

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM**

<b>Complaint no.:</b>	<b>1094 of 2023</b>
<b>Date of filing:</b>	<b>28.03.2023</b>
<b>Date of decision:</b>	<b>13.12.2024</b>

Pradeep Jaiswal R/O: A-65 , Manu Apartments , Mayur Vihar - Phase 1 , New Delhi -110091	<b>Complainant</b>
Versus	
M/S Ms Ninaniya Estates Ltd Regd. Office: Pegasus One , 3 <sup>rd</sup> floor , Golf Course Road , Behind IBIS Hotel , Sector 53 , Gurugram 122002	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Manoj Sharma (Advocate)	Complainant
None	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the rules and regulations made there under or to the allottees as per the memorandum of understanding executed *inter se*.

**A. Project and unit related details**

2. The particulars of the project, the amount of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	Prism Portico, Sector 89, Gurugram
2.	Project area	5.5 acres
3.	Nature of project	Commercial Complex
4.	RERA registered/not registered	Not registered
5.	DTPC license no. & validity status	179 of 2008 dated 02.05.2017 valid upto 10.10.2018
6.	Name of licensee	Ninaniya Estates Pvt. Ltd.
7.	Suites buyers agreement	30.06.2014 (page no. 30 of complaint)
8.	MOU	24.10.2016 (page no. 56 of complaint)
9.	Unit no.	PPES-318, 3 <sup>rd</sup> floor (Page 30 of complaint)
10.	Unit area admeasuring (super area)	550 sq. ft. [Page 33 of complaint]
11.	Possession clause	5.1 Complete <sup>low</sup> and Possession "That the Company shall complete the construction of the said Unit within

		<p><i>36 months from the date of execution of this Agreement and/or from the start of construction whichever is later and offer of possession will be sent to the Allottee by the stipulated date as stated in Annexure-II attached with this agreement including .....</i></p> <p><i>5.2</i>  <i>If there is any delay due to any force majeure reasons as explained hereinafter then the period of delay shall commence 6(six) months after the due date, as these (six) months period shall be grace period available with the company to complete the said complex"</i></p>
12.	Assured return clause	<p><i>2</i></p> <p><i>"The buyer has paid to the developer an amount of Rs.24,54,375/- on which the developer shall give an investment assured return of Rs.24,543/- per month w.e.f. from 23.09.2016 in arrears till the date of possession of the fully furnished said unit is handed over to the buyer."</i></p>
13.	Due date of possession	<p>30.12.2017</p> <p>(calculated from the date of buyer's agreement, as date of construction is not on records plus 6 months grace period allowed being unqualified)</p> <p>(Inadvertently mentioned in the proceeding of the day as 30.06.2017)</p>
14.	Total sale consideration	<p>Rs.28,87,500/- (Basic)</p> <p>(As per buyer's agreement on page no. 33 of complaint)</p>
15.	Total amount paid by the complainant	<p>Rs.27,45,899/-</p>

		(As alleged by complainant on page no. 14 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:
- That the respondent is constructing executive suites and commercial complex by the name of prism portico executive suites after having obtained License No. 179 of 2008 from the Town and Country Planning Department of the State of Haryana.
  - That the complainant was desirous of purchasing unit no. 318 having super area of approximately 550 sq. ft. and covered area of about 350 sq. ft. on the third floor in the project of the respondent. Thereafter, the complainant paid the booking amount and made the following payment to the respondent -

Date of Cheque	Cheque No.	Bank	Amount (INR)	Date on which Cheque was cleared
07.10.2012	718743	HDFC Bank, Rajinder Nagar, New Delhi Branch	5,00,000/-	10.10.2012
<b>TOTAL</b>			<b>Rs. 5,00,000/-</b>	

- That a receipt dated 09.11.2012 was issued to the complainant by the respondent .The complainant received a letter dated 16.04.2014

wherein the respondent stated that the project had reached the stage of commencement of excavation and as per the construction linked payment plan, the complainant paid the following amount to the respondent in relation to the unit :-

Date of Cheque	Cheque No.	Bank	Amount (INR)	Date on which Cheque was cleared
05.05.2014	832852	HDFC Bank, Rajinder Nagar, New Delhi Branch	3,93,017	07.05.2014
<b>TOTAL</b>			Rs. 3,93,017/-	

- d. That a receipt dated 12.06.2014 was issued to the complainant by the respondent. Further, the complainant executed a suites buyer's agreement dated 30.06.2014 with the respondent for purchasing unit no. ppes-318, on the third floor, in the project.
- e. That in clause 3.1 of the buyer agreement, the basic sale consideration for the unit is mentioned as Rs. 28,87,500/-. Out of the basic sale consideration, the complainant has paid a sum of Rs. 8,66,250/- excluding taxes, the receipt of which is acknowledged by the respondent as evidenced from clause 3.5 of the buyer agreement.
- f. That clause 5.3 of the buyer agreement lays down that in case the construction of the said unit is not completed within 36 months or 6 months of the grace period thereafter, the respondent company shall pay Rs. 15/- per square feet of the super area to the complainant.



- g. That as per the payment plan, which has been annexed to the buyer agreement, the complainant has admittedly paid the following amounts to the respondent :-

Date of Cheque	Cheque No.	Bank	Amount (INR)	Date on which Cheque was cleared
28.02.2016	832954	HDFC, Rajinder Nagar Branch, New Delhi	3,98,764/-	16.03.2016
23.09.2016	832607	HDFC, Rajinder Nagar Branch, New Delhi	14,54,118/	23.09.2016
<b>TOTAL</b>			<b>Rs. 18,52,882/</b>	

- h. That the complainant has paid the respondent a total amount of Rs. 27,45,899/- which is duly acknowledged by the respondent in clause 5 of the memorandum of understanding. The complainant executed a memorandum of understanding dated 24.10.2016 with the respondent. The complainant and the respondent had agreed in the memorandum of understanding that the complainant will get an investment return of Rs. 24,543/- per month till the possession of a fully furnished unit is handed over to the buyer.

- i. That pursuant to the execution of the memorandum of understanding and with specific reference to clause 6, the respondent has paid Rs. 5,13,938/- to the complainant from the months of 16.11.2016 to August, 2018. Thereafter, the respondent stopped the payment towards the assured investment returns.
- j. That the respondent unilaterally issued a provisional receipt dated 01.01.2020 wherein it is stated that assured investment returns of nineteen months, that is from September, 2018 to March, 2020, a sum of Rs. 4,19,691/- has been adjusted against the final balance payment of the sale consideration of the unit.
- k. That considering the effective date of the buyer agreement of June 30, 2014, the delay in possession, after exhaustion of the period of 36 months is sixty eight months. The respondent is in clear violation of the terms and conditions laid down in the buyer agreement and the memorandum of understanding where the due date of possession was supposed to be 30.06.2017.
- l. That the respondent has not lived up to the representations and assurances proffered by it to the complainant at the time of booking the unit in the project. The complainant is suffering from economic loss as well as mental agony, pain and harassment by the act and conduct of the respondent and thus, the complainant is entitled to refund with interest.
- m. That the complainant had tried their level best to reach the representatives of respondent to seek a satisfactory reply for delayed possession and compensation as per the rules and provisions of the

Real Estate (Regulation and Development) Act, 2016 and the buyer agreement in respect of the said unit but all went in vain.

n. Written submissions have been filed by the complainant and the same has been taken on record and perused further.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):

- i. Direct the respondent to pay an amount of Rs. 27,45,899/- which was paid by the complainant over the years along with interest at the rate 18% p.a to be calculated from 30.06.2017 till the actual date of payment.
- ii. Direct the respondent to pay pending assured investment return of Rs. 24,543/- per month in terms of suites buyers agreement dated 30.06.2014 and memorandum of understanding dated 24.10.2016 from September 2018 till the actual date of payment.
- iii. Direct the respondent to pay compensation @Rs. 15 per sq. ft. of the super area of the unit per month from 30.06.2017 till the actual date of payment for failing to complete the construction of the said unit as mentioned in clause 5.3 of the suites buyers agreement.
- iv. Direct the respondent to pay an amount of Rs. 5,00,000/- towards mental agony , torture and harassment by the complainant at the hands of the respondent.
- v. Direct the respondent to pay an amount of Rs. 1,50,000/- as litigation expenses incurred by the complainant.

5. The authority issued a notice dated 03.04.2023 of the complaint to the respondent by speed post and also on the given email address at [sudhakar@ninaniyagroup.com](mailto:sudhakar@ninaniyagroup.com) for filing reply within 30 days. The





counsel for the respondent never appeared on any date and has failed to file reply to the complaint within the stipulated period despite given ample opportunities. It shows that the respondent was intentionally delaying the proceedings by avoiding filing of written reply. Therefore, in view of above, vide order dated 24.11.2023, the defence of the respondent was struck off.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainant.

**D. Jurisdiction of the authority**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**D. II Subject matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

*Section 11(4)(a)*

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**E. Findings on the relief sought by the complainant.**

**E.I. Direct the respondent to pay an amount of Rs. 27,45,899/- which was paid by the complainant over the years along with interest at the rate 18% p.a to be calculated from 30.06.2017 till the actual date of payment.**

**E.II Direct the respondent to pay pending assured investment return of Rs. 24,543/- per month in terms of suites buyers agreement dated 30.06.2014 and memorandum of understanding dated 24.10.2016 from September 2018 till the actual date of payment.**

11. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.
12. The facts of the present complaint are that the complainant was allotted a unit no. PPES-318, 3<sup>rd</sup> floor admeasuring 550 sq. ft. in the project



“Prism Portico” being developed by the respondent. The builder buyer agreement was executed between the parties on 30.06.2014, the possession of the subject unit was to be delivered within 36 months from the date of execution of this agreement or from the start of construction whichever is later plus 6 months of grace period .However, there is no document available on record vide which the date of start of construction can be ascertained. Accordingly, the due date is being calculated from the date of execution of agreement .Given the fact that the grace period was unqualified, the same is allowed. Accordingly, in the present case, the due date of possession comes out be 30.12.2017. The complainant has paid an amount of Rs. 27,45,899/- against the basic sale consideration of Rs. 28,87,500/-.

13. Further a memorandum of understanding was also executed between the parties on 24.10.2016. As per clause 2 of the said agreement the developer shall give an investment assured return of Rs. 24,543 /- per month w.e.f 23.09.2016 in arrears till the date of possession of the fully furnished said unit is handed over to the buyer.
14. The builder buyer agreement was executed between the parties on 30.06.2014 and the due date of delivery of possession of the subject unit was 30.06.2017. Further, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme

Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., Civil Appal no. 5785 of 2019**, decided on 11.01.2021.

*"...The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

15. Moreover, the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs. State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under:

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that **if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.**"*

16. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under Section 11(4)(a) of the Act. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

17. The complainant intends to withdraw from the project and sought refund of entire amount paid by them under the proviso of Section 18(1) of the Act. Section 18(1) proviso is reproduced below for ready reference:

***“Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, -*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”*

*(Emphasis supplied)*

18. There has been an inordinate delay in the project which cannot be condoned. Thus, in such a situation, the complainants cannot be compelled to take possession of the unit and are well within right to seek refund of the paid-up amount. This is without prejudice to any other remedy available to the allottees including compensation for which the allottees may file an application for adjudging compensation with the adjudicating officer under Sections 71 and 72 read with Section 31(1) of the Act of 2016.
19. Vide proceeding dated 13.12.2024 the counsel for the complainant stated that similar relief as prayed for in the present case was granted in CR/No. 5628/2022. Therefore, the Authority may consider the same before passing the final order. However it is important to note that the

facts of the referenced case mentioned by the counsel for the complainant and the facts of the present case are different. In the case cited by the Counsel for the complainant, the complainant wished to continue in the project and the relief being demanded was that of assured return and possession as well as conveyance deed. Whereas, in the present case, the complainant is seeking the relief of refund. Therefore, the Authority is perusing with the facts and documents of the present case in hand.

20. Since the complainant-allottees are withdrawing from the project of the respondent by seeking relief of refund of entire amount paid by them along with interest at the prescribed rate, whatever financial benefit accrued to the complainant in lieu of the said MoU is to be refunded by the complainant to the respondent. Therefore, the amount of assured returns paid by the respondent to the complainant-allottees shall be adjusted/deducted from the payable amount.
21. **Admissibility of refund along with prescribed rate of interest:** The Section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules.

Rule 15 has been reproduced as under:

***"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."*

22. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 13.12.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
24. The definition of term "interest" as defined under Section 2(za)(ii) of the act provides that the interest payable by the promoter to the allottee shall be from the date the promoter received the amount. The relevant section is reproduced below: -
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- ... (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, ...*
25. Therefore, the authority hereby directs the promoter to return the amount received by him i.e., Rs. 27,45,899/- with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Rules , 2017. However, it is important to note that the amount of assured return paid by the

respondent to the complainant w.r.t unit allotted shall be adjusted/deducted from the payable amount.

**E.III Direct the respondent to pay compensation @ Rs. 15 per sq. ft. of the super area of the unit per month from 30.06.2017 till the actual date of payment for failing to complete the construction of the said unit as mentioned in clause 5.3 of the suites buyers agreement.**

**E.IV Direct the respondent to pay an amount of Rs. 5,00,000/- towards mental agony , torture and harassment by the complainant at the hands of the respondent.**

**E.V Direct the respondent to pay an amount of Rs. 1,50,000/- as litigation expenses incurred by the complainant.**

26. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer.

**F. Directions of the authority**

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):





- a. The respondent is directed to **refund** the entire amount paid by the complainants, i.e., Rs. 27,45,899/- along with interest at the rate of 11.10% p.a. as prescribed under **Rule 15** of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till its realization. **However**, the amount of assured return already paid by the respondent to the complainant w.r.t. unit allotted shall be adjusted/deducted from the payable amount.
  - b. A period of 90 days is given to the respondent to comply with the directions given in this order and **failing** which legal consequences would follow.
28. The complaint stands disposed of.
29. File be consigned to registry.

**Dated: 13.12.2024**

**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram