



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

Complaint no.	:	6528 of 2022
Date of filing complaint:		27.09.2022
Date of order		18.04.2025

Deepak Bajaj R/O: Cw-40 FF, Sohna Road, Malibu Towne, South City II, Gurugram, Haryana	Complainant
Versus	
M/S Ninaniya Estates Ltd. Office: 278/3, Old Delhi Road, Opposite Ajit Cinema, Gurugram, Haryana.	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Nipun Rao (Advocate)	Complainant
None	Respondent

ORDER

1. This 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 under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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. No.	Particulars	Details
1.	Project name and location	"Prism Portico" Sector-89 Gurgaon-Pataudi Road, Gurugram, Haryana.
2.	Project area	5.05 acres
3.	Nature of project	Executive Suite and Commercial Complex.
4.	RERA registered/not registered	Un-registered.
5.	DTPC license no. & validity status	179 of 2008 dated 11.10.2008 valid Upto 10.10.2018
6.	Name of licensee	Ninaniya Estates Ltd.
7.	Payment Receipt	31.12.2014 (As per page no. 12 of complaint)
8.	Buyer's Agreement (Incomplete)	08.01.2015 (As per page no. 39 of the complaint)
9.	Agreement (Duplicate)	18.12.2021 (As per page no. 30 of the complaint)
10.	MOU	05.01.2015 (As per page no. 42 of the complaint)
11.	MOU (Duplicate) (Incomplete)	18.12.2021 (As per page no. 41 of the complaint)
12.	Unit No.	Retail Shop , FD-12, 1 st floor (As per page no. 20 of the complaint)
13.	Unit area admeasuring	650 sq. ft. (page no. 20 of complaint)
14.	Possession Clause	Cannot be ascertained.
15.	Assured return clause	2. The Buyer has paid to the Developer an amount of Rs. 26,00,000/-on which the developer shall give an investment assured return of Rs. 60,667/- per month w.e.f. 26.12.2014 in arrears till the date of possession of the Said Unit is handed over to the Buyer.

		(As per MOU dated 05.01.2015)
16.	Date of start of construction	Not mentioned
17.	Due date of possession	08.01.2018 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
18.	Total sale consideration	Rs. 31,20,000/- (as per MOU at page 43 of complaint)
19.	Amount paid by the complainant	Rs. 28,26,460/- (as per receipts of payment at page 12 of complaint)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant, based on the claims of the respondent purchased a 650 sq. ft. unit in the project of the respondent known as "Prism Portico Retail Shops", located at Sector-89, Gurgaon-Pataudi Road, Haryana for a total sale consideration of Rs. 31,20,000/-. The original builder buyer agreement dated 05.01.2015 and the allotment of unit no. PPRS-FD-12, first floor, admeasuring 650 sq. ft. super area was assigned in favour of the complainant by the respondent vide its letter dated 31.12.2014.
- II. That the respondent also executed a MOU on dated 05.01.2015. As per the MOU the respondent was liable to pay minimum guaranteed assured returns of Rs. 54,600/- per sq. ft. per month to the complainant till actual possession of the unit to the complainant. The respondent was

paying the monthly returns of Rs. 54,600/- per month since January 2015.

- III. That the respondent in furtherance of its mala fide intentions and ulterior motives without assigning any reason stopped the payment of the monthly returns to the complainant from March 2017 onwards. Despite of repeated requests, the same have not been paid to the complainant till date.
- IV. That the respondent has not only duped the complainant but several other buyers like him by refusing to pay the monthly returns on one pretext or the other even the project has not received the completion/occupation certificate from the competent authority till date. The buyers have been paid the monthly returns for different periods and have been denied the payment of the same on different grounds.
- V. That the respondent has not even offered the possession of the unit of the complainant to him and has further stopped responding to the communications of the complainant and has also restricted entry into its office for the complainant and other buyers and has failed to apprise the complainant regarding the true and correct status of the project where the unit of the complainant is located and has further refused to pay the monthly assured rent/minimum guaranteed rent to the complainant for reasons undisclosed.
- VI. That the conduct of the respondent is illegal and arbitrary, and the respondent is guilty of deficiency of services and of unfair and monopolistic trade practices. The respondent is clearly in breach of its contractual obligations and of causing financial loss to the complainant and the conduct of the respondent has caused and is continuing to cause a great amount of financial loss stress, grief and harassment to the

complainant and his family members. Hence the present complaint is filed by the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay the assured returns due and payable by it to the complainant.
 - ii. Direct the respondent to continue paying the investment returns/monthly returns to the complainant as per the terms of the builder buyer agreement.
 - iii. Direct the respondent to pay interest at the prescribed rate of interest on the unpaid monthly returns/investment returns to the complainant to be calculated from the date the monthly returns were due till the date of actual payment.
 - iv. Direct the respondent to handover the possession of the subject unit along with prescribed interest per annum from the promised date of delivery of the unit in question till handing over/actually delivery of the said unit.
 - v. Direct the respondent to execute a conveyance deed for the unit of the complainant and to handover the physical/symbolic possession of the unit booked by the complainant to him complete in all aspects.
 - vi. Direct the respondent to restrain him from demanding any amount from the complainant at the time of offer of possession which do not form a part of agreement executed between the parties.
5. The authority issued a notice dated 19.11.2022 of the complaint to the respondent by speed post and also on the given email address at sales@ninaniyagroup.com, for filing reply within 15 days. The delivery reports have been placed in the file. The counsel for the respondent put in appearance on 17.01.2023, 05.04.2024, 05.07.2024, 16.08.2024 but 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 03.05.2024, 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 has complete territorial and 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 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 complete 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 promoters, 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 the assured returns due and payable by it to the complainant.**
- E.II Direct the respondent to continue paying the investment returns/monthly returns to the complainant as per the terms of the builder buyer agreement.**
- E.III Direct the respondent to pay interest at the prescribed rate of interest on the unpaid monthly returns/investment returns to the complainant to be calculated from the date the monthly returns were due till the date of actual payment.**
- E.IV Direct the respondent to handover the possession of the subject unit along with prescribed interest per annum from the promised date of delivery of the unit in question till handing over/actually delivery of the said unit.**

Assured Return

11. In the instant complaint, the complainant duly booked a unit bearing no. FD-12, located on the 1st floor of the respondent's project, "Prism Portico," situated at Sector-89, Gurugram. Subsequently, on 31.12.2014, the respondent issued a payment receipt confirming the booking of the aforementioned unit. Thereafter, on 05.01.2015, a Memorandum of Understanding (MOU) was executed between the complainant and the respondent. Further, on 08.01.2015, a buyer's agreement was executed between the parties.
12. The complainant in the present complaint is seeking relief w.r.t payment of assured return as per the terms of the MoU dated 05.01.2015. The complainant has submitted that as per clause 2 of the said MoU, it was

agreed that the respondent would pay monthly assured return of Rs.60,667/- with effect from 26.12.2014 till the date of possession of said unit is handed over to the buyer. The complainant is seeking unpaid assured returns on monthly basis as per the MoU dated 05.01.2015 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU.

13. The authority is of the view that the MoU dated 05.01.2015 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.**, (Writ Petition No. 2737 of 2017) decided on 06.12.2017.
14. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured

returns for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

15. The Authority has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. If the project in which the advance has been received by the developer from an allottee is an ongoing project as per section 3(1) of the Act of 2016 then, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/MoU defines the builder-buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the said memorandum of understanding.
16. In the present complaint, the assured return was payable as per clause 2 of the MoU dated 05.01.2015, which is reproduced below for the ready reference:
- 2. The Buyer has paid to the Developer an amount of Rs. 26,00,000/- on which the developer shall give an investment assured return of Rs. 60,667/- per month w.e.f. 26.12.2014 in arrears till the date of possession of the Said Unit is handed over to the Buyer."*
17. Thus, the assured return was payable @Rs.60,667/- per month w.e.f. 26.12.2014, till the date of possession of the said unit is handed over to the complainant.
18. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 05.01.2015, it was obligation on part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the

parties in MoU dated 05.01.2015. Further, it is to be noted that the occupation certificate for the project in question has not been received till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.60,667/- per month from the date i.e., 26.12.2014 till the possession of the said unit is handed over to the buyer as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant.

Delay Possession Charges:

19. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"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, —

.....

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."

20. In the present matter, MOU was executed between the parties on 05.01.2015 and the buyer's agreement was executed on 08.01.2015. As per the documents on record it was observed that the copy of buyer's agreement dated 08.01.2015 is incomplete and does not provide the clause of handing over of possession. In this regard the complainant has stated that there original documents got lost due to which they have filed a lost information report with Delhi Police on 09.12.2021. Whereas, the complainant has also annexed a copy of buyer's agreement dated 18.12.2021 and stated that after misplacement of original documents they approached the respondent but respondent edited the front page and mentioned the date of execution of agreement as 18.12.2021. The affidavit

in this regard has also been filed by the complainant on 26.09.2024. The authority is of the view that in such case the due date of handing over of possession should be calculated as per the view already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter **Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1** and then was reiterated in **Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:**

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

21. Accordingly, the due date of possession is calculated as 3 years from the date of original agreement i.e., 08.01.2015. Therefore, the due date of possession comes out to be 08.01.2018.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at prescribed rate of interest. Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.

23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, 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.
24. 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., 18.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. 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—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (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, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter

which is the same as is being granted to the complainant in case of delay possession charges.

27. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered by 08.01.2018. Till date no occupation certificate has been obtained by the respondent/promoter. The authority is of the considered view that there is delay on the part of the respondent/promoter to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and to hand over the possession within the stipulated period. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
28. The authority observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, is entitled to both the assured return as well as delayed possession charges?
29. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in the MoU at the rate at which assured return has been committed by the promoter i.e., Rs.60,667/- per month. If we compare this assured return with delayed possession charges payable under proviso to section 18 (1) of the Real Estate (Regulation and Development) Act, 2016, the assured return is much better. By way of assured return, the promoter has assured the allottee that he will be entitled for this specific amount from 26.12.2014 till the possession of the said unit is handed over to the buyer. Accordingly, the interest of the allottee is protected even after the due date of possession is over. The purpose of delay possession charges after due

date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as his money is continued to be used by the promoter even after the promised due date and in return, he is to be paid either the assured return or delay possession charges whichever is higher.

30. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delay possession charges under Section 18 and assured return is payable even after due date of possession, the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
31. In the present complaint, as per clause 2 of the MoU dated 05.01.2015, the amount on account of assured return was payable from 26.12.2014 till the possession of the said unit is handed over to the buyer. Further, it is to be noted that the occupation certificate for the project in question has not been received till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.60,667/- per month from the date i.e., 26.12.2014 till the possession of the said unit is handed over to the buyer as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant.

E.V Direct the respondent to execute a conveyance deed for the unit of the complainant and to handover the physical/symbolic possession of the unit booked by the complainant to him complete in all aspects.

32. The complainant is also asking for the relief of conveyance deed getting executed. As per section 11(4) (f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of

2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

33. Since no occupation certificate has been obtained by the respondent-promoter and the possession of the subject unit has not been offered to the complainant till date. Thus, the respondent is directed to get the conveyance deed executed within a period of three months after obtaining occupation certificate from the competent authority after payment of stamp duty and registration charges.

E.VI Direct the respondent to restrain him from demanding any amount from the complainant at the time of offer of possession which do not form a part of agreement executed between the parties.

34. The respondent is directed not to charge anything which is not part of buyer's agreement/MOU.

F. Directions of the authority

35. 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):


- i. The respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.60,667/- per month from the date i.e., 26.12.2014 till the possession of the said unit is handed over to the buyer as per clause 2 of the MOU dated 05.01.2015, after deducting the amount already paid on account of assured return to the complainant.
- ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount



would be payable with interest @9.10% p.a. till the date of actual realization.

- iii. The respondent/promoter shall not charge anything from the complainant which is not the part of the BBA/MoU.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of payable assured returns.
 - v. The respondent/promoter is directed to offer possession of the subject unit to the complainant within a period of 60 days from the date of obtaining occupation certificate.
 - vi. The respondent is directed to get the conveyance deed executed within a period of three months after obtaining occupation certificate from the competent authority after payment of stamp duty and registration charges.
 - vii. It is also noted by the Authority that the project of the respondent falls under the category of 'ongoing projects' under section 3(i) of the Act of 2016. The promoter has prima facie violated the above provision of the Act, 2016 and is liable to be proceeded against under section 59 of the Act, 2016. The Planning branch of the Authority is directed to initiate action against the promoter in this regard within 30 days of passing of this order
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 18.04.2025


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