

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

Complaint no.: 3320 of 2023
Date of complaint: 17.07.2023
Order reserved on: 24.01.2025
Order pronounced on: 28.03.2025

Ipsa Pratibimbita

R/o: - F-1001, Plot no. 12A, Apex Athena, Sector-75,
Noida

Complainant

Versus

M/s Ninaniya Estates Ltd.

Regd. Office at: - Prism Portico, Sector-89,
Gurugram-Pataudi Road, Hayatpur, Adjacent to NBCC
Heights, Haryana-122004

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Vijay M Chauhan (Advocate)
None

Complainant
Respondent


EXPARTE- 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. Project and unit related details.

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

Sr. No.	Particulars	Details
1.	Name of the project	"Prism Portico", Sector 89, Pataudi Road, Gurugram
2.	Project area	5.05 acres
3.	Nature of project	Commercial Complex
4.	DTCP license	179 of 2008 dated 11.10.2008 valid upto 10.10.2018
5.	License	Ninaniya Estates Ltd.
6.	RERA Registration	Not Registered
7.	Unit no./shop	GB-07, Ground (page no. 12 of complaint)
8.	Unit admeasuring (super area)	500 sq. ft. (page no. 12 of complaint)
9.	Buyer's agreement	16.05.2013 (page no. 09 of complaint)
10.	Possession clause	5. Completion and Possession <i>5.1 That the Company shall complete the construction of the said Unit within 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 subject to the condition that all the amounts due and payable by the Allottee by the stipulated date as stated in Annexure-II attached with this agreement including sale price, maintenance charges, security deposit, stamp duty and other charges etc, have been paid to the Company. The</i>



		<p>company on completion of the construction shall apply for completion certificate and upon grant of same shall issue final letters to the Allottees(s) who shall within 30 days, thereof remit all dues.</p> <p>5.2 If there is any delay due to any force majeure reasons as explain hereinafter then the period of delay shall commence 6(six) months after the due date, as this 6 (six) months period shall be grace period available with the company to complete the said complex.</p> <p>(page no. 16 of complaint)</p>
11.	Due date of possession	<p>16.11.2016</p> <p>(calculated from the date of buyer's agreement as date of construction is not on record plus grace period of 6 month is allowed being unqualified.)</p> <p>Note: Vide proceedings dated 24.01.2025 the due date of possession is inadvertently mentioned as 16.05.2017</p>
12.	Sale consideration	<p>Rs. 30,00,000/- BSP</p> <p>Rs. 32,00,000/- TSC</p> <p>(as per payment schedule at page no. 33 of complaint)</p>
13.	Amount paid by the complainant	<p>Rs. 13,68,760/-</p> <p>(as per receipts annexed at page 34-37 of complaint)</p>
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -



4. That the respondent approached the complainant in March, 2017 and emphasized the complainant to buy a retail shop unit in its project namely "Prism Portico" at Sector-89, Gurugram-Patuadi Road, Haryana.
5. That the complainant vide provisional application dated 09.04.2013 made a payment of Rs.6,18,450/- in favour of the respondent for allotment of one retail shop.
6. That the builder buyer agreement dated 16.05.2013 was executed between the parties. The complainant under the BBA dated 16.05.2013 was allotted a retail shop no. GB-07, ground floor, admeasuring 500 sq. ft. in the complex.
7. That the respondent has received the entire amount of Rs. 13,68,760/- as per the payment plan till 03.08.2016 out of total sale consideration of Rs. 30,00,000/-.
8. That the complainant during these years several times made inquiry about the possession of the said shop as the possession of the unit was to be handed over within 36 months from the date of execution of agreement, i.e. 01.08.2016.
9. That illegal and fraudulent acts of the respondent came into light when the respondent stopped construction on the project site and did not give status of the same despite several calls and reminders from the complainant.
10. That the complainant made several oral and telephonic requests for giving possession of the said shop but till date the complainant did not receive the same.
11. That the respondent has failed to provide services in accordance with the BBA and under various laws in regard thereto and further misrepresented, misguided and cheated the complainant.

C. Relief sought by the complainant: -

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

- (i) Direct the respondent to kindly handover the entire possession of the unit of the complainant, once it is ready, in all respects and not to force an incomplete unit without proper road, electrification of the roads, etc. as mentioned under BBA.
- (ii) Direct the respondent to pay interest @18% p.a. for delay in handing over possession of the commercial unit from 1.8.2016 till actual date of handing over the unit to the complainant.

13. The present complaint was filed on 17.07.2023. The counsel for the respondent neither appeared nor filed the reply in the complaint. Despite specific directions, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority proceeds with the case exparte.
14. 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

15. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

16. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

17. 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) The promoter shall-

(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.

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking delay possession charges.

E. Findings on the relief sought by the complainant.

E.I. Direct the respondent to kindly handover the entire possession of the unit of the complainant, once it is ready, in all respects and not to force an incomplete unit without proper road, electrification of the roads, etc. as mentioned under BBA.

E.II Direct the respondent to pay interest @18% p.a. for delay in handing over possession of the commercial unit from 1.8.2016 till actual date of handing over the unit to the complainant.

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19. The complainant in the present complaint has booked a unit/shop in the project of the respondent namely 'Prism Portico' situated at sector-89 Pataudi Road, Gurugram, Haryana. The complainant was allotted a unit bearing no. GB-07 situated at ground floor, admeasuring 500 sq. ft. the buyer's agreement for the said unit was executed between the complainant and respondent on 16.05.2013. The total sale consideration of the unit was Rs. 32,00,000/- and the complainant has paid an amount of Rs. 13,68,760/-.

20. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."***

21. A builder buyer agreement dated 16.05.2013 was executed between the parties. The due date to handover the possession of unit is calculated as per clause 5 of BBA. The relevant clause is reproduced below:

"5.1 That the Company shall complete the construction of the said Unit within 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 subject to the condition that all the amounts due and payable by the Allottee by the stipulated date as stated in Annexure-II attached with this agreement including sale price, maintenance charges, security deposit, stamp duty and other charges etc, have been paid to the Company. The company on completion of the construction shall apply for completion certificate and upon grant of same shall issue final letters to the Allottees(s) who shall within 30 days, thereof remit all dues.

5.2 If there is any delay due to any force majeure reasons as explain hereinafter then the period of delay shall commence 6 (six) months after the due date, as this 6 (six) months period shall be grace period available with the company to complete the said complex....

22. Due date of handing over of possession: As per possession clause 5.1 of the agreement dated 16.05.2013 the possession of the unit was to be handed over within 36 months from the date of execution of agreement or from start of construction whichever is later. The date of start of construction is not available on records so, the due date is calculated from the date of agreement i.e., 16.05.2013 which comes out to be 16.05.2016. Further clause 5.2 of the agreement mentions that the respondent is entitled to a grace period of 6 months. The said grace period of 6 month is allowed as it is unqualified. Hence, the due date of possession comes out to be 16.11.2016.

23. Admissibility of delay possession charges at prescribed rate of interest: The complainant is seeking delay possession charges. 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]

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."

24. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 28.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

25. On consideration of the documents available on record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the buyer's agreement dated 16.05.2013 executed between the parties. As per the clause 5 of the buyer's agreement, the possession of the booked unit was to be delivered within a period of 36 months including grace period of 6 months which comes out to be 16.11.2016. Till date no occupation certificate has been obtained by the respondent. The authority is of the considered view that there is delay on the part of the respondent 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.
26. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delay possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by complainant to the respondent from the due date of possession i.e., 16.11.2016 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession, whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
27. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and



thereafter the complainant is directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days.

F. Directions of the authority

28. 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 is directed to pay the interest at the prescribed rate i.e. 11.10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 16.11.2016 till valid offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
 - iii. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainant is directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days.



HARERA
GURUGRAM

Complaint No. 3320 of 2023

- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant, which is not the part of the buyer's agreement.
29. Complaint as well as applications, if any, stands disposed off accordingly.
30. File be consigned to registry.

Dated: 28.03.2025



V.I. - 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

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