

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

**Date of decision: 18.03.2025**

NAME OF THE BUILDER		M/s Ninex Developer Limited through its director representative
PROJECT NAME		Ninex City at sector 76, Gurgaon, Haryana
S. No.	Case No.	Case title
1.	CR/4016/2019	Anil Goel and Kavita Goel Vs. M/s Ninex Developer Limited through its director representative
2.	CR/4017/2019	Anil Gupta Vs. M/s Ninex Developer Limited through its director representative
3.	CR/432/2020	Saroj Kansal Vs. M/s Ninex Developer Limited through its director representative

**CORAM:**

Shri Arun Kumar	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>

**APPEARANCE:**

Shri Rajan Gupta advocate (complainants)	Complainant
None appeared on behalf of respondent	Respondent

**ORDER**

- This order shall dispose of the aforesaid 3 complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and

- Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues arising from these complaints are similar in nature. The complainant(s) in the aforementioned matters are allottees of the project, 'Ninex City', situated at Sector-76, Gurugram which is being developed by the same respondent/promoter i.e., M/s M/s Ninex Developer Limited through its director representative. The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delayed possession charges.
  3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>"Ninex City" at sector 76, Gurgaon, Haryana</b>
<b>Project area</b>	16.819 acres
<b>DTCP License No. and validity</b>	16 of 2010 dated 16.02.2010 valid upto 15.02.2018
<b>HRERA Registered</b>	Not Registered
<b>Possession Clause</b>	<b>26. Possession</b>

	<p><i>Subject to other terms of the Application and the Agreement, including but not limited to clauses concerning taxes payable by the Allottee(s) and timely payment of the Sale Price and other amounts, charges &amp; dues as mentioned in the Application/Agreement, the Company shall endeavor to complete the construction of the said apartment within thirty three (33) months from the from the date of booking by the Allottee(s) and thereafter the Company shall offer the possession of the said Apartment to the Allottee(s).....</i></p>
<b>Occupation certificate</b>	<b>Not obtained</b>

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession	Relief sought
1.	<p>CR/4016/2019 Case titled as Anil Goel and Kavita Goel Vs. Ninex Developer Limited through its director representative  DOF: 11.09.2019  Reply: not received</p>	<p>F-110, First floor, F- Block.  Area:28 42 sq.ft.</p>	<p>08.02.2012  Due date of possession : 11.08.2013 (calculated from date of booking i.e. 11.11.2010 )</p>	<p>BSC- Rs. 1,11,57,5 96/-  AP- Rs. 1,08,78,7 21/-</p>	Not offered	• DPC
2.	<p>CR/4017/2019 Case titled as Anil Gupta Vs. Ninex Developer Limited through its director representative</p>	<p>C-804, 8<sup>th</sup> floor, C- Block  area- 1952 sq. ft.</p>	<p>24.01.2012  Due date of possession :</p>	<p>BSC- Rs. 65,39,20 0/-</p>	Not offered	• DPC

	DOF: 11.09.2019		03.05.2014 (calculated from date of booking i.e. 03.08.2011 )	AP- Rs. 63,37,26 7/-		
	Reply: not received					
3.	CR/432/2020 Case titled as Saroj Kansal Vs. Ninex Developer Limited through its director representative  DOF: 11.02.2020  Reply: not received	F-404, 4 <sup>th</sup> floor, F- Block  area- 2863 sq. ft.	24.01.2012  Due date of possession : 16.12.2013 (calculated from date of booking i.e. 16.03.2011 )	BSC- Rs. 57,26,00 0/-  AP- Rs. 60,92,12 4/-	Not offred	• DPC

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/4016/2019 titled as Anil Goel nd Kavita Goel Vs. M/s Ninex Developers Limited through its director representative.** are being taken

into consideration for determining the rights of the allottee(s) qua the relief sought by them.

**A. Project and unit related details**

7. 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:

*CR/4016/2019 titled as Anil Goel and Kavita Goel Vs. M/s Ninex Developers Limited through its director representative.*

S.N.	Particulars	Details
1.	Name of the project	"Ninex City", Sector - 76, Gurugram
2.	Project area	16.82 acres
3.	Nature of the project	Group Housing
4.	DTCP license no. and validity status	16 of 2010 dated 16.02.2010 valid upto 15.02.2025
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	F-110, First floor, F- Block
8.	Unit area admeasuring	2841 sq. ft.
	Date of booking	11.11.2010
9.	Date of allotment	28.02.2011
11.	Date of execution of buyer agreement	08.02.2012 (Page 1 of the apartment buyer agreement annexure P_3)



12.	Possession clause	<b>26 Possession</b> <i>Subject to other terms of the Application and the Agreement, including but not limited to clauses concerning taxes payable by the Allottee(s) and timely payment of the Sale Price and other amounts, charges &amp; dues as mentioned in the Application/Agreement, the Company shall endeavor to complete the construction of the said apartment within thirty three (33) months from the from the date of booking by the Allottee(s) and thereafter the Company shall offer the possession of the said Apartment to the Allottee(s).....</i>
13.	Due date of possession	11.08.2013
14.	Basic sale consideration	Rs. 1,11,57,596/- (as per payment schedule page 15-A of the complaint)
15.	Amount paid by the complainants	Rs. 1,08,78,721/-
16.	Occupation certificate	Not obtained

### B. Facts of the complaint

8. The complainants have made following submissions in the complaint:
  - i. That respondent had launched a Group Housing Colony known as "Ninex City" in Village- Kherki Daula, Sector-76, Gurugram in the year 2010.

- ii. That the respondent had spent a huge amount of money for the launch of the above project and assured the interested buyers that it will be a dream project for investors. The complainants, being simple persons, believed the promise of the respondents and became inclined towards the project and invested all their hard-earned savings in the above project on 21.11.2019.
- iii. That complainants booked an apartment in above said project vide application dated 11.11.2010 and vide allotment letter dated 28.02.2011 the respondent allotted one apartment bearing No. F-110 in block 'F' First Floor, Unit type: Apartment, Super area admeasuring 2842 sq. ft. in respondent's project.
- iv. That the total cost of the subject unit was Rs.1,11,57,596 /-. The respondents entered into apartment buyer agreement with the complainants on 08.02.2012. That as per Clause 26 of the said agreement the respondent assured the complainants that the physical possession of the said plot would be handed over to the complainants within 33 months from the date of booking by allottee i.e. by 10.08.2013 and in case of delay respondent will pay late possession charges.
- v. That the complainants have consistently paid instalments on time. However, upon visiting the unit, they were shocked to see that the construction was still ongoing and significantly delayed from what was promised by the respondent.
- vi. That complainants have already made a payment of Rs.1,08,78,721/- in the favour of respondent, but till today the occupation certificate has not been issued.
- vii. That the complainants have gone through immense mental agony, stress and harassment at the hands of respondent for this huge delay. Due to above act and conduct and further since the respondent failed to

fulfil its promise to deliver the possession in time, the complainants are entitled for delayed possession charges on the amount paid by the complainants with interest at the same rate of interest on which the respondent company was charging late payment @ 18% per annum till the issuance of occupation certificate from the respondent.

**C. Relief sought by the complainant**

9. The complainant has sought the following relief(s):
  - I. Direct the respondent to pay delay possession charge along with prescribed rate of interest till the issuance of possession letter after receiving occupation certificate from the competent Authority.
10. It is important to note that the respondent filed an application dated 13.10.2020 stating that the respondent company has been admitted to CIRP and moratorium pronounced under Section 14 of the IBC in by NCLT vide orders dated 25 July, 2019. The respondent never appeared after the filing of the application dated 13.10.2020.
11. The respondent-promoter was given several opportunities to file a reply but failed to comply with the orders of the Authority. Despite proper service of notice through speed post as well as email, no one has appeared on behalf of the respondent, nor has any reply been filed before the Authority to date. This indicates that the respondent is deliberately delaying the proceedings by avoiding the filing of a written reply. Therefore, vide proceedings dated 05.02.2020, the respondent was proceeded against ex-parte in Complaint Nos. 4016-2019 and 4017-2019, while in Complaint No. 432-2020, the respondent was proceeded against ex-parte on 18.03.2025. Hence, in view of the above, the Authority is



deciding the complaint based on the undisputed documents available on record and the submissions made by the complainant

**D. Jurisdiction of the authority**

12. 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**

13. 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 purposes 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**

14. 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.*

15. 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 delay possession charge along with prescribed rate of interest till the issuance of possession letter after receiving occupation certificate from the competent Authority**

16. Vide order dated 10.12.2020, the matter was kept in abeyance till the decision of the NCLT. The complainant filed an application dated 22.05.2024 for the revival of the complaint and submitted that, in the CIRP of respondent no. 1 company, an application being IA No. 5050/2023 was filed under Section 12A of the Insolvency and Bankruptcy Code, 2016 for the withdrawal of the CIRP, as the withdrawal plan under Section 12A of the Code had been approved by the CoC with 92.50% votes in its favour. The said application, IA No. 5050/2023, was allowed by the Hon'ble NCLT vide its order dated 15.02.2024, and the respondent company was directed to be revived and restored to its original position
17. In the complaint, the complainants intend to continue with the project and is seeking delay possession charges at prescribed rate of interest on the amount already paid by her as provided under the proviso to 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."*

18. Clause 26 of the apartment buyer's agreement dated 08.02.2012, provides for handing over possession and the same is reproduced below:

*26 Subject to other terms of the Application and the Agreement, including but not limited to clauses concerning taxes payable by the Allottee(s) and timely payment of the Sale Price and other amounts, charges & dues as mentioned in the Application/Agreement, **the Company shall endeavor to complete the construction of the said apartment within thirty three (33) months from the from the date of booking** by the Allottee(s) and thereafter the Company shall offer the possession of the said Apartment to the Allottee(s)...."*

19. At the outset, it is relevant to comment on the present possession clause of the agreement, wherein the possession has been subjected to all kinds of terms and conditions of the agreement, and the complainants are not in default under any provisions of this agreement and have complied with all provisions, formalities, and documentation as prescribed by the promoter. The drafting of this clause and the incorporation of such conditions are not only vague and uncertain but are so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottee in fulfilling formalities and documentation, etc., as prescribed by the promoter may render the possession clause irrelevant. As a result, the commitment regarding the time period for handing over possession loses its meaning. The incorporation of such a clause in the buyer's agreement by the promoter is merely an attempt to evade liability for the timely delivery of the subject unit and to deprive the allottees of their rights arising from delay in possession. This demonstrates how the builder has

misused his dominant position by drafting such a one-sided clause in the agreement, leaving the allottees with no option but to sign on the dotted line.

20. **Due date of handing over possession:** As per clause 26 of buyer's agreement, the respondent promoter had proposed to handover the possession of the subject unit ***thirty there (33) months from the from the date of booking***. The date of booking is 11.11.2010, therefore, the due date of handing over possession comes out to be 11.08.2013.
21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to Section 18 provides that where an allottee(s) 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. This prescribed rate has been defined under rule 15 of the Rules, reproduced below:
- 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.*
22. The legislature, in its wisdom, has determined the prescribed rate of interest in the subordinate legislation under Rule 15 of the Rules. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it would ensure uniformity 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., 18.03.2025 is 8.10%. 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(z) of the Act provides that 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. The relevant section is reproduced below:
- "(z) "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—*
- 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;*
- 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;"*
25. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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 agreement. By virtue of clause clause 26 of buyer's agreement, the respondent promoter had proposed to handover the possession of the subject unit **thirty there (33) months from the from the date of booking** i.e. 11.11.2010, therefore, the due date of handing over possession comes out to be 11.08.2013.



26. It is pertinent to mention over here that even after a passage of more than 13 years (i.e., from the date of buyer agreement till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoters. 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. Moreover, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what the status of construction of the project is. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within two months from the date of receipt of the occupation certificate. This two-month reasonable period is granted to the complainant, keeping in mind that even after intimation of possession, the allottee practically has to arrange a number of logistics and requisite documents, including but not limited to inspection of the completely finished unit. However, this is subject to the unit being handed over in a habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession, i.e., 11.08.2013, till the valid offer of possession after obtaining the occupation certificate from the competent authority plus two months, or actual handing over of possession, whichever is earlier.
28. Accordingly, the 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, the allottees shall be paid, by the

promoter, interest for every month of delay from due date of possession i.e., 11.08.2013 till valid offer of possession after obtaining occupation certificate from the competent Authority plus 2 months or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules

**F. Directions of the Authority**

29. 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 delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession 11.08.2013 till valid offer of possession after obtaining occupation certificate from the competent Authority plus 2 months or actual handing over of possession whichever is earlier.
- ii. The arrears of such interest accrued from due date of possession of each case till the date of this order by the Authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged 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 the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. The benefit of grace period on account of Covid-19, shall be applicable to both the parties in the manner detailed herein above.

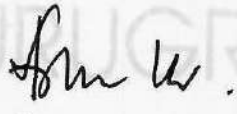
- v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
32. Files be consigned to registry.



(Ashok Sangwan)  
Member



(Vijay Kumar Goyal)  
Member



(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.03.2025