

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

Complaint no. : 1539 of 2023
Date of complaint : 03.04.2023
Date of order : 30.07.2025

Manisha Anand,
R/o: - Whitewood-102, Malibu Town,
Sohna Road, Gurugram-122002.

Complainant

Versus

1. Ninaniya Group
Having Regd. Office At: - 6th Floor, Prism Tower,
Faridabad-Gurgaon Road, Baliwas,
Bandhwari, Haryana.
2. Ninaniya Estates Limited
Having Regd. Office At: - 160, Karni Vihar,
Ajmer Road, Near Rawat Mahila College,
Jaipur, Rajasthan-302021.

Respondents

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Khyati Jain (Advocate)
None

**Complainant
Respondents**

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 under the provisions of the Act or the

Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit 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. N.	Particulars	Details
1.	Name of the project	"Prism portico", Sector- 89, Gurugram.
2.	Project area	5.5 acres
3.	Nature of the project	Commercial Complex
4.	DTCP License no.	179 of 2008 dated 02.05.2017 Valid upto 10.10.2018
5.	Name of licensee	Ninaniya Estates Pvt. Ltd.
6.	Units detail	PPOS-204, Second Floor, Measuring 550 sq.ft (super Area) (As on page no. 12 of complaint)
7.	Memorandum of understanding	05.01.2015 (page 12 of complaint)
8.	Date of execution of buyer's agreement	05.01.2015 (page 20 of complaint)
9.	Possession Clause	Clause 5. COMPLETION AND POSSESSION 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..... 5.2 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 6 (six) months period shall be grace period

		<i>available with the Company to complete the said Complex."</i>
10.	Assured return clause mentioned in MoU	Clause 5. <i>"The developer shall pay the assured investment return @Rs.30,800/- (less TDS) per month on or before first day of every subsequent month after the expiry of the month for which it shall fall due w.e.f. 06.12.2014, till the possession of said unit (office space) under reference is handed over to the buyer.</i>
11.	Due date of possession	05.07.2018 [Calculated as 36 months from the date of execution of agreement + grace period of 6 months is allowed being unqualified]
12.	Basic sale consideration	Rs.19,25,000/- (As on page no. 23 of complaint)
13.	Amount paid by the complainant	Rs.16,50,000/- (as per page 24 of complaint)
14.	Occupation certificate /Completion certificate	Not on record
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

1. That the complainant was approached by the respondent with advertisement published by respondent in the newspaper and referring to the brochure/prospectus with luring offers of assured investment returns against investment to be made in the project developed by the respondent namely Prism Portico, situated at Sector 89, Gurgaon- Pataudi Road, Haryana, India. That the complainant accordingly invested his hard-earned money into the said project of the respondent and paid an amount of Rs.16,50,000/- to the respondent. Simultaneously, a memorandum of understanding and

buyer's agreement dated 05.01.2015 was also executed by the respondent in favour of the complainant.

- II. That against the investment paid by the complainant, the respondent allotted an office space having no. PPOS-204, second floor approx. 550 sq. ft. in the said project. The confirmation of payments made to respondent was also confirmed by the respondent under clause 3.5 of the buyer's agreement.
- III. That the respondent has violated clause 2, clause 3, clause 5, clause 6 and clause 7 of the MoU in respect of assured return of Rs.30,800/- per month promised for the said space w.e.f. 06.11.2014 till the date of possession of said office space and even after repeated reminders and requests no possession has been offered to the complainant neither payment for assured returns is made.
- IV. That the complainant has made several attempts to contact and follow-up on payments with respondents and concerned representatives/CRM team but they either do not answer the complainant calls or just come up with excuses to avoid payments that are due towards the complainant in order to evade liability. The complainant was also harassed by respondents and its authorised representatives over phone calls whenever he called them or follows-up on payments.
- V. That even after repeated reminders and requests no payment has been made in respect of the assured investment returns and no possession of the said property has been offered to the complainant. The complainant also wrote a legal notice dated 08.08.2022 to the respondent and its authorised representatives in this respect of payment of assured returns but no reply has been received in this regard from the respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to handover possession of the unit and to pay delay possession charges as per the Act, 2016.
 - ii. Direct the respondent to pay assured return as per the MoU.
 - iii. Litigation cost.
5. Despite due service of notice through speed post and specific direction for filing reply in the matter, no reply has been received from respondents with regard to the present complaint and also none has put in appearance on its behalf before the Authority. Therefore, the respondents were proceeded ex-parte vide proceedings dated 28.08.2024 and 09.07.2025. Hence, in view of the same, the Authority is deciding the complaint on the basis of these undisputed documents available on record and submissions made by the complainant.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

7. 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.

E. Findings on the relief sought by the complainant.

E.I Direct the respondent to pay assured return as per MoU.

E.II Direct the respondent to handover possession of the unit and to pay delay possession charges as per the Act, 2016

8. The complainant has submitted that she has invested his hard-earned money into the project of the respondent and paid an amount of Rs.16,50,000/- to the respondent. Simultaneously, a memorandum of understanding and buyer's agreement dated 05.01.2015 was also executed by the respondent in favour of the complainant. Thereafter, the respondent an office space having no. PPOS-204, second floor approx. 550 sq. ft. in the said project. She has further submitted that the respondent has violated clause 2, clause 3, clause 5, clause 6 and clause 7 of the MoU in respect of assured return of Rs.30,800/- per month promised for the said space w.e.f. 06.11.2014 till the date of possession of said office space and even after repeated reminders and requests no possession has been offered to the complainant neither payment for assured returns is made.
9. 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.

10. The money was taken by the builder as a 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.
11. Further, 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.

12. In the present complaint, the assured return was payable as per clause 5 of MoU, which is reproduced below for the ready reference:

Clause 6.

"The developer shall pay the assured investment return @Rs.30,800/- (less TDS) per month on or before first day of every subsequent month after the expiry of the month for which it shall fall due w.e.f. 06.12.2014, till the possession of said unit (office space) under reference is handed over to the buyer."

Thus, the assured return was payable @Rs.30,800/- (inclusive of TDS) per month w.e.f. 06.12.2014, till possession of the office space is handed over to the complainant by the respondents.

13. 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 the part of the respondents to pay the assured return. It is necessary to mention here that the respondents have 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 possession of the subject unit has not been handed over to the complainant since occupation certificate for the project in question has not been obtained by the respondents till date. Accordingly, the liability of the respondents to pay assured return as per MoU is still continuing. Therefore, the respondents are liable to pay assured return to the complainant at the agreed rate i.e., @Rs. 30,800/- (inclusive of TDS) per month from the date i.e., 06.12.2014 till possession of the subject unit is handed over to the complainant post receipt of OC/CC as per the memorandum of understanding, after

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deducting the amount already paid on account of assured return to the complainant.

14. Further, the complainant is seeking delay possession charges at prescribed rate from the respondents in terms of Section 18 of the Act, 2016.
15. Clause 5 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"Clause 5. COMPLETION AND POSSESSION

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.

5.2 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 6 (six) months period shall be grace period available with the Company to complete the said Complex".

16. **Due date of possession and admissibility of grace period:** As per clause 5 of the agreement dated 05.01.2015, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of agreement or 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 the 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 to be 05.07.2018.
17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, 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.

18. 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.
19. 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., 30.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
20. The definition of term 'interest' as defined under section 2(za) 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:

"(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—

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- (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;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **11.10%** by the respondents/promoter which is the same as is being granted to her in case of delay possession charges.
22. On consideration of the documents available on record and submissions made by the complainant, the Authority is satisfied that the respondents are in contravention of the provisions of the Act. By virtue of clause 5 of the agreement executed between the parties on 05.01.2015, the possession of the subject unit was to be delivered by 05.07.2018. The respondents have failed to hand over possession of the subject unit till the date of this order. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
23. 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 delay possession charges?

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 BBA or in a MoU having reference of the BBA or an addendum to the BBA/MoU or allotment letter. The rate at which assured return has been committed by the promoter is Rs.30,800/-

(inclusive of TDS) per month. If we compare this assured return with delay 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 she will be entitled for this specific amount from 06.12.2014 upto handover of possession. 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 her money is continued to be used by the promoter even after the promised due date and in return, she is to be paid either the assured return or delay possession charges whichever is higher.

24. 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.
25. In the present case, the assured return was payable till handover of possession of the unit to the complainant. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority. However, the respondent has not received occupation certificate from the competent authority till the date of passing of this order. Hence, the said building cannot be presumed to be fit for occupation. In view of the above, the assured return shall be payable till the said office is handed over to the

complainant after obtaining occupation certificate from the competent authority.

26. Therefore, considering the above said facts, the Authority directs the respondents to pay assured return to the complainant at the agreed rate i.e., @Rs.30,800/- (inclusive of TDS) per month from the date i.e., 06.12.2014 till possession of the subject unit is handed over to the complainant post receipt of OC/CC, as per the memorandum of understanding, after deducting the amount already paid on account of assured return to the complainant.

E.III Direct the respondent to pay litigation cost.

27. 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.* has held that an allottee is entitled to claim compensation and 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 and 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 and legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

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 respondents are directed to pay assured return to the complainant at the agreed rate i.e., @Rs.30,800/- (inclusive of TDS) per month from the date i.e., 06.12.2014 till possession of the subject unit is handed over to the complainant post receipt of OC/CC as per the memorandum of understanding, after deducting the amount already paid on account of assured return to the complainant.
 - ii. The respondents are further directed to pay arrears of accrued assured return as per MoU dated 05.01.2015 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 respondents shall not charge anything from the complainant which is not the part of the agreement dated 05.01.2015.
 - iv. The respondents are directed to handover possession of the subject unit to the complainant in terms of Section 17 of the Act, 2016.
29. Complaint stands disposed of.
30. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.07.2025