

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

Complaint no.: 4309 of 2024
Date of complaint: 29.08.2024
Date of Decision: 16.05.2025

Shanker Lal Chawla
R/o: - H. no. 430, Sector-9, Gurugram

Complainant

Versus

M/s Ninaniya Estates Ltd.
Office at: - 278/3, Sri Krishan Nagar, Old Delhi Road,
Gurgaon

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Sh. Shanker Lal Chawla

Complainant in
Person
Respondent

None

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:

S. N.	Particulars	Details
1.	Name of the project	"Prism Portico", Sector 89, Gurgaon-Pataudi Road, Gurgaon
2.	Nature of project	Commercial unit
3.	RERA registered/not registered	Unregistered
4.	DTPC License no.	16 of 2014 dated 10.06.2014 Valid upto 09.06.2026
5.	Office Space/Unit no.	PPOS/218, 2 nd Floor (Page no. 9 of the complaint)
6.	Unit area admeasuring	500
7.	Date of buyer's agreement	11.05.2016 (page no. 8 of complaint)
8.	Possession Clause	5.1 The Company, shall complete the construction of the said unit within 40 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 allottee who shall within 30 days, thereof remit all dues.
9.	Due date of possession	11.09.2019 (calculated from the date of agreement) <i>Note: In proceeding dated 16.05.2025 inadvertently due date of possession is mentioned as 11.05.2020.</i>
10.	Total sale consideration	₹ 16,50,000/- (page no. 9 of complaint)
11.	Amount paid by the complainant	₹ 16,87,981/- (as per payment receipt at page 15-17 of complaint)
12.	Occupation Certificate	Not obtained
13.	Offer of Possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
4. That the complainant is a super senior citizen of 80 years with a dream to start own professional business of consultancy booked an office built 500 sq. ft. space in the said project but till date the project is standing half built without completion and without possession.
5. That as per the agreement complainant is entitled of 12% rental for 3 years and monthly rental cheques stands bounced after that.

6. Under the present circumstances the complainant should be awarded possession or either suitable compensation.

C. Relief sought by the complainant: -

7. The complainant has sought following relief(s):
- (i) Direct the respondent to pay the interest for every month of delay at prevailing rate of interest.
8. The present complaint was filed on 29.08.2024. The counsel for the respondent neither appeared nor filed the reply in the complaint. Despite multiple opportunities for filing reply on 20.12.2024, 21.03.2025, 18.04.2025, 16.05.2025, 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.
9. 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

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

D.I Territorial jurisdiction

11. 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

12. 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.

13. 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 pay the interest for every month of delay at prevailing rate of interest.

14. The complainant in the present complaint has booked office space/unit 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. 218 situated on 2nd floor, admeasuring 500 sq. ft. the buyer's agreement for the said unit was executed between the complainant and respondent on 11.05.2016. The total sale consideration of the unit was

Rs. 16,50,000/- and the complainant has paid the entire amount of Rs. 16,87,981/-.

15. The complainant in the present matter had initially sought compensation on account of delayed possession. However, during the proceedings dated 16.05.2025, the complainant appeared in person and submitted that the unit in question is still incomplete and there appears to be no likelihood of possession being offered in the near future. Accordingly, the complainant has now sought refund of the amount paid. The Authority takes note of the complainant's submission and permits the modification of relief, treating the claim for refund in place of the earlier claim for delayed possession charges. The Authority is of the view that since the complainant has voluntarily and unequivocally expressed his intention to seek refund in light of the continuing non-completion of the unit, and no prejudice is caused to the respondent in allowing such modification at this stage hence the change in relief is justified and is accordingly allowed.

16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

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

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

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot,

building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

(Emphasis supplied)

17. As per clause 5.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

Clause 5.1

*The Company, shall complete the construction of the said unit **within 40 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 allottee who shall within 30 days, thereof remit all dues."*

18. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

19. 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.
20. 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., 16.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
21. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule 28(1), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 5.1 of the buyer's agreement executed between the parties on 11.05.2016, the possession of the subject unit was to be delivered within a period of 40 months from the date of execution of agreement or from the start of construction whichever is later. The date of start of construction is not available on records therefore the due date is calculated from the date of execution of agreement. The date of execution of agreement is 11.05.2016 therefore, the due date comes out to be 11.09.2019.
22. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the plot in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.



23. The due date of possession as per buyer's agreement as mentioned in the table above is **11.09.2019** and there is inordinate delay. Till date neither the construction is complete nor has the offer of possession of the allotted unit been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend to withdraw from the project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

24. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

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

25. The judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited &***

other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

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

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund an amount of ₹ 16,87,981/- paid by him at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR)

applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

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/promoter is directed to refund the amount i.e., ₹ 16,87,981/- received by it from the complainant along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

29. Complaint stands disposed of.

30. File be consigned to registry.

Dated: 16.05.2025

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