

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

**Complaint no.:** 5673 of 2022  
**Date of complaint:** 31.08.2022  
**Date of Decision:** 25.07.2025

Navjot Kaur

**R/o:** - B-200, Ranjit Avenue, Amritsar, Punjab  
143001

**Complainant**

Versus

M/s Ninaniya Estates Ltd.

**Regd. Office at:** - 160, Karni Vihar, Ajmer Road, Near  
Rawat Mahilla College, Jaipur (Rajasthan) - 302021

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Rajan Kumar Hans (Advocate)

None

Complainant  
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. 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 and location of the project	"Prism Portico Executive Suite, Sector 89, Pataudi Road, Gurugram, Haryana
2.	RERA Registered/ not registered	Not Registered
3.	Allotment	29.05.2012 (page no. 16 of complaint)
4.	MOU	24.05.2012 (page no. 18 of complaint)
5.	Endorsed in favour of allottee	15.03.2014 (page no. 17 of complaint)
6.	Unit no.	405, 4 <sup>th</sup> floor (page no. 20 of complaint)
7.	Unit area admeasuring	550 sq. ft. (page no. 20 of complaint)
8.	Assured return clause	4. The Developer will pay in arrears 12 PDC cheques of Rs. 21,459/- (after deducting TDS) each of first day of every month starting from <b>01.06.2012</b> and assure its clearance on presentation. The company will also give 1 amalgated cheque (due to change in TDS every year) for the financial year 2013-2014 and thereafter another cheque for the financial year 2014-2015. If the possession of the fully furnished said unit as is handed over



		<i>before the period of 36 months than the buyer will return the remaining balance cheques back to the Developer and if the possession is delayed by more than 36 months than the Developer and if the possession is delayed by more than 36 months then the Developer will continue to pay the Buyer an amount of Rs. 21,459/- per month on or before First day of every month in arrears till the fully furnished Said Unit is handed over to the Buyer.</i>
9.	Possession clause	Not mentioned
10.	Due date of possession	24.05.2015 (Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i> )
11.	Total sale consideration	Rs. 28,05,000/- (as per MOU at page 20 of complaint)
12.	Amount paid by the complainant	Rs. 28,15,554/- (as per receipts of payment at page 27 and 29 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

### B. Facts of the complaint

- The complainant has made the following submissions in the complaint: -
- That the said unit was first booked by Ranbir Kaur Benepal (original applicant) on 22.05.2012. The respondent acknowledged the same by issuing allotment letter dated 29.05.2012.



5. That on 24.05.2012 a memorandum of understanding (MOU) for unit no. 405 admeasuring 550 sq. ft. was executed between original applicant and respondent and was further endorsed by respondent in favour of the complainant on 15.03.2014.
6. That as per the terms and conditions of the MOU the cost of the unit was Rs. 28,05,000/-. The possession of the said unit was to be given in 36 months from date of execution of MOU and also in case of delay in payment of assured investment return the developer shall be liable to pay a penal interest of 1.5% per month.
7. That on the demand of the respondent, the complainant has already paid 100% of the agreed amount i.e Rs.28,15,554/- till date to the respondent.
8. That the complainant tried to connect with the respondent many times but the respondent repeatedly changed its offices to evade the queries of the clients like the complainant. The various verbal reminders to the respondent were went unanswered by the respondent and complainant is forced to take the respondent before the Authority for the resolution of the matter.
9. That the respondent has miserably failed in its duty to provide the possession of the unit even after almost 4 years from the due date.
10. That as per section 18 of the RERA Act. 2016, the respondent is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottees of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.

**C. Relief sought by the complainant: -**

11. The complainant has sought following relief(s):
  - (i) Direct the respondent to refund the entire amount of Rs.28,15,554/- without any deduction.





12. The present complaint was filed on 31.08.2022 till date no reply on behalf of respondent has been filed in the authority. The respondent/promoter put in appearance through its Advocate and marked attendance on 05.04.2024, 05.07.2024 respectively. However on proceeding dated 26.05.2023, 19.01.2024, 03.05.2024, 26.07.2024, 27.09.2024, 24.01.2025, 25.04.2025, and 25.07.2025 none appeared on behalf of respondent. 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 Authority by avoiding to file written reply. Therefore, in view of order dated 03.05.2024, the defence of the respondent was struck off.
13. 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**

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

**D.I Territorial jurisdiction**

15. 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**

*Handwritten signature*



16. 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.

17. 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.
18. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)** and 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** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest',



*'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

19. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**E. Findings on the relief sought by the complainant.**

**E.I. Direct the respondent to refund the entire amount of Rs.28,15,554/- without any deduction.**

20. In the present complaint, the unit was earlier allotted to the original allottee namely, Ranbir Kaur Benepal vide allotment letter dated 29.05.2012. The memorandum of understanding (MOU) dated 24.05.2012 was also executed between the parties regarding the payment of assured return. Thereafter on 15.03.2014 the unit was subsequently endorsed in favour of the complainant/allottee.
21. The complainant intends to withdraw from the project and is seeking return of the amount paid by them in respect of subject unit along with interest as per section 18(1) of the Act and the same 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)

22. However, in the present matter no BBA has been executed between the parties therefore the due date of possession cannot be ascertained. A considerate view has 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."



23. Accordingly, the due date of possession is calculated as 3 years from the date of MOU i.e., 24.05.2012. Therefore, the due date of possession comes out to be 24.05.2015.
24. 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 allottee 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. Further in 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. 2021-2022(1) RCR (c ), 357** 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 as under:

*"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) of the Act. The promoter has failed to complete or 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 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 the unit with interest at such rate as may be prescribed.
27. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
28. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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."*



29. 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.
30. 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., 25.07.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. [Note: During proceedings dated 25.07.2025 the rate of interest was inadvertently mentioned as 11.10% instead of 10.90%].
31. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 28,15,554/- with interest at the rate of 10.90% (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 Rules *ibid*.
32. Further the Authority observes that the memorandum of understanding contains a clause pertaining to assured return and handing over of postdated cheques. However, neither the complainant in her complainant has asserted the receipt of assured return nor the respondent has filed reply in this regard. Nevertheless, in the interest of natural justice if any amount on account of assured return has been paid by the respondent the same shall be adjusted from the refundable amount subject to furnishing of proofs of having actually paid & realization of the said amount by the complainant.




**F. Directions of the authority**

33. 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. i. The respondent/promoter is directed to refund the amount i.e., Rs. 28,15,554/- received by it from the complainant along with interest at the rate of 10.90% 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.
  - iii. The amount paid towards assured return, if any may be adjusted from the refundable amount.
34. Complaint as well as applications, if any, stands disposed off accordingly.
35. File be consigned to registry.

Dated: 25.07.2025

  
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram