

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

Complaint no.: 1573 of 2023
Date of complaint: 21.04.2023
Date of Decision: 25.07.2025

Kiran Bharti

R/o: Flat no. 1103, Vipul Lavanya, Tower-9, Sector-81, Gurgaon, Haryana - 122004

Complainant

Versus

M/s Ninaniya Estates Ltd.

Regd. Office at: - Prism Tower, Tower - A, 6th Floor, Sector-2, Gwal Pahari, Gurgaon, Faridabad Road, Gurgaon, Haryana - 122003

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Priyanka Agarwal (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, Sector 89, Pataudi Road, Gurugram, Haryana
2.	Nature of the project	Commercial Complex
3.	RERA Registered/ not registered	Not Registered
4.	Retail Shop no.	GC-06 -, Ground floor (page no. 22 of complaint)
5.	Shop area admeasuring	450 sq. ft. (page no. 22 of complaint)
6.	Welcome Letter	24.09.2018 (page no. 18 of complaint)
7.	Allotment	15.10.2018 (page no. 49 of complaint)
8.	Buyer's Agreement	29.10.2018 (Page 20 of the complaint)
9.	Mou	30.10.2018 (page no. 41 of complaint)
10.	Possession clause	5. That 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

		<p>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.</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>
11.	Due date of possession	<p>29.08.2022</p> <p>(including grace period of 6 months as per possession clause)</p>
12.	Assured return clause	<p>2. The buyer has to pay to the Developer an amount of Rs. 18,90,000/- on which the developer shall give an investment assured return of Rs. 45,900/- per month w.e.f 23.10.2018 on in arrears, till the date the possession of the fully furnished said unit is handed over to the buyer.</p>
13.	Sale consideration	<p>Rs. 27,00,000/- (BSP)</p> <p>Rs. 34,65,450/-</p> <p>(as per payment plan at page 39 of complaint)</p>

14.	Amount paid by the complainant	Rs. 18,90,000/- (as per ledger at page 40 of complaint)
15.	Occupation certificate	Not obtained
16.	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 applied for the allotment of a retail shop in the commercial complex 'Prism Portico' having area of approximately 450 sq. ft. on ground floor of the said complex.
5. That the based on promises and commitment made by the respondent, complainant booked a retail shop bearing unit no. GC-06 in a commercial project "Prism Portico", Sector 89, Gurgaon-Pataudi Road, Gurgaon, Haryana. The initial booking amount of Rs. 2,95,000/- was paid on dated 29.09.2018.
6. That the said unit was allotted vide allotment letter dated 15.10.2018 and thereafter buyer's agreement was executed between the parties on 29.10.2018.
7. That the respondent to dupe the complainant in their nefarious net even executed memorandum of understanding dated 30.10.2018. Respondent create a false belief that will pay investment return of Rs. 45,900/-per month w.e.f. 23.10.2018 in arrears, till the date of possession of the said unit is handed over to the complainant. The respondent further committed that the project shall be completed in time bound manner and in the garb of this



agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.

8. That the total cost of the said unit is Rs. 27,00,000/- and the complainant has paid total amount Rs. 18,90,000/- to the respondent in time bound manner.
9. That as per clause 2 of the MOU dated 30.10.2018 the respondent was liable to pay investment return amount of Rs. 45,900/- per month w.e.f 23.10.2018 but the respondent has not paid from 24.02.2019 to till date.
10. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainant has fulfilled her responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore the complainant herein are not in breach of any of its terms of the agreement.
11. That the respondent sold the said unit in 2018 extracted 70% at the time of booking from innocent buyer by giving false promise of assured investment return of Rs. 45,900/- per month. This was done by executing illegal, unilateral, one-sided MOU.

C. Relief sought by the complainant: -

12. The complainant has sought following relief(s):
 - (i) Direct the respondent to pay assured investment return from 23.11.2018 to date of possession after obtaining the occupation and handover the possession of the unit.
 - (ii) Direct the respondent to pay interest on due amount of assured investment return from the due date of installment of assured investment return till actual payment.
 - (iii) Direct the respondent to quash one sided clauses from BBA.

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13. The present complaint was filed on 21.04.2023. The counsel for the respondent neither appeared nor filed the reply in the complaint. Despite multiple opportunities for filing reply on 15.09.2023, 01.12.2023, 12.02.2024, 29.03.2024, 26.07.2024, 27.09.2024, 24.01.2025, 25.04.2025, 25.07.2025. 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 26.07.2024, the defence of the respondent was struck off.
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 pay assured investment return from 23.11.2018 to date of possession after obtaining the occupation and handover the possession of the unit.

E.II Direct the respondent to pay interest on due amount of assured investment return from the due date of installment of assured investment return till actual payment.

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. GC-06 situated at ground floor, admeasuring 450 sq. ft. The

buyer's agreement for the said unit was executed between the complainant and respondent on 29.10.2018. Thereafter MOU was executed between the parties on 30.10.2018. The total sale consideration of the unit was Rs.34,65,450/- and the complainant has paid an amount of Rs.18,90,000/-. As per the possession clause 5 of the agreement the possession was to be handed over within 40 months from the date of execution of agreement including grace period of 6 months which comes out to be 29.08.2022. Moreover, as per the clause 2 of the MOU dated 30.10.2018 the respondent is obligated to pay the Assured return of Rs. 45,900/- per month w.e.f. 23.10.2018 till the possession of the said unit is handed over to the complainant.

20. On the above-mentioned reliefs sought by the complainant, are being taken together as both the reliefs are interconnected.
21. The complainant is seeking unpaid assured returns on monthly basis as per memorandum of understanding dated 30.10.2018 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the amount of assured returns was paid but later on, the respondent has stopped the payment of assured return.
22. The money was taken by the builder as 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.

23. The builder is liable to pay that amount as agreed upon. Moreover, an agreement 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 original agreement for sale.
24. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. That this Authority has also deliberated the issue of assured return in number of case including ***Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)***.
25. In the present complaint, the assured return was payable as per clause 2 of MoU, which is reproduced below for the ready reference:

Clause 2.

"The buyer has to pay to the Developer an amount of Rs. 18,90,000/- on which the developer shall give an investment assured return of Rs. 45,900/- per month w.e.f 23.10.2018 on in arrears , till the date the possession of the fully furnished said unit is handed over to the buyer."

Thus, the assured return was payable @Rs.45,900/- per month w.e.f. 23.10.2018 till the date of possession of the fully furnished said unit is handed over to the buyer.

26. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 30.10.2018, it was obligation on the part of the



respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 30.10.2018. The occupation certificate for the unit has not been obtained till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Therefore, the authority directs the respondent/promoter to pay assured return to the complainant at the agreed rate i.e., @Rs.45,900/- per month from the date i.e., 23.10.2018 till the date of possession of the fully furnished said unit is handed over to the buyer, after deducting the amount already paid on account of assured return against the unit in question to the complainant.

27. The respondent is further directed to offer the possession of the unit after completing the unit in all respect as per sanctioned plans & after obtaining of occupation certificate.

E.III Direct the respondent to quash one sided clauses from BBA

28. The complainant in the present relief has sought direction for quashing of one sided clauses. However, the complainant has not specified which clauses are one sided. In absence of such particulars the Authority refrains from issuing any directions in this regard.

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 pending assured return to the complainant in terms of Clause 2 of the memorandum of understanding executed between the parties i.e. from 23.10.2018 till the date of possession

of the fully furnished unit is handed over to the buyer. The amount which is already paid on account of assured return shall be adjusted.

- ii. The respondent is directed to offer possession of the unit after completing the unit in all respect as per sanctioned plans & after obtaining of occupation certificate.
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which that amount would be payable with interest @ 8.90% p.a. till the date of actual realization.

30. Complaint stands disposed of.

31. File be consigned to registry.

Dated: 25.07.2025


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

HARERA
GURUGRAM