BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**848 of 2023**
Date of complaint	:	**21.03.2023**
Date of order	:	**12.11.2025**

Bharat Arora,
R/o: - C-379 A, Sushant Lok-I,
Gurgaon-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) **Complainant**
None **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.No.	Particulars	Details
1.	Name of Project	"Prism Hotel & Suites"
2.	Location of the project	Gwal Pahari, Sector-2, Gurgaon-Faridabad Road, Gurgaon, Haryana.
3.	RERA Registered/ not registered	Not registered
4.	Unit no.	Prism Suite No.-1204, Floor-12th (As on page no. 13 of complaint)
5.	Unit area	650 sq.ft. [Total Area] (As on page no. 13 of complaint)
6.	Date of execution of buyer's agreement	19.12.2016 (As on page no. 11 of complaint)
7.	Possession clause	***Clause 6*** *(i)* The Company shall complete the Five Star Hotel Complex including Prism Suites and hand over the possession of the Prism Suites to the Buyer at the earliest possible date, subject to delay caused due to Force Majeure causes, availability of essential items for construction, change of policy by the Governmental Agencies and Local Authorities and other causes beyond the control of the Company. (No penalty to the Company in this case) *(ii)* In case the building is not completed within 36 months/ indefinitely delayed, then it will be

		the Buyer's option whether to accept the cancellation or claim back the amount paid with Interest @24% p.a (which is being paid on monthly basis)
8.	Due date of possession	19.12.2019 [Calculated as per ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]***
9.	Total consideration	Rs.25,00,000/- (As on page no. 13 of complaint)
10.	Total amount paid by the complainant	Rs.25,00,000/- (As on page no. 13 of complaint)
11.	Clause on investment return	*2(a) 100% of the Sale Consideration i.e.* ***Rs.25,00,000/- (Rupees Twenty Five Lakh Only)*** *has been [paid by the Buyer at the time of execution of this Agreement along with the memorandum of Understanding. The developer shall give an investment return of* ***Rs.50,000/- (Rupees Fifty Thousand Only)*** *per month for a period of maximum 12 months.* *[Emphasis supplied]* *(As on page no. 13 of complaint)*
12.	Occupation certificate /Completion certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That the complainant was approached by the respondent with a request to make investment into the project Prism Hotel & Suites at Gwal Pahari, Sector-2, Gurugram to be developed by the respondent.

That the complainant accordingly made an investment of Rs.25,00,000/- to the respondent.

II. That against the investment paid by the complainant, the respondent allotted a unit no. 1204, 12th floor approx. 650 sq. ft. in the said project and the complainant was promised an investment return of Rs.50,000/- per month.

III. That against the said unit, a buyer's agreement was executed by the respondent dated 19.12.2016 in favour of the complainant.

IV. That the respondent had not paid the assured returns and not granted possession of the premises to the complainant and in pursuance of the said agreement the respondent has also violated clause 4, clause 6 (ii) of the aforesaid agreement where complainant was assured unconditional sale-back guarantee by the respondent after a period of 12 months i.e., on 19 December 2017 and were also promised payment of the consideration amount of Rs.25,00,000/- on return of the said premises. It was also clearly mentioned in this clause of the agreement that in case of failure of such payment the allotment of suites buyer's agreement will automatically stand irrevocably confirmed for all times and complainant shall be fully entitled to retain the said unit and shall have the right to transfer, sell, mortgage, gift, will etc. to third party/parties and the respondent will have no right to object it. It was also assured as per clause 6 (ii) of the aforesaid agreement that in case the building is not completed within 36 months/ indefinitely delayed by the respondent, then complainant is free to accept cancellation or claim back the amount paid with interest @24% p.a. (which is being paid on monthly basis). The complainant is also entitled for interest @24% p.a. which is to be paid on monthly basis due to delay in handling over the possession as the due date for handing over the possession was 2019 but no payments have been made in this respect by the respondent.

V. 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.

VI. 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.

   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 respondent no.1 with regard to the present complaint. Therefore, the defence of the respondent no.1 was struck off vide proceedings dated 28.02.2024. Further, neither anyone has put in appearance on behalf of respondent no.2 before the Authority, nor any written reply to the

present complaint has been received from it. Thus, the respondent no.2 was proceeded ex-parte vide proceedings dated 30.07.2025. In view of the above, 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 he was allotted a suite bearing no. 1204, admeasuring 650 sq.ft. on 12th Floor in the project of the respondent named "Prism Hotel & Suites", Sector-2, Gurgaon vide buyer's agreement dated 19.12.2016 for a sale price of Rs.25,00,000/- and the same has been paid at the time of execution of agreement.

9. The complainant has further submitted that as per the clause 2 of the BBA dated 19.12.2016, the respondent undertook to pay the complainant assured returns @Rs.50,000/- per month for a period of 12 months, i.e. for upcoming 12 months from the date of execution of agreement, but the same remains unpaid till date.

10. The Authority observes that money was taken by the promoter 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 promoter 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.

12. In the present complaint, the assured return was payable as per clause 2(a) of buyer's agreement, which is reproduced below for the ready reference:

> ***2(a)*** *100% of the Sale Consideration i.e. Rs.25,00,000/-(Rupees Twenty Five Lakh Only) has been [paid by the Buyer at the time of execution of this Agreement along with the memorandum of Understanding.* ***The developer shall give an investment return of Rs.50,000/- (Rupees Fifty Thousand Only) per month for a period of maximum 12 months.****"*

Thus, the assured return was payable @Rs.50,000/- per month w.e.f. the date of execution of buyer's agreement i.e. 19.12.2016, till 12 months i.e. 19.12.2017.

13. In light of the reasons mentioned above, the Authority is of the view that as per the buyer's agreement dated 19.12.2016, 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 buyer's agreement dated 19.12.2016. Accordingly, the liability of the respondent to pay assured return as per agreement is still continuing. Therefore, the Authority directs the respondents/promoter to pay assured return to the complainant at the agreed rate i.e., @Rs.50,000/- per month from the date i.e., 19.12.2016, till 12 months i.e. 19.12.2017 as per the buyer's agreement dated 19.12.2016.

14. Further, the complainant is seeking delay possession charges at prescribed rate from the respondent in terms of Section 18 of the Act, 2016.

15. **Due date of possession:** The Hon'ble Supreme Court in the case of ***Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018*** observed that *"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.***

16. In view of the above-mentioned reasoning, the date of execution of buyer's agreement i.e. 19.12.2016 is ought to be taken as the date for calculating due date of possession. Therefore, the due date of possession comes out to be 19.12.2019.

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, she 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., 12.11.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

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—*
> *(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., **10.85%** by the respondents/promoter which is the same as is being granted to him 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 respondent is in contravention of the provisions of the Act. It is observed that possession of the subject unit was to be delivered by 19.12.2019. However, 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. The Authority is of the considered view that there is delay on the part of the respondents in offering possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 19.12.2016 executed between the parties. Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as an on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

23. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 19.12.2016 to hand over the possession within the stipulated period. 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 respondents is established. As such, the allottee shall be paid, by the promoter, interest at prescribed rate on the paid-up amount, for every month of delay from the due date of possession i.e., 19.12.2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules.

E.III Direct the respondent to pay litigation cost.

24. 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. (supra)***, 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. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

F. Directions of the authority

25. 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.50,000/- per month from the date i.e., 19.12.2016 till 12 months i.e. 19.12.2017 as per the buyer's agreement dated 19.12.2016. The respondent is further directed to pay arrears of accrued assured return as per buyer's agreement dated 19.12.2016 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 @8.85% p.a. till the date of actual realization.

    ii. The respondents are directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% p.a. for every month of delay from the due date of possession i.e., 19.12.2019 till valid offer of possession plus two months after obtaining occupation certificate from the competent authority 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.

✓

iii. The arrears of such interest accrued from 19.12.2019 till the date of order by the Authority shall be paid by the promoter to the allottee 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 the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules.

iv. The respondents shall not charge anything from the complainant which is not the part of the agreement dated 19.12.2016.

v. The respondents are directed to handover possession of the subject unit to the complainant in terms of Section 17 of the Act, 2016.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.11.2025