

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM

Date of decision: 04.11.2025

NAME OF THE BUILDER		M/S NINANIYA ESTATES LIMITED	
PROJECT NAME		FIVE STAR HOTEL AND SUITES COMPLEX	
S. No.	Case No.	Case title	Appearance
1.	CR/4950/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	Gaurav Rawat Advocate (Complainant)
2.	CR/4951/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	None (Respondent)
3.	CR/4952/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	
4.	CR/4955/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	
5.	CR/4956/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	
6.	CR/4784/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
7.	CR/4785/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
8.	CR/4822/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	

9.	CR/4823/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
10.	CR/4824/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
11.	CR/4827/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
12.	CR/4828/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
13.	CR/4829/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
14.	CR/4831/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
15.	CR/4832/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
16.	CR/4834/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
17.	CR/4835/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
18.	CR/4836/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
19.	CR/4837/2024	Baldev Kumar Varma and Sanjay Varma V/S Ninaniya Estate Limited	
20.	CR/4947/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	

21.	CR/4948/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	
22.	CR/4949/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	
23.	CR/4957/2024	Shashi Bala Varma and Rajesh Kumar Varma V/S Ninaniya Estate Limited	

CORAM:

 Ashok Sangwan
 Phool Singh Saini

 Member
 Member

EX-PARTE ORDER

1. This order shall dispose of the 23 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Five Star Hotel and Suites situated at Gwal Pahari, Sector-2, Gurugram being developed by the same respondent/promoter i.e., M/s Ninaniya Estates Limited. The terms and conditions of the buyer's

agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the unit along with interest.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Five Star Hotel and Suites" at Gwal Pahari, Sector-2, Gurgaon, Haryana.				
Project area Change of land use Name of licensee		10.5875 acres Memo no. G-1791-8DP-2007/25396 dated 09.10.2007 M/s Ninaniya Estates Ltd.				
RERA Registration		Not Registered				
Occupation Certificate: Not obtained						

CR No.	CR. No. 4950-2024, Cr. 4951-2024, CR no. 4952-2024, CR No. 4955-2024, CR No. 4956-2024, CR No. 4947-2024, CR No. 4948-2024, CR No. 4949-2024& CR No. 4957-2024					
Date of Filing	BBA and Addendum	MoU	Unit no. and Area	Due Date	Total Sale Consideration and Amount Paid	Penalty and Assured return clause
Date of Reply	Agreement					

DOF: 09.1 0.20 24 10.1 0.20 24 DOR :- Not Filed	BBA- 20.02.2 017 Adden and dum Agree ment:- 19.01.2 018	Mou:- 20.02. 2017	906,907,908, 909,910,911, 1201,1203,1 210 (As per the BBA dated 20.02.2017 for the above- mentioned complaints) Area:- 7095 sq. ft.	20.08.2020 Calculated as per <i>Fortune Infras tructure and Ors. vs. Trevor D'Lima and Ors.</i> <i>(12.03.2018 - SC);</i> <i>MANU/SC/02 53/2018</i> including grace period of 6 months on account of covid-19	TSC:- Rs.3,01,69, 500/- (Against all the units) Amount Paid:- Rs. 3,00,00,00 0/- (Against all the units)	6(iii) case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 6,00,000/- per month till the date of possession.
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Cr. No.	CR No. 4784-2024 & CR No. 4785-2024						
Date of Filin g Date of	BBA	MoU	Unit no. and Area	Due Date	Total Considerati on and Amount Paid	Sale and Penalty and Assured return clause	

Repl y							
DOF: 10.1 0.20 24 DOR :- Not Filed	BBA- 18.07. 2018	Mou: - 18.07.2 018	709 and 710 (As per the bba dated 18.07.2018 for the above- mentioned complaints))	18.01.2022 Calculated as per <i>Fortune Infra structure and Ors. vs. Trevor D'Lima and Ors.</i>	TSC: - Rs.1,17,00, 0 0/- (Against all the units)	6(iii) In case the project is delayed due to gross negligence of the company Amount Paid: - Rs. 1,17,00,000 /- (Against all the units)	In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 2,34,000/- per month till the date of possession.

Date of Filing	BBA	MoU	Unit no. and Area	Due Date	Total Sale Consideration and Amount Paid	Penalty and Assured return clause
DOF: 10.1 0.20 24 DOR : - Not Filed	BBA- 24.11.2 017	Mou: - 25.11. 2017	511 and 1011 (As per the bba dated 24.10.2017) for the above- mentioned complaints) Area- 1650 sq. ft.	24.07.2020 Calculated as per <i>Fortune Infra structure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0 253/2018 including grace period of 6 months on account of covid-19)</i>	TSC:- Rs.1,00,00, 650/- (Against all the units) Amount Paid:- Rs. 1,00 ,00,000/- (Against all the units)	6(iii) In case the project is delayed due (Against all the units) to gross negligence of the company then post 12 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 2,00,000/- per month till the date of possession.

Date of Filing	BBA	MoU	Unit no. and Area	Due Date	Total Consideration and Amount Paid	Penalty and Assured return clause
DOF: 10.10.2024 DOR:- Not Filed	BBA-017 07.07.2024 7.20 17	MoU : - 07.0	201 and 211 (As per the bba dated 02.05.2017) for the above- mentioned complaints) Area- 1650 sq. ft.	07.01.2021 Calculated as per <i>Fortune Infra structure and Ors. vs. Trevor D'Lima and Ors.</i> <i>(12.03.2018 - SC); MANU/SC/0 253/2018] including grace period of 6 months on account of covid-19)</i>	TSC: - Rs.1,00,00, 650/- (Against all the units) Amount Paid: - Rs. 1,00 ,00,000/- (Against all the units)	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 2,00,000/- per month till the date of possession.

Cr. No.	CR No. 4828-2024 & CR No. 4829 -2024					
Date of Filing	BBA	MoU	Unit no. and Area	Due Date	Total Consideration and Amount Paid	Penalty and Assured return clause

Date of Reply					Amount Paid	
DOF: 14.10.2024 DOR: - Not Filed	BBA- 10.05.2024 017	Mou : - 10.0	1101 and 1420 (As per the bba dated 10.05.2017) for the above-mentioned complaints)	02.11.2020 Calculated as per <i>Fortune Infra structure and Ors. vs. Trevor D'Lima and Ors.</i> (12.03.2018 - SC); <i>MANU/SC/0 253/2018/</i> including grace period of 6 months)	TSC: - Rs. 1,00,00,000/- Amount Paid: - Rs. 1,00,00,000/- (Against all the units)	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 2,00,000/- per month till the date of possession.

Cr. No.	CR No. 4831-2024, CR No. 4832 -2024, CR No. 4834-2024, CR No. 4835-2024, CR No. 4836-2024 and CR No. 4837-2024.					
Date of Filing Date of Reply	BBA	MoU	Unit no. and Area	Due Date	Total Consideration and Amount Paid	Sale and Assured return clause

DOF: 14.10.2 024	BBA- 20.02.2 017	Mou :- 20.0	806,807,808, 809,810 & 811	20.08.2020 Calculated as per (As per the bba dated 20.02.2017)	TSC:- Rs.2,00,00,0 00/- (Against all <i>Fortune Infr astructure</i> <i>and Ors. vs.</i> <i>Trevor D'Lima and</i> <i>Ors.</i> <i>(12.03.2018 - SC);</i> <i>MANU/SC/ 0253/2018]</i> including grace period of 6 months on account of covid-19)	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 4,00,000/- per month till the date of possession.
DOF: 19.01.2 018	Not Filed	Agree ment :-	20 dum	for the above- mentioned complaints)	Amount Paid:- Rs. 2,00 ,00,000/- (Against all the units)	

Relief Sought: - 1. Direct the respondents to handover possession of the said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same.

2. Direct the respondents to pay the interest on the total amount paid by the complainant-at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.

3. Direct the respondents to pay the due and payable monthly assured return/commitment charges amount till the unit in question is handed over, as in accordance with the buyer agreement or delay possession charges from the due date, whichever is higher.

4. Direct the respondents to pay the amount due to the complainant, from the respondents, on account of the interest, as per the guidelines laid in the RERA,2016 and the monthly assured amount(s) as per clause of the agreement or the delayed

possession charges from the due date till handing over the possession whichever is higher.

5. Direct the respondents to execute a conveyance deed in respect of the unit in question in favour of the complainants.

6. Restraine the respondent from raising fresh demand for payment under any head as the complainant had already made payment as per the payment plan.

7. Direct the respondent to not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.

8. Direct the respondent to provide the exact layout plan of the said units.

9. Direct the respondent to not to charge anything irrelevant which has not been agreed to between the parties like labour cess, electrification charges, which in any case is not payable by the complainant

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking delayed possession charges and assured return.

5. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case ***CR/4950/2024 Shashi Bala Varma and Rajesh Kumar Varma V/s M/s Ninaniya Estate Limited*** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

6. 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:

CR/4950/2024 Shashi Bala Varma and Rajesh Kumar Varma V/s M/s Ninaniya Estate Limited

S. N.	Particulars	Details
1.	Name and location of the project	Five Star Hotel and Suites Complex, Gwal Pahari, Sector 2, Gurgaon-Faridabad Road, Gurgaon (India)
2.	RERA Registered/ not registered	Unregistered
3.	Unit no.	909, 9 th floor
4.	Unit area admeasuring (super area)	7095 sq. ft. [Super-Area] (As on page no. 38 of complaint)
5.	Date of execution of buyer agreement	02.02.2017 (As on page no. 36 of complaint)
7.	MoU	20.02.2017 (Page 51 of complaint)
8.	Assured Return clause	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 6,00,000/- per month till the date of possession.
8.	Addendum to the BBA	19.01.2018
9.	Basic Sale Price	Rs.3,01,69,500/- (As on page no. 38 of complaint)
10.	Amount paid	Rs. 33,52,166/- (As per page 53 of complaint)
11.	Occupation certificate	Not obtained
12.	Date of offer of possession	Not offered

B. Facts of the complaint

7. The complainant has made the following submissions in the complaint: -

- I. That in 2017, the respondents company issued an advertisement announcing a Five Star Hotel (commercial complex) "Five Star Hotel and Suites Complex Gwal Pahari, Sector 2, Gurugram-Faridabad Road, Gurgaon was launched by respondent, under the license, issued by DTCP, Haryana, Chandigarh and

thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority.

II. That relying on various representations and assurances given by the respondent company and on belief of such assurances, the complainant booked a unit in the project by paying total consideration of Rs. 33,52,166.6/- towards the booking of the said unit bearing no. 909, 9th floor having super area measuring 788.33 sq. ft. to the respondents dated 20.01.2017 and the same was acknowledged by the respondents.

III. That based on the payment plan and as per the demand raised by the respondent company, complainant made payment of Rs.33,52,166.6/- as full and final payment to buy the captioned unit.

IV. That a buyer agreement and MOU dated 20.02.2017 was executed between the parties for total six units including the present unit and the respondent providing the details of the project, confirming the booking of the unit dated 20.01.2017, allotting a unit no. 909, 9th floor measuring 788.33 sq. ft. (super built up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 33,52,166.6, which includes basic price, EDC and IDC, and other specifications of the allotted unit.

V. That as per assurance and on the bases of the clause 2 of the said agreement for 9 units:- The sale consideration of Rs. 3,01,69,500/- shall be payable by the buyer to the company for the sale of the said unit in the following manner:-
(a)-99.45% of the sale consideration i.e. Rs. 3,00,00,000/-shall be payable by the buyer at the time of execution of this agreement. The developer shall give an investment return of Rs. 6,00,000/- per month for a period of maximum 12 months. Hence, respondent was duty bound to pay monthly assured return

of Rs.66,666/-and same was paid till January, 2019. Thereafter, respondent till date has failed to pay.

VI. That as per clause 4 of the agreement respondent assured and agreed following: - 4. It is agreed by and between the parties that the buyer hereby gives a compulsory unconditional sale-back guarantee to the company and the company has assured the buyer to buy back the unit as per this agreement at a total consideration of Rs. 3,00,00,000/- after a period of 12 months i.e. on 23.01.2018. The buyer shall surrender the aforesaid units once the company pays the sale-back amount of Rs. 3,00,00,000/-. In case the company fails to pay assured return of Rs. 6,00,000/- per month on monthly basis due to the buyer as per the agreed terms of this agreement up to 23.01.2018 or there is any 12 PDC issued in terms of this agreement dishonored twice with the reason insufficient funds or stop payment, Then the allotment of the suites buyer's agreement will automatically stand irrevocably confirmed for all times to come without any reference to the company and the buyer shall be fully entitled to retain the said unit and shall have the right to transfer, sell, mortgage, gift, will etc. to a third party / parties. The company shall have no objection to such sale and transfer of the said unit to the new buyers. Besides the above in case the company fails to pay amount of. Rs. 3,00,00,000/- due on 23.01.2018, then the allotment of the suites buyer's agreement will automatically stand irrevocably confirmed for all times to come without any reference to the company and the buyer shall be fully entitled to retain the said unit and shall have the right to transfer, sell, mortgage, gift, will etc. To a third party/parties. The company shall have no objection to such sale and transfer of the said unit to the new buyers."

VII. That as per clause 6(i) of the agreement: - 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 24 months / indefinitely delayed, then it will be the Buyer's option whether accept the cancellation or claim back the amount paid with Interest @ 24% p.a. (iii) In case the project is delayed due to gross negligence of the Company then post 24 months the company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 6,00,000/- per month till the date of possession. Hence the due date of possession comes out 20.02.2019.

VIII. That as per clause 9 of the agreement: - the buyer shall be entitled to the possession of the said unit only after the payment of the entire sale consideration as payable under this agreement. the buyer shall execute an undertaking to pay external development charges, internal development charges as demanded by the company. As per the said agreement, the respondent was liable to handover the possession of the said unit on or before 20.02.2019, therefore, the respondent was liable to pay interest as per the prescribed rate as laid under the RERA Act, 2016 & HRERA Rules, 2017 for the delay in the delivery and the complainant as per clause 2 of the agreement is also entitled to get the monthly assured amount till the completion of the unit but respondent has paid till Januray,2019.

IX. That the respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after a delay of many years.

X. That during the period the complainant went to the office of respondent several times and requested them to allow them to visit the site and also the assured return the complainant is entitled to but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them. The complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.

XI. That the complainant continuously asking the respondent company about the status of the project, time by which the project is expected to be completed, when the respondent will hand over the possession and the penalty amount that respondent is liable to pay and also the monthly assured amount but respondent was never able to give any satisfactory response to the complainant. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.33,52,166/- towards the said unit against total sale consideration of Rs. 33,52,166/-

XII. That it is pertinent to mention here that allotment of the unit was made on 20.02.2017, after coming into force of the RERA Act,2016 and as per the Act,

after coming into force of the Act the respondent can charge only on the carpet of the unit not on the super area of the unit. In the present case, respondent has charged the complainant on the super area i.e. 788.33 sq. ft. @ Rs. 33,52,166.6 which is against the provisions of the RERA Act, 2016 and the rules, 2017 made thereof. Hence, in accordance to the provisions of the RERA Act, necessary penal action to be taken against the respondent and direction may kindly be passed to the respondent to charge on the carpet area instead of the super area of the unit. The complainant approached the Respondents and asked about the status of construction and also raised objections towards non-completion of the project.

XIII. That the complainant through counsel sent legal notices dated 11.11.2019, 18.11.2019 and 05.02.2021 to the respondent but till date no reply from the respondent to the said notices.

XIV. That the complainant continuously asking the respondents company about the status of the project, time by which the project is expected to be completed, assured amount respondents required to pay to the complainant and the penalty amount that respondents is liable to pay but respondents was never able to give any satisfactory response to the complainant.

C. Relief sought by the complainant: -

The complainant has sought following relief(s):

- I. Direct the respondents to handover possession of the said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same.
- II. Direct the respondents to pay the interest on the total amount paid by the complainant-at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.

- III. Direct the respondents to pay the due and payable monthly assured return/commitment charges amount till the unit in question is handed over, as in accordance with the buyer agreement or delay possession charges from the due date, whichever is higher.
- IV. Direct the respondents to pay the amount due to the complainant, from the respondents, on account of the interest, as per the guidelines laid in the RERA,2016 and the monthly assured amount(s) as per clause of the agreement or the delayed possession charges from the due date till handing over the possession whichever is higher.
- V. Direct the respondents to execute a conveyance deed in respect of the unit in question in favour of the complainants.
- VI. Restrain the respondent from raising fresh demand for payment under any head as the complainant had already made payment as per the payment plan.
- VII. Direct the respondent to not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.
- VIII. Direct the respondent to provide the exact layout plan of the said units.
- IX. Direct the respondent to not to charge anything irrelevant which has not been agreed to between the parties like labour cess, electrification charges, which in any case is not payable by the complainant.
8. In the present complaints the respondent was directed to file the reply within three weeks in the registry of the Authority. However, despite specific directions and providing an opportunity of being heard, no written reply has been filed by the respondent. Thereafter it was directed to serve notice to the respondent by way of substituted service i.e, publication in the newspaper namely Danik Bhaskar and Hindustan Times at the expense of the complainant. The counsel for the complainant has placed on record a copy of

publication of notice in both the above newspapers on 25.09.2025 at page 9 in the newspaper of Hindustan Times and page 7 in the newspaper Danik Bhaskar. However, despite service through publication, none has appeared on behalf of the respondent. Therefore, in view of proceeding dated 04.11.2025, the respondent was proceeded ex-parte.

D. Jurisdiction of the authority

9. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

10. 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

11. 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.

12. 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.

E. Findings on the relief sought by the complainant

E.I Direct the respondents to handover possession of the said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same.

E. II. Direct the respondents to pay the interest on the total amount paid by the complainant-at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.

E.III. Direct the respondents to pay the due and payable monthly assured return/commitment charges amount till the unit in question is handed over, as in accordance with the buyer agreement or delay possession charges from the due date, whichever is higher.

E. IV. Direct the respondents to pay the amount due to the complainant, from the respondents, on account of the interest, as per the guidelines laid in the RERA,2016 and the monthly assured amount(s) as per clause of the agreement or the delayed possession charges from the due date till handing over the possession whichever is higher.

E.V. Direct the respondents to execute a conveyance deed in respect of the unit in question in favour of the complainants.

13. The common issues with regard to penalty , assured return and execution of conveyance deed is involved in the aforesaid complaints.

14. The complainant is seeking penalty and assured returns as per the terms and conditions of the builder buyer agreement executed inter se parties and the arrears of unpaid assured return along with interest on such unpaid assured return. It is pleaded that the respondent has not complied with the terms and conditions of the said builder buyer agreement.
15. That in all the above cases builder buyer agreement and memorandum of understanding is executed between the parties which contains the clause of assured return.
16. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are stated in unequivocal terms for handing over of possession.
17. As far as the due date is concerned there is no specific time period mentioned in the builder buyer agreement so the same is calculated to be 3 years from the date of the buyer agreement in terms of the "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**". As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Accordingly, the due date of possession in each case is mentioned in para 3 of the order.
18. 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 as well as penalty the project is delayed due to gross negligence of the

company. So, on his failure to fulfil that commitment, the complainant-allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

19. Further, the builder buyer agreement defines the relationship between builder buyer. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. 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. In view of the above, the respondent is liable to pay assured return and penalty (SIC) to the complainant-allottee in terms of the builder buyer agreement. For the sake of clarity, it may be noted here that the word 'penalty' is being used in specific context of this case and is not to be confused with penalty as laid down under the statutory provisions of the Act of 2016.

20. The amount of penalty as well as assured return payable in each case is detailed in the table below: -

Sr. No.	Complaint No.	Penalty and Assured Return payable by the respondent as per the builder buyer agreement
1.	CR. No. 4950-2024, Cr. 4951-2024, CR no. 4952-2024, CR No. 4955-2024, CR No. 4956-2024, CR No. 4947-2024, CR No. 4948-2024, CR No. 4949-2024& CR No. 4957-2024	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 6,00,000/- per month till the date of possession.

2.	CR No. 4784-2024 & CR No. 4785-2024	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 2,34,000/- per month till the date of possession.
3.	CR No. 4822-2024 & CR No. 4823-2024	6(iii) In case the project is delayed due to gross negligence of the company then post 12 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 2,00,000/- per month till the date of possession
4.	CR No. 4824-2024 & CR No. 4827-2024	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 2,00,000/- per month till the date of possession.
5.	CR No. 4828-2024 & CR No. 4829 -2024	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured return of Rs. 2,00,000/- per month till the date of possession.
6.	CR No. 4831-2024, CR No. 4832 -2024, CR No. 4834-2024, CR No. 4835-2024, CR No. 4836-2024 and CR No. 4837-2024	6(iii) In case the project is delayed due to gross negligence of the company then post 24 months the Company will bear a penalty of Rs. 15 per Sq. Ft. plus assured

	return of Rs. 4,00,000/- per month till the date of possession.
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21. As per information on record, the respondent has neither obtained occupation certificate nor has offered the possession of the subject unit to the complainant-allottee.
22. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought penalty and assured returns as per the terms and conditions of the builder buyer agreement executed inter se parties and the arrears of unpaid assured return along with interest on such unpaid assured return.
23. Admittedly, the respondent has neither obtained occupation certificate nor has offered the possession of the subject unit to the complainant-allottee.
24. Accordingly, the respondent is directed to pay the penalty and assured return amount as per clause 6(iii) of the builder buyer agreement within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount of assured returns due from the respondent to the complainant would be payable with interest @ 8.85% p.a. till the date of actual realization.
25. The amount of assured return payable is clarified in para 20 of the order.

E.V. Conveyance Deed

26. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case

may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

27. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit in terms of the BBA and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

E.VI Restrain the respondent from raising fresh demand for payment under any head as the complainant had already made payment as per the payment plan.

28. The Authority herein observes that the builder buyer agreement is executed inter-se parties. Hereby, both the parties are bound to adhere to the contractual obligations agreed between the parties vide the said agreement. Therefore, the respondent shall raise demands only in accordance with the agreed builder buyer agreement and the complainants are also bound to make payment of demands raised if any as per the builder buyer agreement.

E.VII Direct the respondent to not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed.

29. Indemnity-cum-undertaking- The Authority observes the said issue has already been decided by this Authority in complaint bearing no. **4031 of 2019** titled as ***Varun Gupta V. Emaar MGF Land Ltd.*** wherein it is held that the respondent shall not place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights. Ordered Accordingly.

E.VIII Direct the respondent to provide the exact layout plan of the said units.

30. The respondent is directed to provide the layout plans of the said units to the complainant according to section 19(1) of the Act of 2016. Section 19(1) is reproduced as under: -

19. Rights and Duties of allottees-

(1) the allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

E.IX Direct the respondent to not to charge anything irrelevant which has not been agreed to between the parties like labour cess, electrification charges, maintenance charges which in any case is not payable by the complainant.

31. The complainant has sought the relief to restrain the respondent to not to charge anything which has not agreed to between the parties like Labour Cess, electrification charges and maintenance charges.

- **Labour Cess**:- The Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled ***Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.
- **Electrification Charges**:- This issue has already been dealt by the Authority in complaint bearing no. ***CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited*** wherein it is held that the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.
- **Maintenance Charges**:- The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 15 of the buyer agreement provides the clause for maintenance charges. However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no

specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

F. Directions of the authority

32. 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 the penalty and assured return amount as per clause 6(iii) of the builder buyer agreement within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount of assured returns due from the respondent to the complainant would be payable with interest @ 8.85% p.a. till the date of actual realization.
- ii. The respondent is directed to handover possession of the flat/unit in terms of the BBA and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
- iii. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the apartment buyer's agreement.
- iv. The respondent is directed to provide the layout plans of the said units to the complainant according to section 19(1) of the Act of 2016.

33. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

34. The complaints stand disposed of.

35. Files be consigned to the registry.



(Phool Singh Saini)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:04.11.2025

