

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

Complaint no. : 2561 of 2025
Complaint filed on : 26.05.2025
Date of Decision: 09.01.2026

Sangeeta Arora

Address: G37, East of Kailash, 1st Floor, Back Side
Unit, New Delhi-110065

Complainant

Versus

M/s Ninaniya Estates Limited

Regd. Office at: - Prism Tower, Tower A, 6th Floor,
Sector-02, Gwal Pahari, Gurgaon Faridabad Road,
Gurgaon Haryana

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Tanmay Gupta (Advocate)

None

Complainant
Respondent

EXPARTE 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 to the allottee as per the agreement for sale executed *inter se* them.

		not on record plus grace period of 6 month is allowed being unqualified.)
15.	Sale consideration	Rs. 16,25,000/- (as per BBA at page no. 21 of complaint)
16.	Amount paid by the complainant	Rs. 16,77,254/- (as alleged by complainant)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant by relying on the respondent builder's strong reputation in the market and through advertisement, booked a retail shop/unit in the respondent builder's project bearing shop no PPRS-FD-01(a), first floor, prism portico admeasuring 325 sq. ft. for a total sale consideration of Rs. 16,25,000/- and paid initial booking amount of Rs. 1,00,000/- dated 21.04.2015 and the unit was allotted in favour of the complainant vide allotment letter dated 01.05.2015. The complainant further paid an amount of Rs 10,00,000/- on 07.05.2015.
- II. Thereupon, the parties entered into a memorandum of understanding dated 10.06.2015 whereby the aforesaid allotment was confirmed the respondent would give an investment assured return of Rs 23,763/- per month, w.e.f. 09.05.2015 to the complainant till the date of the possession of the unit is handed over to the complainant.
- III. That the parties thereupon entered into a buyer's agreement dated 13.08.2015 whereupon the details regarding the transaction between

- the parties was agreed. The possession of the shop would be handed over to the complainant within 40 months therefrom.
- IV. Thereupon, the complainant made a further payment of Rs 1,02,000/- dated 08.07.2015 which was duly acknowledged vide receipt dated 08.09.2015.
- V. That as per the buyer's agreement, the shop was supposed to be handed over to the complainant by 13.12.2018. However, no such possession was offered by the respondent to the complainant.
- VI. On the contrary, the cheques sent by the respondent to the complainant for monthly assured return payments started getting dishonoured on presentation for the reason "Funds Insufficient". It is submitted that on various occasions the respondent requested the complainant to either delay the presentation of cheques or not present them at all.
- VII. That at the start of the year 2019, the respondent unilaterally informed the complainant that it was not in a position to make further monthly assured return payments. Vide a provisional receipt dated 15.05.2019, the respondent informed the complainant that it had adjusted an amount of Rs. 3,16,836/- from the assured returns for the months of January 2019 to December 2019.
- VIII. Thereupon, the complainant received an undated letter from the respondent along with a provisional receipt dated 07.01.2020 whereby the respondent informed the complainant that it was still not in a position to pay assured returns from January 2020 till June 2020 and that it was unilaterally adjusting the assured returns for the said months from the balance payable by the complainant. Therefore, by the June 2020, the complainant had paid a total amount of Rs 16,77,254/- which was admittedly beyond the total consideration

		return of Rs. 23,763/- per month w.e.f 09.05.2015 in arrears, till the date of possession of the said Unit is handed over to the Buyer.
13.	Possession clause	<p>5. Completion and Possession</p> <p><i>5.1 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 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.</i></p> <p><i>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.</i></p> <p>(page no. 26 of complaint)</p>
14.	Due date of possession	13.06.2019 (calculated from the date of buyer's agreement as date of construction is

A. Unit and project 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Prism Portico", Sector 89, Pataudi Road, Gurugram
2.	Project area	5.05 acres
3.	Nature of project	Commercial Complex
4.	DTCP license	179 of 2008 dated 11.10.2008 valid upto 10.10.2018
5.	License	Ninaniya Estates Ltd.
6.	RERA Registration	Not Registered
7.	Unit no./shop	PPRS-FD-01, 1 st Floor (page no. 21 of complaint)
8.	Unit admeasuring (super area)	325 sq. ft. (page no. 21 of complaint)
9.	Allotment letter	01.05.2015 (page no. 17 of complaint)
10.	Buyer's agreement	13.08.2015 (page no. 18 of complaint)
11.	MOU	10.06.2015 (page no. 45 of complaint)
12.	Assured return clause	2. The Buyer has paid to the Developer an amount of Rs. 11,00,000/- on which the Developer shall give an investment assured

payable by the complainant to the respondent, i.e., Rs 16,25,000/-. However, the possession of the said shop was far from being handed over to the complainant.

- IX. Thereupon, the complainant received another undated letter, the respondent informed the complainant that it cannot offer assured returns to the complainant and that the excess amount paid and assured returns shall be settled by it at the time of physical possession of the unit.
- X. That the complainant made various personal and telephonic conversation with the respondent and enquired about the status of the unit as well as of the assured returns. The respondent would always respond that it is in the process of the completing the project and handing over the unit to the complainant upon which it would also pay the balance assured sum. However, the project continues to be abandoned without the completion in sight. The respondent has not offered possession to the complainant till date. Needless to state, the occupation certificate over the said project has not been obtained by the respondent.
- XI. That the complainant has complied with all the terms and conditions of the various documents executed but the respondent has failed to meet up with its part of the contractual obligations and thus are liable for to refund the entire amount paid by the complainant and assured returns along with interest. The respondent continues to enjoy the hard-earned money of the complainant.
- XII. That as respondent has not registered its project, with the concerned authority within the stipulated time period prescribed under the Central Act. Therefore, under Section 59 of Real Estate (Regulation and

- Development) Act, 2016, for non-compliance with the said Act and for such violation, penalty must be imposed on respondent.
- XIII. That the respondent is misusing its position and imposing unfair terms on the complainant and have committed an unfair trade practice. Respondent and their employees are attempting to cheat and defraud the complainant, out of her hard-earned money by engaging in dishonest conduct and unfair trade practices. That various terms of the agreement are one-sided and are not binding on the complainant.
- XIV. That in the column of registered mobile number and registered email address, the complainant has given her express consent so as to specify/state the email address and mobile number of the lawyer who has been engaged by the complainant and any communication made to such email id/mobile number shall be deemed to be an express communication to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct respondent to pay the assured returns of Rs 23,763/- per month w.e.f. 09.05.2015 with interest at the prescribed rate of interest from each assured return due till the date of refund.
 - II. Direct respondent to reimburse litigation cost of Rs. 1,50,000/- to the complainant.
5. The present complaint was filed on 26.05.2025. The counsel for the respondent neither appeared nor filed the reply in the complaint. Despite specific directions on dated 05.09.2025, 12.09.2025, 14.11.2025, 19.12.2025, 09.01.2026, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the

authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority proceeds with the case *exparte*.

6. 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 submission made by the parties.

D. Jurisdiction of the authority

7. The contention 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

8. 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

9. 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.

10. 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

- 1. Direct respondent to pay the assured returns of Rs 23,763/- per month w.e.f. 09.05.2015 with interest at the prescribed rate of interest from each assured return due till the date of refund.**

11. In the instant complaint, the complainant duly booked a unit bearing no. FD-01, located on the 1st floor of the respondent's project, "Prism Portico," situated at Sector-89, Gurugram. On 10.06.2015, a Memorandum of Understanding (MOU) was executed between the complainant and the respondent. Further, on 13.08.2015, a buyer's agreement was executed between the parties.
12. The complainant in the present complaint is seeking relief w.r.t payment of assured return as per the terms of the MoU dated 10.06.2015. The complainant has submitted that as per clause 2 of the said MoU, it was agreed that the respondent would pay monthly assured return of Rs.23,763/- with effect from 09.05.2015 till the date of possession of said unit is handed over to the buyer. The complainant is seeking unpaid assured returns on monthly basis as per the MoU dated 10.06.2015 at the

rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said MoU.

13. The authority is of the view that the MoU dated 10.06.2015 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.*, (Writ Petition No. 2737 of 2017) decided on 06.12.2017.
14. 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.

15. The Authority has been regulating the advances received under the project and its various other aspects. So, the amount paid by the complainant to the builder is a regulated deposit accepted by the latter from the former against the immovable property to be transferred to the allottee later on. 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. Moreover, an agreement/MoU 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 said memorandum of understanding.
16. In the present complaint, the assured return was payable as per clause 2 of the MoU dated 10.06.2015, which is reproduced below for the ready reference:
- 2. The Buyer has paid to the Developer an amount of Rs. 11,00,000/- on which the developer shall give an investment assured return of Rs. 23,763/- per month w.e.f. 09.05.2015 in arrears till the date of possession of the Said Unit is handed over to the Buyer."*
17. Thus, the assured return was payable @Rs.23,763/- per month w.e.f. 09.05.2015, till the date of possession of the said unit is handed over to the to the complainant.
18. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 10.06.2015, it was obligation on 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 10.06.2015. Further, it is to be noted that the occupation certificate for the project in question has not been received till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Hence, the respondent/promoter is liable to pay assured return to the complainant at the agreed rate i.e., @Rs.23,763/- per month from the date i.e., 09.05.2015 till the possession of the said unit is handed over to the buyer as per the memorandum of understanding after deducting the amount already paid on account of assured return to the complainant.

II. Direct respondent to reimburse litigation cost of Rs. 1,50,000/- to the complainant.

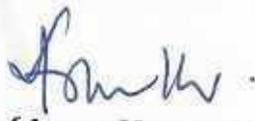
19. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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 compensation.

F. Directions of the authority

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to pay assured return to the complainant at the agreed rate i.e., @Rs.23,763/- per month from the date i.e., 09.05.2015 till the possession of the said unit is handed over to the buyer as per clause 2 of the MOU dated 10.06.2015, after deducting the amount already paid on account of assured return to the complainant.
 - ii. The respondent/promoter is directed to pay the outstanding accrued assured return amount till date 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 @8.80% p.a. till the date of actual realization.
 - iii. The respondent/promoter shall not charge anything from the complainant which is not the part of the BBA/MoU.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of payable assured returns.
21. Complaint stands disposed of.
22. File be consigned to registry.

Dated: 09.01.2026



(Arun Kumar)
Chairman
Haryana Real Estate Regulatory
Authority, Gurugram