

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

Complaint no.: 770 of 2025
Date of decision: 14.11.2025

1. Aarti Sareen
2. Yog Raman Sareen
Both Residence of 89, Teachers Colony, Nawanshahr,
Distt- S.B.S Nagar

Complainants

Versus

1.M/s Y B Builders Private Limited
2.Niami Developers Pvt. Ltd.
Registered office at: - SCO- 304, 2nd Floor, Sector 29,
Gurugram, Haryana-122002

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Ajay Yadav (Advocate)
Sh. Sushil Yadav (Advocate)

Complainants
Respondents

ORDER

1. This complaint has been filed by the complainants/allottees 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. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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	"Nimai Place" at sector 114, Gurgaon, Haryana
2	Nature of the project	Commercial
3	Project area	3.012 acres
4	DTCP license no.	126 of 2012 dated 20.12.2012 valid upto 19.12.2028
5	RERA Registered/ not registered	Registered vide no. 07 of 2018 dated 13.07.2018 valid upto 31.03.2023
6	Unit no.	Virtual space 11, 5 th floor (page 44 of complaint)
7	Unit area admeasuring	150.00 sq. ft.
8	Date of builder buyer agreement	Not executed
9	MOU	20.10.2015 (page 37 of complaint)
10	Assured return	3. <i>That the first party hereby agrees and undertakes to pay a sum of Rs. 12,892/- per month as committed amount calculated at the rate of Rs. 95.50/- per sq. ft. per month till the construction is completed and after that the committed amount would be Rs. 80/- per sq. ft. till the first lease is signed.</i>
12	Due date of possession	20.10.2017

		[Due date of possession calculated from three years from the date of MOU]
13	Basic sale consideration	Rs. 5,73,000/-
14	Amount paid by the complainants	Rs. 5,97,066/- (as per payment receipts on page 44-45 of complaint)
15	Occupation certificate	10.02.2023 (as per DTCP website)
16	Offer of possession	01.04.2023

B. Facts of the complaint:

3. The complainants have made the following submissions:

- i. That the Respondent is developing a commercial project comprising retail spaces, office spaces, and studio apartments under the name and style of "Nimai Palace", situated at Sector 114, Gurugram, Haryana.
- ii. That the Complainant, relying upon the representations, assurances, and promises made by the Respondent with regard to the development and commercial viability of the said project, entered into a Memorandum of Understanding (MOU) dated 20.10.2015 with the Respondent Company for the purchase of a commercial space in the said project.
- iii. That as per the terms of the said MOU, the total sale consideration for the said space was fixed at ₹5,73,000/- (Rupees Five Lakhs Seventy-Three Thousand Only). That pursuant to the said MOU, the Respondent allotted to the Complainant Space No. 210/11, measuring 1500 sq. ft., situated on the 5th Floor of the said project.

- iv. That the Complainant duly paid the entire sale consideration amount of ₹5,73,000/- to the Respondent Company in accordance with the terms of the MOU. That it is pertinent to mention that the Respondent had received the entire sale consideration from the Complainant even before obtaining registration of the said project with the Haryana Real Estate Regulatory Authority (HRERA), Gurugram. The Respondent got the said project registered only on 30.07.2018, which clearly indicates that the Respondent collected money from the Complainant without complying with the mandatory statutory requirements under the Real Estate (Regulation and Development) Act, 2016, thereby indulging in unfair trade practices and misleading the Complainant.
- v. That as per Clause 3 of the Memorandum of Understanding dated 20.10.2015, the Respondent had agreed to pay a committed/assured return of ₹12,892/- per month to the Complainant for the said space measuring 1500 sq. ft. on the 5th Floor. That the said committed amount was calculated at the rate of ₹95.50 per sq. ft., after deduction of applicable TDS and other statutory taxes, if any.
- vi. That as per the agreed terms, the said committed amount was to be paid every month till the completion of construction of the project or till the date of handing over possession of the said space, whichever was earlier. That the Respondent continued to pay the committed amount to the Complainant till March 2020, as the project remained incomplete even after a lapse of almost five years from the date of execution of the MOU. That thereafter, the Respondent unilaterally and without any prior notice or justification stopped making payment of the committed amount to

the Complainant after March 2020, despite the fact that the project was still incomplete and possession had not been offered to the Complainant.

- vii. That the Respondent has thus failed to discharge its contractual obligations as agreed under the MOU dated 20.10.2015, despite having received the entire sale consideration from the Complainant. That the Respondent collected money from the Complainant by making false promises and assurances regarding the assured return and timely completion of the project, which amounts to unfair trade practice, misrepresentation, and breach of contract, thereby causing wrongful loss to the Complainant and wrongful gain to the Respondent. That the conduct of the Respondent clearly reflects mala fide intention and deliberate misconduct, and is in gross violation of the provisions of the Real Estate (Regulation and Development) Act, 2016, as well as other applicable laws.
- viii. That due to the illegal acts, omissions, and negligence on the part of the Respondent, the Complainant has suffered severe mental agony, financial loss, inconvenience, and harassment, which has adversely affected the Complainant and his family.
- ix. That the Complainant has been deprived not only of the promised financial returns but also of the legitimate benefits arising out of the said property investment.
- x. That in view of the above facts and circumstances, the Respondent is liable to compensate the Complainant and is also liable to pay appropriate compensation, interest, and damages for the losses, harassment, and mental agony suffered by the Complainant.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- a) Direct the respondent to pay delay possession charges along with possession of the unit.
 - b) Direct the respondent to pay committed amount as per the MOU executed between the parties.
 - c) Direct the respondent to execute conveyance deed in favour of the complainant.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:
- i. That the Respondent Developer conceived and developed a commercial project under the name and style "Nimai Place", comprising various commercial units with modern facilities and amenities, situated at Sector 114, Gurugram, Haryana (hereinafter referred to as "*the Project*"). The Respondent Developer obtained License No. 33 of 2011 dated 16.04.2011 from the Director General, Town and Country Planning Department (DTCP), Haryana, under the provisions of the *Haryana Development and Regulation of Urban Areas Act, 1975* and the rules framed thereunder, for the development and construction of the said commercial project in a planned and lawful manner, after obtaining all requisite sanctions and approvals from the competent authorities.
 - ii. That the Complainant, after conducting his own independent due diligence and being fully satisfied with the details, location, and commercial viability of the Project, applied for the booking of a commercial unit therein by submitting a duly filled Application Form dated 29.12.2015. The Complainant also accepted the indicative terms and conditions governing the proposed allotment,

- including but not limited to the cost of the unit, super area, and possession timeline. Along with the application, the Complainant paid a booking amount of ₹1,50,000/-.
- iii. That pursuant to the said application, the Respondent Developer provisionally allotted to the Complainant a commercial unit situated on the 5th Floor, initially admeasuring 150 sq. ft., which was subsequently revised to 190 sq. ft., in accordance with the project layout and development plans.
- iv. That the total sale consideration for the said unit is ₹14,16,791/-. However, against the said consideration, the Complainant has paid only ₹5,97,066/- till date. The payment schedule agreed between the parties was a Time-Linked Payment Plan, which required the Complainant to make payments as per the stipulated timeline. The Complainant, however, wilfully and deliberately defaulted in making payments in accordance with the agreed schedule despite repeated reminders and demands issued by the Respondent.
- v. That the Respondent Developer, on multiple occasions, called upon the Complainant to execute the Builder Buyer Agreement (BBA) for the unit in question and complete other necessary formalities. However, the Complainant failed to appear before the Respondent or take necessary steps for execution of the said agreement.
- vi. That since June 2022, the Complainant has failed to make any further payments towards the outstanding installments. The Respondent issued several demand notices and payment reminders, requesting the Complainant to clear the outstanding dues. However, the Complainant persistently failed and neglected to comply with the said demands. Copies of the demand letters are annexed herewith.

- vii. That despite the Respondent's continuous efforts to communicate with the Complainant and secure payment of outstanding dues, the Complainant neither cleared the dues nor responded to the communications issued by the Respondent, thereby exhibiting deliberate non-cooperation.
- viii. That the Respondent, being fully committed to the timely completion of the Project, diligently completed the construction and thereafter applied for the Occupation Certificate (OC) before the competent authority, i.e., the DTCP, Haryana. The said Occupation Certificate was duly granted on 10.02.2023, thereby conclusively establishing that the Project has been lawfully completed and is fit for occupation. A copy of the said OC is annexed herewith.
- ix. That after obtaining the Occupation Certificate, the Respondent issued an Offer of Possession dated 01.04.2023 to the Complainant, calling upon him to take lawful possession of the said unit upon payment of the outstanding dues and completion of necessary documentation. However, the Complainant failed to take possession of the unit and also failed to clear the outstanding dues despite the said offer.
- x. Reliance is placed upon the judgment of the Hon'ble U.P. Real Estate Appellate Tribunal in Central Government Employees Welfare Housing Organisation vs. Rajender Mohan Saxena, Appeal No. 197/2023, wherein the Hon'ble Tribunal granted a zero period of approximately 20 months and 28 days to developers for delays attributable to the two waves of the COVID-19 pandemic. The same principle squarely applies to the facts of the present case.

- xi. That the Respondent has invested substantial amounts, including borrowed funds from financial institutions, for the timely completion of the Project and for securing the Occupation Certificate. In contrast, the Complainant has committed continuous and material defaults in payment of the sale consideration as per the agreed payment plan, thereby withholding the legitimate dues of the Respondent.
- xii. That under Section 19(6) and Section 19(7) of the *Real Estate (Regulation and Development) Act, 2016*, the Complainant, being an allottee, is statutorily obligated to make all due payments in a timely manner and is further liable to pay interest on delayed payments. The Respondent therefore reserves the right to claim such interest in accordance with law.
- xiii. That despite the issuance of the Occupation Certificate and the subsequent Offer of Possession, the Complainant has neither taken possession of the unit nor cleared the outstanding dues. Consequently, the Complainant is also liable to pay holding charges, maintenance charges, and other applicable dues as per the applicable provisions of the Act and the terms of allotment.
- xiv. That under Section 19(10) of the RERA Act, every allottee is required to take possession of the property within two months from the date of issuance of the Occupation Certificate. The Complainant's failure to comply with the said statutory requirement amounts to a clear violation of his obligations under the Act.
- xv. The Respondent further submits that a Memorandum of Understanding (MOU) had been executed with respect to the

- purchase of an unidentifiable and indivisible virtual space admeasuring 500 sq. ft. on the 5th Floor of the Project.
- xvi. Various Courts and authorities have discouraged and effectively prohibited Assured Return Schemes in real estate projects through judicial pronouncements and regulatory advisories, rendering the continuation of such arrangements legally impermissible.
- xvii. The development of external infrastructure, being under the control of Government agencies, faced delays beyond the control of the Respondent, which adversely affected the leasing potential of the Project.
- xviii. The Occupation Certificate was duly obtained in February 2023, thereby fulfilling all statutory requirements for lawful possession of the unit. The Respondent, having completed its contractual and statutory obligations, cannot be held liable for payment of Assured Returns during periods of force majeure, including the COVID-19 pandemic.
- xix. The Respondent shall discontinue payment of Assured Return/Committed Amount in accordance with the terms of the MOU and applicable law. The Complainant is hereby called upon to take physical possession of the Unit within fifteen (15) days from receipt of this notice and to complete the following formalities.
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 submissions made by both the parties.

E. Jurisdiction of the Authority:

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

E.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.

E.II Subject-matter Jurisdiction

9. 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)(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 complainants at a later stage.

F. Findings on the relief sought by the complainants:

- i. Direct the respondent to pay delay possession charges along with possession of the unit.
- ii. Direct the respondent to pay committed amount as per the MOU executed between the parties.

- iii. Direct the respondents to execute conveyance deed in favour of the complainants.
11. The complainants have filed the present complaint seeking payment of assured monthly returns from the respondent in accordance with the agreed terms and conditions. It is submitted that the respondent has failed to comply with the terms of the agreement executed between the parties.
12. As per Clause 3 of the Memorandum of Understanding dated 20.10.2015, the respondent agreed and undertook to pay assured returns to the complainant. The said clause provides that the first party hereby agrees and undertakes to pay a sum of Rs. 12,892/- per month as committed amount calculated at the rate of Rs. 95.50/- per sq. ft. per month till the construction is completed and after that the committed amount would be Rs. 80/- per sq. ft. till the first lease is signed.
13. Section 2(4) of the above-mentioned Act defines the word 'deposit' as *an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include*
- i. *an amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business including—*
 - ii. *advance received in connection with consideration of an immovable property under an agreement or arrangement subject to the condition that such advance is adjusted against such immovable property as specified in terms of the agreement or arrangement.*
14. The money was taken by the builder as an advance deposit against the allotment of immovable property, and its virtual possession was to be offered within a certain stipulated period. However, since the sale consideration was taken in advance, the builder promised to pay a

certain amount as assured returns for a specific period. Therefore, upon failure to fulfill this commitment, the allottee has the right to approach the Authority for redressal of his grievances by filing a complaint.

15. Moreover, the developer is also bound by the doctrine of promissory estoppel. As per this doctrine, if any person makes a promise and the promisee acts upon such promise and alters his position, then the promisor is bound to fulfill the promise. When builders failed to honor their commitments, a number of cases were filed by creditors before various forums, such as in the cases of Nikhil Mehta and Pioneer Urban Land and Infrastructure, which ultimately led the Central Government to enact the Banning of Unregulated Deposit Schemes Act, 2019 on 31.07.2019 pursuant to the Banning of Unregulated Deposit Schemes Ordinance, 2018. However, the moot question that arises for consideration is whether the schemes floated earlier by builders promising assured returns on the basis of allotment of units fall within the ambit of the said Act or not.
16. A similar issue came up for consideration before the **Hon'ble RERA Panchkula in the case of Baldev Gautam vs. Rise Projects Private Limited (RERA-PKL-2068-2019)**, wherein it was held on 11.03.2020 that a builder is liable to pay monthly assured returns to the complainants until possession of the respective apartments is handed over, and that there is no illegality in this regard. This Authority has also deliberated upon the issue of assured returns in a number of cases, including **Prateek Srivastava & Namita Mehta vs. M/s Vatika Limited (RERA-GRG-660-2021)** as well as cases numbered 518 of 2021, 622 of 2021, and 633 of 2021, wherein a similar view has been taken.
17. It is not disputed that the respondent is a real estate developer and had obtained registration under the Real Estate (Regulation and

Development) Act, 2016 for the project in question, registered vide No. 07 of 2018 dated 13.07.2018, valid up to 31.03.2023.

18. Upon consideration of the documents available on record and the submissions made by the complainant and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The Memorandum of Understanding executed between the parties on 20.10.2015 clearly provides under Clause 3 that the first party agreed and undertook to pay a sum of Rs. 12,892/- per month as the committed amount, calculated at the rate of Rs. 95.50/- per sq. ft. per month until the construction is completed. Thereafter, the committed amount was agreed to be Rs. 80/- per sq. ft. per month until the first lease is executed.
19. It is worthwhile to note that the assured return is payable to the allottee on account of the provisions contained in the MOU. The promoter had committed to pay assured returns at the rate of Rs. 12,892/- per month, calculated at Rs. 95.50/- per sq. ft. per month, until completion of construction. By way of assured return, the promoter assured the allottee that he would be entitled to receive this specific amount until completion of the building, and thereafter the committed amount would be Rs. 80/- per sq. ft. per month until the first lease is executed.
20. In the present complaint, the Occupation Certificate (OC) for the block in which the complainant's unit is situated was obtained by the promoter on 10.02.2023. The Authority is of the view that construction is deemed to be complete upon receipt of the Occupation Certificate from the concerned authority by the respondent promoter for the said project.
21. Therefore, considering the facts and circumstances of the present case, the respondent is directed to pay the amount of assured return at the agreed rate, i.e., Rs. 12,892/- per month calculated at the rate of Rs.

95.50/- per sq. ft. per month until the construction is completed, and thereafter Rs. 80/- per sq. ft. per month until the first lease is executed.

***** (It was inadvertently mentioned in the POD dated 14.11.2025 that the delay possession charges is allowed from the due date of possession till valid offer of possession).**

22. The respondent is further directed to pay the outstanding accrued assured return amount at the agreed rate within 90 days from the date of this order, after adjustment of any outstanding dues payable by the complainant, if any. Failing such payment within the stipulated period, the said amount shall carry interest @ 8.85% per annum until the date of actual realization.

F.III Direct the respondent to execute conveyance deed as per the agreed terms.

23. 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."

24. The respondents are directed to execute the conveyance deed in respect of the allotted unit in favour of the Complainants, in terms of Section 17(1) of the Real Estate (Regulation and Development) Act, 2016, subject to payment of applicable stamp duty and registration charges

25. Considering that the subject matter of the allotment pertains to virtual space, the relief sought by the Complainants for physical possession is hereby declined.

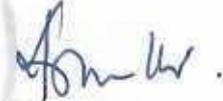
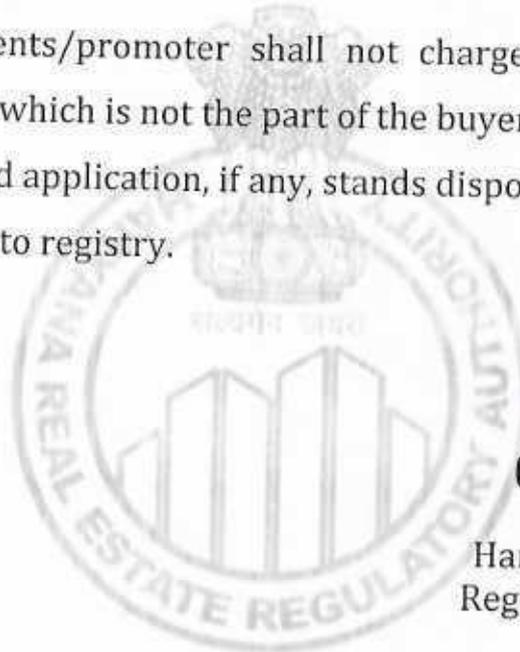
G. Directions issued by the Authority:

26. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to pay the assured return at the agreed rate, i.e., Rs. 12,892/- per month, calculated at the rate of Rs. 95.50/- per sq. ft. per month until the completion of construction and thereafter at the rate of Rs. 80/- per sq. ft. per month until the first lease is executed, in terms of the Memorandum of Understanding dated 20.10.2015, as no document regarding execution of any lease has been placed on record.
- ii. The respondent is further 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 any outstanding dues payable by the complainant, if any.
- iii. In the event of failure to make such payment within the stipulated period, the said amount shall carry interest @ 8.85% per annum until the date of actual realization.
- iv. Thereafter, the respondent shall be liable to pay assured rental at the rate of Rs. 80/- per sq. ft. per month from the date of completion of construction until such time as the offered space is leased out and the first lease agreement is executed, in terms of the Memorandum of Understanding (MOU) dated 20.10.2015.

- v. The respondents shall ensure execution of the conveyance deed in respect of the allotted unit in favour of the Complainants within 60 days from the date of this order, in terms of Section 17(1) of the Real Estate (Regulation and Development) Act, 2016, subject to payment of applicable stamp duty and registration charges.
- vi. That the subject matter of the allotment pertains to virtual space, the said relief sought by the Complainants for physical possession is hereby declined.
- vii. The respondents/promoter shall not charge anything from the complainants which is not the part of the buyer's agreement.
23. The complaint and application, if any, stands disposed of.
24. File be consigned to registry.

Dated: 14.11.2025



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

HARERA
GURUGRAM