

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

Complaint no. : 670 of 2025
Complaint filed on : 19.02.2025
Date of Decision: 14.11.2025

Shantanu Mukherji

Address: Flat no. 130, Sector- 23, HUDA Gurgaon -
122017, Haryana

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:

Ms. Ada Khursheed
(Advocate)

Complainant

None

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.

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	PPES-309, 3 rd floor (page no. 20 of complaint)
8.	Unit admeasuring (super area)	550 sq. ft. (page no. 20 of complaint)
9.	Welcome Letter	07.02.2013 (page no. 15 of complaint)
10.	Suites Buyer's agreement	24.09.2013 (page no. 17 of complaint)
11.	Possession clause	5. Completion and Possession <i>5.1 That the Company shall complete the construction of the said Unit within 36 months from the date of execution of</i>

		<p><i>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. 25 of complaint)</p>
12.	Due date of possession	<p>24.03.2017</p> <p>(calculated from the date of buyer's agreement as date of construction is not on record plus grace period of 6 month is allowed being unqualified.)</p>
13.	Total sale consideration	<p>Rs. 33,45,000/-</p> <p>(page no. 42 of complaint)</p>
14.	Amount paid by the complainant	<p>Rs. 17,52,340/-</p> <p>(page no. 4 of complaint)</p>

15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant is a law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainant being interested in the project because it was a commercial project and the complainant applied to the company for allotment of an executive suite in the commercial complex 'PRISM PORTICO' having area of approximately 550 sq. ft. in the said complex.
- II. That the complainant was subjected to unethical trade practice as well as subject of harassment, buyer agreement clause of many hidden charges which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided.
- III. That based on the promises and commitment made by the respondent, complainant was allotted an executive suite bearing no. PPES-309, 3rd floor, in the project Prism Portico', Sector 89, Gurugram-Pataudi Road, Gurgaon, Haryana. The initial booking amount of Rs. 5,00,000/- was paid on dated 25.01.2013.
- IV. That the respondent to dupe the complainant in their nefarious net even executed a suites buyer's agreement between the complainant and M/s Ninaniya Estates Ltd. dated 24.09.2013 respondent create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.

- V. That the total cost of the said executive suite is Rs. 33,45,000/-including and complainant paid total amount Rs. 17,52,340/- to the respondent in time bound manner as per BBA.
- VI. That complainant booked the executive suite in 2013 and as per clause 5.1 of builder buyer agreement, builder liable to offer possession within 36 months from the date of execution of BBA, thus, on before 24.09.2016. However, the builder failed do so and the project is still incomplete.
- VII. That as per section 19(6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the Act) complainant has fulfilled her responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore the complainant herein are not in breach of any of its terms of the agreement.
- VIII. That complainant had paid all the instalments timely and deposited Rs. 17,42,340/- that respondent in an endeavour to extract money from Allottee devised a payment plan under which respondent extracted more than 50% of the total sale consideration from the complainant and after taking the same respondent have not bothered to any development on the project till date as the project is still incomplete.
- IX. That the respondent has failed to meet the obligations and with malafide intentions have collected huge amount of money from the complainant. This Act on part of the respondent has not only caused huge financial losses, but have also offset the family life.
- X. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the allotted unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct

of the respondent, consequently injuring the interest of the buyers including the complainant who spent her entire hard earned savings in order to buy this retail shop and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

1. Direct the respondent to refund the entire paid amount of Rs. 17,52,340/- along with interest at the prescribed rate from the date of each payment till the actual date of realization.

5. The present complaint was filed on 19.02.2025. The counsel for the respondent neither appeared nor filed the reply in the complaint. Despite specific directions on dated 04.07.2025, 08.08.2025, 10.10.2025, 07.11.2025 and 14.11.2025, 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 *ex parte*.

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.

E. 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.

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 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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on **12.05.2022** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the

jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

- I. Direct the respondent to refund the entire paid amount of Rs. 17,52,340/- along with interest at the prescribed rate from the date of each payment till the actual date of realization.
13. The complainant booked a unit in the project of the respondent "Prism Portico, located at Sector 89, Pataudi Road, Gurugram, Haryana. The complainant was allotted a unit bearing no. PPES 309 on 3rd Floor admeasuring 550 sq. ft. and the suites buyer's agreement for the said unit was executed between the respondent and complainant on 24.09.2013. The total sale consideration of the unit was Rs. 33,45,000/- and the complainant paid an amount of Rs. 17,52,340/-.
14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

15. Clause 5 of the suites buyer agreement dated 24.09.2013 provides for handing over of possession and is reproduced below:

*5.1 That the Company shall complete the construction of the said Unit within **36 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.*

*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.."*

16. **Due date of handing over possession and admissibility of grace period:** As per clause 5 of the suites buyer agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of agreement or from the start of construction, whichever is later. The date of construction is not available on records so, the due date of possession is calculated from the date of agreement which comes out to be 24.03.2017 including grace period of 6 months as it is unqualified.
17. **Admissibility of refund along with prescribed rate of interest:** The complainant intends to withdraw from the project and is seeking refund of the amount paid by them in respect of the subject unit with interest at

prescribed rate as provided 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., 14.11.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
20. On consideration of documents available on record as well as submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 5 of the buyer agreement executed between the parties on 24.09.2013, the due date of possession of the subject unit comes out to be 24.03.2017 including the grace period as allowed being unqualified. The authority observes that even after a passage of more than 8 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent/promoter.

21. Keeping in view the fact that the complainant/allottees wish to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit in question with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016.
22. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***
- “.... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project.....”
23. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** it was observed that:
25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time*

stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sell or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the authority

26. 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 refund the amount i.e., Rs. 17,52,340/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to registry.

Dated: 14.11.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram