

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

**Complaint no.:** 1413 of 2024  
**Date of filing of complaint:** 08.04.2024  
**Date of Order:** 20.01.2026

Kunal Chaudhary  
R/o: B-1/53, Janakpuri, New Delhi-110058 **Complainant**

Versus

M/s Ninaniya Estates Ltd. **Respondent**  
**Regd. Office at:** - Pegasus One, 3<sup>rd</sup> floor, behind  
Hotel IBIS, Golf Course Road, Sector-53,  
Gurgaon, Haryana - 122003

**CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini **Chairman  
Member**

**APPEARANCE:**

Shri Vinayak Gupta (Advocate) **Complainant**  
None **Respondent**

**EX-PARTE ORDER**

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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. Project and unit related details.**

2. 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:

S. No.	Particulars	Details
1.	Name and location of the project	"Prism Portico", Sector-89, Gurugram
2.	Nature of project	Commercial complex
3.	Project area	5.05 Acres
4.	DTCP License no.	179 of 2008 dated 11.10.2008 valid up to 10.10.2018
5.	License Holder	M/s Ninaniya Estate Limited
6.	RERA registered or not registered	<b>Un-registered</b>
7.	Unit no.	PPRS-GE-12 on Ground Floor (As per page no. 35 of the complaint)
8.	Unit area	550 sq. ft. (super area) (As per page no. 35 of the complaint)
9.	MOU	19.03.2013 (As per page no. 23 of the complaint)
10.	Assured Investment return clause (as per MoU)	<b>Clause 2</b> <i>The buyer has paid to the developer an amount of Rs.23,23,750/- on which developer shall give an investment assured return of Rs.47,024/- per month w.e.f. 22.10.2012 in arrears, till the date of possession of the said unit (retail shop) is handed over to the buyer.</i> <b>[Emphasis Supplied]</b> (As per page no. 24 of the complaint)
11.	Date of execution of buyer's agreement	20.06.2013 (As per page no. 32 of the complaint)
12.	Possession clause	<b>Clause 5 Completion and Possession.</b> <i>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</i>

		<p><i>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.</i></p> <p>5.2</p> <p><i>If there is any delay due to any force majeure reasons as explained hereinafter then the period of delay shall commence 6 (six) months after the due date, as this 6 (six) month period shall be grace period available with the company to complete the said complex.</i></p> <p><b>[Emphasis Supplied]</b> (As per page no. 39 of the complaint)</p>
13.	Due date of possession	<p>20.06.2016</p> <p>(Note: The due date of possession is calculated 36 months from the date of execution of buyer's agreement i.e., 20.06.2013)</p> <p>(Grace period is not allowed)</p>
14.	Total sale consideration	<p>Rs.28,87,500/-</p> <p>(As per payment schedule at page no. 56 of the complaint)</p>
15.	Amount paid by the complainant	<p>Rs.24,04,477/-</p> <p>(As alleged by the complainant and acknowledged in MoU on page no. 25 of the complaint)</p>
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That on account of the highly publicized and misleading advertisements and brochures regarding the project, the complainant unsuspectingly and in total good faith was induced to book a retail shop bearing shop no. PPRS-GE-12, admeasuring 550 sq. ft. super area, on the ground floor of Prism Portico Retail Shops Complex in the project in March, 2013.
- II. That the aforesaid unit was being constructed by the respondent as part of a commercial complex including office and retail complex. The respondent on account of the lapses and omissions on its part detailed hereinbelow and by denying the timely delivery of the said unit has caused immense losses to the complainant for which the complainant is entitled to the reliefs sought for in the instant complaint.
- III. That a Memorandum of Understanding was executed between the complainant and the respondent on 19.03.2013 and the following terms and conditions were agreed upon:
  - As per clause 1 of the MOU, the said unit was agreed to be allotted/sold to the complainant for a total sale consideration of Rs. 24,75,000/-.
  - As per clause 2 of the MOU, the respondent undertook to give an Assured Investment Returns of Rs.47,024/- per month w.e.f. 22.10.2012 in arrears till possession is handed over to the complainant.
  - Further, as per clause 3 of the MOU, the respondent was obligated to hand over 5 post-dated cheques of Rs.42,322/- (after deduction of TDS @ 10%) each of the first day of every month starting from 01.12.2012 for the FY 2012-13 and one amalgamated cheque for the FY 2013-14 and thereafter another cheque for the entire FY 2014-15. The respondent further undertook to continue to pay to the buyer the

amount of Rs.42,322/- per month on or before the first day of every subsequent month till handing over the possession of the unit. It is submitted that since the amount of Rs.42,322/- was determined keeping in light the TDS, useful reference has to be taken from clause 2 of the MOU by which the complainant was assured that the amount of Rs.47,024/- (Rs. 42322/- after deduction of TDS @ 10%) was to be assured to the complainant.

- IV. That the MOU further acknowledges that even prior to signing of the MOU, the complainant had paid an amount of Rs.24,04,477/- including service tax.
- V. That in accordance with the MOU, the respondent and the complainant also entered into a buyer's agreement dated 20.06.2013 whereby under clause 5 of the agreement, the respondent undertook to deliver the possession of the said unit within 36 months of the execution of the buyer's agreement dated 20.06.2013 or from the date of commencement of the construction, whichever is later.
- VI. That as is evident from the Annexure -II to the agreement, the said agreement had a construction linked payment plan, however, despite various requests, the complainant was never informed about the date of start of the construction of the project. It is stated that since the complainant had never been communicated the start of construction; by necessary implication the date of execution of the buyer's agreement i.e., 20.06.2013 has to be taken into account for computing the period of 36 months within which the possession was to be handed over.
- VII. That during the course of time, however, the fraud played by the respondent unravelled completely as the respondent not only did not offer

the possession of the unit to the complainant but also stopped making payments of the Assured Investment Returns to the complainant, as had been agreed in the MOU and which were due and payable w.e.f. 01.12.2012, but was paid only for a period of 33 months.

- VIII. That in the last few years, the complainant has tried to contact the respondent several times to seek the status of possession of the unit or to seek refund/payment of the money but to no avail and the respondent's officers, staff and functionaries have been deliberately avoiding any contact with the complainant. The respondent's conduct has thus been in blatant violation of the MOU dated 19.03.2013 and the buyer's agreement dated 20.06.2013 both as also of the provisions of the Act and the Rules.
- IX. That there was undue and unwarranted delay on the part of the respondent, and in light of the lackadaisical attitude of the respondent and utter failure of the respondent to perform their obligations under the MOU and the agreement, the complainant was constrained to send a legal notice dated 31.03.2023 to the respondent and its Directors through his Advocate seeking payment of assured investment return and delivery of the said unit as agreed upon in the Memorandum of Understanding dated 19.03.2013 and buyer's agreement dated 20.06.2013. However, the same was returned as undelivered and it appears that the respondent is deliberately avoiding service.
- X. That the cause of action accrued in favour of the complainant and against the respondent when the respondent inordinately and unjustifiably and with no proper, reasonable or legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day. The cause of action continues to arise as the respondent has neither delivered the

unit to the complainant or refunded/paid the sums due and payable to the complainant nor it has ever refused to do so.

- XI. That the complainant has therefore not only suffered huge financial losses due to the respondent's failure to abide by the terms and conditions of the agreement but has also suffered severe mental harassment in the last several years.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
- i. Direct the respondent pay to the complainant the Assured Investment Return of Rs 47,024/- per month w.e.f. 01.12.2012 till the delivery of the said unit as agreed upon in the aforesaid Memorandum of Understanding dated 19.03.2013 and the buyer's agreement dated 20.06.2013 after deducting the payments of Rs.47,024/- made to the complainant for 33 months, along with interest @ 18% per annum from the date when the said unpaid monthly component of the Assured Investment Return became due and payable.
  - ii. Direct that the respondent immediately deliver the possession of the book a retail shop bearing Shop No. PPRS-GE-12, admeasuring 550 sq. ft. super area, on the Ground Floor of Prism Portico Retail Shops Complex to the complainant after confirming the grant/existence of all statutory approvals.
  - iii. Direct that the respondent pay to the complainant a sum of Rs.20,00,000/- for the mental agony and harassment.
  - iv. Direct that the respondent pay an amount of Rs.5,00,000/- to the complainant towards litigation costs.

5. The authority issued a notice dated 09.04.2024 to the respondent by speed post and also on the given email address at [officeofadityadewan@gmail.com](mailto:officeofadityadewan@gmail.com) and [sudhakar@ninaniyagroup.com](mailto:sudhakar@ninaniyagroup.com) for filing of reply and putting up appearance on the date fixed for hearing. The delivery reports have been placed in the file. Despite given ample opportunities vide hearings dated 11.07.2024, 08.08.2024, 10.10.2024, 23.01.2025, 24.04.2025 and 14.08.2025 the counsel for the respondent neither put in appearance nor did not file any reply to the complaint within the stipulated period. Therefore, vide proceedings of the day dated 20.11.2025 the authority has struck off the defence of the respondent and proceeded ex-parte against the respondent.
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 the complainant.

**D. Jurisdiction of the authority:**

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

**D.I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

8. 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.

9. 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 respondent pay to the complainant the Assured Investment Return of Rs.47,024/- per month w.e.f. 01.12.2012 till the delivery of the said unit as agreed upon in the aforesaid Memorandum of Understanding dated 19.03.2013 and the buyer's agreement dated 20.06.2013 after deducting the payments of Rs.47,024/- made to the complainant for 33 months, along with interest @ 18% per annum from the date when the said unpaid monthly component of the Assured Investment Return became due and payable.
- E.II Direct that the respondent immediately deliver the possession of the book a retail shop bearing Shop No. PPRS-GE-12, admeasuring 550 sq. ft. super area, on the Ground Floor of Prism Portico Retail Shops Complex to the complainant after confirming the grant/existence of all statutory approvals.
- Assured returns

10. The complainant in the present complaint has booked a unit/shop in the project of the respondent namely 'Prism Portico' situated at sector-89 Pataudi Road, Gurugram, Haryana. The complainant was allotted a unit bearing no. PPRS-GE-12 situated at ground floor, admeasuring 550 sq. ft. A memorandum of understanding was executed between the parties on 19.03.2013. Thereafter, the buyer's agreement for the said unit was executed between the complainant and respondent on 20.06.2013. The total sale consideration of the unit was Rs.28,87,500/- and the complainant has paid an amount of Rs.24,04,477/-. As per the possession clause 5 of the agreement the construction of the unit shall be completed within 36 months from the date of execution of agreement, the grace period of 6 months was subject to force majeure conditions and no force majeure conditions occurred during that period, thus the grace period was not allowed. Therefore, the due date of possession comes to 20.06.2016. Moreover, as per the clause 2 of the MOU dated 19.03.2013 the respondent is obligated to pay the Assured return of Rs.47,024/- per month w.e.f. 22.10.2012 till the possession of the said unit is handed over to the complainant.
11. Though during proceedings of the day dated 20.01.2026, it has been recorded that the complainant is seeking delayed possession charges along with interest and on the basis of the said request, the Authority has inadvertently granted the relief of the delayed possession charges along with interest. However, on perusal of the documents placed on record and the relief sought, the Authority has observes that the complainant is seeking the relief of assured return as promised by the respondent vide MOU dated 19.03.2013. So, it is recorded accordingly.

12. The complainant is seeking unpaid assured returns on monthly basis as per memorandum of understanding dated 19.03.2013 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the agreement. Though for some time, the assured returns were paid but later on, the respondent has stopped the payment of assured return.
13. 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.
14. The builder is liable to pay that amount as agreed upon. Moreover, an agreement 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 original agreement for sale.
15. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and the same would fall within the jurisdiction of the authority for giving the desired relief to the complainant besides initiating penal proceedings. 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. That this Authority has also deliberated the issue of

assured return in number of case including **Prateek Srivastava & Namita Mehta VS M/s Vatika Limited (RERA-GRG-660-2021)**.

16. In the present complaint, the assured return was payable as per clause 2 of MoU, which is reproduced below for the ready reference:

**Clause 2.**

*"The buyer has to paid to the Developer an amount of Rs.23,23,750/- on which the developer shall give an investment assured return of Rs.47,024/- per month w.e.f. 22.10.2012 in arrears, till the date the possession of the said unit is handed over to the buyer."*

17. Thus, the assured return was payable @Rs.47,024/- per month w.e.f. 22.10.2012 till the date of possession of the said unit is handed over to the buyer.

18. In light of the reasons mentioned above, the authority is of the view that as per the MoU dated 19.03.2013, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in MoU dated 19.03.2013. The occupation certificate for the unit has not been obtained till date. Accordingly, the liability of the respondent to pay assured return as per MoU is still continuing. Therefore, the authority directs the respondent/promoter to pay assured return to the complainant at the agreed rate i.e., @Rs.47,024/- per month from the date i.e., 22.10.2012 till the date of possession of said unit is handed over to the buyer, after deducting the amount already paid on account of assured return against the unit in question to the complainant.

**• Possession**

19. As per clause 5 of the buyer's agreement dated 20.06.2013, the company shall complete the construction of the unit within 36 months of the buyer's agreement which was lapsed on 20.06.2016 (excluding the grace period of 6

months) but till date the respondent has not obtained the occupation certificate. Thus, the respondent is further directed to handover the possession of the unit after completing the unit in all respect as per sanctioned plans & after obtaining of occupation certificate.

**E.III Direct that the respondent pay to the complainant a sum of Rs.20,00,000/- for the mental agony and harassment.**

**E.IV Direct that the respondent pay an amount of Rs.5,00,000/- to the complainant towards litigation costs.**

20. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**F. Directions of the authority:**

21. 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 pending assured return to the complainant in terms of Clause 2 of the memorandum of understanding executed between the parties i.e., from 22.10.2012 till the date of possession of the unit is handed over to the buyer. The amount which is already paid on account of assured return shall be adjusted, if any.

- ii. The respondent is directed to issue a revised statement of account after adjustment of assured returns within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues, if any, after adjustment of assured returns.
  - iii. The respondent is directed to handover possession of the unit after completing the unit in all respect as per sanctioned plans & after obtaining of occupation certificate.
  - iv. The respondent is to get the conveyance deed of the allotted apartment executed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
  - v. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.
22. Complaint stands disposed of.
23. File be consigned to registry.

  
**(Phool Singh Saini)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority,  
Gurugram

**Dated: 20.01.2026**