

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

|                              |             |
|------------------------------|-------------|
| Complaint no. :              | 399 of 2025 |
| Date of Filing of complaint: | 10.02.2025  |
| Date of Decision:            | 22.01.2026  |

Sandeep Bidani

Address at: A-132, GF, M2K, Aura Sector 47.

**Complainant**

Versus

Ninaniya Estates Limited

Regd. office: Prism Tower- A, 6<sup>th</sup> floor, Sector-2,  
Gawal Pahari, Gurugram.

**Respondent**

**CORAM:**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Sh. Aditya Bhardwaj

None

Advocate for the complainant

Advocate for the respondent

**EX-PARTE ORDER**

1. The present complaint has been filed by the complainant/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 there under 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 complainant, 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 of the project                  | "Prism Portico", at Sector-89, Gurugram.   |
| 2.    | Project area                         | 5.05 Acres   |
| 3.    | Nature of the project                | Commercial   |
| 4.    | DTCP license no. and validity status | 179 of 2008 dated 11.10.2018<br>Valid up to 10.10.2018   |
| 5.    | Name of licensee                     | Ninaniya Estates Limited   |
| 6.    | RERA Registered                      | <b>Un-registered</b>   |
| 7.    | Allotment letter                     | Not provided   |
| 8.    | Unit no.                             | 311, on 3 <sup>rd</sup> Floor (Executive Suits)<br>(as mentioned in clause 3.1 of BBA at page no. 70 of complaint)   |
| 9.    | Unit area                            | 550 sq. ft. (Super area)<br>(as mentioned in clause 3.1 of BBA at page no. 70 of complaint)  |
| 10.   | Date of start of construction        | Not provided<br><b>(To be ascertained)</b>   |
| 11.   | MoU                                  | 02.11.2012<br>(as per page no.61-65 of complaint)  |
| 12.   | Clause w.r.t assured return          | 6.The developer shall pay the assured investment return @Rs.24,007/- per month (after deduction of TDS) on or before first day of every subsequent month after the expiry of the month for which it shall fall due w.e.f. 01.12.2012 till the possession of a fully furnished suite under reference is handed over to the buyer.<br>(as per page no.64 of complaint) |



|     |                          |   |
|-----|--------------------------|---|
| 13. | BBA                      | 09.10.2013<br>(as per page no. 66-93 of complaint)  |
| 14. | Possession clause        | 5.Completion and possession<br>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...<br><b>Read with</b><br>5.2 If there is any delay due to any force majeure reasons as explained hereinafter then the period of delay shall commence 6 months after the due date, as the 6 months period shall be grace period available with the company to complete the said complex.<br><b>[Emphasis Supplied]</b><br>(as per page 74 of complaint) |
| 15. | Due date of possession   | <b>09.10.2016</b><br>(Note: the due date of possession is calculated 36 months from the date of execution of buyer's agreement, as date of start of construction is not provided <b>Plus Grace period of 6 months is dismissed.</b> )   |
| 16. | Total sale consideration | Rs.19,70,000/-<br>(as mentioned in payment plan (Annexure-II) of BBA at page no. 92 of complaint)   |
| 17. | Amount paid              | Rs.14,02,500/-<br>(as mentioned in clause 3.5 of BBA at page no. 72 of complaint)   |
| 18. | Occupation certificate   | Not provided  |
| 19. | Offer of possession      | Not provided  |

**B. Facts of the complaint:**

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



- i. That in year 2012 the respondent's authorised representative approached the complainant and lured him with the respondent's aforesaid project and shown brochure of the project. The respondent has confirmed that the project had got building plan approval from the authority and made various other representations and assurance to convince the complainant to purchase a unit in the aforesaid project.
- ii. That relying on various representations and assurances given by the respondent company and on belief of such assurances, the complainant booked a unit in the project by paying total consideration of Rs. 14,45,837/- against the sale consideration of Rs 16,50,000/- towards the booking of the unit bearing no. 311, 3<sup>rd</sup> Floor having super area measuring 500 sq. ft. to the respondent.
- iii. That on 02.11.2012 a memorandum of understanding was executed between the parties wherein clause 2 and 6 the respondent has acknowledged the receipt of Rs 14,02,500/- as against the receipt of Rs 14,45,837/- and undertaken to give an investment assured return of Rs 26,675/- per month w.e.f. 02.11.2012 in arrears, till the date of possession of the fully furnished booked unit is handed over to the complainant. That in pursuance to the said MOU the respondent has paid some amount in tranches against the IAR and the last payment was made in January 2019 and thereafter they failed to make any payment.
- iv. That further on 09.10.2013 the respondent entered into detailed a suites buyer's agreement with the complainant however its original copy was retained by the respondent and only an unsigned document was supplied to the complainant.
- v. That in clause 3.5 of the said SBA the Respondent again acknowledged the receipt of Rs 14,02,500/- only as against the receipt of Rs 14,45,837/-, being 85% of the sale price towards the booking of the unit



bearing no. 311, 3<sup>rd</sup> Floor having super area measuring 500 sq. ft. The remaining amount was stated to be paid as per the payment plan. it is pertinent to mention that thereafter the respondent neither demanded any payment from the complainant nor they updated the complainant regarding the status of construction as stated in the payment plan.

- vi. That as per clause 5 of the SBA the construction was to be completed within the period of 36 months with extra grace period of 6 months; failing which the allottee shall be entitled to receive the compensation from the Company @ Rs.15/- per sq. ft. per month for the super area of the booked unit for the period of delay. The suites buyer agreement is dated 09/10/2013, hence the due date of possession in accordance with the SBA comes out to be 08/10/2016, and if the 6 months of grace period is added, then the said date extends to 07/04/2017. However, the respondent deliberately failed to handover the possession, therefore, the respondent is liable to pay the complainant an interest as per the prescribed rate as laid under the RERA Act, 2016 & HRERA Rules, 2017 for the delay in the delivery in addition to the compensation & IAR till handing over the possession to the complainant.
- vii. That the complainant went to the office of respondents several times and requested them to allow him to visit the site and also to pay the assured returns the complainant which he is entitled to, but the respondent never allowed the complainant by saying that they do not permit any buyer to visit the site during construction period.
- viii. The complainant contacted the respondents on several occasions and were regularly in touch with the respondents. The respondents were never able to give any satisfactory response to the complainant regarding the status of construction and were never definite about the delivery of possession. That after COVID-19 era the respondent has



started taking the excuse of Covid for their delay and dependency in services.

- ix. The complainant has inquired from the respondents regarding the status of the project and the respondent in its reply sent an email to the complainant and taken the same defence of covid and sent some photographs of the site. The perusal of the said photographs clearly revealed that the construction is not yet completed.
- x. That the respondent were irregular in making the iar payment and their cheques were often bounced. They further defaulted in depositing the TDS amount despite deducting the same from the Complainant. The Complainant has to visit the Respondent office several times for TDS and IAR but they were not listening and dragging the issue on the flimsy grounds. The Complainant was compelled to write emails to them and remind them their obligations and duties. That after much efforts of the Complainant Respondent have emailed their ledger regarding the payments of IAR, but not made the payments. That the acts and services of the Respondents were most deficient and negligent.
- xi. The complainant is an innocent home buyer and he has made substantial investment from his hard earned savings under the belief that the respondent/promotor/real estate developer will hand over possession of the unit in terms of their assurances and SBA but his bonafide belief stood shaken when the promoters failed to adhere their promises and hand over possession of unit in time and further failed to give assured returns in terms of the agreement.
- xii. That respondent has falsely mis-represented the complainant and induced him to booked a unit in their project by investing a huge amount of money even before the signing of the SBA. They have committed serious crime against the Complainant. The respondents not only failed



to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent has illegally and dishonestly not provided the complainant the signed copy of SBA. Further they did not handover the possession even after the delay of many years. The Respondent has made false representations and indulge into unfair and unethical trade practice. The services being provided by them are gross deficient. All such Act and omissions on the part of the Respondent have caused an immeasurable mental stress and agony to the Complainant. That by having intentionally and knowingly induced and having falsely mis-represented to the complainant and thereby making them to act in accordance to its misrepresentations, and owing to all the deliberate lapses/delays on the part of the respondents, they are liable to make as being requisitioned/claimed by the complainant.

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

4. The complainant has sought following relief(s):
  - i. Direct the respondent to handover the possession of the unit booked by the complainant and allotted to him with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same;
  - ii. Direct the respondent to execute a conveyance deed in respect of the unit in question in favour of the complainant;
  - iii. Direct the respondent to pay the interest on the total amount paid by complainant at the prescribed rate of interest as per RERA, from due date of possession till handing over the possession;



- iv. Direct the respondent to pay the due and payable monthly investment assured return, till the unit in question is handed over, as in accordance with the buyer's agreement;
  - v. Restrain the respondents from raising any fresh demand(s) for payment under any head, as the complainant had already made payment as per the payment plan;
  - vi. Direct the respondent not to force the complainant to sign any indemnity cum undertaking indemnifying the builder from anything legal as a pre-condition for signing the conveyance deed;
5. The present complaint was filed on 10.02.2025. The counsel for the respondent neither appeared nor filed the reply in the complaint. Despite multiple opportunities for filing reply on 22.05.2025, 10.07.2025, 28.08.2025, 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 record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**D. Jurisdiction of the authority:**

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



**D.I Territorial jurisdiction**

8. 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**

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:**

- E.I Direct the respondent to handover the possession of the unit booked by the complainant and allotted to him with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same;**



**E.II Direct the respondent to execute a conveyance deed in respect of the unit in question in favour of the complainant;**

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

**E.IV Direct the respondent to pay the due and payable monthly investment assured return, till the unit in question is handed over, as in accordance with the buyer's agreement;**

**E.V Restrain the respondents from raising any fresh demand(s) for payment under any head, as the complainant had already made payment as per the payment plan;**

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

**G.I. Assured return.**

11. The complainant is seeking unpaid assured returns on monthly basis as per the application form at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said acknowledgement letter. Though for some time, the amount of assured returns was paid but later on, the respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of the Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018) whereby relief of assured return was declined by the authority. The authority has rejected the aforesaid objections raised by the respondent in CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd. wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a



bar for payment of assured returns even after coming into operation as the payments made in this regard are protected as per section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

12. 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.
13. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. 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.
14. 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 complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the



complainants-allottees in terms of the MOU dated 02.11.2012 & BBA executed inter-se parties on 09.10.2013.

**G.II. Delayed possession charges**

15. In the present complaint, the complainant intends to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

**"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, —**

**.....  
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"**

16. As per clause 5.1 of the BBA dated 09.10.2013 the possession of the subject apartment was to be delivered within 36 months from the date of execution of this agreement or from the start of construction, whichever is later. Therefore, the due date of handing over possession is 09.10.2016 to be calculated 36 months from the date of execution of buyer's agreement as the date of start of construction is not provided.

17. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges. Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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]**

**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 rule 15 of the rules has determined the prescribed rate of interest. 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., 22.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
19. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be delivered within stipulated time i.e., 09.10.2016.
20. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
21. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of MOU dated 02.11.2012 and provisions in the BBA dated 09.10.2013. The assured return in this case is payable as per "MOU" the promoter had agreed to pay to the complainant's allottee ₹24,007/- per sq. ft. on monthly basis w.e.f. 01.12.2012 till the possession of fully furnished suite under reference is handed over to the buyer. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable as ₹24,007/- per month whereas the delayed possession charges are payable approximately ₹12,622/- per month. By way of assured



return, the promoter has assured the allottee that he would be entitled for this specific amount till the said unit is put on lease. Moreover, the interest of the allottees is protected even after the completion of the building as the assured returns are payable till the date of said unit/space is handed over to the buyer. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottees as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

22. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after the date of completion of the project, then the allottees shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. However, in the present matter, it is observed that, inadvertently, delay possession charges at the prescribed rate of 10.80% per annum, calculated from the due date of possession until the valid offer of possession, along with a period of two months after obtaining the Occupation Certificate from the competent authority or the handing over of possession, whichever is earlier, were allowed in the proceedings dated 22.01.2026. The same is hereby being corrected in the present order, in light of the proper reasoning set out in the preceding paragraphs. Accordingly, assured returns, being higher in nature, are allowed in place thereof.

23. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the terms of BBA and



MOU thereto along with interest on such unpaid assured return. As per MOU dated 02.11.2012, the promoter had agreed to pay to the complainant's allottee ₹24,007/- per sq. ft. on monthly basis w.e.f. 01.12.2012 till the possession of a fully furnished suite under reference is handed over to the buyer. The said clause further provides that it is the obligation of the respondent promoter to pay the assured returns. It is matter of record that the amount of assured return was paid by the respondent promoter but later on, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per section 2(4)(iii) of the above-mentioned Act.

24. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹24,007/- per sq. ft. per month w.e.f. 01.12.2012 till the possession of a fully furnished suite under reference is handed over to the buyer.
25. Accordingly, the respondent 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.

**F. 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):
- The respondent is directed to pay the amount of assured return at the agreed rate i.e., @ ₹24,007/- per sq. ft. per month w.e.f. 01.12.2012 till



- the possession of a fully furnished suite under reference is handed over to the buyer in terms of clause 6 of the MOU.
- ii. The respondent 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 shall not charge anything from the complainant which is not the part of the builder buyer agreement.
  - iv. 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.
  - v. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.
27. Complaint as well as applications, if any, stand disposed off accordingly.
28. File be consigned to registry.



**(Phool Singh Saini)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 22.01.2026**