

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

Complaint no. :	398 of 2025
Date of Filing of complaint:	10.02.2025
Date of Decision:	22.01.2026

K Sujatha

Address at: D-81, 3rd floor, D Block Saket.

Complainant

Versus

Ninaniya Estates Limited

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

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Sh. Aditya Bhardwaj

Advocate for the complainant

None

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.

BE

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 Valid up to 10.10.2018
5.	Name of licensee	Ninaniya Estates Limited
6.	RERA Registered	Un-registered
7.	Allotment letter	Not provided
8.	Unit no.	417, on 4 th Floor (Executive Suits) (as mentioned in clause 3.1 of BBA at page no. 103 of complaint)
9.	Unit area	550 sq. ft. (Super area) (as mentioned in clause 3.1 of BBA at page no. 103 of complaint)
10.	Date of start of construction	Not provided (To be ascertained)
11.	BBA	23.08.2013 (as per page no. 100-126 of complaint)
12.	Possession clause	5. Completion and possession 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... Read with 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. [Emphasis Supplied] (as per page 108 of complaint)
13.	Due date of possession	23.08.2016 (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 Plus Grace period of 6 months is dismissed.)
14.	Basic sale consideration	Rs.29,70,000/- (as mentioned in clause 3.1 of BBA at page no. 103 of complaint)
15.	Amount paid	Rs.25,24,500/- (as mentioned in clause 3.5 of BBA at page no. 105 of complaint)
16.	Occupation certificate	Not provided
17.	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.



- 26,70,000/- towards the booking of the unit bearing no. 417, 4th Floor having super area measuring 500 sq. ft. to the respondent.
- iii. That the complainant had paid more 85% of sale consideration therefore the respondent had undertaken to give an investment assured return of Rs. 25,246/- per month w.e.f. 02.10.2012 till the date of possession of the fully furnished booked unit is handed over to the complainant. That in pursuance to the said undertaking the respondent has paid some amount in tranches against the IAR till November 2020. The last payment of Rs. 22,500/- was made on 13.11.2020 as against the IAR dues and thereafter they did not make any payment despite repeated reminders, request and visit to their office.
 - iv. The respondent was irregular in making the IAR payment and their cheques were often bounced. The complainant was compelled to visit their office various time.
 - v. That further on 23.08.2013 the respondent entered into detailed a suites buyer's agreement with the complainant however its original copy was retained by the respondent. The respondent deliberately and dishonestly not supplied SBA to the complainant.
 - vi. That in clause 3.5 of the said SBA the Respondent again acknowledged the receipt of Rs 25,24,500/- only instead of Rs. 26,02,507/- towards the booking of the unit bearing no. 417, 4th 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.
 - vii. 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 23.08.2013, hence the due date of possession in accordance with the SBA comes out to be 22.08.2016, and if the 6 months of grace period is added, then the said date extends to 22.02.2017. 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.

- viii. 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.
- ix. 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.
- x. 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.



- xi. The respondent has sent a letter dated 29.04.2016 to the complainant wherein they acknowledged that the unit no. 417 is allotted to her and further intimated her regarding change of their corporate office address. The respondent was irregular in making the IAR payment and their cheques were often bounced. The complainant has to visit the respondent corporate office several times for IAR but they were not listening and dragging the issue on the flimsy grounds.
- xii. 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 promotors 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.
- xiii. 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 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.V 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;



11. In the present complaint, the complainant is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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."

(Emphasis supplied)

12. Clause 5.1 of the buyer's agreement provides for handing over of possession and is reproduced below:

5.1 Possession

"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..."

(Emphasis supplied)

13. **Admissibility of delay possession charges at prescribed rate of interest:** 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]

(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.

14. 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.

15. 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%**.

16. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. — For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

17. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.80%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.

18. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the Authority regarding contraventions as per provisions of Rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 5.1 of the agreement executed between the parties on 23.08.2013 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 23.08.2016 to be calculated 36 months from the date of execution of buyer's agreement as the date of start of construction is not provided. The respondent has failed to handover possession of the subject apartment within prescribed time. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 23.08.2013 executed between the parties.

19. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 23.08.2016 till valid offer of possession after obtaining occupation certificate plus two months or actual handover of possession, whichever is earlier, at prescribed rate i.e., 10.80 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

Assured return

20. Upon the perusal of the record, it is observed that no provision with respect to assured return was agreed upon between the parties, either in the agreement for sale or in any MOU executed inter se the parties. In the absence of any contractual stipulation to this effect, the said relief cannot be granted. Accordingly, the claim of the complainant seeking assured return stands declined.

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 interest to the complainant against the paid-up amount at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 23.08.2016 till valid offer of possession after obtaining occupation certificate plus two months or actual handover of possession, whichever is earlier, as per section 18(1) of the Act read with rule 15 of the rules.
 - ii. The respondent is directed to execute the registered conveyance deed in favour of the complainant within 3 months from the date of obtaining the occupation certificate.
 - iii. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's 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.
22. Complaint as well as applications, if any, stand disposed off accordingly.
23. File be consigned to registry.


(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.01.2026