

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

Date of Order: 06.01.2026

NAME OF THE BUILDER		NINANIYA ESTATES LIMITED	
PROJECT NAME		"FIVE STAR HOTEL AND SUITES COMPLEX"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/529/2025	Rohit Khanna and Chetna Khanna V/S Ninaniya Estate Limited	Sh. Gaurav Rawat Advocate for complainant None for respondent
2.	CR/530/2025	Rohit Khanna and Chetna Khanna V/S Ninaniya Estate Limited	Sh. Gaurav Rawat Advocate for complainant None for respondent
3.	CR/532/2025	Rohit Khanna and Chetna Khanna V/S Ninaniya Estate Limited	Sh. Gaurav Rawat Advocate for complainant None for respondent
4.	CR/533/2025	Rohit Khanna and Chetna Khanna V/S Ninaniya Estate Limited	Sh. Gaurav Rawat Advocate for complainant None for respondent

CORAM:Arun Kumar
Phool Singh Saini**Chairman**
Member**EX-PARTE ORDER**

1. This order shall dispose of all the 4 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations,

responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Five Star Hotel and Suites situated at Gwal Pahari, Sector-2, Gurugram being developed by the same respondent/promoter i.e., M/s Ninaniya Estates Limited. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delayed possession charges/assured return along with interest.
- The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Ninaniya Estate Limited at "Five Star Hotel and Suites Complex" situated in Sector- 02, Gurugram.			
Occupation certificate: Not obtained				
Complaint No. & Case Title	CR/529/2025 Rohit Khanna & Chetna Khanna V/S Ninaniya Estate Limited	CR/530/2025 Rohit Khanna & Chetna Khanna V/S Ninaniya Estate Limited	CR/532/2025 Rohit Khanna & Chetna Khanna V/S Ninaniya Estate Limited	CR/533/2025 Rohit Khanna & Chetna Khanna V/S Ninaniya Estate Limited
Reply status	Not filed	Not filed	Not filed	Not filed
Unit No.	1004, 10 th floor (As per page no. 35 of the complaint)	1005, 10 th floor (As per page no. 35 of the complaint)	704, 7 th floor (As per page no. 35 of the complaint)	705, 7 th floor (As per page no. 35 of the complaint)
Area admeasuring	1540 sq. ft. (Super area)	1540 sq. ft. (Super area)	1540 sq. ft. (Super area)	1540 sq. ft. (Super area)



	(As per page no. 35 of the complaint)	(As per page no. 35 of the complaint)	(As per page no. 35 of the complaint)	(As per page no. 35 of the complaint)
Date of memorandum of understanding	03.01.2018 (As per page no. 48 of the complaint)	03.01.2018 (As per page no. 48 of the complaint)	21.12.2017 (As per page no. 47 of the complaint)	21.12.2017 (As per page no. 47 of the complaint)
Date of BBA	03.01.2018 (As per page no. 32 of the complaint)	03.01.2018 (As per page no. 32 of the complaint)	21.12.2017 (As per page no. 32 of the complaint)	21.12.2017 (As per page no. 32 of the complaint)
Due date of handing over of possession	03.07.2021 (Note: Due date to be calculated as per <i>Fortune Infrast ructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/025 3/2018</i> including grace period of 6 months on account of covid-19)	03.07.2021 (Note: Due date to be calculated as per <i>Fortune Infrast ructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/025 3/2018</i> including grace period of 6 months on account of covid-19)	21.06.2021 (Note: Due date to be calculated as per <i>Fortune Infrast ructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/025 3/2018</i> including grace period of 6 months on account of covid-19)	21.06.2021 (Note: Due date to be calculated as per <i>Fortune Infrast ructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253 /2018</i> including grace period of 6 months on account of covid-19)
Total Consideration / Total Amount paid by the complainant(s)	TSC: Rs.41,50,000 /- (As per page no. 35 of the complaint) AP: Rs.41,50,000/- (As alleged by the complainants on page no. 29 of the complaint)	TSC: Rs.41,50,000 /- (As per page no. 35 of the complaint) AP: Rs.41,50,000/- (As alleged by the complainants on page no. 29 of the complaint)	TSC: Rs.41,50,000 /- (As per page no. 35 of the complaint) AP: Rs.41,50,000/- (As alleged by the complainants on page no. 29 of the complaint)	TSC: Rs.41,50,000 /- (As per page no. 35 of the complaint) AP: Rs.41,50,000/- (As alleged by the complainants on page no. 29 of the complaint)
Penalty and Assured return clause	6(iii) In case the project is delayed due to	6(iii) In case the project is delayed due to	6(iii) In case the project is delayed due to	6(iii) In case the project is delayed due to



	gross negligence of the company then post 24 months the Company will bear a penalty of Rs.15/- per sq. ft. plus assured return of Rs.2,00,000/- per month till the date of possession.	gross negligence of the company then post 24 months the Company will bear a penalty of Rs.15/- per sq. ft. plus assured return of Rs.2,00,000/- per month till the date of possession.	gross negligence of the company then post 24 months the Company will bear a penalty of Rs.15/- per sq. ft. plus assured return of Rs.1,52,166/- per month till the date of possession.	gross negligence of the company then post 24 months the Company will bear a penalty of Rs.15/- per sq. ft. plus assured return of Rs.1,52,166/- per month till the date of possession.
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The complainants in the above complaint(s) have sought the following reliefs:

1. Direct the respondent to handover possession of the said unit in question with all amenities and specifications as promised, in all completeness without any further delay and after completion of the same.
2. Direct the respondent to pay the interest on the total amount paid by the complainant-at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.
3. Direct the respondent to pay the due and payable monthly assured return/commitment charges amount till the unit in question is handed over, as in accordance with the buyer agreement or delay possession charges from the due date, whichever is higher.
4. Direct the respondent to pay the amount due to the complainant, from the respondents, on account of the interest, as per the guidelines laid in the RERA, 2016 and the monthly assured amount(s) as per clause of the agreement or the delayed possession charges from the due date till handing over the possession whichever is higher.
5. Direct the respondent to execute a conveyance deed in respect of the unit in question in favour of the complainants.
6. Restrain the respondent from raising fresh demand for payment under any head as the complainant had already made payment as per the payment plan.
7. Direct the respondent to 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.
8. Direct the respondent to provide the exact layout plan of the said units.
9. Direct the respondent to not to charge anything irrelevant which has not been agreed to between the parties like labour cess, electrification charges, which in any case is not payable by the complainant



Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking delayed possession charges and assured return.
5. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/529/2025 Rohit Khanna and Chetna Khanna V/s M/s Ninaniya Estate Limited** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

6. 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 of the project	"Five Star Hotel and Suites Complex", at Sector-02, Gurugram.
2.	Nature of the project	Commercial
3.	RERA Registered	Un-registered
4.	Allotment letter	Not provided
5.	Unit no.	1004, on 10 th Floor (As per page no. 35 of the complaint)
6.	Unit area	1540 sq. ft. (Super area) (As per page no. 35 of the complaint)
7.	Memorandum of Understanding	of 03.01.2018 (As per page no. 48 of the complaint)



8.	BBA	03.01.2018 (As per page no. 32 of the complaint)
9.	Possession clause	9. POSSESSION AFTER FULL PAYMENT <i>Buyer shall be entitled for possession of the said unit only after the payment of entire sale consideration as payable under this agreement. The buyer shall execute an undertaking to pay EDC/IDC as demanded by the complaint.</i> (As per page no. 37 of the complaint)
10.	Addendum to buyer's agreement (buy-back clause)	25.01.2019 (As per page no. 46 of the complaint)
11.	Due date of possession	03.07.2021 (Note: Due date to be calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018 including grace period of 6 months on account of covid-19)
12.	Total sale consideration	Rs.41,50,000/- (As per page no. 35 of the complaint)
13.	Amount paid	Rs.41,50,000/- (As alleged by the complainant on page no. 29 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

7. The complainants have made the following submissions in the complaint:
- I. That the complainants are law-abiding citizens of India and are currently residing at TG-2A, Garden Estate, Gurugram.
 - II. That in 2017, the respondent issued an advertisement announcing a Five Star Hotel (Commercial Complex) "Five Star Hotel and Suites Complex Gwal

Pahari, Sector 2, Gurugram-Faridabad Road, Gurgaon was launched by respondent, under the license, issued by DTCP, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the authority.

- III. That the complainants while searching for a commercial unit was lured by such advertisements and calls from the brokers of the respondent for buying a commercial space in their project. The respondent told the complainants about the moonshine reputation of the company and the representative of the respondent made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region. The respondent handed over one brochure to the complainants which showed the project like heaven and in every possible way tried to hold the complainants and incited the complainants for payments.
- IV. That relying on various representations and assurances given by the respondent and on belief of such assurances, the complainants booked a unit in the project by paying total consideration of Rs.41,50,000/- towards the booking of the said unit bearing no. 1004, 10th floor having super area measuring 770 sq. ft. to the respondent on 02.01.2018 and the same was acknowledged by the respondent.
- V. That a buyer's agreement and MOU dated 02.01.2018 was executed between the parties for total two units including the present unit and the respondent providing the details of the project, confirming the booking of the unit dated 02.01.2018, allotting a unit no. 1004, 10th Floor measuring 770 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit

i.e., Rs.41,50,000/- which includes basic price, EDC and IDC, and other specifications of the allotted unit.

- VI. That as per assurance and on the basis of the clause 2 of the said MOU for 2 units, the sale consideration of Rs.83,00,000/- shall be payable by the buyer to the company for the sale of the said unit and same shall be payable by the buyer at the time of execution of this agreement. The developer shall give an investment assured return of Rs.1,52,166/- per month for a period of maximum 12 months. Hence, respondent was duty bound to pay monthly assured return of Rs.1,52,166/- which the respondent has failed to pay till date.
- VII. That as per clause 4 of the agreement, it was agreed by and between the parties that the buyer hereby gives a compulsory unconditional sale-back guarantee to the company and the company has assured the buyer to buy back the unit as per this agreement at a total consideration of Rs.83,00,000/- after a period of 12 months i.e., on 04.01.2019. The buyer shall surrender the aforesaid units once the company pays the sale-back amount of Rs.83,00,000/-. In case the company fails to pay assured return of Rs.1,52,166/- per month on monthly basis due to the buyer as per the agreed terms of this agreement up to 04.01.2019 or there is any 12 PDC issued in terms of this agreement dishonored twice with the reason insufficient funds or stop payment, then the allotment of the suites buyer's agreement will automatically stand irrevocably confirmed for all times to come without any reference to the company and the buyer shall be fully entitled to retain the said unit and shall have the right to transfer, sell, mortgage, gift, will etc. to a third party/parties. The company shall have no objection to such sale and transfer of the said unit to the new buyers.

- VIII. That as per clause 6 (i) of the agreement, the company shall complete the Five Star Hotel Complex including Prism Suites and hand over the possession of the Prism Suites to the buyers at the earliest possible date, subject to delay caused due to force majeure causes, availability of essential items for construction, change of policy by the Governmental Agencies and Local Authorities and other causes beyond the control of the company. (No penalty to the Company in this case). ii) In case the building is not completed within 24 months / indefinitely delayed, then it will be the buyer's option whether accept the cancellation or claim back the amount paid with Interest @ 24% p.a. (iii) In case the project is delayed due to gross negligence of the company then post 24 months the company will bear a penalty of Rs.15/- per sq. ft. per month till the date of possession. Hence, the due date of possession comes out 03.01.2020.
- IX. That as per clause 9 of the agreement, the Buyer shall be entitled to the possession of the said unit only after the payment of the entire sale consideration as payable under this agreement. The buyer shall execute an undertaking to pay External Development Charges, Internal Development Charges as demanded by the company.
- X. That the respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainants by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after a delay of many years.
- XI. That the complainants went to the office of respondent several times and requested to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once the complainants visited the site but was not allowed to enter the site and even there was no proper approach road. The complainants even after

paying the amount received nothing in return but only loss of the time and money invested by them.

- XII. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession.
- XIII. That the complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail.
- XIV. That the complainants continuously asking the respondent company about the status of the project, time by which the project is expected to be completed, when the respondent will hand over the possession and the penalty amount that respondent is liable to pay and also the monthly assured amount but respondent was never able to give any satisfactory response to the complainants.
- XV. That allotment of the unit was made on 03.01.2018, after coming into force of the Act, 2016, the respondent can charge only on the carpet of the unit not on the super area of the unit. In the present case, respondent has charged the complainants on the super area i.e., 770 sq. ft. which is against the provisions of the Act, 2016 and the Rules, 2017 made thereof. Hence, in accordance to the provisions of the RERA Act, necessary penal action to be taken against the respondent and direction may kindly be passed to the respondent to charge on the carpet area instead of the super area of the unit.
- XVI. That further, the complainants having dream of its own unit in NCR signed the agreement in the hope that the unit will be delivered within 5 years from

the date of allotment letter. The complainants were also handed over one detailed payment plan. It is unfortunate that the dream of owning a unit of the complainants was shattered due to dishonest, unethical attitude of the respondent.

- XVII. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- XVIII. That the respondent despite having made multiple tall representations to the complainants, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.
- XIX. That the respondent has completely failed to honour its promises and not provided the services as promised and agreed through the brochure, allotment letter and the different advertisements released from time to time. Further, such acts of the respondent are also illegal and against the spirit of Act, 2016 and Rules, 2017.
- XX. That the respondent has played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period and paying the

monthly assured amount. The respondent had further malafidely failed to implement the allotment letter with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.

- XXI. That the complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the allotment letter.
- XXII. That the complainants continuously asking the respondent about the status of the project, time by which the project is expected to be completed, assured return respondent required to pay to the complainants and the penalty amount that respondent is liable to pay but the respondent was never able to give any satisfactory response to the complainants.
- XXIII. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.
- XXIV. That the complainants are the one who has invested their life savings in the said project and are dreaming of a unit for themselves and the respondent

has not only cheated and betrayed them but also used their hard-earned money for own enjoyment.

- XXV. That the complainants after losing all the hope from the respondent having their dreams shattered of owning a unit and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.
- XXVI. That the present complaint is within the prescribed period of limitation.
- XXVII. That the complainants have not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law. Hence the present complaint.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):
- I. Direct the respondent to handover possession of the said unit in question 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 pay the interest on the total amount paid by the complainant-at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.
 - III. Direct the respondent to pay the due and payable monthly assured return/commitment charges amount till the unit in question is handed over, as in accordance with the buyer agreement or delay possession charges from the due date, whichever is higher.
 - IV. Direct the respondent to pay the amount due to the complainant, from the respondents, on account of the interest, as per the guidelines laid in the Act, 2016 and the monthly assured amount(s) as per clause of the agreement or

the delayed possession charges from the due date till handing over the possession whichever is higher.

- V. Direct the respondent to execute a conveyance deed in respect of the unit in question in favour of the complainants.
- VI. Restrain the respondent from raising fresh demand for payment under any head as the complainant had already made payment as per the payment plan.
- VII. Direct the respondent to 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.
- VIII. Direct the respondent to provide the exact layout plan of the said unit.
- IX. Direct the respondent to not to charge anything irrelevant which has not been agreed to between the parties like labour cess, electrification charges, which in any case is not payable by the complainant.
9. The authority issued a notice dated 05.02.2025 to the respondent by speed post and also on the given email address at rawatgaurav6464@gmail.com, and md@ninaniyagroup.com. The delivery reports have been placed in the file. The counsel for the respondent neither put in appearance nor filed a reply to the complaint within the stipulated period despite ample opportunities vide proceedings of the day dated 14.05.2025, 13.08.2025 and 08.10.2025. In view of the same, the authority has struck off the defence of the respondent vide proceedings dated 26.11.2025 and proceeded ex-parte against the respondent to decide the complaint on the basis of documents and pleadings filed by the complainants.

D. Jurisdiction of the authority:

10. 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

11. 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.

D.II Subject matter jurisdiction

12. 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.

13. 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 complainants:

E.I Direct the respondent to handover possession of the said unit in question 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 pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.**
- E.III Direct the respondent to pay the due and payable monthly assured return/commitment charges amount till the unit in question is handed over, as in accordance with the buyer agreement or delay possession charges from the due date, whichever is higher.**
- E.IV Direct the respondent to pay the amount due to the complainants, from the respondent, on account of the interest, as per the guidelines laid in the Act, 2016 and the monthly assured amount(s) as per clause of the agreement or the delayed possession charges from the due date till handing over the possession whichever is higher.**
14. The common issues with regard to penalty, assured return and execution of conveyance deed is involved in the aforesaid complaints.
15. The complainants are seeking penalty and assured returns as per the terms and conditions of the builder buyer's agreement executed inter se parties and the arrears of unpaid assured return along with interest on such unpaid assured return. It is pleaded that the respondent has not complied with the terms and conditions of the said builder buyer's agreement.
16. That in all the above cases builder buyer agreement and memorandum of understanding is executed between the parties which contains the clause of assured return.
17. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are stated in unequivocal terms for handing over off possession.
18. As far as the due date is concerned there is no specific time period mentioned in the builder buyer's agreement so the same is calculated to be 3 years from the date of the buyer's agreement in terms of the "**Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018**". As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having



completion date on or after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Accordingly, the due date of possession in each case is mentioned in para 3 of the order.

19. 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 as well as penalty the project is delayed due to gross negligence of the company. So, on his failure to fulfil that commitment, the complainants-allottee have a right to approach the authority for redressal of their grievances by way of filing the complaint.
20. Further, the builder buyer's agreement defines the relationship between builder buyer. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship. 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. In view of the above, the respondent is liable to pay assured return and penalty (SIC) to the complainant-allottee in terms of the builder buyer agreement. For the sake of clarity, it may be noted here that the word 'penalty' is being used in specific context of this case and is not to be confused with penalty as laid down under the statutory provisions of the Act of 2016.
21. The amount of penalty as well as assured return payable in each case is detailed in the table below:

S. No.	Complaint No.	Penalty and Assured Return payable by the respondent as per the builder buyer's agreement
1.	CR No. 529-2025 & CR No. 530-2025	6(iii) In case the project is delayed due to gross negligence of the company then post 12 months the company will bear a penalty of Rs.15/- per sq. ft. plus assured return of Rs.2,00,000/- per month till the date of possession
2.	CR No. 532-2025 & CR No. 533-2025	6(iii) In case the project is delayed due to gross negligence of the company then post 12 months the company will bear a penalty of Rs.15/- per sq. ft. plus assured return of Rs.1,52,166/- per month till the date of possession

22. As per information on record, the respondent has neither obtained occupation certificate nor has offered the possession of the subject unit to the complainants-allottee.
23. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought penalty and assured returns as per the terms and conditions of the builder buyer's agreement executed inter se parties and the arrears of unpaid assured return along with interest on such unpaid assured return.
24. Admittedly, the respondent has neither obtained occupation certificate nor has offered the possession of the subject unit to the complainants-allottee.
25. Accordingly, the respondent is directed to pay the penalty and assured return amount as per clause 6(iii) of the builder buyer's agreement within 90 days



from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount of assured returns due from the respondent to the complainant would be payable with interest @8.80% p.a. till the date of actual realization.

26. The amount of assured return payable is clarified in para 21 of the order.

E.V Direct the respondent to execute a conveyance deed in respect of the unit in question in favour of the complainants.

27. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title:

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

28. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. In view of the above, the respondent is directed to handover possession of the flat/unit in terms of the BBA and execute conveyance deed 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, within three months after obtaining occupation certificate from the competent authority.

E.VI Restrain the respondent from raising fresh demand for payment under any head as the complainants had already made payment as per the payment plan.

29. The Authority herein observes that the builder buyer's agreement is executed inter-se parties. Hereby, both the parties are bound to adhere to the contractual obligations agreed between the parties vide the said agreement. Therefore, the respondent shall raise demands only in accordance with the agreed builder buyer's agreement and the complainants are also bound to make payment of demands raised if any as per the builder buyer's agreement.

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

30. Indemnity-cum-undertaking- The Authority observes the said issue has already been decided by this Authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.** wherein it is held that the respondent shall not place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights. Ordered accordingly.

E.VIII Direct the respondent to provide the exact layout plan of the said unit.

31. The respondent is directed to provide the layout plans of the said units to the complainants according to section 19(1) of the Act of 2016. Section 19(1) is reproduced as under:

19. Rights and Duties of allottees:

(1) the allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

E.IX Direct the respondent to not to charge anything irrelevant which has not been agreed to between the parties like labour cess, electrification

charges, maintenance charges which in any case is not payable by the complainants.

32. The complainants have sought the relief to restrain the respondent to not to charge anything which has not agreed to between the parties like Labour Cess, electrification charges and maintenance charges.

- **Labour Cess:** The Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no.962 of 2019 titled *Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited* wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.
- **Electrification Charges:** This issue has already been dealt by the Authority in complaint bearing no. CR/4031/2019 titled as *Varun Gupta Vs. Emaar MGF Land Limited* wherein it is held that the promoter cannot charge electrification charges from the allottees while issuing offer of possession letter of a unit even though there is any provision in the builder buyer's agreement to the contrary.

- **Maintenance Charges:** The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 15 of the buyer's agreement provides the clause for maintenance charges.

However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

F. Directions of the authority:

33. 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 the penalty and assured return amount as per clause 6(iii) of the builder buyer's agreement within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which the amount of assured returns due from the respondent to the complainants would be payable with interest @ 8.80% p.a. till the date of actual realization.
 - ii. The respondent is directed to handover possession of the flat/unit in terms of the BBA and execute conveyance deed 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, within three months after obtaining occupation certificate from the competent authority.
 - iii. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the builder buyer's agreement.

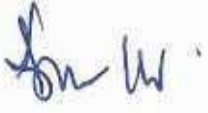


HARERA
GURUGRAM

Complaint No. 529 of 2025
and 3 others

- iv. The respondent is directed to provide the layout plans of the said units to the complainants according to section 19(1) of the Act of 2016.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. The complaints stand disposed of.
36. Files be consigned to the registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 06.01.2026

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