

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

Complaint no. :	3248 of 2021
Date of filing complaint:	20.08.2021
First date of hearing:	14.12.2021
Date of decision :	25.08.2022

1. Tshering Lamu Bhutia 2. Tshering Bhutia Both R/O: House no D-6, 6007/1, Vasant Kunj, South West, Delhi-110070	Complainants
2.Versus	
M/s Nani Resorts and Floriculture Pvt. Ltd. Regd. office: M-18, Greater Kailash Part 2 New Delhi- 110048	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Garv Malhotra (Advocate)	Complainants
Sh. Amar Yadav (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"ROF Galleria" Sec102, Gurugram
2.	Project area	5 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	11 of 2014 dated 10.06.2014 and valid up to 09.08.2019
5.	Name of licensee	Nani Resorts & Floriculture Pvt. Ltd.
6.	RERA Registered/ not registered	105 of 2017 dated 24.08.2017 Registered at Panchkula
7.	Unit no.	Shop no. 114, Ground floor [Page 18 of the complaint]
8.	Unit measuring	210.4 sq. ft. [Page 18 of the complaint]
9.	Date of allotment	N/A
10.	Date of execution of builder buyer agreement	10.10.2017 [Page 16 of the complaint]
11.	Possession clause	4.1 Possession of unit That the possession of the Said Unit shall be delivered to the Allottee(s) within 24-months of execution of this agreement , provided all amounts due and payable by the allottee(s) under this agreement have been paid to the Developer in timely manner and subject to the force majeure circumstances as

		stated in this Agreement, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the Allottee (s) of all its obligations, formalities and documentation as prescribed by the developer from time to time and not being in default under any part of this agreement.
12.	Due date of delivery of possession	10.10.2019 Calculated from the date of agreement i.e. 10.10.2017
13.	Total sale consideration	Rs.24,19,600/- [Page 20 of the complaint]
14.	Total amount paid by the complainants	Rs.16,25,982/- [As per demand letter at page 65 of the reply]
15.	Payment plan	Possession linked payment plan [Page 35 of the complaint]
16.	Intimation for offer of possession	01.08.2019 [Page 64 of the reply]
17.	Occupation Certificate	01.08.2019 [Page 70 of the reply]

B. Facts of the complaint:

3. That the respondent had launched a new commercial shopping complex project called "ROF GALLERIA" Sector 102, Gurugram, Haryana & had actively promoted the project to attract the public at large. This was a 0.2 Acre area especially earmarked for commercial use out of an affordable housing colony project under the name and style "ROF AALAYAS".
4. That on 14.09.2017, an amount of Rs 2,70,998/- was paid by the complainants to the respondent as booking amount. That on 14.10.2017 another payment of Rs 13, 54, 984/- was paid to the

respondent. Thus, the total amount paid as on date is Rs 16, 25,984/- against the total sale consideration of Rs 24,19,600/-.

5. That on 10.10.2017 the complainants and respondent entered into a builder buyer agreement, which clearly indicated that it was a possession linked payment plan in the project of the respondent and was allotted the shop no. 114, admeasuring 210.4 sq ft. and having covered area of 131.5 sq. ft., on ground floor. the carpet area is of 110.63 at the rate of Rs. 11,500/- per sq. ft.
6. That as per the clause 4.1 of the BBA the possession of the said unit shall be delivered within 24 months of execution of this agreement i.e. by 10.10.2019. That after chasing the respondent builder for the timely possession the respondent builder, separately assured rental payment to the tune of Rs 13,065/- per month from the due date of possession till physical possession. This amount was paid from December 2017 to 11.04.2019 for a period of 17 months only but is due from October 2017 till actual handing over of physical possession. Thus, the respondent be directed to pay the assured return as promised.
7. That on 05.04.2019 and vide demand letter dated the respondent arbitrarily and illegally demanded further money/installment, the complainants visited the site of the project and was shocked to see that no development work had taken place at all. The construction of the shop was of very poor quality and standard. That some really huge plumbing pipes were inside the shops depreciating its value and aesthetic sense. Thus, the complainants requested for the refund of the money vide their letter dated February 2020, but the respondent builder made false hopes and promises to refund the total money paid.

8. The project was not moving as per the schedule and timelines as promised by the respondent builder. Despite the delay, the respondent kept on sending arbitrary and illegal demand notices. The complainants visited the respondent's office many times and asked for a confirmation on date of possession but was given nothing but false promises and deadlines. Even as on date there is virtually very little progress in the project, and it is far from completion.
9. That the complainants have approached the respondent time and again seeking the information and status of the project and date of offer of possession of the said premises. After repeated reminders the respondent assured that they will refund the amount soon. yet no such offer has been made till now. Moreover, the respondent responded and assured that they will refund the amount very soon. It is pertinent to note that no offer of refund has been made till date despite all obligations and payments being met with by the complainants in time as and when demanded by the respondent.
10. It is humbly submitted that the present unit is under a possession linked plan and the complainants are bound to pay on possession which have not been met as per the scheduled timeline, thus there is absolutely no liability to pay and the said letter is nothing but a pressure tactic to make the complainants succumb to the illegal demands of the respondent builder.
11. Moreover, the respondents should be ordered to waive of arbitrarily and illegally levied delayed payment charges/holding charges and withdraw / rescind the demand letters and be restrained from alienating the aforesaid property and to restrain from creating any third-party rights till the matter is sub-judice.

12. That almost 60% of the BSP is duly paid. Yet, the respondents kept on illegally demanding further payments irrespective of the fact that the construction of the unit was inordinately delayed. Even as on date, almost 2 years after the due date of possession the unit is nowhere near completion.
13. That the possession is delayed by almost 2 years approximately. Having faced serious hardship on account of the delay, the complainants want to withdraw from the project and the respondent has failed to provide possession in promised date.
14. It is submitted that the respondent has not registered its project, "ROF GALLERIA" with the authority within the stipulated time period under Section 59 of Real Estate (Regulation and Development) Act, 2016, for Non-compliance with the said Act and for such violation, penalty must be imposed on respondent.

C. Relief sought by the complainants:

15. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the entire amount deposited with interest for every month of delay from the actual date of deposit of each payment till date of realisation on pro rata basis.
 - ii. Direct the respondent to pay the assured rental returns of Rs 13,065/- per month from the due date of possession till physical possession minus the period already paid for.
 - iii. Ordering the respondent to waive of the arbitrarily and illegally levied delayed payment along with restraining respondent from alienating the aforesaid property from creating any third-party rights.



- iv. Direct the respondent to reimburse litigation cost of Rs. 1,00,000/- to the complainants as he was constrained to file the same because of the callous and indifferent attitude of the respondent.

D. Reply by respondent:

16. That it is submitted that the present complaint deserves to be dismissed at the outset as it is based on suppression of material facts and based upon false averments. The instant complaint is ex-facie intended to misuse the due process of law as the complainants themselves are a defaulter. The extract from the relevant term of the Builder Buyer Agreement dated 10/10/2017 is reproduced hereunder for ready reference: -

Clause 2.2 " The Allottee (s) agrees to pay to the Developer the balance amount of consideration in accordance with the payment plan annexed to this agreement"

Clause 2.3 "That the timely payment of each instalment and of other charges is the essence of this agreement. It shall be incumbent upon the Allottee (s) to comply with the terms of payment plan and other terms and conditions of sale. In the event of any delay in payment of any instalment and other charges as specified herein, the allottee (s) shall be liable to pay interest on such payments due, calculated from the due date of outstanding amount @12% per annum compounded quarterly for the delayed period till the instalment and/or other chares is paid in full".

17. That the respondent has developed around 115 shops/commercial units in the complex, out of those 98 shops has been sold and possession has been handed over to their respective unit holders on time and many shops are open and working. It is pertinent to mention here that the complainants have opted their own the shop No. G-114

- as per its location, it is clarified that these are commercial units, hence no draw or allotment were made by the developer or /DTCP.
18. It is submitted that as per application form No.1351, complainants accept and confirmed that "In case of any difference and/or dispute between the company and me/us, the same shall be referred for arbitration to a sole arbitrator appointed by the company and award of the sole arbitrator shall be final and binding on the parties". It is pertinent to mention here that complainants did not approach the developer to appoint the arbitrator to resolve the dispute. It is submitted that complainants are liable to abide by the compliance of terms and conditions of the allotment letter.
 19. That the residential project is registered under the provisions of the Act with the Haryana Real Estate Regulatory Authority at Panchkula, Haryana on 24.08.2017 under registration number 105 of 2017.
 20. That it is submitted that the complainants had approached the respondent's as they were interested in purchasing a commercial property /shop in the project vide application no. 1351 together with requisite affidavits in terms agreed upon by both parties. They were chosen the own, the shop no. G-114 in "ROF Galleria" Project admeasuring 210.4 sq. ft. (saleable area) at total price of Rs. 24,19,600/-. Initially the complainants made payment of Rs.2,00,000/- vide a cheque drawn on Punjab National Bank dated 01.09.2017. That subsequently an allotment letter dated 22.09.2017 was issued to the complainants by the respondent.
 21. That thereafter intimation of next demand becoming due till 14.10.2017 vide demand letter a sum of Rs.13,54,984/- dated

- 20.09.2017 was sent as per the PLP plan (possession linked plan), agreed and taken up by complainants, which is duly signed in agreement by the complainants i.e. 10% of Basic sale price (BSP) i.e. Rs.2,41,960/- at the time of the booking and 50% of BSP within 30 days of booking i.e. Rs.12,09,800/-, 40% payment of BSP i.e. Rs. 9,67,840/- at the time of the offer of possession plus other charges as applicable. This payment plan was chosen by the complainants vide BBA executed on dated 10.10.2017.
22. That a demand letter dated 05.04.2019 was sent to the complainants as per the payment plan agreed and accepted by them and again on dated 22.10.2019. The respondent sent an email on dated 15.07.2020 and 18.01.2021 to the complainants to clear the demand of balance payment and possession charges as raised as per the payment plan chosen by them but complainants failed to make the payment and replied by an email on dated 26.02.2021 and shown their difficulty to make the due payments as facing finance problem and requested to hold the outstanding payments.
23. That the respondent again sent a demand letter dated 23.11.2020. This demand was in consonance with the agreement between both the parties but was not honored again by the complainants. The respondent again sent a demand letter dated 08.01.2021 & dated 13.02.2021. This demand was in consonance with the agreement between both the parties but was not honored again by the complainants.
24. That the respondent again called upon to make payment of balance sale consideration and complete the necessary formalities by email dated 12.03.2021 and another demand letter was sent on dated

09.07.2021. However, the complainants failed to do the needful. The complainant was sent a recent final demand letter on dated 03.09.2021 regarding payment of outstanding/overdue amount of Rs.17,70,892/-. This was not honored by the complainant.

25. It is submitted that the complainants have made the payment as per the payment plan (possession linked plan) chosen by them which is duly signed in builder buyer agreement. It is submitted that the location of the shop no. G-114 was chosen by the complainant themselves as it is a commercial property hence no draw of allotment was conducted by the respondent.
26. It is submitted that assured rental income of Rs. 13,065/- per month were given to the complainant as per discussion held with the complainants at the time of booking. It is submitted that payment /assured rental /interest were released to the complainants as commitments made by respondent and paid when become due to the next month by cheque.
27. It is submitted that possession is already handed over to all buyers as per due date subject to their payment plan. It is submitted that whatever demand letters were sent to the complaint are according to the terms and conditions of the agreement which is duly signed by the complainants. It is submitted that the possession of the units was already handed over the unit holders subject to full and final payment towards the purchase of the unit. It is further submitted that offer of possession was also given to the complainants vide letter dated 01.08.2019 subject to the clear the dues; however, complainants showed their inability to pay the dues and seeking time to make the balance payment.

28. It is submitted that possession of the units was already handed over to the unit holders on due date i.e. in the year of 2019. The occupation certificate is already granted vide Memo No. ZP-992/AD(RA)/2019/18117 on dated 01.08.2019.
29. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

30. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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 complainants at a later stage.

F. Entitlement of the complainants for refund:

- F.1 Direct the respondent to refund the entire amount deposited with interest for every month of delay from the actual date of deposit of each payment till date of realisation on pro rata basis.**
- F.2 Direct the respondent to pay the assured rental returns of Rs 13,065/- per month from the due date of possession till physical possession minus the period already paid for.**

31. The complainants were allotted the subject unit on ground floor Shop no. 114 having a super area of 210.4 sq. ft. against total sale consideration of Rs. 24,19,600/-. It led to execution of builder buyer agreement between the parties on 10.10.2017, detailing the terms and conditions of allotment, total sale consideration of the allotted unit, its dimensions, due date of possession, etc. The due date of possession of the subject unit was calculated as per clause 4.1 where the possession has to be handover within 24 months of execution of this agreement

which comes out to be 10.10.2019. After signing of buyer's agreement, the complainants started depositing various amounts against the allotted unit and paid a sum of Rs. 16,25,982/- as is evident from demand letter at page 65 of the reply.

The due date of possession as per agreement for sale as mentioned in the table above is **10.10.2019** and the allottee in this case has filed this application/complaint on 20.08.2021 i.e., after the due date of handing over of possession.

32. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. But since in the present case respondent builder has sent intimation for offer of possession dated 01.08.2019 to the complainants after obtaining occupation certificate on 01.08.2019 i.e. even before the due date of handing over of possession. Hence, the respondent has fulfilled obligation conferred upon him and there is no delay of part of respondent in handing over the possession of the allotted unit. Therefore, no case of refund or even DPC is made out.

The authority observes that the said request of surrendering the unit by the complainants was taken into account as unit has been offered to the complainants after obtaining occupation certificate and the complainants intends to withdraw from the project. The complainants have also confirmed that till then Rs. 16,25,982/- has been paid to the respondent. Due to unavoidable circumstances, it was not possible for him to pay further payment. As the complainants are seeking refund of the entire amount which has not been done so far by the promoter.

In view of aforesaid circumstances, the respondent is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 within 90 days from the date of this order along with an interest @ 10% p.a. on the refundable amount, from the date of filling of the complaint which shall be treated as the date of surrender i.e. 20.08.2021 till the date of realization of payment after adjusting the amount received by them if any by way of assured returns.

F.II Direct the respondent to reimburse litigation cost of Rs. 1,00,000 to the complainants as he was constrained to file the same because of the callous and indifferent attitude of the respondent.

33. The complainants are seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants may approach the adjudicating officer for seeking the relief of compensation.

F.III. Ordering the respondent to waive of the arbitrarily and illegally levied delayed payment along with restraining respondent from alienating the aforesaid property from creating any third-party rights.

In view of findings on relief no. 1 this relief became irrelevant.

G. Directions of the Authority:

34. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:


- i) The respondent-promoter is directed to refund the amount after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10% p.a. on the refundable amount, from the date of filing of the complaint which shall be treated as the date of surrender i.e. 20.08.2021 till the date of realization of payment after adjusting the amount received by complainants if any by way of assured returns.
- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of.

36. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)
Chairman

Dated: 25.08.2022