

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

Complaint no. : 4836 of 2022
Date of complaint : 18.07.2022
Date of decision : 24.05.2024

Bhushan Mehta
R/o: 2018 B, Sector-46, Kanhai(73),
Gurugram

Complainant

Versus

Nani Resorts & Floriculture Pvt. Ltd.
Office at: Building no. 80, 1st floor, Sector-44,
Gurugram

Respondent

CORAM:
Shri Sanjeev Kumar Arora

Member

APPEARANCE:
Sh. Sanjeev Sharma (Advocate)
Sh. Garvit Gupta (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed on 18.07.2022 by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees 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. N.	Particulars	Details
1.	Name of the project	"ROF Aalayas Phase II", Sector 102, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Project area	4.1125 acres
4.	DTCP license no. and validity status	82 of 2018 dated 06.12.2018 valid upto 05.12.2023
5.	RERA Registered/ not registered	33 of 2019 dated 03.07.2019
6.	Building plan	27.05.2019 (Page no. 19 of complaint)
7.	Environment clearance	04.10.2019 (page no. 19 of complaint)
8.	Date of Agreement to sell	30.06.2021 (Page 19 of complaint)
9.	Unit no.	1201, 12 th Floor, Tower/block J (Page no. 20 of complaint)
10.	Unit admeasuring	645 sq. ft. (carpet area) 140 sq. ft. (Balcony area) (Page no. 20 of complaint)
11.	Possession clause	7. Possession of the said flat

		<p>7.1 Within 3-months from the date of issuance of Occupancy Certificate, the Promoter shall offer the possession of the Said Flat to the Allottee. Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the Payment Plan, stamp duty and registration charges, the Promoter shall offer possession of the Said Flat to the Allottee within a period of 4 years from the date of approval of building plans of grant of environment clearance, whichever is later ("Commitment Period").</p>
12.	Due date of possession	04.10.2023 (calculated from the date of environment clearance i.e., 04.10.2019 being later)
13.	Total sale consideration	Rs. 26,30,000/- (As per BBA on page 64 of reply)
14.	Amount paid by the complainant	Rs. 26,56,799/- (As stated by complainant during hearing)
15.	Occupation certificate /Completion certificate	Not obtained

16. Offer of possession	Not offered
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B. Facts of the complaint:

3. That the complainant made the booking for allotment of unit and executed the apartment buyer agreement dated 30.06.2021 with respondent wherein the complainant was allotted unit no. J1201 type 3BHK admeasuring carpet area 645 sq. ft. and balcony area 140 sq. ft. for total consideration of Rs. 26,30,000/-.
4. That the instalments were supposed to be paid from the date of application till handing over of the possession in half yearly equal instalments as per the builder buyer agreement as well as Government Policy on affordable Housing.
5. That the respondent charged instalments beginning from 16th June 2019, then charged instalment on 11th October 2019 at the time of issue of allotment letter and then continued to charge after every six month.
6. The respondent demanded more money on 11th September 2021 and 11th March 2022 @ Rs. 3,32,038/- per instalment despite already having an excess amount with him. He further threatened to cancel the allotment if the instalment demanded is not paid on time.
7. That the complainant arranged Rs. 6,64,575/- from his sources and paid the amount on 01.07.2021 but did not pay the illegal demand of interest on the amount demanded by the respondent.
8. That the respondent should have either executed and registered the agreement of sale before asking for instalments or should not have asked for further instalments without execution and registering the builder buyer agreement.
9. Till date the respondent has demanded and collected Rs. 16,60,186/- as per the statement of account dated 18th January 2022 and rest of the

amount is pending to be paid as per the instalments directed to be paid by the authority. Fresh dates of instalments are required to be decided by the authority. Equitable interest on the illegal instalments received by the developer be paid to the complainant which he has demanded from the complainant under section 2 of the RERA Act.

10. The authority is requested to issue notice for the contravention of section 13 of the RERA Act and levy a heavy Penalty on the respondent to hoodwink the allottees and authority together under section 61 of the RERA Act.
11. Time frame of installments to be paid and date of handing over the possession be decided by the authority viz-a-viz to the booking, allotment and builder buyer agreement.

C. Relief sought by the complainant:

12. The complainant sought following relief(s).
 - I. Interest on excess amount collected by the respondent without executing the buyer's agreement.
 - II. An amount of Rs. 1,50,000/- as legal charges to be paid by the developer/respondent to the complainant.
13. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

14. That the complainant is the real estate investors who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that his calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to somehow illegally extract benefits from the respondent.

15. That the respondent had obtained the approval on the building plans from DTCP vide letter bearing memo no. ZP-992/AD(RA)/2019/12680 dated 27.05.2019 and the environment clearance bearing no. SEIAA/HR/2019/360 dated 04.10.2019 from the State Environment Assessment Authority, Haryana for the project in question. Moreover, the respondent in compliance of all laws including Real Estate (Regulation and Development) Act, 2016 has registered the project in question with this Hon'ble Authority and this Hon'ble Authority after scrutiny of all the relevant documents and completing its own due diligence has issued a registration certificate bearing no. RC/REP/HARERA/GGM/339/71/2019/33.
16. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide his booking application form on 16.06.2019. The complainant agreed to be bound by the terms and conditions of the booking application form. The complainant was aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the affordable housing policy and only after being completely satisfied about the same, had made the booking with the respondent.
17. That after scrutiny of the application under the overall monitoring of the concerned district town planner and after conducting draw of lots, the respondent vide its intimation letter dated 11.09.2019 informed the complainant about him being a successful applicant in the draw of lots and accordingly allotted to the complainant apartment no. J-1201 having carpet area of 645 square feet. Even in the said application form, it was clearly stated that the booking was made and the allotment was done in terms of the Affordable Group Housing Policy, 2013. The respondent vide the said intimation letter wherein the allotment was

informed had demanded the next 20% of the total cost of the flat as per Clause 5(iii)(b) of the said Policy. The complainant aware of the terms of the Policy and the booking application form made the requisite payment and the respondent accordingly issued a receipt towards the same to the complainant.

18. That in terms of the affordable group housing policy, 2013 and Annexure A of the booking application form, the respondent raised payment demands from the complainant. Vide demand letter dated 05.08.2020, the respondent demanded Rs. 7,10,116/- from the complainant. However, the complainant defaulted in making timely payment and the same was done only after a reminder dated 22.10.2020 was sent by the respondent to the complainant. An agreement dated 30.06.2021 was accordingly executed between the parties. Despite being aware that the complainant was bound to get registered the said agreement with the concerned authorities, he failed to do so despite email dated 12.04.2021 by the respondent.
19. That vide payment demand letter dated 26.07.2021, the respondent had sent demand letter for the net outstanding amount of Rs. 3,32,538/- . However, the said amount was not paid by the complainant despite email dated 22.12.2021 and the said amount was adjusted in the next payment demand as arrears.
20. That the respondent demanded Rs. 6,64,575/- from the complainant as per the demand letter dated 18.01.2022. The same demand was again sent to the complainant vide email dated 01.02.2022. However, the complainant failed to remit the due amount despite reminder dated 16.02.2022 and the respondent was constrained to send a cancellation letter dated 07.05.2022. It was only after the receipt of the cancellation letter that the complainant made the payment towards the demanded

amount. That despite being aware of the contractual terms and conditions, the complainant chose to remit the due amount after a time period of 4-5 months from the date of issuance of the demand letter.

21. That on account of such delay, the respondent had demanded interest from the complainant as per the prevailing law and the same is evident from a bare perusal of the payment demand letter dated 29.07.2022. The complainant was aware that as per Clauses 1.4 and 5 of the agreement, timely payment of the installment amount was the essence of the allotment. It was understood vide clause 9.4 of the agreement and as per clause 5(iii)(i) of the Affordable Scheme Policy, 2013, that if the allottee fails to make the payment towards the demanded amount, then the respondent would be entitled to terminate the allotment by issuing the cancellation letter. On account of defaults committed by the complainant, the respondent was left with no other choice but to terminate the allotment of the complainant by issuing the cancellation letter dated 16.08.2022. The complainant is left with no right, title or lien in the unit after the said cancellation. The said cancellation has been done by the respondent strictly as per the agreement and the said policy and the same is valid in the eyes of law. Without prejudice to the rights of the respondent, it is willing to restore the allotment provided the complainant makes the payment of outstanding amount with interest and an assurance that future payments would be made on time by him.
22. That the respondent has throughout acted strictly as per the terms of the allotment, rules, regulations, law and the directions issued by the concerned authorities. The respondent has already completed a substantial part of the construction of the project in question as per the timeline prescribed and there has been no delay of whatsoever nature on the part of the respondent in doing so.

23. 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 complainant.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

25. 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.

E.II Subject-matter jurisdiction

26. 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.

27. 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.

F. Findings on the relief sought by the complainant.

F. I. Interest on excess amount collected by the respondent without executing the buyer's agreement.

28. In the present complaint, the complainant booked a unit in an affordable housing project called ROF Aalayas Phase II, located in sector-102, Gurugram. The complainant was allotted unit no. 1201 on the 12th floor of tower J, and the agreement to sell for this unit was executed on June 30, 2021, between the complainant and the respondent company. The total sale consideration for the unit is ₹26,30,000, out of which the complainant has made a payment of ₹26,56,799.
29. That the complainant's unit was initially cancelled by the respondent company due to non-payment of outstanding dues. This cancellation was communicated to the complainant via a letter dated August 16, 2022. However, during the course of the hearing, the authorized representative (AR) of the respondent company stated that the cancellation letter was withdrawn because the outstanding payments were made by the complainant.
30. The complainant in the present complainant is seeking interest on excess amount collected by the respondent without executing the buyer's agreement, however on the hearing dated 12.04.2024 the counsel for the complainant stated at bar that they are seeking interest and possession of the unit. Moreover, there is no provision in the Act of

which provides for interest on amount paid by the complainant before executing BBA. However, as per clause 7 of the agreement the respondent was liable to deliver the possession of the subject unit within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later. The relevant clause 7 is reproduced below:

7. Possession of the said flat

7.1 Within 3-months from the date of issuance of Occupancy Certificate, the Promoter shall offer the possession of the Said Flat to the Allottee. Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the Payment Plan, stamp duty and registration charges, the Promoter shall offer possession of the Said Flat to the Allottee within a period of **4 years from the date of approval of building plans of grant of environment clearance, whichever is later** ("Commitment Period").

31. Even the delay possession charges can be provided as per 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."

32. **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.

33. 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.
34. 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., 24.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
35. 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;"*

36. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.
37. 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 7 of the agreement executed between the parties on 30.06.2021, the possession of the subject unit was to be delivered within 4 years from the date of sanction of building plans or receipt of environmental clearance whichever is later. The building plans were sanctioned on 27.05.2019 and the environment clearance was provided on 04.10.2019. Therefore, the due date of handing over possession comes out to be 04.10.2023. The respondent has failed to handover possession of the subject apartment till date of this order. 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 30.06.2021 executed between the parties. Further, no OC/part OC has been granted to the project.
38. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. 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., 04.10.2023 till the date of valid offer of possession or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.II An amount of Rs. 1,50,000/- as legal charges to be paid by the developer/respondent to the complainant.

39. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has 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 complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

40. 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 at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 04.10.2023 till valid offer of possession plus two months or actual

handing over of possession whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- ii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
 - iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
41. Complaint stands disposed of.
42. File be consigned to registry.



(Sanjeev Kumar Arora)
Member

HARERA
GURUGRAM

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.05.2024