

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

**Complaint no. :** 3962 of 2023  
**Date of decision:** 04.09.2024

Anita Devi  
**R/O:** H.no-60, Village-Ambrahi, Sector-19,  
Dwarka, New Delhi.

**Complainant**

Versus

M/s Nani Resorts and Floriculture Private Limited  
**Regd. office:** Building No.-80, Floor-1<sup>st</sup>,  
Sector-44, Gurugram.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)

Sh. Garvit Gupta (Advocate)

Complainant

Respondent

**ORDER**

1. The present complaint has been filed 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 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Rof Alante", Village-Dharampur, Sector-108, Gurugram, Haryana.
2.	Nature of the project	Affordable Group Housing
3.	Area of project	5.0 acres
4.	DTCP license	License no. 43 of 2019 Dated-05.03.2019
5.	RERA Registered	Registered Vide registration no. 75 of 2019 Dated:- 09.12.2019
6.	Environment clearance	06.02.2020
7.	Allotment letter	27.04.2023 (As on page no. 122 of reply)
8.	Unit no.	E-501, Floor-5 <sup>th</sup> , Tower-E (As on page no. 122 of reply)

9.	Unit area	645.743 sq.ft [Carpet area] 121.536 sq.ft. [Balcony Area] Along with one car parking (As on page no. 122 of reply)
10.	Date of execution of buyer's agreement	Not executed
11.	Due date of possession	06.08.2024 [calculated 4 years from date of environmental clearance+ 6 months on account of covid-19]
12.	Total sales consideration	Rs.23,04,353/- (As on page no. 90 of reply)
13.	Total amount paid by the complainant	Rs.17,94,653/- (As on page no. 90 of reply)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Reminders to pay outstanding amount due	07.12.2022 23.12.2022 (As on page no. 90-95 of reply)
17.	Cancellation letter	Not on record
18.	Demand letter	01.02.2023
19.	Notice towards full and final settlement of account sent by	18.03.2023 (As on page no. 117 of reply)



	the respondent to the allottee	
20.	Newspaper advertisement	22.03.2023

**B. Facts of the complaint:**

3. The complainant has made the following submissions: -

- I. That in 2019, the respondent issued an advertisement announcing an Affordable Group Housing Project "ROF ALANTE" located in Village- Dharampur, Sector- 108, Gurugram and invited applications from prospective buyers for the purchase of unit in the said project.
- II. That lured by the advertisements and calls from the brokers of the respondent, the complainant booked a unit in the project by paying an amount of Rs.1,31,650/- towards the booking of the unit bearing no. E-501 having carpet area measuring 645.743 sq.ft. on 20.12.2019 and the same was acknowledged by the respondent.
- III. That at the time of booking, the complainant was assured that the project will be completed within 36 months and agreement will be executed within period of 2 months but the same has not been executed till date.
- IV. That after a delay of more than 3 months, the respondent sent an intimation letter dated 03.03.2020 to the complainant confirming the booking of the unit. The allotment of the unit bearing no. E-501, admeasuring 645.743sq.ft. was confirmed by the respondent vide the letter dated 03.03.2020 for a total sale consideration i.e. Rs.26,33,475/-, including the basic price plus EDC and IDC, ETC and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. Furthermore as per intimation letter, the respondent raised a demand of Rs.5,33,175/-

- and undertook to issue an allotment letter and execution of the agreement.
- V. That the respondent sent a demand letter dated 29.07.2020, raising a demand of Rs.3,32,413/- on account of payment due "*Within 6 months from the date of issuance of the allotment letter*". In the present case respondent has collected approx Rs.17,94,653/- till date and further raised demand of Rs.8,65,151/- vide letter dated 20.02.2023, without executing the builder buyer agreement. Hence, the said demand is void, illegal and needs to be quashed.
- VI. That the respondent sent a reminder dated 19.04.2022 to complainant raising demand of Rs.5,64,824/-. Further, levying interest at rate of 12% per annum. It is pertinent to mention here that after coming into force of the Act, 2016, the builder cannot charge interest against the interest rate provided under the Act, 2016.
- VII. That the complainant sent an email dated 16.07.2021 stating that she has already deposited nearly 70% of the total sale consideration as and when demanded by the respondent and is willing to pay further amount also, but requested to provide the allotment letter, agreement, final demand letter and date of completion of project but no satisfactory response has been received till date. Thereafter various reminder emails were also sent.
- VIII. That the respondent instead of replying to the emails and reminders kept on sending the demand letters to pay the amount. Further, levying interest at rate. On 14.07.2023, the complainant visited the respondent's office and was shocked knowing that representatives of the respondent informed the complainant that the unit has been cancelled on 19.01.2023. Thereafter, the complainant requested to provide the copy of the cancellation letter as it was never received

by her but same was not provided. It is pertinent to mention here that if the said unit was cancelled on 19.01.2023, then why the respondent raised demand of Rs.8,65,151.29/- on 20.02.2023. That the complainant again sent a reminder e-mail mentioning that:

*"I fail to understand the intention and motive of not responding to me via mails and in person. I am surprised that because of your reluctant behavior and constant delay in process you are charging interest and cancellation of unit."*

- IX. During this period, the complainant visited the respondent's office several times and requested them to resolve the issue and accept the amount. Also, allow her to visit the site but the same was never allowed stating that they do not permit any buyer to visit the site during the construction period.
- X. The complainant contacted the respondent on several occasions and was regularly in touch with the respondent with regard to execution of the builder buyer agreement. The respondent never gave any satisfactory response to the complainant regarding the status of the agreement, construction, loan sanction and were never definite about the delivery of the possession.
- XI. The complainants kept pursuing the matter by visiting the respondent's office regularly as well as raising the matter to when will they get the agreement executed and why construction is going on at such a slow pace, but to no avail. Furthermore, the complainant repeatedly requested the respondent to provide justification and to withdraw the demand letters and issue fresh demand letter after execution of the agreement and without illegal demands and interest charged @ 12% but respondent failed to do so till date.

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

3. The complainant has sought following relief(s):



- i Direct the respondent to handover the actual physical possession of the apartment without delay.
- ii Direct the respondent to set aside the cancellation notice dated 19.01.2023.
- iii Direct the respondent to not cancel the allotment of the unit.
- iv Direct the respondent accept the outstanding dues from the complainant.
- v Direct the respondent to restrain from raising fresh demands for payment under any head.

**D. Reply by respondent:**

4. The respondent has made following submissions:
  - I. That the complainant is a real estate investor who had booked the unit with a view to earn quick profit in a short span of time. However, it appears that her calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to illegally extract benefits from the respondent.
  - II. That after checking the veracity of the project, the complainant applied for allotment of an apartment on 16.12.2019. 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 policy and only after being completely satisfied about the same, had made the booking. Moreover, the complainant had also perused and signed Annexure-A of the Application form which contained the payment plan, specifically stating the payment stages.
  - III. That the payment plan was strictly as per the Affordable Scheme Policy, 2013. The relevant clause 5 (iii)(b) of the said policy is reproduced hereunder:-



*"b. ...Any persons interested to apply for allotment of flat in response to such advertisement by the colonizer may apply on the prescribed application form along with 5% amount of the total cost of the flat. All such applicants shall be eligible for an interest at the rate of 10% per annum on the booking amount received by the developer for a period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case may be. The application will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of the flat. The balance 75% amount will be recovered in six equated six monthly installments spread over three year period..."*

- IV. That the respondent sent a demand letter to the complainant on 04.02.2021 demanding Rs.4,84,826/- till 03.03.2021. The complainant made only the part- payment of Rs.1,30,000/- despite reminders dated 06.04.2021, 26.04.2021, 05.05.2021, 08.05.2021 and 17.05.2021 by the respondent.
- V. That vide payment demand letter dated 01.09.2021, the respondent again sent demand letter for the net outstanding amount of Rs.5,34,825/-. However, the complainant failed to remit the said demand despite reminders dated 21.10.2021 and 10.11.2021.
- VI. That the respondent vide payment demand dated 21.01.2022 demanded net payable amount of Rs.6,65,324/- and the due date for making the payment was 03.03.2022. However, the complainant yet again only made part-payment despite reminders dated 02.04.2022, 19.04.2022, 10.05.2022, 25.05.2022, 18.06.2022 and 24.06.2022 and the remaining amount was adjusted in the next instalment demand as arrears.
- VII. That the respondent vide payment demand dated 01.08.2022 demanded net payable amount of Rs.6,32,738/-. As per the said demand letter, the complainant was informed that the due date for making the payment was 03.09.2022. However, the complainant yet again failed to make the payment despite reminders dated





01.11.2022, 07.12.2022, 23.12.2022 and final opportunity letter dated 03.01.2023.

- VIII. That vide demand dated 15.02.2023, a demand of Rs.8,65,151/- was raised. The complainant was informed that she had to make the payment by 03.03.2023. However, the complainant once again failed to remit the due amount.
- IX. That as per Clause 5(iii)(i) of the Affordable Scheme Policy, 2013, if the allottee failed to make the payment towards the demanded amount, then the respondent was 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 18.03.2023 with the full and final settlement of the account with a copy of cheque amounting to Rs.14,72,571/-. Therefore, the complainant is now 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.
- X. That thereafter, the respondent in accordance with the Affordable Housing Policy, 2013, published advertisement in the Newspaper on 22.03.2023 intimating the public that the allotment of the unit in question has been cancelled. The respondent accordingly, vide newspaper advertisement on 28.03.2023 invited booking from the public. The unit has been subsequently allotted to Mr. Suraj Pati vide allotment letter dated 27.04.2023 i.e before the filing of the present complaint.
- XI. 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.

5. 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:**

6. The Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I .Territorial jurisdiction**

7. 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**

8. 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 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;*

9. 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 Direct the respondent to handover physical possession of the unit to the complainant.**

10. In the present complaint, the complainant intends to continue with the project and is seeking possession of the unit as per section 18(1) of the Act and the same is reproduced below for ready reference:

***“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.-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*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)*

11. The complainant booked a unit in the affordable group housing colony project of the respondent known as “ROF Alante” situated at Village-Dharampur, Sector-108, Gurugram, Haryana and was allotted a unit bearing no. E-501 on 5<sup>th</sup> floor in Tower-E having carpet area of 645.743sq.ft. and balcony area of 121.536 sq.ft. alongwith one (1) two

wheeler parking of the project vide allotment letter dated 03.03.2020 for a total sale consideration of Rs.26,59,804/- out of which the complainant had paid an amount of Rs.17,94,653/-.

12. As per the Affordable Group Housing Policy, 2013 the possession of the unit was to be offered within 4 years from the date of approval of building plans or from the date of environment clearance, whichever is later. The environmental clearance was received later i.e., 06.02.2020, so it will be taken into account and 4 years will be calculated from 06.02.2020 which comes out to be 06.02.2024. Further, a period of 6 months will also be added to this as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Therefore, the due date comes out be **06.08.2024**.
13. The complainant has paid Rs.17,94,653/- till date out of the total sale consideration of Rs.26,33,475/-. It is observed that the respondent failed to adhere to the provisions of the Act, 2016. As per Section 1113(1) of the Act 2016, the respondent/promoter shall not accept more than 10 % of the total sale consideration of the unit as an advance payment. The said clause is reproduced below:

*" Clause 13 No deposit or advance to be taken by promoter without first entering into agreement for sale:-*

*(1) A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."*

14. The respondent vide reminder/demand letters dated 01.08.2022, 01.11.2022, 07.12.2022, 23.12.2022 and final opportunity letter dated 03.01.2023 intimated the complainant for payment of the outstanding dues but she failed to adhere the same. It is observed that the complainant failed to pay the remaining amount as per the schedule of

payment and which led to issuance of notice for cancellation by the respondent/builder dated 19.01.2023 but the same is not placed on record by the respondent . An inference about the same has been mentioned by the respondent in the letter dated 18.03.2023 whereby the respondent informed the complainant that the unit of the complainant stands cancelled on 19.01.2023 and notice towards "full and final settlement of account dues " has been sent to the complainant. Thereafter, an advertisement has been published regarding the cancellation of the allotment by the respondent on 22.03.2023. The counsel for the complainant during the proceedings dated 29.05.2024 stated that even after making the payment of 4 instalments amounting to Rs.17,94,653/- against total consideration of Rs.26,33,475/- , no allotment letter was sent to the complainant nor any BBA was forwarded for execution despite repeated reminders by the respondent.

15. In the present case, the respondent has neither issued an allotment letter in favor of the complainant nor executed an Agreement for Sale. The complainant has paid Rs. 17,94,653/- out of the total sale consideration of Rs. 26,33,475/-, which constitutes 68% of the total amount. The respondent's actions are in violation of Section 13(1) of the Act, 2016. Despite the payment schedule being aligned with the Affordable Group Housing Policy, 2013, adherence to the provisions of the Act is mandatory.
16. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, **the list of such defaulters may be published in one regional Hindi***



*newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs.25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".*

17. According to Clause 5(iii)(b) of the 2013 Policy, if the allottee fails to pay the outstanding dues, the promoter is required to publish a list of defaulters in a newspaper, providing a 15-day period for payment from the date of publication and if payment is not made within this period, the allotment may be cancelled. It is specified that the respondent/promoter must first publish the defaulter's name and allow a 15-day period for payment before proceeding with the cancellation of the unit. In this case, the respondent allegedly cancelled the unit on 19.01.2023 and issued a notice towards "*Full and Final Settlement of Account due to termination of allotment*" on 18.03.2023, and subsequently published a cancellation notice on 22.03.2023. This sequence indicates that the respondent did not follow the required procedure. In view of the above, the said cancellation is bad in law and is liable to be set aside.
18. On the last date of hearing i.e., 07.08.2024, the respondent was directed to file an affidavit w.r.t availability of the unsold units of same size in the project within a period of 2 weeks. The respondent failed to bring on record the requisite document.
19. In light of the aforementioned circumstances, the respondent is hereby directed to offer possession of a unit of the same size, at the same sale consideration, and within the same project as was originally allotted to the complainant. This offer must be made within 60 days of this order. Should the respondent fail to comply, they are instructed to refund the entire amount paid by the complainant, along with interest at the rate of

11.10 % per annum, calculated from the date of each payment until actual realization. Also, the complainant may seek compensation from the Adjudicating Officer, if the unit is not handed over to her.

**F.II Direct the respondent to set aside the cancellation notice dated 19.01.2023.**

**F.III. Direct the respondent accept the outstanding dues from the complainant.**

20. The cancellation dated 19.01.2023 is hereby set aside for the reasons above-mentioned and the respondent is directed to accept the outstanding dues from the complainant without asking for any charges which were not initially agreed between the parties.

**H. Directions of the Authority:**

21. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. The cancellation of the unit of the allottee is set aside and the respondent is directed to offer possession of a unit of the same size in the same project and at the same price as was originally allotted to the complainant. This offer must be made within 60 days of this order. Should the respondent fail to comply, the respondent is directed to refund the entire amount paid by the complainant, along with interest at the rate of 11.10% per annum, from the date of each payment until actual realization including compensation from the Adjudicating Officer.
  - 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.



**HARERA**  
**GURUGRAM**

Complaint No. 3962 of 2023

22. Complaint stands disposed of.
23. File be consigned to the registry.

Dated: 04.09.2024

**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**