

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

Complaint no. : 1424 of 2024
Date of complaint : 25.04.2024
Date of order : 11.12.2024

Sushma Madan, W/o Mahesh Chander Madan,
R/o: - C4D/54C, Janakpuri, New Delhi-110058.

Complainant

Versus

M/s Nani Resorts & Floriculture Pvt. Ltd.
Regd. Office at: Building No. 80, 1st Floor, Sector-44,
Gurugram, Haryana- 122003.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Complainant in person
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 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:

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.	Building plan approval	15.11.2019 (as per DTCP website)
7.	Environment clearance	06.02.2020 (as per Annex. R-2 at page 22 of reply)
8.	Allotment letter	03.03.2020 (As on page 6 of complaint)
9.	Unit no.	B-802 (As on page 6 of complaint)
10.	Unit area	645.786 sq.ft [Carpet area] 91.063 sq.ft. [Balcony Area] (As on page 6 of complaint)
11.	Date of execution of buyer's agreement	Not executed
12.	Possession clause in Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance , whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.



13.	Due date of possession	06.08.2024 [calculated 4 years from date of environmental clearance i.e. 06.02.2020 as per policy of 2013+ + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
14.	Total sales consideration	Rs.26,28,676/- (As on page 5 of reply)
15.	Total amount paid by the complainant	Rs.1,31,434/- (As on page 5 of reply)
16.	Occupation certificate	20.09.2024 (as per DTCP website)
17.	Offer of possession	Not offered
18.	Surrender Request	01.12.2020 (As on page 62 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a residential apartment in the project of the respondent named "Rof Alante" at Sector-108, Gurugram by depositing a sum of Rs.1,31,434/- and vide letter dated 03.03.2020, it was intimated to the complainant that a flat bearing no. B-802 having carpet area of 645.786 sq.ft. and balcony area of 91.063 sq.ft. has been drawn out in her name.
- II. That the deadly pandemic "Covid" brought unprecedented financial crunch in the family of the complainant forcing her not to accept the offer of allotment. In addition, there was no proper communication from the builder possibly due to complete lock down related restrictions or a bad corporate governance. As a result, the



complainant requested for withdrawal of her application and refund of the earnest money alongwith up to date interest.

- III. That the request for refund of Rs.1,31,434/- was finally submitted to the builder on 02.02.2021 alongwith all requisite documents personally. Since the refund amount was not received within the promised period of one month, the request was followed up regularly with the builder. The builder repeatedly assured processing of refund at the earliest but no money was refunded to the complainant even after two years.
- IV. That the complainant submitted appeal to the concerned builder for refund of the earnest money through mail dated 28.04.2023, with copy to HRERA and HUDA, Gurgaon, for their intervention in the matter of refund of earnest money/application amount. The builder did not even bother to send an acknowledgement or reply despite various communications.
- V. That as neither refund of the amount deposited has been made by the builder even after three years, nor have they sent any communication to the complainant. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to refund the entire paid-up amount of Rs.1,31,434/- along with interest.
 - Direct the respondent to pay a sum of Rs.100,000/- towards compensation.
5. 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.

6. The respondent contested the complaint vide its reply dated 01.10.2024 on the following grounds: -

- i. That the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that her calculations went wrong on account of severe slump in the real estate market and the complainant now want to somehow illegally extract benefits from the respondent. Such malafide tactics of the complainant cannot be allowed to succeed.
- ii. That the respondent had obtained the approval on the building plans from DTCP vide letter dated 15.11.2019 and the environment clearance from the State Environment Assessment Authority, Haryana dated 06.02.2020 for the project in question. Moreover, the respondent in compliance of all laws including Act, 2016 has registered the project in question with this Authority vide registration certificate bearing no. RC/REP/HARERA/GGM/381/113/2019/75.
- iii. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide her booking application form on 27.12.2019. The complainant agreed to be bound by the terms and conditions of booking application form. The complainant was aware and had admitted and accepted vide the said booking application form that she by the way of said application form had applied in the said project under the Affordable Group Housing Colony being developed by the respondent under the Affordable Scheme Policy and had understood all the limitations and obligations after being provided with all the information and clarifications. 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 said policy and only after being completely satisfied about the same, had made the booking with the respondent. Moreover, the complainant had also perused and signed Annexure A of the application form which contained the payment plan which specifically stated the stage of payments. It is submitted that at the time of submission of the booking application form, the complainant made payment of Rs.1,31,434/- to the respondent. The payment plan of the unit applied for was strictly as per the notified Affordable Scheme Policy, 2013.

- iv. That the complainant was allotted a unit bearing no. B-802 having carpet area of 645.786 sq ft. and balcony area of 91.063 sq ft. together with one parking site in the said project of the respondent vide its allotment letter dated 03.03.2020. The respondent strictly as per the terms of the allotment and policy vide the said allotment letter intimated the complainant that there is a net payable amount of Rs.5,32,306.69/- were to be paid by the complainant till 18.03.2020. It is pertinent to mention here that the said amount was not paid by the complainant despite the repeated reminders and requests rather the complainant in complete defiance of her obligations entirely ignored the respondent and no communication or response whatsoever was received by the respondent to its reminders and requests.
- v. That the respondent vide payment demand dated 01.12.2020 demanded net payable amount of Rs.8,64,176.58/-. As per the said demand letter, the complainant was informed that the due date to make the payment was 03.09.2020. The complainant yet again failed to remit the said dues and the respondent was yet again constrained to remind the complainant of the said payable amount.



- vi. That several reminders and follow-ups were done by the respondent with the complainant to make the payment towards the sale consideration. However, in complete abeyance of the contractual obligations, the complainant informed the respondent vide her email dated 01.12.2020 that the complainant wishes to surrender her unit on account of certain personal reasons. The said surrender request was followed by a formal application dated 02.01.2021 by the complainant and the said surrender request was duly accepted by the respondent. The complainant was aware that if she surrenders the allotted unit, then as per the terms of the Affordable Housing Policy, 2013 and Clause 23 of the booking application form, the respondent would be entitled to forfeit and deduct the earnest amount and certain percentage as per the provisions laid down by law.
- vii. That the complainant had till date paid a sum of Rs.1,31,434/- out of the total sale consideration of Rs.26,28,676/-. It is submitted that vide the amendment in the Affordable Housing Policy, 2019 dated 05.07.2019, the Clause 5(iii) of the said policy dated 19.08.2013 was substituted and thus the amount to be forfeited by the colonizer was amended.
- viii. That the date of commencement of the project would be taken as 06.02.2020 as per Clause 1(iv) of the Affordable Housing Policy, 2013. Since, the complainant had made the surrender request within 1 year from the date of commencement of the project, the respondent is entitled to forfeit a sum of Rs.25,000/- in addition to Rs.26,286/- (1% of the total sale consideration) and statutory dues and taxes already paid by the respondent to the concerned authorities. In the present case, the total deductible amount comes to the tune of Rs. 51,286/- and the same was duly informed to the complainant by the respondent at



the time of surrender of the allotment. The complainant even submitted a surrender deed dated 02.01.2021 wherein it was admitted by her that she would be entitled to only Rs. 80,148/- after valid deductions. The respondent even issued a cheque dated 05.07.2021 in favour of the complainant.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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.

F. Findings on the objections raised by the respondent

F. I Objections regarding the complainant being investor.

12. The respondent has taken a stand that the complainant is an investor and not consumer and therefore she is not entitled to the protection of the Act and to file the complaint under section 31 of the Act. The Authority observes that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is a buyer and paid total price of Rs.1,31,434/- towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter, it is crystal clear that she is an allottee as the subject unit allotted to her by the promoter. The



concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to refund the entire paid-up amount of Rs.1,31,434/- along with interest.

16. The complainant has submitted that she had booked a residential apartment in the Affordable Group Housing project of the respondent named "Rof Alante" at Sector-108, Gurugram by paying a sum of Rs.1,31,434/- and was allotted a flat bearing no. B-802 having carpet area of 645.786 sq.ft. and balcony area of 91.063 sq.ft. vide allotment letter dated 03.03.2020. She has further submitted that the covid pandemic brought an unprecedented financial crunch in the family of the complainant due to which she was forced not to accept the offer of allotment and hence, she requested the respondent vide email dated 01.12.2020 to refund the total deposited amount alongwith interest. However, despite multiple requests, the respondent has failed to refund the paid-up amount till date. The counsel for the respondent vide proceedings dated 11.12.2024, has submitted that the refund was offered in the form of a cheque dated 05.07.2021, but the complainant refused to accept the same. Thus, after considering the above, it is

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determined that the said amount was never encashed and still remains with the respondent.

14. The Authority observes that clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 states as under:

On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil;
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat;
(cc)	Upto 2 years from the date of commencement of the project	3% of the cost of flat;
(dd)	after 2 years from the date of commencement of the project	5% of the cost of flat;

Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time.

15. In the instant case, the date of commencement of the project was calculated from the date of obtaining E.C i.e., 06.02.2020. However, the unit was surrendered by the complainant-allottee on 01.12.2020. Since the surrender of the unit by the complainant was done after commencement of construction. Hence the respondent/builder is entitled to forfeit the amount in accordance with amended section 5(iii)(h) of the policy, 2013.
16. The Authority observes that complainant is entitled for the refund of deposited amount after deduction of the amount as allowed under Affordable Group Housing Policy 2013 and amendment of 2019 which allow for deduction of 1% of the consideration money in addition to Rs.25,000/- as the complainant surrendered the unit within one year



from the grant of environmental clearance. Thus, the respondent was bound to cancel the unit and return the amount as per clause 5(iii) (h) of the policy, 2013 as amended by the State Government on 05.07.2019, along with prescribed rate of interest i.e., @11.10% per annum from the date of surrender i.e. 01.12.2020 till the actual realization of the amount.

G. II To pay a sum of Rs.100,000/- towards the litigation expenses for filing the complaint.

20. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. 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.*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

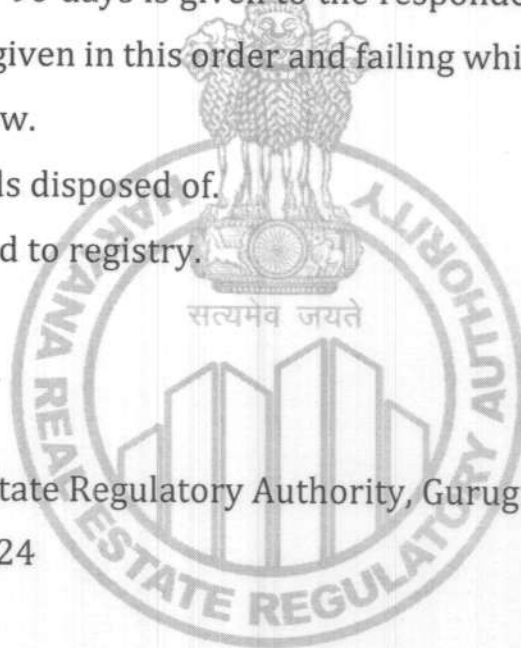
H. Directions of the authority

17. 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):

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- i. The respondent/promoter is directed to refund the paid-up amount of Rs.1,31,434/- after deduction of 1% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with prescribed rate of interest i.e., @11.10% per annum from the date of surrender i.e. 01.12.2020 till the actual realization of the amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
18. Complaint stands disposed of.
19. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.12.2024

HARERA
GURUGRAM