

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

**Complaint no. :** 4562 of 2023  
**Date of filing :** 20.10.2023  
**Order reserved on :** 21.11.2024

Col. Guler Chand

**R/o:** V.P.O-Jagrup Nagar (474), District  
Kangra, Himachal Pradesh-176082.

**Complainant**

Versus

M/s Nani Resorts and Floriculture Pvt. Ltd.

**Regd. Office at:** Building no. 80, 1<sup>st</sup>  
Floor, Sector-44, Gurugram-122003.

**Respondent no.1**

M/s Homecrew Facility Services Pvt. Ltd.

**Regd. Office at:** House no. 242, Block E,  
Pocket 19, Sector 3, Near Sarvodaya  
Vidyalaya, Rohini, New Delhi-110085.

**Respondent no.2**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Rahul Thareja (Advocate)

Sh. Garvit Gupta (Advocate)

**Complainant**

**Respondents**

**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

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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. No.	Particulars	Details
1.	Name of the project	"ROF AALAYAS" sector- 102, Gurugram
2.	Project area	5 acres
3.	Nature of project	Affordable Group Housing
4.	DTCP License no. and validity	11 of 2014 dated 10.06.2014 valid up to 09.08.2019
5.	Name of licensee	Nani Resorts & Floriculture Pvt. Ltd.
6.	RERA registered/not registered and validity	<b>Registered</b> Vide no. 33 of 2019 dated 03.07.2019 Valid up to 4 years from the date of environmental clearance i.e., 05.01.2015
7.	Unit no.	F-406, 4th floor, tower/block- F, (As per page no. 39 of the complaint)
8.	Unit measuring	473 sq. ft (carpet area) & 73 sq. ft. (balcony area) (As per page no. 13 of the complaint)
9.	Date of approval of building plans	26.03.2015 (As per page no. 38 of the complaint)
10.	Date of grant of environment clearance	05.01.2015 (As per page no. 40 of the reply)
11.	Offer of allotment letter	29.04.2016 (As per page no. 34 of the complaint)
12.	Date of execution of apartment buyer's agreement	21.07.2016 (As per page no. 37 of the complaint)
13.	Possession clause	3. Possession 3.1 Unless a longer period is permitted by the DGTCF or in the policy and subject to the force majeure circumstances as stated in clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the apartment buyer(s) of

		all his/her/their obligations, formalities and documentation as prescribed by the developer from time to time and not being in default under any part of this agreement, including but not limited to timely payment of instalments of the total cost and other charges as per the payment plan, stamp duty and registration charges, <b>the developer proposes to offer possession of the said apartment to the apartment buyer(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later.....</b> (As per page no. 43 of the complaint)
14.	Due date of possession	<b>26.03.2019</b> [Note: Due date of possession is calculated from 4 years from approval of building plans i.e., 26.03.2015, being later.]
15.	Total sale consideration	Rs.21,69,675/- (As per payment plan on page no. 63 of the complaint)
16.	Total amount paid by the complainant	Rs.22,50,027/- (As per statement of account on page no. 64 of the complaint)
17.	Occupation certificate	01.08.2019 (As per page no.67 to 69 of reply)
18.	Offer of possession	01.08.2019 (As per page no. 70 of reply)

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:
- I. That the complainant, Col. Guler Chand (Retd.) is a law-abiding citizen and is residing at VPO-Jagrup Nagar (474), Jagrup Nagar, District Kangra, Himachal Pradesh-176082.
  - II. That the complainant is an allottee within the meaning of Section 2 (d) of the Real Estate (Regulation and Development) Act, 2016. The respondent no.1 company, M/s Nani Resorts and Floriculture Pvt. Ltd. is a limited company incorporated under the Companies Act, 1956 and is inter alia engaged in the business of providing real estate services.

- III. This is with reference to the residential apartments in the proposed affordable group housing colony in the project "ROF AALAYAS" in the project of "M/s Nani Resorts and Floriculture Pvt. Ltd." under the license no. 11 dated 10.06.2014 issued by DTCP, Haryana, Chandigarh.
- IV. Around 2016, the respondent company announced the launch for residential apartments in the proposed affordable group housing colony known as " ROF AALAYAS" in the project of "M/s Nani Resorts and Floriculture Pvt. Ltd". The said project is being developed under the Affordable Housing Policy 2013, issued by the Government of Haryana, vide Town and Country Planning Department's Notification dated 19 August 2013. The complainant while searching for a residential flat was lured by the advertisements/ brochures of the company to buy a flat in their project namely "ROF AALAYAS" at Sector 102, Village Dhankot, Gurugram. The agents and officers of respondent no.1 company told the complainant about the moonshine reputation of the company and the agents of the respondent no.1 company made huge presentations about the project mentioned above and assured that they have delivered several projects in the national capital region prior to this project. The respondent no.1 handed over a brochure to the complainant, which projected a very interesting landscaping of the said project and went on to incite the complainant to part with their hard-earned money by way of making payments. The respondent no.1 claimed that it has taken all due approvals, sanctions and government permissions towards development and construction of said project and after representing through brochures, about the facilities to be provided, the respondent managed to impress the complainant who then decided to invest his hard-earned money in purchasing the unit in the said project.

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- V. Relying on various representations and assurances given by respondent no.1 company and on belief of such assurances, the complainant booked a unit in the said project via booking application form having application no. 11795 dated 28.04.2016.
- VI. That the complainant received the provisional allotment letter towards the booking of the unit bearing apartment no. F-406 located at 4<sup>th</sup> floor in tower no. F, admeasuring 534.75 sq. ft. (carpet area) along with balcony area of 61.35 sq. ft. as well as one two-wheeler parking site in the project "ROF AALAYAS" Sector - 102, Village Dhankot, Gurugram. Moreover, the said allotment letter confirms the receipt of Rs.2,17,000/- paid by the complainant on 28.04.2016 as a part payment out of the total sale consideration of the unit in question.
- VII. That by trusting the goodwill of the respondent no.1, the complainant paid Rs.5,96,628/- vide ICICI Bank cheque no. 718387 dated 30.05.2016 against the allotment letter dated 29.04.2016 sent by respondent no.1. However, the said payment demand was totally an illegal act of respondent no.1 and against the section 13(1) of the RERA Act, 2016 as no promoter can demand more than 10% of the cost of the unit without entering into a written agreement. Therefore, all payments taken in advance should be compensated and interest on advance payments be paid to the complainant.
- VIII. That an apartment buyer's agreement was executed between the complainant and respondent no. 1 on 21.07.2016 at Gurugram. As per clause 2.1 of the said apartment buyer's agreement dated 21.07.2016, total sale consideration of the apartment in question is Rs.21,69,675/- whereas the complainant has already paid Rs.22,27,985/- in time.
- IX. Vide payment demand dated 03.11.2018, Rs.75,950/- is the balance payment as GST, which is incorrect. It is pertinent to mention here that

the Central Government directed the developers not to charge any GST from Affordable Housing Buyers which can be adjusted against Input Tax Credit as passed in GST Council meeting and ITC facility is applicable to affordable housing project as per Chapter 'V' of GST notification of 09.10.2018. Moreover, the GST council has also mentioned that developers are expected to follow the principle laid down under section 171 of GST Act (Anti Profiteering Rules) scrupulously. Therefore, respondent no.1 cannot recover any GST from the complainant /buyers of the Affordable Housing.

- X. That as per clause 3.1 of the apartment buyer's agreement the respondent no.1 had to offer possession of the said Apartment within a period of 4 years from the date of approval of building plans. It is pertinent to mention here that the date of approval of building plans is 26.03.2015.
- XI. That respondent no. 1 never updated the complainant regarding the status of the construction. Therefore, the complainant visited project construction site to check the progress and the work of his future home in question. However, the complainant was shocked to see that the same was not ready or was incomplete and the same was shown to the site incharge. Hence, the complainant taken some photographs of incomplete work of the unit in question and sent to respondent no. 1 for early rectification.
- XII. That the complainant contacted respondent no.1 on several occasions but the respondent no.1 was never able to give any satisfactory response regarding the status of the construction. Even when the complainant visited the construction site in first week of September 2020, the officials of the respondent no.1 refused to permit him to further visit the site stating that he must clear the alleged pending



payment. Furthermore, the respondent was never definite about the delivery of the possession. It is pertinent to mention here that the respondent no.1 company is guilty of unfair trade practices as they have been unable to live up to their end of the agreement.

- XIII. That the complainant sent various mails dated 16.08.2017, 31.03.2018, 14.02.2019, 13.05.2019, 07.08.2019, 10.01.2020, 27.03.2020, 09.06.2020, 03.04.2021 and also sent a notice dated 14.09.2021 to the respondent no.1 in order to obtain the possession of the unit in question as soon as possible.
- XIV. The complainant after losing all the hope from the respondent no.1 company, having their dreams shattered of owning a flat & having basic necessary facility in the project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.
- XV. That the respondent no.1 has played a fraud upon the complainant and has cheated him fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent no.1 had further malafidely failed to implement the builder buyer agreement. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent no.1, is filing the present complaint.
- XVI. That it has been held by the Hon'ble NCDRC, New Delhi in many cases that offering of possession on the payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified.

- XVII. That no negotiations were permitted in relation to the apartment buyer's agreement dated 21.07.2016. It is submitted that this agreement and various clauses therein amount to an unconscionable agreement, i.e., an agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the superior bargaining power, that they are contrary to good conscience. That no compensation was provided to the complainant till date.
- XVIII. Moreover, the said clause is also in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 itself which has clarified the position that the interest payable by the promoter in case of default shall be the same as the interest payable by the allottees in case of any default made by them.
- XIX. It is also pertinent to mention here that the respondent no.1 has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15% per annum as per clause 2.5 of the apartment buyer's agreement.
- XX. That respondent no.1 is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent no.1 and as such the Respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- XXI. That the present complaint sets out the various deficiencies in services, unfair and restrictive trade practices adopted by the respondent no.1 in sale of their unit and the provisions allied to it. The modus operandi



adopted by the respondent no.1, from the respondent no.1 point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

XXII. As per section 18 of the RERA Act, 2016, the promoter is liable to pay delay possession charges to the allottee of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. In addition to the abovementioned provision, the respondent is also bound by the Haryana Real Estate Regulation Rules, 2017 which lists the interest to be computed while calculating compensation to be given by a promoter to an allottee in case of a default. Section 15 of the said rules provides that "an allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12 of the Act.

XXIII. That respondent no.2 has regularly sending emails to the complainant to pay charges which are not understood as to how they are communicating without giving possession of the unit in question to the complainant.

XXIV. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this Hon'ble Authority.

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- XXV. The complainant after losing all the hope from the respondent no.1, having their dreams shattered of owning a flat & having basic necessary facility in the vicinity of the 'ROF AALAYAS" project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.
- XXVI. It is stated that the present complaint is within the prescribed period of limitation. That the Complainant has not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law.

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

4. The complainant has sought following relief(s):
- Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.
  - Direct the respondent to provide possession of the flat with all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible.
  - All payments taken in advance should be compensated and interest on advance payments be paid to the complainant.
  - It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to not to charge any charges which the complainant is not legally bound to pay the same.
  - Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
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 has contested the complaint on the following grounds:
  - i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
  - ii. That there is no cause of action to file the present complaint. That the complainant has no locus standi to file the present complaint.
  - iii. That the complainant is estopped from filing the present complaint on account of his own acts, omissions, admissions, delays, laches and acquiescence.
  - iv. That moreover, in lieu of the actual facts and on account of the default of the Complainant himself, the reliefs sought by the Complainant cannot be granted by this Hon'ble Authority against the respondents.
  - v. That no relief has been sought against respondent no.2 and hence, respondent no.2 is liable to be deleted from the arrays of parties.
  - vi. That the complaint is not maintainable for the reason that the agreement contains a dispute resolution clause which refers to the mechanism to be adopted by the parties in the event of any dispute i.e. Clause 24 of the Buyer's Agreement.
  - vii. That the complainant has not approached this Hon'ble Authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law.
  - viii. That the respondent no.1 is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The

respondent no.1 has developed and delivered prestigious projects such as 'ROF Portico', ROF Aalayas and ROF Ananda and in most of these projects large numbers of families have already shifted after having taken possession.

- ix. That it is submitted 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 his calculations have gone wrong on account of severe slump in the real estate market and the complainant now want to somehow illegally extract benefits from the respondents. Such malafide tactics of the complainant cannot be allowed to succeed.
- x. That the respondent no.1 is the sole, absolute and lawful owner of the land parcel situated in the revenue estate of Village Dhankot, Sector 102, Tehsil and District Gurugram, Haryana. The respondent no.1 had obtained the approval/sanction to develop a project known as 'ROF Aalayas' from the Director Town and Country Planning, Haryana, Chandigarh (hereinafter referred to as the 'DTCP') vide approval bearing license no. 11 of 2014 dated 10.06.2014 under the Haryana Development and Regulation of Urban Areas Act, 1975 and the Haryana Development and Regulation of Urban Areas Rules, 1976 read with the Affordable Group Housing Policy, 2013 issued by the Government of Haryana vide the Town and Country Planning Department notification dated 19.08.2013 as amended from time to time.
- xi. That the respondent no.1 had obtained the approval on the building plans from DTCP vide letter bearing Memo no. 4864 dated 26.03.2015 and the environment clearance bearing no. SEIAA/HR/2015/51 dated 05.01.2015 from the State Environment Assessment Authority,

Haryana for the project in question. Moreover, the respondent no.1 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. 105 of 2017.

- xii. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide his booking application form on 28.04.2016. 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 he 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 no.1 strictly as per the said policy and only after being completely satisfied about the same, had made the booking with the respondent no.1. Also, the payment plan of the unit applied for was strictly as per the notified Affordable Scheme Policy, 2013.
- xiii. That on the basis of the application, a unit no. F-406 on 4<sup>th</sup> Floor in Tower F having a carpet area of 534.75 sq. ft. and balcony area of 61.35 sq. ft. together with one two-wheeler parking was allotted to the complainant vide allotment letter 29.04.2016. Accordingly, an agreement was sent by the respondent no.1 to the complainant. The complainant signed the agreement only after being fully aware of all

the limitations and obligations and after being completely satisfied with the terms and conditions of the said agreement. Thus, the agreement for sale was executed between the complainant and the respondent no.1 on 21.07.2016 and the same is attached herewith by the complainant along with the complaint.

- xiv. That the respondent no.1 strictly as per the terms of the Affordable Housing Policy, 2013 sent all the demand letters for payment of instalments due from the complainant. The complainant made payments of some of the instalments on time and thereafter defaulted in adhering to his contractual obligation of making timely payments as per the terms of the agreement and the Affordable Housing Policy, 2013.
- xv. That the complainant at the time of signing of the booking application form and the agreement had understood that the timely payment of the instalment amount was the essence of the allotment. It was agreed that in case of default on the part of the complainant in adhering to this contractual obligation, he would be bound to make payment @15% per annum from the due date. As per clause 5(iii)(b) of the Affordable Housing Policy, 2013, it was known that any default in payment would invite interest @15% on the outstanding amount. The complainant despite being aware of the actual facts, terms and conditions is now trying to misinterpret the same in order to unnecessarily harass, pressurize and blackmail the respondents to submit to his unreasonable and untenable demands and he cannot be allowed to achieve in his malafide motives.
- xvi. That the respondent no.1, as per the mutually agreed terms, sent a demand letter against 'within 24 months of allotment' to the complainant wherein the due amount was to be paid by the

complainant till 22.08.2017. The complainant failed to make the payment towards the complete demanded amount and the same was adjusted in the next payment demand as arrears.

- xvii. That the respondent no.1 thereafter, as per the mutually agreed terms, sent a demand letter dated 08.01.2018 against 'within 30 months of allotment' to the complainant wherein the due amount was to be paid by the complainant. However, the complainant in continuation of his defaults, failed to remit the complete amount despite reminder dated 17.04.2018. The remaining payment was adjusted in the next instalment demand as arrears.
- xviii. That the respondent no.1 as per the terms of the Affordable Housing Policy, 2013 and as per the terms of the agreement, issued a demand letter dated 18.07.2018 against 'within 36 months of instalment as well as interest accrued as per the terms of the policy and agreement and the due date to make the said payment was 22.08.2018. However, the complainant failed to remit the payment towards the complete demanded amount and the respondent no.1 was yet again, constrained to adjust the said amount in the next demand letter.
- xix. That as per clause 3.1 of the agreement, the respondent no.1 was to handover the physical possession of the unit to the complainant within a period of 4 years from the date of approval of the building plan or environment clearance, whichever is later. However, as per the said clause, the due date to handover the possession of the unit was subject to timely payment of instalment by the allottee. Hence, since the building plans of the project was approved on 26.03.2015 which was later than the environment clearance, the due date of handing over of possession was 26.03.2019. However, the said period was subject to

the additional time on account of non-timely payment of the instalments by the complainant.

- xx. That despite continuous failure of the complainant in making payments on time, the respondent no.1 completed the construction of the tower in which the unit allotted to the complainant is located and offered the possession of the unit vide letter dated 01.08.2019 along with demand letter after receiving the occupation certificate on 01.08.2019. Thus, it is very safe to say that there is no delay on the part of the respondent no.1 in completing the construction of the unit and offering the possession to the complainant although the complainant has throughout been at default. It is pertinent to mention here in that as per clause 3.3 of the agreement and clause 19 of the RERA Act, 2016, upon receiving a written intimation from the builder to take the possession, the complainant was to take the possession by executing necessary undertakings, formalities and documentation and after making payment of the due amount. However, the complainant has till date not taken the possession nor has made the payment towards the balance sale consideration.
- xxi. That since, the complainant had failed to make the payment towards the demanded amount, the respondent no.1 sent several demand letters dated 07.10.2020, 16.12.2020 and 03.09.2021 demanding the lawful dues against the allotment. However, the complainant failed to pay any heed to the genuine dues of the respondent no.1.
- xxii. That vide demand dated 07.10.2021, the respondent no.1 demanded Rs.1,73,550/-. However, the complainant failed to remit the amount and the same was adjusted and demanded in the next instalment demand dated 07.07.2021. However, the complainant chose not to



make the payment despite reminders dated 23.05.2022, 09.06.2022 and final opportunity letter dated 27.06.2022.

- xxiii. That the respondent no.1 vide payment letter dated 07.12.2023 demanded Rs.2,23,590/- from the complainant. However, the complainant being in continuous default has failed to remit the due amount. As per the interest ledger as on 30.01.2024, an amount of Rs.2,34,360/- has been accrued and the same is payable by the complainant to the respondent no.1 on account of continuous defaults on his part. The complainant is trying to unilaterally extract benefits from the respondent no.1 which he is not entitled to and he cannot be allowed to succeed in his illegal motives.
- xxiv. That the respondent no.1 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 no.1 in doing so.
7. 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 parties.

**E. Jurisdiction of the authority:**

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection 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, 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**

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(j) 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.*

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 objections raised by the respondent:**

**F.1 Objection regarding maintainability of complaint on account of complainant being investor.**

10. The respondent took a stand that the complainant is investor and not a consumer and therefore, he is not entitled to the protection of the Act and

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thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note 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 allotment letter, it is revealed that the complainant is buyer, and he has paid total price of Rs.22,50,027/- to the promoter towards purchase of unit in its project. 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;"*

11. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the flat buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them 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". Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**F.II Objection regarding complainant is in breach of agreement for non-invocation of arbitration.**

12. The respondent submitted that the present complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.



13. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

**G. Findings on the relief sought by the complainant:**

- G.I Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.**
- G.II Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.**
14. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under 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.*  
*(Emphasis supplied)*

16. Clause 3.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

**3. Possession**

*"3.1 Unless a longer period is permitted by the DGTCP or in the policy and subject to the force majeure circumstances as stated in clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the apartment buyer(s) of all his/her/their obligations, formalities and documentation as prescribed by the developer from time to time and not being in default under any part of this agreement, including but not limited to timely payment of instalments of the total cost and other charges as per the payment plan, stamp duty and registration charges, **the developer proposes to offer possession of the said apartment to the apartment buyer(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later.** The aforesaid period of development shall be computed by excluding Sundays, bank holidays, enforced Govt. holidays and the days of cessation of work at site in compliance of order of any judicial/ concerned State Legislative Body."*

*(Emphasis supplied)*

17. The authority has gone through the possession clause of the agreement and observed that the respondent proposes to handover the possession of the allotted unit within four years from the date of approval of building plan or from the date of grant of environmental clearance, whichever is later. As per clause 3.1 of the apartment buyer's agreement the possession of the allotted unit to be handed over the possession of the allotted unit within four years from the date of approval of building plan i.e., 26.03.2015 or from the date of grant of environmental clearance i.e., 05.01.2015, whichever is later. And hence, the due date is calculated from the date of approval of building plan i.e., 26.03.2015 being later. Therefore, the due date of possession comes out to be 26.03.2019.

18. The Authority during the proceedings dated 21.11.2024, appointed a local commissioner to visit the project site and to clarify the status of occupation certificate of project in which unit of the complainant is located. The local commissioner visited the project site on 02.01.2025, in presence of Sh. Siddharth Sharma, Advocate, for the respondent/promoter visited the site and accordingly has submitted its detailed report along with copy of OC, Site Plan and Deed of Declaration. The local commissioner also filed the photographs of the project as well as subject unit in question, which evidences that other allottees have already taken the physical possession of their units and are residing in it. The extracts of the report are reproduced as under:

*6. Conclusion:*

*The site of the project namely "Rof. Aalayas" in Sector-102, Gurugram being developed by M/s Nani Resorts and Floriculture Pvt. Ltd. Has been inspected on 02.01.2025 and it is submitted that:*

- A. As per approved site plan there are five number of residential tower, community building, commercial, Creche for which occupation certificate stands issued vide memo no. ZP-992/AD(RA)/2019/18117 dated 01.08.2019.*
- B. As per approved site plan and occupation certificate, the tower names are Tower A, B, C, D & E but as per marketing/BBA/Deed of Declaration/Site status, these tower names are charged by the promoter as Tower A (Tower A & Tower B), Tower B (Tower C & Tower D), Tower C (Tower E & Tower F), Tower D (Tower G) & Tower E (Tower H).*
- C. The complainant unit exists in Tower-F as per BBA and as per approved/site status, the complainant unit exists in Tower C.*
- D. The promoter has obtained the occupation certificate on 01.08.2019 for tower C (which is named as Tower E & Tower F as per marketing/ Deed of Declaration/Site status, wherein the complainant unit exists)."*

19. Therefore, the Authority is of the view that the occupation certificate w.r.t tower in which unit of complainant is situated (i.e., tower-F as mentioned in BBA, and is tower-C as per site plan), was obtained by the respondent no.1 on 01.08.2019.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the

prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she 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.*

21. 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.
22. 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., 21.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
23. 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;"*

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3.1 of the buyer's agreement, the due date of handing over of possession of the unit in question is 26.03.2019 (calculated from the date of approval of building plan, being later). Occupation certificate was granted by the concerned authority on 01.08.2019 and thereafter, the possession of the subject unit was offered to the complainant on 01.08.2019, supporting to which during the proceedings of the day dated 21.11.2024, the counsel for the respondent provides the copy of postal receipt dated 01.08.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent no.1 to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.07.2016 to hand over the possession within the stipulated period.





26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. Section 19 (10) proviso read as under:

***"Section 19: Rights and duties of allottees.***

*19 (10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be."*

27. In the present complaint, the occupation certificate was granted by the competent authority on 01.08.2019. The respondent offered the possession of the unit in question to the complainant only on 01.08.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (01.08.2019) which comes out to be 01.10.2019.

28. Further, the Authority observes that the complainant has impleaded *M/s Homecrew Facility Services Pvt. Ltd.* as respondent no.2, but neither any cause of action has been arisen on account of respondent no.2 and nor any relief has been sought against respondent no.2 and also in reply, the respondent no.1 has requested to delete the name of respondent no.2 from arrays of parties. Thus, the Authority is of the view, that respondent no.2 is not required being a necessary party to decide the present

complainant and hence no direction are to be given against the respondent no.2.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent no.1 is established. As such the complainant is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. w.e.f. 26.03.2019 till the expiry of 2 months from the date of offer of possession (01.08.2019) which comes out to be 01.10.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

**G.III Direct the respondent to provide possession of the flat with all amenities, as assured in the brochure and as promised at the time of booking of the flat, as soon as possible.**

30. The complainant in the present complaint is seeking relief for the possession of the unit. The occupation for the said unit was received on 01.08.2019 thereafter possession was offered on 01.08.2019. Therefore, the respondent no.1 is directed to handover the possession of the unit after completing all the basic amenities as specified in buyer's agreement and as per annexure-c attached with buyer's agreement within 30 days of this order.

**G.IV All payments taken in advance should be compensated and interest on advance payments be paid to the complainant.**

31. The complainant is seeking above mentioned 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. (supra)*, 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.

**G.V It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents to not to charge any charges which the complainant is not legally bound to pay the same.**

32. The complainant in the present complaint is seeking relief which the complainant is not legally bound to pay. Therefore, the respondent is directed not to charge anything from the complainant which is not the part of buyer's agreement dated 21.07.2016 executed interse parties and shall adhere the provision of the Affordable Housing Policy, 2013.


**H. Directions of the Authority:**

33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent no.1 is directed to pay delay interest on the paid-up amount of Rs.22,50,027/- by the complainant at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 26.03.2019 till offer of possession (i.e., 01.08.2019) plus two months (i.e., 01.10.2019) as per proviso to section 18(1) of the Act read with rules 15 of the rules.
- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- iii. The respondent no.1 is directed to handover the physical possession of the unit within 30 days to the complainant/allottee, on payment of outstanding dues, if any remains after adjustment of interest for delayed period.



- iv. The respondent no.1 shall not charge anything from the complainant which is not the part of the builder buyer's agreement dated 21.07.2016 executed interse parties and in accordance with the Affordable Housing Policy, 2013.
- v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
34. Complaint stands disposed of.
35. File be consigned to registry.

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.11.2024

**HARERA**  
**GURUGRAM**