

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

Complaint no. : 773 of 2024
Date of filing : 12.03.2024
Date of order : 25.04.2025

Vishal Verma

R/O: 120A, Ward no. 3, Sanjay Gram, Gurugram.

Complainant

Versus

M/s Nani Resorts & Floriculture Pvt. Ltd.

Office At: 1st Floor, Building no. 80, Sector-44,
Gurugram

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Bhajan Lal Jangra (Advocate)

Shri 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*.

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A. Project and unit 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	Registered 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.	Allotment Letter	15.09.2015 (Page 20 of complaint)
8.	Unit no.	F-804, 8 th floor, tower/block- F (As per page no. 25 of the complaint)
9.	Unit measuring	428 sq. ft (carpet area) & 54.08 sq. ft.(balcony area) (As per page no. 25 of the complaint)
10.	Date of approval of building plans	26.03.2015 (As per page no. 33-38 of the reply)



11.	Date of grant of environment clearance	05.01.2015 [As per page no.39-48 of the reply]
12.	Date of execution of apartment buyer's agreement	02.01.2016 (As per page no. 23 of the complaint)
13.	Possession clause	3. Possession <i>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.....</i> (As per page no. 29 of the complaint)
14.	Due date of possession	26.03.2019 [Note: Due date of possession can be calculated by the 4 years from approval of building plans i.e., 26.03.2015, being later.]
15.	Total sale consideration	Rs.17,40,640/- (As per page no. 49 of the complaint)

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16.	Total amount paid by the complainant	Rs.10,00,390/- (As stated by the complainant)
17.	Occupation certificate	Not obtained for Tower-F
18.	Offer of possession	Not offered
19.	Demand and reminder letters	08.08.2016 , 15.05.2018 , 01.06.2018 , 15.06.2018 (Page 93-97 of reply)
20.	Cancellation	13.07.2018 (Page 101 of reply)
21.	Unit re allotted to other person i.e Mrs. Shakuntla Devi	23.10.2020 (Page 103 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the complainant has been allotted a flat no. 804 in the project "ROF AALAYAS at Sector -102, Dwarka Express, Gurugram, Haryana under the scheme of affordable group housing by the respondent.
- II. That the draw of the flats was conducted on 22.08.20215 and accordingly, the complainant was turned out to be successful as one of the allottee in the said project whereby a unit/flat no. f-804 in block/tower F having carpet area of 428.40 sq. ft. with 54.08 sq. ft. balcony area against total sale consideration of Rs. 17,40,640/-.
- III. Subsequent thereto, the respondent signed apartment buyer agreement dated 02.01.2016 wherein all the terms and condition were incorporated





and sum of Rs. 1,00,000/- was confirmed by the respondent which was taken at the time of booking application.

- IV. As per group housing policy the project was to be completed and unit/flat was to be handed over within 4 years from date of signing of the agreement. The respondent mischievously did not mention specific date of handing over physical possession of the flat/unit in the apartment buyer's agreement.
- V. That the respondent, without achieving the milestone, kept sending illegal demands upon the complainant under threat of cancellation of the unit/ flat and forfeiture of paid amount.
- VI. That the respondent sent a cancellation letter dated 13.07.2018 through courier and invited the complainant to collect the paid amount from office of the respondent but not amount paid till date hence the present complaint for seeking refund along with interest from date of payment.
- VII. That the respondent neglected to refund the amount despite follow up by the complainant. The complainant visited to the office of the respondent but of no consequences.
- VIII. That the complainant was lured by false representation and false assurance by the respondent, to invest money in purchasing the said flat and on account of negligence on the part of the respondent to keep up their obligations and the complainant was constrained to withdraw and seek refund of Rs. 10,00,390/- along with interest from date of payment.
- IX. That despite regular follow up, the respondent had refused to refund sale consideration on one pretext or the other, therefore the complainant is left with no other efficacious remedy available except to file the present complaint before this Hon'ble Authority seeking refund of sale consideration.

C. Relief sought by the complainant: -

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

- I. Direct the respondent to refund an amount of Rs. 10,00,390/- along with interest as per prevailing rate.

D. Reply by the respondent.

5. The respondent has contested the complaint on the following grounds.
 - I. That the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed.
 - II. That there is no cause of action to file the present complaint.
 - III. That the complainant has no locus standi to file the present complaint.
 - IV. That the complainant is estopped from filing the present complaint on account of his own acts, omissions, admissions, delays, laches and acquiescence.
 - V. 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.
 - VI. That the respondent 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 has developed and delivered several prestigious projects such as 'ROF Portico', ROF Aalayas and ROF Ananda and in most of these projects large number of families have already shifted after having taken possession.
 - VII. That the complainant is 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 wants to somehow illegally

extract benefits from the respondent. Such malafide tactics of the complainant cannot be allowed to succeed.

- VIII. That the respondent had obtained the approval on the building plans from DTCP vide letter bearing Memo no. ZP-992/AD (RA)/2015 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 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.
- IX. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide his booking application form on 15.04.2015. The complainant agreed to be bound by the terms and conditions of the booking application form. The complainant was aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the 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.
- X. That after scrutiny of the application under the overall monitoring of the concerned District Town Planner and after conducting draw of lots, the respondent vide its allotment letter dated 15.09.2015 informed the complainant about him being a successful applicant in the draw of lots and accordingly allotted to the complainant apartment no. F-804 having carpet area of 428.4 sq. ft. accordingly, an agreement was sent by the respondent 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 on 02.01.2016.

- XI. That the complainant was aware that as per clause 2.5 of the agreement for sale, timely payment of the installment amount was the essence of the allotment. It was understood vide the said clause of the Agreement for sale and as per Clause 5(iii)(b) of the Affordable Scheme Policy, 2013, that if the allottees fail to remit the payment demanded by the respondent on time, then they would be bound to make payment towards interest @15% per annum. Despite being aware of the terms and conditions, the complainant failed to remit the payments on time for the reasons best known to them.
- XII. That the respondent 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 had failed to remit the dues and make the payments against the said demands despite numerous reminders to the complainant to make the said payments. The respondent vide demand letters dated 08.08.2016 had requested the complainant to make payment of the due amount.
- XIII. That the complainant miserably failed to make the said payment of Rs. 7,37,742/- and the respondent was thus constrained to issue reminder letters dated 15.05.2018, 01.06.2018 and 15.06.2018 requesting the complainant to make the said due payments. The respondent has been acting in accordance with the provisions of the Affordable Housing Policy, 2013 and the provisions of the buyer's agreement.

- XIV. That the respondent vide several telephonic calls and messages also reminded the complainant of the said dues. However, the complainant despite all the said reminders failed to make the payment against the said dues. As per the provisions of the Affordable Housing Policy, 2013 and clause 3.1 of the agreement, the due date to handover the possession of the unit was 4 years from the date of receipt of the building plans or environment clearance, whichever was later. Thus the due date to handover the possession of the unit, subject to occurrence of the force majeure conditions and timely payment by the complainant was 26.03.2019. The respondent has already obtained the occupation certificate for the unit in question on 01.08.2019.
- XV. That 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 13.07.2018 with the full and final settlement of the account against the unit no. F-804 and accordingly requested the complainant to visit the office of the respondent and collect the balance dues, if any. 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 and the same is valid in the eyes of law. The said cancellation has been done by the respondent strictly as per the provisions laid down by law and no illegality whatsoever has been committed by the respondent.
- XVI. That thereafter, the respondent accordingly, invited booking from the public as per the provisions and guidelines laid down in the Affordable Housing Policy. The unit has been subsequently allotted to Mrs. Shakuntla Devi vide allotment letter dated 23.10.2020 i.e., before the filing of the present baseless, false and frivolous complaint.

- XVII. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

6. 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

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) 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.

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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.

- I. Direct the respondent to refund an amount of Rs. 10,00,390/- along with interest as per prevailing rate.

9. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest 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)

10. Clause 3 of the apartment buyer's agreement provides the time period of handing over possession and the same is reproduced below:

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.***

11. The complainant booked a unit in the affordable group housing colony project of the respondent known as "ROF Aalayas" situated at sector 102, Gurgaon, Haryana and was allotted a unit bearing no. 804 on 8th floor in tower- F of the project vide allotment letter dated 15.09.2015. The apartment buyer agreement was executed between the complainant and the respondent on 02.01.2016 for a total sale consideration of Rs.17,40,640/- out of which the complainant had paid an amount of Rs. 10,00,390/-.
12. As per the possession clause the possession of the unit was to be offered within 4 years from the date of approval of building plans (26.03.2015) or from the date of environment clearance (05.01.2015), whichever is later. The due date is calculated from the date of approval of building plans as it is later which comes out to be 26.03.2019.
13. The respondent vide reminder/demand letters dated 08.08.2016, 15.05.2018, 01.06.2018, 15.06.2018, intimated the complainant for payment of the outstanding dues but he 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 13.07.2018.
14. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 13.07.2018. In line with the aforesaid facts, the



documents and submissions placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"

15. 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".*

16. However, in the present case, it is evident from the material placed on record that the respondent company has issued reminder/demand letters dated 08.08.2016, 15.05.2018, 01.06.2018, 15.06.2018. Thereafter, the respondent issued cancellation notice dated 13.07.2018. The respondent has also published a list of defaulters of payments in the daily Hindi newspaper.
17. The authority is of the considered view that the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation letter dated 13.07.2018 is held to be valid.
18. As per cancellation clause of the affordable housing policy of 2013 the respondent can deduct the amount of Rs.25,000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid

circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 along with interest on such balance amount from date of cancellation of unit i.e., 13.07.2018 till the actual realization of the amount.

G. Directions of the authority

19. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent is directed to refund the paid-up amount of Rs.10,00,390/- to the complainant after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the Affordable Housing Policy, 2013 along with interest on such balance amount at the prescribed rate i.e., 11.10% per annum as prescribed under rule 15 of the Rules, 2017 from the date of cancellation i.e., 13.07.2018 till its actual realisation.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequence would follow.

20. The complaint stand disposed of.

21. File be consigned to registry.

Dated: 25.04.2025


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory
Authority, Gurugram