

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

Complaint no. : 4424 of 2023
Date of filing : 22.09.2023
Reserved on : 29.07.2025

Mrs. Charu Puri
R/o: 357, 2nd Floor, Huda Plots, Sector
56, Gurugram, 122011.

Complainant**Versus**

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

Respondent**CORAM:**

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member****APPEARANCE:**

Complainant with Sh. Ashish Arora
Sh. Garvit Gupta (Advocate)

**Complainant
Respondent****ORDER**

1. The present complaint has been filed by the complainant/allottee on 22.09.2023 under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.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.	Unit no.	B-605, 6th floor, tower/block- B, (As per Annexure A of the complaint)
8.	Unit measuring	342.19 sq. ft (Carpet area) (As per Annexure A of the complaint)
9.	Date of approval of building plans	26.03.2015 (As per page no. 32 of the reply)
10.	Date of grant of environment clearance	05.01.2015 (As per page no. 38 of the reply)
11.	Offer of allotment letter	07.06.2017 (As per page no. 64 of the reply)
12.	Date of execution of apartment buyer's agreement	29.07.2017 (As per page no. 66 of the reply)
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</i>

		<i>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. 75 of the reply)
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. 13,99,435/- (As per payment plan on page no. 95 of the reply)
16	Total amount paid by the complainant	Rs. 13,99,435/- (As per statement of account on page no. 49 of the written arguments by the Complainant)
17	Occupation certificate	01.08.2019 [for Tower A to E] (As per page no.67 to 69 of reply)
18	Offer of possession	01.08.2019 (Proof of delivery not provided)
19	Demand Letters	17.07.2018, 11.12.2020, 06.07.2021, 03.09.2021, 26.10.2021, 23.05.2022, 09.06.2022 (Proof of deliveries not provided)
20	Cancellation Letter	07.07.2022 (Proof of delivery not provided)

B. Facts of the complaint:

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

- I. That the complainant is the law-abiding citizen of India. It is respectfully submitted that the complainant has invested significant sum of money in the project, "ROF AALAYAS", located at sector - 102, Gurugram, Haryana (hereinafter referred to as "the project").
- II. That respondent is a company incorporated under the companies Act,1956, having its registered office at m-18, greater kailash -II, New

Delhi. the respondent also has its corporate office at building no. 80, sector- 44, Gurugram-122003. Haryana.

- III. That the respondent through various channels represented to be engaged in the business of real estate development. Vide various representations regarding its project ROF Aalayas at Sector 102 Gurugram ('the project'), the respondent approached the complainant and assured that the project would be completed and possession handed-over by december, 2018. Since the complainant was looking for an affordable residential apartment, and the project was being constructed and developed through the license granted under the Affordable Group Housing Policy 2013 issued by the Government of Haryana, the complainant expressed interest in the said project and paid to the respondent asked booking amount of Rs. 1,40,000/- on 24th May 2017.
- IV. On 07.06.2017 vide allotment letter issued by the respondent, the complainant was allotted apartment number B-605 on 6th Floor in Tower B of the project, with carpet area of 342.19 sq. ft. and balcony area of 61.35 sq. ft.
- V. That the complainant for the said unit executed apartment buyer's agreement with the respondent on 29.07.2017. Among other things, the said agreement also contained an assurance to complete construction and handover possession of the project including complainant's unit within 4 years from the date of approval of building plans and out of the total agreed purchase consideration amount the complainant had already made a payment of Rs.1,40,000/- (Rupees One Lakh Forty Thousand Only) towards booking amount for

allotment of the unit. The respondent duly acknowledged the receipt of said booking amount by the complainant.

- VI. It is further submitted that the respondent itself mentioned in the said agreement that they had got the building plans for the project already approved vide memo no. 4864 dated 26.03.2015, which means the project was supposed to be completed and possession handed-over maximum by 25th march 2019. Furthermore, it is pertinent to mention here that clause 2.1 of the said agreement mentioned Rs. 13,99,435/- as total consideration or total cost for purchase of the said unit.
- VII. That total consideration of Rs. 13,99,435/- agreed for the unit was fully paid by september 2019, much ahead of the project completion and payment schedule specified under the Affordable Scheme Policy, 2013 and the same is reproduced below which is as per terms of the Apartment Buyer's agreement.

Payment Stages	As per Affordable Housing Policy 2013				Asked for and paid by the Buyer/Complainant		
	Payment date	% of TC*	Amount (In Rs.)	Cum. Amount (In Rs.)	Amount (In Rs.)	Cum. Amount (In Rs.)	Excess paid (In Rs.)
Application	01.03.2017 20.05.2017	5%	69972	69972	140000	140000	70028
Allotment **	22.06.2017 (15 days of allotment)	20%	279887	349859	603278	743278	323391
Within 6 months of allotment	07.12.2017	12.50%	174929	524788	-	743278	-
Within 12 months of allotment	07.06.2018	12.50%	174929	699718	-	743278	-

Within 18 months of allotment	07.12.2018	12.50%	174929	874647	450000	1193278	275071
Within 24 months of allotment	07.06.2019	12.50%	174929	1049577	-	1193278	-
Within 30 months of allotment	07.12.2019	12.50%	174929	1224506	206157	1399435	31228
Within 36 months of allotment	07.06.2020	12.50%	174929	1399435	-	1399435	-

(As submitted in the written arguments by the complainant)

- VIII. That the complainant accordingly, through a combination of her own hard- earned savings and a housing loan facility taken from ICICI Bank Ltd., continued paying to the respondent subsequent amounts due towards aforesaid total cost of her allotted unit.
- IX. That after sometime on going through the statement of account (for her said allotted unit) as taken from the respondent, the complainant realized that payments she made towards her allotted unit were being adjusted partly towards GST and thus leaving balance towards agreed total cost outstanding, whereas it is submitted before this Hon'ble Court that the GST council vide its notification had forbidden all developers of affordable housing projects to not to charge GST from the affordable housing buyers. GST council had notified this with an intent to provide relief/pass on the benefits to the buyers of affordable housing projects.
- X. It is pertinent to mention here that for next about 14 months despite multiple reminders through emails and in-person visits by

complainant, the concerned officials in finance and customer relationship management (CRM) departments at the respondent' office did not respond over those emails of the complainant. After 14 months, their new CRM In-charge finally responded on 30th May 2019. Initially, the said in-charge kept giving false pretexts of charging and regarding GST council's said notification until complainant's in-person meeting with him on 20th July 2017 at respondent's Corporate office that he (after consulting with his senior officials) agreed on to abiding by the said GST Council notification and further assured that no part of complainant's payments would be accounted and adjusted towards GST, interest or any other charge but solely towards total cost as mentioned in the buyer agreement (i.e. Rs. 13,99,435/-). This discussion and understanding were duly put in writing through an email by the complainant on 24th July 2017 and acknowledged by respondent' CRM officials as well.

- XI. Thereafter, the complainant made several follow-ups on project completion but the CRM team at the respondent kept giving false commitment that the project would be completed soon and possession handed over. The complainant, going by their assurance, kept on waiting for next few months for the project completion and possession handover of her unit, but neither the project was completed even in the year 2020 nor the respondent committed to a certain timeline to the complainant, despite that the complainant complied with everything in a time-bound manner. It is submitted that due to onset of coronavirus epidemic thereafter in March 2020 the complainant was not in a position to again visit respondent' office for completion status and the possession but always communicated via telephone or email.

- XII. That in april 2022, when the complainant again approached CRM officials of the respondent, she was shocked and frustrated on the CRM official asking her to pay significant additional demand raised by the respondent. The additional demand comprises of part of total consideration shown as outstanding (despite having paid in full in September 2019), GST charges, interest charges, holding charges etc. and runs into Lakhs of rupees.
- XIII. Thereafter, the complainant approached various times to the officials of respondent for waiving these unilateral, unauthorized and illegal charges levied to her and provide her possession of her fully paid apartment. The Complainant along with her husband also visited project site to see construction status of her allotted unit, but the project teams there denied her access and visit to her apartment on the condition that the Complainant should first take NOC from the CRM officials at their corporate office.
- XIV. That on being consistently intimidated and harassed, the aggrieved complainant (along with her husband), the complainant along with her husband in june 2022, again visited respondent' corporate office at sector 44 Gurugram and discussed the concerns again with their CRM In-charge. However, the CRM officials remained adamant that the complainant first paying all outstanding additional demand raised being the condition upon which only they would allow her access/visit her allotted unit. The official further intimidated the complainant that in case she does not pay this additional demand in the next few days they would cancel her apartment and would allot/sell to someone else. Upon which, the complainant then requested front office staff for a meeting with the directors of the company. Initially, the front office

staff denied her meeting to directors and instead kept insisting that demand mentioned by CRM in-charge was final, until finally she arranged complainant's meeting with Mr. Thareja (General Manager - Sales & Marketing ROF). Although that meeting concluded with said general manager assured her that he would look into her concerns and would get back with the resolution in the next 2-3 days. However, he did not deliberately answer to complainant's follow up calls in the subsequent days.

- XV. That the complainant along with her husband have been reaching out to multiple officials in CRM team to address their concerns for an earlier possession of her unit, as for their delay in giving possession beyond committed timeline of December 2018 they have been staying on rented accommodation paying hefty rent from their past hard-earned savings as her (and husband's) source of income already hit badly due to Coronavirus epidemic. The complainant on 1st June 2023 again approached the respondent but they did not pay any heed towards the complainant's concerns.
- XVI. That the respondent has committed undue delay in constructing and completing the project.
- XVII. Also, the respondent did not mention in their reply as to when and through which mode the alleged demand letters dated 17.07.2018 and 11.12.2020, the alleged reminder letters dated 23.05.2022 and 09.06.2022, the alleged final opportunity Letter dated 27.06.2022, and the alleged cancellation letter dated 07.07.2022 were sent to complainant. As the complainant did not receive these alleged letters, so in her replication (on 12.09.2024) the same were asked to be

substantiated by filing response which the respondent failed to file despite the directions to do so.

XVIII. That vide payment demand dated 11.12.2020, Rs.3,18,301/- (which is never received by the complainant) 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 cannot recover any GST from the complainant /buyers of the affordable housing.

XIX. That the cause of Action in the present complaint is subsisting and continuing as the respondent has neither given possession of the said unit till date despite breaching committed timelines, nor have they in anyway compensated the complainant for delays in possession purely attributed to respondent's fault.

C. Relief sought by the complainant:

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

- i. Direct the Respondent to completely waive off all additional demand(s) raised over and above the originally agreed total purchase consideration of the apartment (i.e., Rs. 13,99,435/-) as already paid in full by September 2019, and to handover to the complainant an earliest peaceful possession of her fully constructed and duly finished apartment (along with the specifications proposed

at the time of application) bearing no. B-605 on 6th Floor in Tower B having Carpet Area of 342.19 Sq. Ft. and Balcony Area of 61.35 Sq. Ft. in the "ROF Aalayas" project at Sector 102, Gurugram Haryana to the Complainant.

- ii. Direct the respondent to pay Delayed Possession Charges with interest @15%.
 - iii. Direct the respondent to pay Cost and expenses of litigation Rs.60,000/-.
 - iv. Declare alleged cancellation of complainant's unit as null and void.
 - v. Declare the terms of the Apartment Buyer Agreement as one-sided, prejudicial to the interest of the buyer, arbitrary, biased and against the provisions of the Real Estate (Regulation and Development) Act, 2016, the Haryana Real Estate (Regulations and Development) Rules, 2017 and the Affordable Housing Policy 2013.
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:
- a. 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 prestigious projects and in most of these projects large numbers of families have already shifted after having taken possession.

- b. 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 her 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 respondent. Such malafide tactics of the complainant cannot be allowed to succeed.
- c. That the respondent 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 had obtained the approval/sanction to develop a project known as 'ROF Aalayas Phase -I' from the Director Town and Country Planning, Haryana, Chandigarh (hereinafter referred to as the 'DTCP') vide approval bearing license no. 11 of 2014 dated 11.06.2014 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 (herein after referred to as 'Affordable Scheme Policy').
- d. That the respondent had obtained the approval on the building plans from DTCP vide letter bearing memo no. ZP-992/AD(RA)/2015/4863 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.
- e. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide her booking application form on 01.03.2017. 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, 2013 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.
- f. That that on the basis of the application, a unit no. B-605 on 6th floor in tower b having a carpet area of 342.19 sq. ft. and balcony area of 61.35 sq. ft. together with one two-wheeler parking was allotted to the complainant vide allotment letter 07.06.2017. 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 29.07.2017 and the same is attached herewith by the complainant along with the complaint.

- g. That the complainant intimated to the respondent that she was suffering from financial constraints and that she would accordingly approach a financial institution for loan. Accordingly, the complainant approached a financial institution named ICICI Bank, to avail loan facility and to make payments against the said unit.
- h. That the complainant got the said loan sanctioned to enable it to financially assist the complainant in making payment towards the total sale consideration of the unit. the respondent reminded the complainant about clause 2.10 of the agreement for sale wherein the complainant had acknowledged and admitted that regardless of availing of the loan facility, it would be the obligation and responsibility of the complainant to make the payment in order to ensure compliance of the terms and conditions of the agreement for sale.
- i. That 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 and have now concealed the said facts from this Hon'ble Authority.

- j. That the respondent strictly as per the terms of the Affordable Scheme Policy, 2013, sent all the demand letters for payment of instalments due from the complainant. It is pertinent to mention here that the complainant used to make only a part-payment out of the total payable amount and the respondent accordingly had to send numerous reminders to the complainant to make the said payments. The respondent vide demand letter dated 17.07.2018 had requested the complainant to make the payment towards the due amount. However, for the reasons best known to the complainant, the complainant failed to make the said payment.
- k. The respondent completed the construction of the tower in which the unit allotted to the complainant was located and accordingly obtained the Occupation Certificate for the said project on 01.08.2019. The complainant was required to remit the outstanding dues in order to take the possession of the said unit. The complainant failed to remit the due amount and take the possession of the unit. It is submitted that as per Clause 3.1 of the Agreement, the possession of the unit was subject to the timely payment of the installments by the allottee and herein the present case, the complainant has failed to remit the dues timely and even till date and thus no question of handing over of possession arises.
- l. Since the complainant failed to remit the due amount within time as prescribed, the complainant approached the respondent to further grant her some time to make the payment towards the sale consideration. Although the respondent was not obligated to adhere to

the request, however on the assurances of the complainant that she would make the timely payments from now, the respondent chose not to terminate the allotment and give further time to the complainant. However, it was made clear to the complainant that against the said request, the respondent would be entitled to charge interest as per the provisions of the Affordable Scheme Policy, 2013. Hence, the respondent sent several demand letters dated 11.12.2020, 06.07.2021, 03.09.2021, 26.10.2021. Yet, the assurances of the Complainant turned out to be false and she failed to remit the due amount.

- m. That the respondent vide final opportunity letter dated 27.06.2022 further requested the complainant to make the due payment of Rs 3,75,708/- within 7 days from the said letter to avoid the cancellation of allotment. It is pertinent to mention here 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 and the final opportunity letter dated 27.06.2022 failed to make the payment against the said dues.
- n. That the cancellation of the allotment has been done not only in accordance with the provisions of the agreement but also as per the law laid down in Real Estate (Regulation and Development) Act, 2016 and the Affordable Housing Scheme Policy, 2013 notified by State government of Haryana. In the present case, the agreement of sale is as per the agreement which was submitted by the complainant at the time of registration of the project with this Hon'ble Authority. Therefore, the said Act of cancellation of the allotment has been done keeping in mind the legality and provisions of the Real Estate (Regulation and Development) Act, 2016. Moreover, even as per Clause

5(iii)(i) of the Affordable Housing Scheme Policy, 2013 notified by State government of Haryana, the cancellation of an allotment can be done if the successful applicant fails to deposit the installments within the time period. Thus, the cancellation done by the complainant is as per law and is to upheld by this Hon'ble Authority. No illegality of any nature whatsoever has been committed by the complainant 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(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.

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.I Objection regarding maintainability of complaint on account of complainant being investor.

10. The respondent took a stand that the complainant is an investor and not a consumer and therefore, he is not entitled to the protection of the Act and 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. 13,99,435/- 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.

G. Findings on the reliefs sought by the complainant:

- G.I Direct the respondent Respondent to completely waive off any and all additional demand(s) raised over and above the original agreed cost of the unit (i.e. 13,99,435/-) already paid in full by the complainant by September 2019, and to handover earliest the peaceful possession of fully constructed and duly finished unit bearing no. B-605 on 6th Floor in Tower B having Carpet Area of 342.19 Sq. Ft. and Balcony Area of 61.35 Sq. Ft.in their project "ROF Aalayas", at Sector 102, Gurugram Haryana to the Complainant.**
- G.II Direct the respondent to pay Interest for every month of delay at prevailing rate of interest.**
- G.III Direct the respondent to pay Cost and expenses of litigation Rs.60,000.**
- G.IV Declare alleged cancellation of complainant's unit as null and void.**
- G.V Declare the terms of the Apartment Buyer Agreement as one-sided, prejudicial to the interest of the buyer, arbitrary, biased and against the provisions of the Real Estate (Regulation and Development) Act, 2016, the Haryana Real Estate (Regulations and Development) Rules, 2017 and the Affordable Housing Policy 2013**

12. The above-mentioned reliefs **G.I, G.II, G.IV & G.V** 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. Below mentioned table reinforce delay through a date chart:

Sr. No.	Event	Date
1.	Building Plan Approval	26.03.2015
2.	Due Possession Date	26.03.2019
3.	Occupation Certificate	01.08.2019
4.	Offer of Possession as per policy, 2013	01.08.2019
5.	Cancellation Letter (alleged)	07.07.2022

13. In the present complaint, the complainant intends to continue with the project and are 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)

14. 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)

15. 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**.

16. **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.

17. 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.
18. 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., 29.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
19. The definition of term 'interest' as defined under section 2(z) 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:
- "(z) "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;"*
20. 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.

21. In the present complaint, it is pertinent to note that the occupation certificate was granted by the competent Authority on 01.08.2019. As per the Affordable Housing Policy, 2013, the offer of possession shall be made only after the receipt of the occupation certificate. However, in the present case, the respondent failed to issue a proper offer of possession to the complainant post receipt of the occupation certificate. On the contrary, the respondent allegedly raised demands for interest without first offering possession in accordance with law. The complainant has categorically stated that no demand letters, final opportunity letter, or even any communication regarding cancellation was ever received by them. Moreover, despite being specifically asked during the proceedings, the counsel for the respondent failed to produce any documentary evidence or copies of postal receipts to substantiate the alleged dispatch of such letters. No such documents have been placed on record.
22. 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 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.
23. As per the clause 5(iii)(i) of the Affordable Housing Policy, 2013 as amended by the state government on 05.07.2019, the relevant provision regarding cancellation procedure of the unit by the respondent has been laid down and the same is reproduced as under :

"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 news-paper 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."

24. It is pertinent to note that the alleged cancellation of the unit by the respondent was neither duly communicated to the complainant nor was it published in any newspaper, as is often required as per Affordable Housing Policy, 2013. No such fact has been brought on record by the respondent before this Hon'ble Authority to demonstrate that any public notice or newspaper advertisement was issued regarding the said cancellation. This clearly reflects the lack of transparency and due process in the Action taken by the respondent. In absence of any cogent evidence of proper publication, the cancellation cannot be sustained in the eyes of law and is liable to be set aside.

25. 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."

26. 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

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 pay Cost and expenses of litigation of Rs.60,000/-.

27. The complainant is seeking above mentioned relief with respect to 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.

H. Directions of the Authority:

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

- i. The respondent is directed to pay delay interest on the paid-up amount of **Rs.13,99,435/-** 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 the valid offer of possession 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 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 shall not charge anything from the complainant which is not the part of the builder buyer's agreement dated 29.07.2017 executed inter se 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.
29. Complaint stands disposed of.
30. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2025