

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

Complaint No. : **3801 of 2024**
Date of filing : **06.08.2024**
Reserved on : **12.08.2025**

Jyoti Sangwan
R/o: Gali No. 6, Vivekanand Nagar,
Bahadurgarh, Jhajjar, Haryana.

Complainant

Versus

M/s Nani Resorts and Floriculture Pvt. Ltd.
Regd. Office at: M-18, Greater Kailash
II, New Delhi - 110048

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:

Complainant with Sh. Vinay Sangwan
Sh. Garvit Gupta (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee on **06.08.2024** 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 PHASE 2" sector- 102, Gurugram
2.	Project area	4.1125 acres
3.	Nature of project	Affordable Group Housing
4.	DTCP License no. and validity	82 of 2018 dated 06.12.2018 valid up to 05.12.2023
5.	Name of licensee	Nani Resorts & Floriculture Pvt. Ltd.
6.	RERA registered/not registered and validity	Registered vide no. 206 of 2019 dated 21.05.2019 valid up to 02.07.2023
7.	Unit no.	M - 1508, M-Tower (As per page no. 19 of the complaint)
8.	Unit measuring	645 Sq. Ft. (carpet area) (As per page no. 17 of the complaint)
9.	Intimation/Allotment letter	11.09.2019 (As per page no. 17 of the complaint)
10.	Date of execution of apartment buyer's agreement	Not Executed
11.	Possession clause	NA
12.	Due date of possession	04.10.2023 (4 years from the date of Environment Clearance)
13.	Total sale consideration	Rs.26,56,300/- (As per Annexure R15)
14.	Total amount paid by the complainant	Rs. 7,10,100/- (As per payments proofs attached)
15.	Occupation certificate	03.06.2024
16.	Offer of possession	NA
17.	Demand Letters	24.01.2020, 20.03.2020, 05.08.2020, 03.07.2021 17.07.2021 28.04.2022 (Proof of delivery not provided)

18.	Cancellation Letter	06.05.2022 (As per page no. 69 of the reply)
19.	Newspaper publication	11.05.2022 (As per page no. 75 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- I. That the complainant is a law-abiding citizen of India and residents of Gali no. 6, Vivekanand Nagar, Bahadurgarh, Jhajjar. The complainant had invested his entire life savings and booked an apartment in the affordable housing project **"ROF AALAYAS PHASE 2"**, being developed by the respondent within the territory of Gurugram at Sector 102.
 - II. That the respondent is a company duly incorporated under the companies act, 1956 (herein referred to as '*respondent*'/*'developer*'/*'promoter*') engaged in the business of construction and development in the real estate sector and claims to be the leading real estate companies. The respondent is liable for the wrongful acts committed in contravention/violation to the law.
 - III. That the respondent through their marketing representatives and agents represented that they are developers of great repute. The complainant was looking for a unit and henceforth, approached by the respondent whereby the respondent assured that the instant project is going to be one of the finest and best projects.
 - IV. Subsequently, believing upon the assurances, representations and undertaking of the respondent, the complainant decided to book a unit upon the trust and faith that the respondent had obtained all sanction(s) and approval(s) deemed necessary for the development of the project. For booking of the plot, the respondent asked the complainant to make the payment towards the unit i.e. Rs. 1,32,500/-. Believing the respondent, the complainant made the payment of Rs.



1,32,500/- for booking a 645 sq. ft. apartment in the project of the respondent.

- V. That vide intimation letter dated 11.09.2019, the respondent further demanded 25% of the total consideration i.e. Rs. 5,77,600/-, without even executing builder buyer agreement, which is a clear violation of the RERA act, 2016.
- VI. That the complainant made payment of Rs. 5,77,600/- vide online transaction no. 1808607159 to the respondent as raised by them in the Intimation letter.
- VII. That despite accepting the more than 25% sale consideration, the respondent failed to issue any allotment letter or execute the builder buyer agreement or agreement to sale with the Complainant. The complainant time and again approached the respondent requesting to issue allotment letter and for execution of the agreement for the unit admeasuring 645 sq. ft., but the respondent always ignored all the requests of the complainant by providing false assurances on one pretext or the other.
- VIII. That the respondent failed to execute any agreement for sale with respect to the purchase of the abovementioned plot which clearly depicts its malafide intention to cheat and dupe the complainant. further, receiving more than 10% of the sale consideration without executing an agreement for sale is in gross violation of Section 13 of the RERA Act, 2016.
- IX. Subsequent upon non providing a specific plot number and non-execution of the agreement for the same, the complainant made several requests with the respondent asking them to execute the

agreement for the same but the respondent paid no heed to the requests made by the complainant.

- X. That the respondent issued a reminder letter to clear the outstanding dues i.e. Rs. 19,46,200/- against the allotment of apartment no. M-1508 in the project.
- XI. Thereafter, the complainant approached the respondent to pay the outstanding dues and presented the cheque of Rs.19,46,200/- but the respondent denied to accept the payment and stated that the unit has been cancelled way back in 2022 without intimating or issuing a cancellation letter to the complainant.
- XII. That since the date of booking the complainant in spite after paying more than 30% of the total sale price has been constrained to run from pillar to post to ascertain the plot number allotted to the complainant, the status of the development and the due date of handing over the possession but even after numerous follow-ups and visits the respondent have been failed to provide any response and has been taking undue benefit of its dominant position.
- XIII. That the respondent has made false and frivolous assurances and promises to the complainant. the complainant had already faced a lot of financial distress due to the malafide act of the respondent. The present case is a clear exploitation of innocence and beliefs of the complainant and an act of the respondent to first not providing any plot number to the complainant then not executed any agreement and not completing the development of the project within the proposed timelines with malafide intention to gain unlawful enrichment which has caused immense loss to the complainant.

XIV. Thus, it is a matter of fact, that the respondent is habitual defaulters and have defaulted in his obligations and responsibilities since inception of booking of the plot. The respondent has also defaulted by not executing the BBA and cancelling the unit. It is the tactic of the Respondent to cheat and dupe the innocent and gullible buyers by diverting the money collected from them for their own use or benefits.

C. Relief sought by the complainant:

- A. To direct the respondent to execute the builder buyer agreement for a unit no. M- 1508 measuring 645 sq. ft. in their project ROF Aalayas Phase II as promised and allotted by the respondent.
 - B. To set aside the cancellation letter as orally submitted by the Respondent,
 - C. To direct the respondent to handover possession of the plot.
 - D. To direct the respondent to accept the payment as per demand letter sent by the respondent.
 - E. To direct the respondent to execute the conveyance deed in favour of the complainant for the plot.
4. The complainant has sought following relief(s):
5. Any other relief or order that this Ld. Authority deems fit and proper in favour of the complainant. 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 - II' from the director town and country planning, Haryana, Chandigarh (hereinafter referred to as the 'DTCP') vide approval bearing license no. 82 of 2018 dated 06.12.2018 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)/2019/12680 dated 27.05.2019 and the environment clearance bearing no.

SEIAA/HR/2019/360 dated 04.10.2019 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. RC/REP/HARERA/GGM/339/71/2019/33.

- e. That the construction of the project had been stopped/obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by hon'ble national green tribunal, new Delhi; environment pollution (control and prevention) Authority, national capital region, Delhi; Haryana state pollution control board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed in the delay in completing the project within the specified time period.
- f. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide her booking application form on 17.06.2019. The complainant agreed to be bound by the terms and conditions of booking application form. The complainant was aware and had admitted and accepted vide the said booking application form that she by the way of said application form had applied in the said project under the affordable group housing Colony being developed by the respondent under the affordable scheme policy and had understood all the limitations and obligations after being

provided with all the information and clarifications. The complainant was aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the said policy and only after being completely satisfied about the same, had made the booking with the respondent. Moreover, the complainant had also perused and signed Annexure A of the Application form which contained the payment plan which specifically stated the stage of payments.

- g. That on the basis of the application, a unit no. M-1508 on 15th Floor in Tower M having a carpet area of 645 sq. ft. and balcony area of 61.35 sq. ft. was allotted to the complainant vide intimation letter 11.09.2019. Thereafter, the complainant was approached by the respondent for the execution of the agreement for sale. However, the complainant failed to come forward for the execution of the said agreement.
- h. 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 failed to make the payments as per the payment plan despite the issuance of the demand letters sent by the respondent. Although the complainant was aware that timely payment of the installment amount was the essence of the allotment, she for the reasons best known to her, failed to make the payment on time and was a constant defaulter from the very inception. The respondent was constrained to send several reminder letters including but not limited to 24.01.2020 and 20.03.2020 to the complainant requesting the complainant to make the payment against the due installments.

- i. That the respondent on account of non-payment of the installments by the complainant sent a demand letter dated **05.08.2020** requesting the complainant to make payment of Rs.7,10,116/-. However, the complainant in continuation of its defaults failed to make the said payment.
- j. That the respondent vide several telephonic communications and vide several emails and letters requested the complainant to make the due payments and to come forward for the execution of the agreement for sale. it is pertinent to mention here that the respondent vide its email dated 12.04.2021 requested the complainant to share the convenient date so as to allow the respondent to execute the builder buyer agreement with the complainant. However, no response whatsoever was ever received by the respondent with respect to the said email.
- k. That the complainant strictly as per the terms of the allotment and policy was yet again reminded that there was a payment due on their part vide the emails dated 05.05.2021 and 26.05.2021 sent by the respondent. The complainant despite the receipt of the said emails neither responded nor paid the dues which were payable by the complainant to the respondent.
- l. That vide final opportunity letters dated 03.07.2021, 17.07.2021 and 28.04.2022, the respondent had given a final chance to make the payment of Rs.18,83,463/- as due on the part of the complainant. However, the complainant in continuation of her defaults failed to remit the said demand despite the said final opportunity letter.
- m. Thereafter, the respondent in accordance with the affordable housing policy, 2013, published advertisement in the newspaper on 11.05.2022

intimating the public that the allotment of the unit in question has been cancelled.

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 the relief sought by the complainant:

G1. To direct the respondent to execute the builder buyer agreement for a unit no. M - 1508 measuring 645 sq. ft. in their project ROF Aalayas Phase 2 as promised and allotted by the respondent.

G2. To set aside the cancellation letter as orally submitted by the Respondent.

G3. To direct the respondent to handover possession of the plot.

G4. To direct the respondent to accept the payment as per demand letter sent by the respondent.

10. The above-mentioned reliefs **G1, G2, G3 and G4** 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.
11. The complainant has booked a unit area admeasuring 645 sq. ft. in the project of the respondent named "ROF Aalayas Phase II" in Sector 102, Gurugram by making a payment of Rs 1,31,187/- and 5,77,600/- vide receipt dated 17.06.2019 and 27.09.2019. It was specifically clarified that unit no. M - 1508 was allotted to the complainant.

12. 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)

13. **Due date of handing over possession:** As per the documents available on record, no BBA has been executed between the parties but the due as per the affordable housing policy, 2013, if the builder buyer agreement is not executed, the due date for possession shall be determined in accordance with the applicable policy, which stipulates that all such projects must be completed within four years from the date of approval of the building plans or the grant of environmental clearance, whichever occurs later. This date shall be treated as the "date of commencement of the project" for the purposes of the policy, and licences shall not be renewed beyond the said four-year period from the date of commencement. Here, the date of environmental clearance is 04.10.2019, hence the due date for possession shall be 04.10.2023.

14. 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 has issued cancellation notice dated 06.05.2022. The respondent has also published a list of defaulters of payments in the hindi newspaper but on 11.05.2022 which is after the cancellation of the said unit.
17. The Authority is of the considered view that the respondent/builder has not followed the prescribed procedure as per clause 5(iii)(i) of the policy, 2013 and in view of the same, the cancellation letter dated 06.05.2022 is held to be invalid and shall be set aside.
18. **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.

19. 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.
20. 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., 12.08.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. 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:
- "(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;"*

22. 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.
23. On consideration of the circumstances, the evidences and other record and submission made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Affordable Housing Policy, 2013. The respondent proceeded to cancel the allotted unit prior to effecting any publication in the newspaper. The record shows that the respondent published the cancellation notice only after cancelling the unit in a Hindi newspaper which is not in circulation in the area where the complainant resides. The complainant has submitted that she was never informed by the respondent regarding the cancellation of the unit, and came to know of the same only much later. Such conduct on the part of the respondent is not in conformity with the due process as envisaged under law and policy guidelines, and deprives the allottee of a fair opportunity to respond or remedy any alleged default before such a drastic step is taken.
24. 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."
25. It is observed from the submissions and documents placed on record that the complainant, after receiving a demand notice dated 30.06.2024,

visited the office of the respondent to clear the alleged outstanding dues and tendered a cheque of ₹19,46,200/- towards the same. However, the respondent refused to accept the said payment on the ground that the unit stood cancelled way back in the year 2022. It is pertinent to note that the respondent failed to produce any material on record to show that any valid cancellation letter was ever issued or communicated to the complainant at the relevant time as no receipts has been attached during the submission.

26. The unilateral cancellation of the unit without proper notice, followed by refusal to accept the payment, is not in accordance with the principles of natural justice and the mandate of the Affordable Housing Policy, 2013.

G. Directions of the Authority:

27. 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. Cancellation letter dated 06.05.2022 issued to the complainant is set aside. Since, third party rights have already been created on the unit, the respondent is directed to execute the builder buyer agreement and allot unit of the same size and the same rate as per the agreed terms of the Application Form on 17.06.2019 between the parties.
 - ii. The respondent is directed to pay delay interest on the paid-up amount of Rs.7,10,000/- 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., 04.10.2023 till the valid offer of possession plus 2 months after obtaining the occupancy certificate from the concerned Authority or

actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

- iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within 30 days and complainant is directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents which is the same rate of interest which the promoters 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.

28. Complaint stands disposed of.

29. File be consigned to registry.


(Ashok Sangwan)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2025