BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of Order: 05.08.2025

Name of the Builder		Nani Resources and Floriculture Private Limited	
Project Name		"ROF AALAYAS - II", Sector 102	
S. No.	**Case No.**	**Case title**	**Appearance**
1.	CR/5007/2023	Lalit Kumar Vs. Nani Resources and floriculture Private Limited	Shri Garv Malhotra (Advocate for the Complainant) Shri Garvit Gupta (Advocate for the Respondent)
2.	CR/5006/2023	Deepak Kumar Vs. Nani Resources and floriculture Private Limited	Shri Garv Malhotra (Advocate for the Complainant) Shri Garvit Gupta (Advocate for the Respondent)

CORUM:

Arun Kumar — **Chairman**

Ashok Sangwan — **Member**

ORDER

1. This order shall dispose of the aforesaid 2 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions

to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely **"ROF AALAYAS PHASE II, Sector 102, Gurugram** being developed by the same respondent/promoter **"Nani Resources and Floriculture Private Limited"**. The fulcrum of the issue involved in both these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession and delayed possession charges.

3. The details of the complaints, reply status, unit no., date of BBA, total sale consideration, total paid amount by the complainant, and reliefs sought by the complainant are given in the table below:

Particulars	**Details**
Name and location of the project	**"ROF AALAYAS PHASE II", Sector – 102, Gurugram, Haryana.**
Project area	4.1125 acres
Nature of the project	Affordable Group Housing
DTCP license no. and validity status	82 of 2018 dated 06.12.2018 valid up to 05.12.2023
Name of the Licensee	Nani Resorts & Floriculture Pvt. Ltd.
RERA registered/ not registered and validity status	Registered vide no. 206 of 2019 dated 21.05.2019 valid up to 02.07.2023
Occupation certificate	03.06.2024 for Towers – I,J,K,L,M & N (As per DTCP site)

Sr. No.	**Complaint No., Case Title, and Date of filing of complaint**	**Unit No. and Date of execution of BBA**	**Total Sale Consideration / Total Amount paid by the complainant**
1.	CR/5007/2023	M-1105, 11th Floor,	TSC -

	Lalit Kumar Vs. Nani Resources and floriculture Private Limited DOF – 26.10.2023 Reply – 02.02.2024	(as per BBA at page 39 of complaint) BBA dated – 24.06.2022 (as per BBA at page 34 of complaint)	Rs. 26,30,000/- (as per BBA at page 39 of complaint) AP – Rs. 24,10,100/- (as per the account ledger on pg. 65 of the reply)
2.	CR/5006/2023 Deepak Kumar Vs. Nani Resources and floriculture Private Limited DOF – 26.10.2023 Reply – 02.02.2024	I-1204, 12th Floor, (as per BBA at page 36 of complaint) BBA dated – 02.05.2022 (as per BBA at page 31 of complaint)	TSC - Rs. 26,30,000/- (as per BBA at page 36 of complaint) AP – Rs. 17,10,100/- (as per the account ledger on pg. 71 of the reply)

Reliefs sought by the complainant -

1. To order the respondent to withdraw the cancellation letter dated 18.01.2023 & grant a stay on the unit in question till the actual handing over of possession to the complainant.
2. Kindly allow delay possession charges Interest for every month of delay at Prevailing rate of interest from the due date of possession till actual handing over of complete and valid physical possession.
3. To order the respondents to waive of the arbitrarily and illegally levied interest of Rs. 3,51,621/- (As per Demand letter of 02.02.2023), restoration cost and delayed payment charges, Holding charges, etc (if any).
4. To direct the respondents to charge on the carpet area and to provide a detailed break-up of Super Area and common area applicable and allotted to the complainant and whether it includes the area designated under two paid car parking or not.
5. The complainant should be adequately reimbursed, the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents.

6. To direct the respondent to reimburse litigation cost of Rs. 1,50,000/- to the complainant as they are constrained to file the same because of the callous and indifferent attitude of the respondent.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
TSP	Total sale consideration
AP	Amount paid by the allottee/s

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the "Agreement for sale" (ATS) executed between the parties in respect of subject unit for not handing over the possession by the due date, set aside the cancellation of the unit and seeking delay possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case ***CR/5007/2023 Lalit Kumar Vs. Nani Resources and floriculture Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

A. Unit and project related details

7. 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:

CR/5007/2023 Lalit Kumar Vs. Nani Resources and floriculture Private Limited.

S. No.	Particulars	Details
1.	Name of the project	"**ROF AALAYAS PHASE II**" 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.	Date of the Approval of building plans	27.05.2019 (As per the agreement for sale on pg. no. 34 of the complaint)
8.	Date of Environmental clearance	04.10.2019 (As per the agreement for sale on pg. no. 34 of the complaint)
9.	Unit no.	M-1105, 11th Floor, (as per BBA at page 35 of complaint)
10.	Unit measuring	645 Sq. Ft. (carpet area) and 140 Sq. Ft. (Balcony Area) (As per page no. 35 of the complaint)
11.	Application form	20.06.2019 (As per page no. 42 of the reply)
12.	Date of execution of apartment buyer's agreement/ Agreement for sale	24.06.2022 (as per BBA at page 34 of complaint)
13.	Possession clause	Clause 7.1 *Within 3-months from the date of issuance of Occupancy Certificate, the Promoter shall offer the*

		*possession of the Said Flat to the Allotee. Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allotee having timely complied with all its obligations, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the **Promoter shall offer possession of the Said Flat to the Allottee within a period of 4 years from the date. of approval of building plans or grant of environment clearance, whichever is later** ("Commitment Period").* (as per ATS at page 46 of the complaint)
14.	Due date of possession	**04.04.2024** (Calculated from date of environment clearance i.e., 04.10.2019 being later, which comes out to be 04.10.2023 + 6 months as per ***HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic***)
15.	Total sale consideration	Rs. 26,30,000 /- (as per BBA at page 39 of complaint)
16.	Total amount paid by the complainant	Rs. 24,10,100/- (as per the account ledger on pg. 65 of the reply)
17.	Demand Letters	05.08.2020, 09.02.2021, 26.05.2021, 04.06.2021,

		22.07.2021, 05.04.2022, 20.04.2022, 07.05.2022, 04.10.2022 (as per the pg. no. 50-58 of the reply)
18.	Letters seeking extension in payment of instalments on the behalf of complainant	16.02.2022 30.03.2022 16.05.2022 21.12.2022 (as per the pg. no. 79 – 89 of the complaint)
19.	Cancellation Letter	21.12.2022 (Not placed on record)
20.	Full and Final settlement of account Letter	18.01.2023 (As per page no. 90 of the complaint)
21.	Newspaper publication	28.03.2023 (As alleged by the respondent in its the reply) (*Note – Proof of publication with date is not provided by the respondent*)
22.	Occupation certificate	03.06.2024 (As per the DTCP Site)
23.	Offer of possession	Not offered

B. Facts of the complaint:

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

I. That the complainant had vide application dated 20.06.2019, applied to book a unit in the respondent builder's project. Along with the application, the complainant paid an amount of Rs. 1,31,500/- in favor of the respondent for the said booking, which was duly acknowledged by the respondent vide its acknowledgement dated 20.06.2019.

II. That on 11.09.2019, the complainant received an intimation-cum-demand letter from the respondent company, confirming the complainant, of the booking of their unit in the respondent builder's above-mentioned project. The complainant was allotted a unit in the respondents abovementioned project bearing apartment No. M-1105, having a carpet area of 645 Sq. Fts. along with a balcony area of 140 Sq Fts., including one two-wheeler parking space in the project vide the intimation cum demand letter. The complainant further on 25.09.2019 paid an amount of Rs. 5,78,600/- in favor of the respondent for the consideration of the unit.

III. That on 16.06.2022, on repeated requests to the respondent by the complainant to enter into a builder buyer agreement, the complainant and the respondent entered into a builder buyer agreement, wherein the details of the said flat and the total consideration of the said unit were clearly listed.

IV. Subsequently, as per the clause 7.1 of the Builder Buyer Agreement entered between the complainant's brother and the respondent for a separate unit in the same project, the due date of possession was 4 years from the date of approval of building plans or grant of environmental clearance.

V. That it is submitted as per the clause E of the builder buyer agreement, the respondent builder had obtained the approval of the environmental clearance was on 04.10.2019, which makes the due date of delivery of possession to be 04.10.2023.

VI. That the respondent builder has till date not offered the possession of the said unit to the complainant and has instead created third party rights on the said unit.

VII. That the complainant on various occasions made payments in favor of the respondent vides different modes, on 08.04.2022, 29.06.2022 16.12.2022 & 15.02.2023 made payments of Rs. 5,00,000 /-, Rs. 5,00,000/-, Rs. 7,00,047/-, & Rs. 2,46,223/-.

VIII. That the complainant has shown its bonafide by making payments as and when the complainant could arrange for the same, that the respondent has illegally and malafidely charged the complainant with interest on delayed payments.

IX. That till date the complainant has in total made payments of Rs. 26,56,370 /- (Rupees Twenty-Six Lakhs Fifty-Six Thousand Three Hundred Seventy Only), in favor of the respondents for the consideration of the said flat.

X. That the complainant had on various occasion tried to contact the respondent builder, and request for the respondent builder to extend the due date of payment of the instalments.

XI. That the during that period the whole world was suffering from the COVID-19 pandemic, U.K. variant, its second surge, black fungus, omicron and third wave since march 2020, lock down in almost all the states in the country, very little public mobility, and global recession, beside farmers movement, blockage of all highways to the national capital, which made it difficult for the complainant the honor the due instalments.

XII. That the complainant on various occasions, requested the respondent builder, through its letters, to extend the due date of its instalments.

XIII. That the respondent builder not even on a single occasion replied to the complainant's letters, and arbitrarily continued to charge interest on the same instalments.

XIV. That despite all the illegal and arbitrary acts committed by the respondent, the complainant on every occasion has assured the respondent, that the complainant is ready to pay the actual cost of the unit as agreed, but despite the assurances the respondent did not waive off the arbitrary and illegal interest.

XV. That the respondent has arbitrarily, illegally and malafidely vide its letter dated 18.01.2023, addressed to the complainant, wherein the respondent has cancelled the booking of the complainant in the respondent's project, stating the reason for such cancellation to be "default in the payments by the complainant".

XVI. That despite, the delay the complainant has almost completed the payment towards the consideration of the said unit, which has also been acknowledged by the respondent in its cancellation letter.

XVII. That further the respondent has also sent a photocopy of a cheque of Rs. 18,70,475/- (Rupees Eighteen Lakhs Seventy Thousand Four Hundred Seventy-Five Only) to the complainant, which was a pre dated cheque, dated 19.12.2022, and till date no such original cheque is received by the complainant.

XVIII. That the cancellation letter sent by the respondent was unsigned, thus the cancellation letter is a farse, and cannot be relied upon.

XIX. That it is submitted, that the complainant has as per the respondent's demand letter dated 02.02.2023, has made total payment of Rs. 26,56,370/- in favor of the Respondent, which has been duly acknowledged by the respondent.

XX. That the complainant had made the last, final and complete payment in favor of the respondent dated 08.12.2022, vide which the complainant had completed its part of the contract to honor the complete payments in favor of the respondent.

XXI. That after making the complete payments in favor of the respondent, the complainant was expecting the respondent to offer the possession of the said unit, on or before the due date of possession, but instead of offering possession to the complainant, the respondent has sent an illegal, arbitrary, and unlawful demand letter dated 02.02.2023, demanding arbitrarily charged interest from the complainant.

XXII. That the respondent has not given the benefit of the period of time of the pandemic, wherein worldwide it was observed that interest upon non-payment of loans, instalments were not to be charged. That the respondent has illegally charged interest from the complainant for the period of COVID-19.

XXIII. That despite the cancellation letter dated 18.01.2023, the respondents have construed and have given consent by sending the demand letter 02.02.2023, and by acting on their own will and accord, to the effect that the cancellation letter dated 18.01.2023, is null and void.

XXIV. That for handing over the actual, physical possession of said apartment to complainant, despite repeated requests and demands made by complainant to respondent in this regard from time to time.

XXV. That till date the complainant have paid an amount of Rs. 26,56,370/- (Rupees Twenty-Six Lakhs Fifty-Six Thousand Three Hundred Seventy Only), which is duly acknowledged by the Respondent vide their own cancellation letter dated 18.01.2023.

XXVI. That it is submitted that the complainant are still ready to take the possession of the said unit, after making the payments that are due to the Respondents, in the case the Respondent decides to handover the possession of the said unit.

C. Relief sought by the complainant:

1. To order the respondent to withdraw the cancellation letter dated 18.01.2023 & grant a stay on the unit in question till the actual handing over of possession to the complainant.
2. Kindly allow delay possession charges Interest for every month of delay at Prevailing rate of interest from the due date of possession till actual handing over of complete and valid physical possession.
3. To order the respondents to waive of the arbitrarily and illegally levied interest of Rs 3,51,621/- (As per Demand letter of 02.02.2023), restoration cost and delayed payment charges, Holding charges, etc (if any).
4. To direct the respondents to charge on the carpet Area and to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainant and whether it includes the area designated under two paid car parking or not.
5. The complainant should be adequately reimbursed, the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents.
6. To direct the respondent to reimburse litigation cost of Rs. 1,50,000 to the complainant as they are constrained to file the same because of the callous and indifferent attitude of the respondent.

9. 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:

10. The respondent has contested the complaint on the following grounds:

a. That the complainant is real estate investors who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that their 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.

b. 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.

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 complainant, after checking the veracity of the said project had applied for allotment of an apartment vide their booking application form on 20.06.2019. The complainant agreed to be bound by the terms and conditions of booking application form.

f. The complainant was aware and had admitted and accepted vide the said booking application form that he by the way of said application form had applied in the said project under the Affordable Group Housing Colony being developed by the respondent under the Affordable Scheme Policy and had understood all the limitations and obligations after being provided with all the information and clarifications. The complainant was aware that all the payment demands towards the total sale consideration were to be demanded by the respondent 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 the payment plan of the unit applied for was strictly as per the notified Affordable Scheme Policy, 2013. The relevant clause i.e. 5 (iii)(b) of the said policy is reproduced hereunder: -

> *"b. ...Any persons interested to apply for allotment of flat in response to such advertisement by the colonizer may apply on the prescribed application form* ***along with 5% amount of the total cost of the flat****. All such applicants shall be eligible for an interest at the rate of 10% per annum on the booking amount received by the developer for a period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case may be. The application will be required to deposit* ***additional 20% amount of the total cost of the flat at the time of allotment of the flat****. The balance 75%* ***amount will be recovered in six equated six-monthly installments*** *spread over three-year period..."*

h. 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 Intimation Letter dated 11.09.2019 informed the complainant about him being a successful applicant in the draw of lots and accordingly allotted to the complainant apartment no. M-1105 having carpet area of 645 square feet and balcony area of 140 sq. ft. Even in the said application form, it was clearly stated that the booking was made and the allotment was done in terms of the Affordable Group Housing Policy, 2013. The respondent vide the said intimation letter wherein the allotment was informed had demanded the next 20% of the total cost of the flat as per Clause 5(iii)(b) of the said Policy. The complainant was aware of the terms of the policy and the booking application form made the requisite payment and the respondent accordingly issued a receipt towards the same to the complainant.

i. That on the basis of the application, 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 24.06.2022.

j. That an allotment letter was issued in favor of complainant, against the intimation letter on 02.05.2022. The said issuance of another letter was a formality which had to be complied with as the essence of the allotment being the unit number and size had already been intimated to the complainant vide the Intimation letter dated 11.09.2019.

k. That prior to the issuance of the said allotment letter, all the payment demands were being demanded and paid by the complainant to the respondent as per the policy in question and no objection whatsoever were raised by them.

l. That complainant is aware that as per clause 1.3 of the booking application form and clauses 1.4 and 2.2 and 5.1 of the agreement, timely payment of the instalment amount was the essence of the allotment. It was understood vide clauses 11.7 of the booking application form and 1.13 of the agreement and as per clause 5(iii)(i) of the Affordable Scheme Policy, 2013, that if the allottee fails to make the payment towards the demanded amount, then the respondent would be entitled to terminate the allotment by issuing the cancellation letter.

m. 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 18.01.2023 and finally terminated via termination letter dated 18.01.2023 with the full and final settlement of the account against the unit no. M-1105, with a copy of cheque amounting to Rs. 18,70,775/- dated 19.12.2022.

n. 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.

o. That the respondent has throughout acted strictly as per the terms of the allotment, rules, regulations, law and the directions issued by the concerned authorities.

p. 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 his defaults failed to remit the said demand despite the said final opportunity letter.

q. All other averments made in the complaint were denied in toto.

11. 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:

12. 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.*

13. 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:

1. To order the respondent to withdraw the cancellation letter dated 18.01.2023 & grant a stay on the unit in question till the actual handing over of possession to the complainant.

2. Kindly allow delay possession charges Interest for every month of delay at Prevailing rate of interest from the due date of possession till actual handing over of complete and valid physical possession.
3. To order the respondents to waive of the arbitrarily and illegally levied interest of Rs 3,51,621/- (As per Demand letter of 02.02.2023), restoration cost and delayed payment charges, Holding charges, etc (if any).
4. To direct the respondents to charge on the carpet Area and to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainant and whether it includes the area designated under two paid car parking or not.
5. The complainant should be adequately reimbursed, the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents.
6. To direct the respondent to reimburse litigation cost of Rs. 1,50,000 to the complainant as they are constrained to file the same because of the callous and indifferent attitude of the respondent.

14. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

15. The complainant booked a unit in the affordable housing colony project of the respondent known as "ROF Aalayas Phase II" situated in Sector-102, Gurugram, Haryana and was allotted a unit bearing no. M-1101 on 11th floor in Tower M having carpet Area of 645 Sq. Ft. and balcony area of 140 Sq. Ft. along with one (1) two-wheeler parking space in the project vide Builder buyer agreement dated 24.06.2022 for a total sale

consideration of Rs. 26,30,000/- out of which the complainant had paid an amount of Rs. 24,10,100/-.

16. As per the Affordable Group Housing policy, 2013, the possession of the unit was to be offered within 4 years from the date of approval of building plans or from the date of environment clearance, whichever is later. The environmental clearance was received later i.e.,04.10.2019, so it will be taken into account and 4 years will be calculated from 04.10.2019 which comes out to be 04.10.2023. Further, a period of 6 months will also be added to this as per HARERA notification no.9/3-2020 dated 25.05.2020 for the projects having completion date on or after25-03.2020. Therefore, the due date comes out to be **04.04.2024.**

17. The respondent vides reminder/demand letters dated 05.08.2020, 05.08.2020, 09.02.2021, 26.05.2021, 04.06.2021, 22.07.2021, 05.04.2022, 20.04.2022, 07.05.2022, and final opportunity letter dated 04.10.2022 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 21.12.2022 but the proofs of delivery of the same are not placed on record by the respondent. An inference about the same has been mentioned by the respondent in the letter dated 18-01.2023 whereby the respondent informed the complainant that the unit of the complainant stands cancelled on 21.12.2022 and notice towards "full and final settlement of account dues " has been sent to the complainant. Thereafter, an advertisement in the English newspaper has been published regarding the cancellation of the allotment by the respondent on 28.03.2023.

18. Further, the respondent re-allotted the subject unit to a third party (allotment dated 19.04.2023 to Mr. Anup Kumar and Mrs. Nitu Kumari) without compliance of the prescribed procedure under the Affordable Housing Policy, 2013.

19. 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?"

20. 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, <u>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.</u> 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".*

21. According to Clause 5(iii)(b) of the 2013 policy, if the allottee fails to pay the outstanding dues, the promoter is required to publish a list of defaulters in a newspaper, providing a 15-day period for payment from the date of publication and if payment is not made within this period, the allotment may be cancelled. It is specified that the respondent/promoter must first publish the defaulter's name and allow a 15-day period for payment before proceeding with the cancellation of the unit. The Authority observes that the name of the complainant was published in the list of defaulters in an English newspaper, however, as

per the record of the proceedings, the respondent was specifically directed by the Authority to submit the date and proof of such publication, which they failed to do.

22. In this case, the respondent allegedly cancelled the unit on 21.12.2022 and issued a notice towards "Full and final Settlement of Account due to termination of allotment" on 18.01.2023, and subsequently published a cancellation notice on 28.03.2023. This sequence indicates that the respondent did not follow the required procedure. In view of the above, the said cancellation letter dated 21.12.2022 is bad in the eyes of law and hereby set aside.

23. Now, 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)*

24. **Due date of handing over possession:** As per the documents available on record, BBA has been executed between the parties on 24.06.2022. Here, the date of environmental clearance is 04.10.2019, hence the due date for possession shall be **04.04.2024** *(as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic).*

after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic).

25. The Authority further observes that the respondent had issued a demand letter dated 02.02.2023 to the complainant, which was sent subsequent to the "full and final settlement of account dues " of the said unit. The issuance of such a demand notice after the termination of the allotment reflects inconsistency in the respondent's actions.
26. Furthermore, the record reveals that the said unit has already been re-allotted to a third party vide allotment letter dated 17.04.2023, without following due process and without any intimation to the complainant.
27. **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, he 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.*

28. 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.

29. 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., 05.08.2025 is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%. (*Note: The rate of interest has been inadvertently recorded as 11.10% in proceeding dated 05.08.2025).*

30. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant Section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.90% by the respondent /promoter

which is the same as is being granted to the complainant in case of delayed possession charges.

32. 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."*

F.4 To direct the respondents to charge on the carpet Area and to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainant and whether it includes the area designated under two paid car parking or not.

33. The Authority reiterates that as per Section 4(2)(h) read with Section 2(k) of the act, 2016, the promoter is bound to sell units on the basis of carpet area only. The respondent is therefore directed to ensure that all calculations of the sale consideration are based on carpet area and not on the super area. Further, it is pertinent to note that as per Clause 5(i) of the Affordable Housing Policy, 2013, as amended up to 16.11.2021, the allotment of dwelling units is to be made on the basis of the *carpet area* at a maximum allotment rate prescribed per square foot. Therefore, the respondent is directed to charge only in accordance with the Affordable Housing Policy, 2013.

34. In light of the aforementioned circumstances, the respondent is hereby directed to offer possession of a unit of the same size, at the same sale consideration, and within the same project as was originally allotted to the complainant.

F.5 The complainant should be adequately reimbursed, the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents.

35. Upon consideration of the documents on record it is pertinent to note that the complainant itself has sent letter dated 16.02.2022, 30.03.2022, 16.05.2022 and 21.12.2022 seeking time for the payment of outstanding dues to the respondent. Now herein, the complainant is seeking relief with regard to the reimbursement of the excess stamp duty charges due to delay in executing the conveyance deed by the respondents. Furthermore, the stamp duty charges are paid to the Government as per applicable local laws at the time of the conveyance deed. So, the respondent cannot be held liable to reimburse any amount on account of stamp duty charges.

F.6 To direct the respondent to reimburse litigation cost of Rs. 1,50,000/- to the complainant as they are constrained to file the same because of the callous and indifferent attitude of the respondent.

36. The complainant is seeking relief w.r.t litigation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.*** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G. Directions of the Authority:

37. 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 Cancellation/Full and Final settlement of account letter dated 18.01.2023 issued to the complainant is invalid in the eyes of law and is hereby set aside. Since, third party rights have already been created on the unit, the respondent is directed to allot unit of the same size in the same project and at the same rate as per the agreed terms of the on 24.06.2022 between the parties.

ii. The respondent is directed to pay delay interest on the paid-up by the complainant at the prescribed rate of 10.90% p.a. for every month of delay from the due date of possession i.e., 04.04.2024 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. *(Note: The due date of possession has been inadvertently recorded as 04.10.2023 in proceeding dated 05.08.2025)*

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.,10.90% 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(za) of the Act.

v. The respondent is further directed to provide a detailed break-up of the super area and common area applicable to the complainant' unit, and to clarify whether the area designated under the two paid car parking slots has been included in the super area or treated separately. Such disclosure shall be provided to the complainant within 30 days from the date of this order.

38. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

39. Complaint stands disposed of.

40. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2025