

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

Complaint no. :	5980 of 2024
Date of Filing:	06.12.2024
Date of Decision:	17.10.2025

Deepanshu Dabas

**R/O:** Flat no. 21, Madan Pur Dabas, Factory  
Road, Rani Khera, North West Delhi, Delhi-  
110081**Complainant**

Versus

M/s Nani Resorts &amp; Floriculture Pvt. Ltd.

**Office:** Building no. 80, 1<sup>st</sup> Floor, Sector-44,  
Gurgaon, Haryana - 122003**Respondent****CORAM:**

Shri Arun Kumar

**Chairman****APPEARANCE:**Sh. Jagdeep Kumar  
Sh. Garvit GuptaAdvocate for the complainant  
Advocate for the respondent**ORDER**

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

Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**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. N.	Particulars	Details
1.	Name of the project	"ROF AALAYAS" Phase-II Sector- 102, Gurugram
2.	Project area	4.11 acres
3.	Nature of the project	Affordable Group Housing
4.	RERA Registered/ not registered	Registered Vide no. 33 of 2019 dated 27.05.2019 Valid up to 4 years from the date of environmental clearance i.e., 05.01.2015
5.	License no. and validity	82 of 2018 dated 06.12.2018 valid up to 05.12.2023
	Licensee name	Nani Resorts & Floriculture Pvt. Ltd.
6.	Unit no.	M-1508, 15 <sup>th</sup> Floor, Tower M [Page 25 of complaint]
7.	Unit area admeasuring	645 sq. ft (carpet area), 140 sq. ft. (balcony area) [page 25 of complaint]
8.	Allotment Letter	14.04.2023 [Page 23 of complaint]
9.	BBA	Not executed
10.	Date of approval of building plans	27.05.2019
11.	Date of grant of environment clearance	04.10.2019 [As per page no. 40 A of the reply]

12.	Possession clause in Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.
13.	Due date of possession	04.04.2024 (Calculated as 4 years from the date of grant of environmental clearance i.e., 04.10.2019 as per policy of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
14.	Total sale consideration	Rs. 28,09,000/- [as per application form at page 52 of reply]
15.	Amount paid by the complainant	Rs. 32,16,607/- (as per SOA filed by complainant along with written statement)
16.	Occupation certificate	03.06.2024 (page no. 74 of reply)
17.	Offer of possession (OP)	07.06.2024 (page no. 68 of reply)
18.	Reminders for payment	26.06.2024, 25.07.2024 (final) (page no. 70-71 of reply)
19.	Cancellation letter	08.08.2024 (page no. 72 of reply)

## B. Facts of the complaint

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



- I. That in month of March 2023 respondent approached the complainant through its business development associate with an offer to invest and buy a management quota / leftover flat in the project of respondent, the project namely "ROF Aalyas Phase - II" in the Sector-102, Gurugram.
- II. That the complainant while relying upon the assurances of the respondent and believing them to be true, submitted an application with respondent for 3 BHK flat measuring carpet area 645 sq. ft. and balcony area 140 sq. ft. under draw of lots in the aforesaid project of the developer and made payment of application amount of Rs. 2,30,000/- & of Rs 50,000/-.
- III. That in the said application form, the price of the said flat was agreed at the rate of Rs. 4000/- per sq. ft. for carpet area and Rs 500 per sq. ft. for balcony area as mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.
- IV. That as per clause 1(iv) Affordable housing policy 2013, all projects under affordable housing policy shall be required to be necessarily completed within 4 years from the approval of building plan or grant of environmental clearance, whichever is later.
- V. That on 14<sup>th</sup> April 2023, respondent issued an offer of allotment letter dated 14.04.2023 and offered a residential unit no. M-1508, tower - M "ROF Aalyas Phase -II" Sector 102, Gurgaon, Haryana at price of Rs. 26,30,000/- plus management quota premium charges which

complainant paid in cash as instructed by the respondent's representative Mr. Gaurav.

VI. That the respondent implemented a self-proclaimed payment plan, divergent to payment plant specified under Haryana Affordable Housing Policy 2013.

VII. That from the date of submitting application for allotment on 10<sup>th</sup> March 2023 and till 07.06.2024, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the Haryana Affordable Housing Policy 2013 without any default or delay on their part and have also fulfilled otherwise also their part of obligations as narrated in the affordable housing policy 2013. The complainant were and have always been ready and willing to fulfill their part of agreement, if any pending.

VIII. That the complainant, upon allotment of the said flat, inquired with Mr. Gaurav, the Sales Representative of the respondent, regarding the execution of the buyer's agreement. Mr. Gaurav assured the complainant that all documents pertaining to management quota flats would be provided at the time of handover of the flat. However, it was later discovered that the respondent had fraudulently manipulated this arrangement to exploit the complainant's hard-earned money by increasing the basic sale price by Rs. 200/- per square foot and charging balcony fees at Rs. 1,000/- per square foot instead of the initially agreed Rs. 500/- per square foot.

IX. That the respondent added Rs 1,79,000/- in sale consideration arbitrarily and unilaterally without any reference for the same in



Affordable housing policy, which is an illegal, arbitrary, unilateral and unfair trade practice. Respondent also add Rs 1,08,277/- for electricity other miscellaneous charges arbitrarily and also impose an interest penalty of Rs 2,41,240/- at the rate of 15% interest at the time of issuing demand letter dated 7 June 2024. Complainant opposed the increase in sales consideration and other charges but respondent did not pay any attention to complainant.

- X. That the complainant has paid the entire sale consideration along with applicable taxes to the Respondent for the said flat. The complainant have already paid Rs. 32,16,607/- towards total sale consideration, applicable taxes and arbitrary & unethical demands of respondent.
- XI. That the date agreed for the delivery of possession of said unit as per the Haryana Affordable Housing Policy 2013 is 04/10/2023, the complainant had approached the respondent and its officers for inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the complainant.
- XII. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is immoral as well as illegal.
- XIII. That on June 7th, 2024 respondent issued a demand letter with unreasonable additional demands which are unilateral, arbitrary and contrary to the guidelines and Policy terms & conditions of Haryana Affordable Policy 2013. Respondent did not even credit a single penny for delay possession charges as per RERA Act 2016. The respondent arbitrarily increased the rate of basic sale price by increasing the fixed

basic per sq. ft. rate from Rs. 4000/- to Rs 4200/- and charges of balcony from Rs. 500/- to Rs. 1000/-.

- XIV. That the respondent unilaterally raised a demand of external electrification charges of Rs 68,499/-, power backup charges of Rs 65,000/-, electric meter charges of Rs. 7,080/-, BOCW of Rs. 13,700/-, Admin Charges of Rs. 17,700/- , RWA Fee of Rs. 1,298/- and respondent also impose an arbitrary interest rate of 15% on account of late payment charges to squeeze Rs. 2,41,240/-. The complainant opposed all the illegal demands of respondent and under protest made the payment of all unjustified demands of respondent in want of taking the possession of said flat, but even after paying all aforesaid payments on 31<sup>st</sup> August 2024, respondent is not providing the possession of flat nor the respondent executing the conveyance deed of the flat.
- XV. That the respondent after issuing a unilateral demand letter dated 7th June 2024, further demanded an interest-free security deposit from the complainant on 8th August 2024. The complainant, under duress and with the sole intention of securing possession of the flat, complied with the respondent's demand and made the payment on 23rd August 2024.
- XVI. That the occupation certificate for the project was obtained on 3rd June 2024. Till date, the respondent has neither issued an offer of possession nor executed the conveyance deed in favor of the complainant.
- XVII. That on 5th November 2024, the respondent sent an email to the complainant pressuring him to pay unreasonable maintenance charges for the period from August 2024 to November 2024.



XVIII. That the complainant sent multiple emails to the respondent between 25th July 2024 and 5th November 2024, opposing these demands and urging the respondent to pay delay possession charges for failing to deliver the flat on time. Despite several attempts to obtain possession after clearing all dues, the respondent's executives exerted undue influence, coercion, and duress on the complainant by withholding possession and forcing further unreasonable payments. This deliberate harassment by the respondent reflects their intent to exploit the complainant financially while blatantly disregarding their legal obligations.

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

4. The complainant has sought following relief(s).
  - (i) Direct the respondent to pay interest at the rate of 15% on account of delay in offering possession on Rs.32,16,607/- from due date of possession till the physical possession of said flat to complainant..
  - (ii) Direct the respondent to pay interest on payments taken by respondent from complainant prior to the due date as specified under Affordable Housing Policy 2013.
  - (iii) Direct the respondent to refund Rs 2,41,240/- the extra interest charged from complainant at unilateral and arbitrary rate of interest of 15% for delay in payment of installments.
  - (iv) Direct the respondent to earmark two-wheeler parking for complainant in the said project "ROF Aalyas Phase -II", Sector 102, Gurugram, Haryana.
  - (v) Direct the respondent to refund the excess amount of Rs 1,29,000/- charged by increasing basic sale price of said flat.



- (vi) Direct the respondent to refund the excess amount of Rs 50,000/- charged by increasing balcony charges of said flat.
  - (vii) Direct the respondent to provide the valid offer of possession, physical possession of flat.
  - (viii) Direct the respondent to execute the conveyance deed.
  - (ix) Direct the respondent to refund external electrification charges of Rs. 68,499/- already taken from complainant.
  - (x) Direct the respondent to refund electric meter charges Rs. 7,080/- already taken from complainant.
  - (xi) Direct the respondent to refund BOCW charges of Rs. 13,700/- already taken from complainant.
  - (xii) Direct the respondent to refund admin charges of Rs. 17700/- already taken from complainant.
  - (xiii) Direct the respondent to refund interest free operational security of Rs. 30,000/- already taken from complainant.
  - (xiv) Restrain the respondent to charge operational charges for the month of August 2024 to November 2024. Also restrain the respondent to charge any maintenance charges for next 5 years as per affordable housing policy 2013.
  - (xv) Direct the respondent to construct community sites as per the guidelines of Haryana Affordable Housing Policy 2013.
  - (xvi) Direct the respondent to pay an amount of Rs. 55,000/- to the complainant as cost of the present litigation.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint on the following grounds.
  - I. That the present complaint as filed is neither maintainable, nor tenable and is liable to be out rightly dismissed.
  - II. That there is no cause of action to file the present complaint.
  - III. That the present complaint has been filed by the complainant without any locus standi or any valid ground against the Respondent/ allottee.
  - IV. That the complainant is estopped from filing the present complaint on account of its own acts, admissions, omissions and laches. The present complaint deserves to be dismissed with heavy costs payable by the complainant to the respondent.
  - V. That the complainant has not approached this Hon'ble Authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by her maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
  - VI. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered prestigious projects and in most of these projects large numbers of families have already shifted after having taken possession.
  - VII. 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.

- VIII. 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.
- IX. 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.

- X. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide her booking application form on 10.03.2023 as per the provisions of the said policy. The complainant agreed to be bound by the terms and conditions of booking application form. The complainant was aware and had admitted and accepted vide the said booking application form that he by the way of said application form had applied in the said project under the affordable group housing colony being developed by the respondent under the affordable scheme policy and had understood all the limitations and obligations after being provided with all the information and clarifications. The complainant was aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the said policy and only after being completely satisfied about the same, had made the booking with the respondent.
- XI. 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, he for the reasons best known to him, failed to make the payment on time and was a constant defaulter from the very inception. The respondent was constrained to send a reminder letter dated 19.07.2023 demanding an amount of Rs. 24,57,654/-. However, only part payment of Rs. 14,00,000/- was made by the complainant.



- XII. That the respondent was again restrained to issue demand and reminder letters including but not limited to 14.02.2024, and on receipt of such letter, the complainant made only a part payment towards the same.
- XIII. That the respondent got the environment clearance on 04.10.2019 and thus, the due date to handover the possession of the said unit was 04.10.2023. However, on account of COVID-19 pandemic, the implementation of the project was impacted. This Honorable Authority has vide resolutions already have granted a relaxation of six months period to all those projects which were due to be completed between March 2020 and March 2022. Furthermore, the Hon'ble HARERA, Panchkula vide resolutions have granted a relaxation of three months in this regard. Thus, the due date to handover the possession of the unit was 04.07.2024.
- XIV. That the Hon'ble Supreme Court had imposed complete construction ban in Delhi-NCR from 04.11.2019 to 09.12.2019 and later, construction at night was banned from 09.12.2019 to 14.02.2020. That because of these multiple bans it was improbable to find labour as most of the labour class which is migratory in nature had gone back to their homes/villages, which adversely affected the construction. Thereafter, the worldwide COVID-19 pandemic caused various nation/state-wide lockdown(s) which exponentially hampered the construction. The respondent offered possession of the said unit on 07.06.2024 to the complainant before the lapse of the due date to handover the possession and hence, no default was committed by the respondent.

- XV. That the respondent along with the letter of offer of possession dated 07.06.2024 sent a demand letter dated 07.06.2024 to the complainant to remit the dues payable by the complainant before taking possession of the unit in question. The demand raised is strictly in accordance with the terms and conditions as agreed in the duly executed application form, allotment letter, and the Haryana Affordable Housing Policy, 2013. The complainant defaulted in making timely payments, as evident from the reminder letters served to the complainant and thus, the complainant attracted the said applicable interest.
- XVI. That the complainant strictly as per the terms of the allotment and policy was yet again reminded that there was a payment due on his part vide the letter dated 26.06.2024 sent by the respondent. The complainant despite the receipt of the said letter neither responded nor paid the dues which were payable by the complainant to the respondent.
- XVII. That vide final opportunity letter dated 25.07.2024, the respondent had given a final chance to make the payment of Rs. 5,42,794/- 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.
- XVIII. The complainant was aware that 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. 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



08.08.2024, thereby inviting the complainant to visit the office and collect the balance amount, if any. Therefore, the complainant is now left with no right, title or lien in the unit after the said cancellation. The said cancellation has been done by the respondent strictly as per the agreement and the said policy and the same is valid in the eyes of law.

- XIX. That the complainant was a regular defaulter and delay was caused by the complainant in making certain payment of instalments as demanded by the respondent as per the payment plan. The respondent strictly as per the said payment plan kept on demanding the payments as due. However, the complainant failed to make the payment towards the said amount and the respondent was constrained to terminate the allotment.
- XX. 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. The respondent has already completed a substantial part of the construction of the project in question as per the timeline prescribed and there has been no delay of whatsoever nature on the part of the respondent 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 these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. 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**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11**

.....

(4) The promoter shall-

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. 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 objections raised by the respondent.**

#### **F.I Objection regarding the complainant being investor.**



12. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. 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;"*

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) 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 an investor is not entitled to protection of this Act also stands rejected.

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

- (i) Direct the respondent to pay interest at the rate of 15% on account of delay in offering possession on Rs.32,16,607/- from due date of possession till the physical possession of said flat to complainant.
  - (ii) Direct the respondent to pay interest on payments taken by respondent from complainant prior to the due date as specified under Affordable Housing Policy 2013.
  - (iii) Direct the respondent to provide the valid offer of possession, physical possession of flat.
14. The above mentioned relief no. (i), (ii) and (iii) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

16. The complainant submitted an application for participation in the draw for the allotment of apartments in the project developed by the



respondent company, namely ROF Aalayas, Phase II, located at Sector 102, Gurugram. In response, the complainant was allotted unit bearing no. 1508 on the 15th floor of tower M, with a carpet area of 645 sq. ft. and balcony area of 140 sq. ft. vide allotment letter dated 14.04.2023. The builder buyer agreement was not executed between the parties. The said project is the affordable group housing project and regulated as per the Affordable Group Housing Policy, 2013.

17. Clause 1(iv) of the affordable group housing policy, 2013 provides for handing over of possession and is reproduced below:

*1 (iv) All such projects required to be necessarily completed within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.*

18. **Due date of possession:** As per clause 1(iv) of the affordable housing policy, 2013 the project has to be handed over within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. The respondent has obtained building plan approval and environment clearance in respect of the said project on 27.05.2019 and 04.10.2019 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Therefore, the due date of possession comes out to be 04.10.2023. Further grace period of 6 months is allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Hence the due date of possession comes out to be 04.04.2024.



19. Further, the total price of the unit was Rs. 28,09,000/- out of which the complainant has made a payment of Rs. 32,16,607 /-. The occupation certificate for the project was received on 03.06.2024 and subsequently unit was offered for possession on 07.06.2024. The respondent raised further demand of Rs. 5,42,124/- vide letter dated 26.06.2024. Due to the complainant's failure to remit the required payment, the respondent issued reminder for payment dated 25.07.2024. Subsequently, due to continued non-payment of the outstanding dues by the complainant, the respondent on 08.08.2024 cancelled the unit of the complainant. Now, the question before the authority is whether this cancellation is valid or not.
20. After considering the documents available on record as well as submissions made by the parties, the Authority observes that the said project is regulated as per the Affordable Housing Policy, 2013. Further, the clause 5(iii)(i) of the Affordable Housing Policy, 2013 is relevant in the case of cancellation by the respondent promoter. The said clause is reproduced below for ready reference:

"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".

21. The Authority observes that clause 5(iii)(i) of the Affordable Housing Policy, 2013 provides that if an applicant fails to remit the installment within the prescribed time period, a reminder may be issued to the applicant, requiring payment of the outstanding installment within fifteen (15) days from the date of issuance of such notice. If the allottee fails to make the payment within the specified period, the list of defaulters may then be published in a regional Hindi newspaper. If the allottee continue to default, the allotment may be cancelled within fifteen (15) days thereafter.
22. In the present case, it is evident that the demand for payment was raised on 26.06.2024, followed by a reminder issued on 25.07.2024 and the unit was thereafter cancelled on 08.08.2024. The Authority finds that the mandatory procedure prescribed under the Affordable Housing Policy, 2013 has not been duly complied with by the respondent. Notably, the requisite publication of the list of defaulters in a regional Hindi newspaper as mandated under the Policy was not carried out prior to cancellation of the allotment. Further, the record reflects that the complainant had already paid an amount of Rs. 32,16,607/- against the total sale consideration of Rs. 28,09,000/-. In view of the above, the said cancellation is bad in law and is hereby set aside and the subject unit is ordered to be restored to its original position in favour of the complainant.
23. **Payment of delay possession charges at prescribed rate of interest:** As delineated hereinabove, the respondent was liable to handover possession of the subject unit by 04.04.2024. The respondent has obtained the occupation certificate from competent authority on 03.06.2024 and subsequently offered the possession on



07.06.2024. The complainant is seeking delay possession charges at the prescribed rate of interest. Proviso to 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.*

24. 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.
25. 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., 17.10.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
26. 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;"*

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted to him in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date.
29. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer possession of the allotted unit to the complainant. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period.
30. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 04.04.2024 till the date of offer of possession 07.06.2024 plus 2 months i.e., 07.08.2024 at prescribed rate i.e.,

10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

31. The respondent-promoter is directed not to create third party rights. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the allotment letter dated 14.04.2023 in the said project to the complainant.

**(iv) Direct the respondent to refund Rs 2,41,240/- the extra interest charged from complainant at unilateral and arbitrary rate of interest of 15% for delay in payment of installments.**

32. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

**(v) Direct the respondent to earmark two-wheeler parking for complainant in the said project "ROF Aalyas Phase -II", Sector 102, Gurugram, Haryana.**

**(vi) Direct the respondent to refund the excess amount of Rs. 1,29,000/- charged by increasing basic sale price of said flat.**

**(vii) Direct the respondent to refund the excess amount of Rs 50,000/- charged by increasing balcony charges of said flat.**

33. The Authority is of the considered view that any charge, levy, demand, or amount whatsoever including charges towards parking, basic sale price or balcony charges if raised by the respondent shall be strictly in



accordance with the terms and conditions of the allotment letter, the provisions of the Affordable Housing Policy and the application form executed between the parties. The respondent is restrained from raising any charge beyond or contrary to the aforesaid documents.

**(viii) Direct the respondent to execute the conveyance deed.**

34. That as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
35. The possession of the subject unit has already been offered to the complainant after obtaining occupation certificate on 07.06.2024. Therefore, the respondent/builder is directed to get the conveyance deed of the allotted apartment executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.

- (ix) Direct the respondent to refund external electrification charges of Rs. 68,499/- already taken from complainant.**
- (x) Direct the respondent to refund electric meter charges Rs. 7,080/- already taken from complainant.**
- (xi) Direct the respondent to refund BOCW charges of Rs. 13,700/- already taken from complainant.**
- (xii) Direct the respondent to refund admin charges of Rs. 17700/- already taken from complainant.**



**(xiii) Direct the respondent to refund interest free operational security of Rs. 30,000/- already taken from complainant.**

36. The complainant submitted that the respondent company has offered the possession of the allotted unit on 07.06.2024 along with statement of account the said letter contains several illegal/unreasonable demands under different heads i.e., external electrification charges of Rs.68,499/-, electric meter charges, BOCW charges, admin charges and interest free operational security.
37. The authority vide order dated 09.12.2022, passed in case bearing no. *4147 of 2021 titled as Vineet Choubey V/s Pareena Infrastructure Private Limited and also the complaint bearing no. 4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited*, has already decided the above said issues. The respondent is directed to charge the same relying on the above said orders.

**(xiv) Restrain the respondent to charge operational charges for the month of August 2024 to November 2024. Also restrain the respondent to charge any maintenance charges for next 5 years as per affordable housing policy 2013.**

38. The authority regarding the maintenance charges is of the view that as per clause 4(v) of the policy, 2013 talks about maintenance of colony after completion of project: *A commercial component of 4% is being allowed in the project to enable the coloniser to maintain the colony free-of-cost for a period of five years from the date of grant of occupation certificate, after which the colony shall stand transferred to the "association of apartment owners" constituted under the Haryana Apartment Ownership Act 1983, for maintenance. The coloniser shall not*

*be allowed to retain the maintenance of the colony either directly or indirectly (through any of its agencies) after the end of the said five years period. Engaging any agency for such maintenance works shall be at the sole discretion and terms and conditions finalised by the "association of apartment owners" constituted under the Apartment Ownership Act 1983. Moreover, the authority on 11.04.2022 requested DTCP, Haryana to give clarification upon the issue of maintenance but the clarification with respect to the said issue. In response of the said letter sent by the Authority, an email dated 29.11.2022 has been received from DTCP intimating that the issue of free maintenance of the colony in terms of section 4(v) of the Affordable Group Housing Policy, stands referred to the Government and clarification will be issued by DTCP as and when the approvals is received from the Government. Therefore, the issue of maintenance charges shall be regulated in terms of the orders of the Government as and when issued and the same would be binding on both the parties.*

**(xv) Direct the respondent to construct community sites as per the guidelines of Haryana Affordable Housing Policy 2013.**

39. With respect to the relief sought by the complainant for directing the respondent to construct community sites, the Authority observes that the project in question is duly regulated as per the Haryana Affordable Housing Policy, 2013. Accordingly, any obligation relating to the provision and development of community sites shall be governed strictly by the provisions, norms and guidelines prescribed under the Haryana Affordable Housing Policy, 2013. The respondent is therefore, bound to comply with the requirements of the said policy.



**(xvi) Direct the respondent to pay an amount of Rs. 55,000/- to the complainant as cost of the present litigation.**

40. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

#### **H. Directions of the authority**

41. 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 of the allotted unit is set aside.
- ii. The respondent is directed to restore the subject unit to its original position in favour of the complainant.
- iii. The respondent-promoter is directed not to create third party rights. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and



specifications at same rate as per the allotment dated 14.04.2023 in the said project to the complainant.

- iv. The respondent is hereby directed to execute agreement to sale with the complainant within a period of 30 days of this order.
- v. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 04.04.2024 till the date of valid offer of possession i.e., 07.06.2024 plus 2 months i.e., 07.08.2024 at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- vi. The respondent is directed to supply a copy of the updated statement of account after adjusting the delay possession charges within a period of 30 days to the complainant.
- vii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.85% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- viii. The respondent/builder is directed to get the conveyance deed of the allotted apartment executed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable within three months from the date of this order.
- ix. The respondent shall not charge anything from the complainant which is not provided under Affordable Housing Policy, 2013.

- x. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
42. Complaint as well as applications, if any, stands disposed off accordingly.
43. File be consigned to registry.

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.10.2025



**HARERA**  
GURUGRAM