

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

<b>Complaint no.</b>	<b>:</b>	<b>607 of 2024</b>
<b>Date of Filing:</b>		<b>04.03.2024</b>
<b>Date of Decision:</b>		<b>31.10.2025</b>

Sailesh Kumar Singh

**R/O:** House No. B-508, Street No. 1, Near Patel  
Nagar, Railway Station, Prem Nagar, Central  
Delhi - 110008

**Complainant**

M/s Nani Resorts & Floriculture Pvt. Ltd.

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

**Respondent**

**CORAM:**

Shri Arun Kumar

**Chairman**

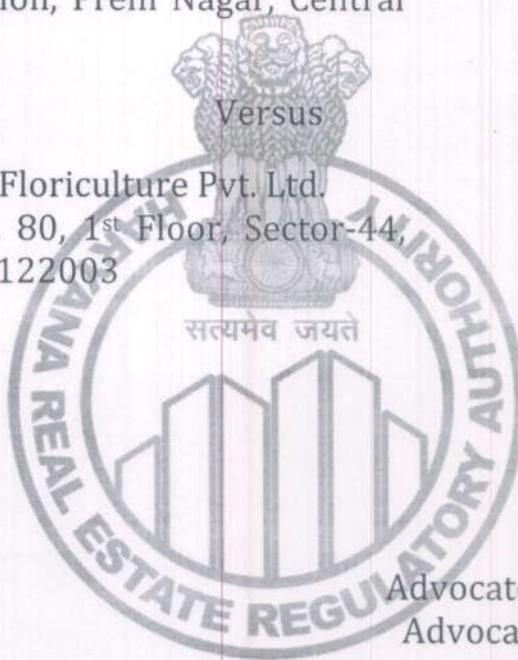
**APPEARANCE:**

Sh. Maninder Singh

Sh. Garvit Gupta

Advocate for the complainant

Advocate for the respondent



**HARERA**  
ORDER  
**GURUGRAM**

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:

<b>S.No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the project	"Rof Alante" sector- 108, Gurugram
2.	Project area	5.0 acres
3.	Nature of project	Affordable Group Housing
4.	DTCP License no. and validity	43 of 2019 dated 05.03.2019
5.	Name of licensee	Nani Resorts & Floriculture Pvt. Ltd.
6.	RERA registered/not registered and validity	Registered vide no. 75 of 2019 dated 09.12.2019
7.	Environment Clearance	06.02.2020
8.	Date of approval of building plans	15.11.2019 (As per page no. 5 of the complaint)
9.	Application form for allotment	03.03.2020 (As per page no. 13 of the complaint)
10.	Unit no. and unit area admeasuring	B-707 645.549 sq. ft (carpet area) & 104.787 sq. ft.(balcony area) (As per page no. 13 of the complaint)
11.	Date of buyer's agreement	Not Executed
12.	Possession clause in Affordable Housing Policy	<b>1 (iv)</b> <i>All such projects shall be required to be necessarily completed within 4 years from the date of approval of building</i>



		<i>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.</i>
13.	Due date of possession	06.08.2024  [Note: Due date of possession can be calculated by the 4 years from EC i.e., 06.02.2020, being later plus six months on account of Covid-19 ]
14.	Total sale consideration	Rs. 26,32,196/- (As per details filed by respondent)
15.	Total amount paid by the complainant	Rs.20,95,500/- (As stated by the complainant in the complaint)  Rs. 12,63,500/- (As per ledger at page no. 61 of reply filed by respondent)
16.	Demand letter	06.11.2020, 16.12.2020, 07.04.2021, 19.04.2022(final)
17.	Cancellation letter	06.05.2022 (page 59 of reply)
18.	Newspaper Publication	13.09.2022 (page 64 of reply)
19.	Third party rights created	19.11.2022 (page 63 of reply)
20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

#### **B. Facts of the complaint**

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



- I. That in the year 2020, respondent through its agents approached the complainant with an offer to buy its above-mentioned project claiming to provide possession to the complainant within 4 years for a basic sale price of Rs.26,32,196/-.
- II. That the respondent arranged the visit of its representatives to the complainant, wherein it was categorically assured and promised by the respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and it would hand over the flat of the complainant within the time span of 4 years.
- III. That relying upon those assurances and believing them to be true, the complainant booked a residential flat bearing no. B-707 in block/tower no. B on 7th floor having carpet area of 645.54 sq. ft. and 104.787 sq. ft. for balcony area, at the proposed project to be developed by respondent on 15.11.2019. The complainant had paid Rs. 5,38,500/- as booking amount towards the basic price.
- IV. That thereafter, the respondent started raising the demand of money /installments from the complainant, which was duly paid by the complainant as per agreed timelines. The complainant as on today has paid Rs. 20,95,500/- towards the sale consideration of the flat.
- V. That as mentioned above the project developed by the respondent is an affordable project under the Affordable Housing Policy-2013 and as per clause 5(iii)b of the Policy the date of offer of possession will be 4 years from the date of approval of building plan or grant of environmental clearance operative part of the clause is below:-
- VI. That the building plan got sanctioned on 15.11.2019 by which, the promised date to hand over the possession of the above mentioned flat



comes out to be 15.11.2023 but the respondent has still not handed over the flat after many repeated reminders and request by the allottees.

VII. That the conduct on the part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that the respondent never ever had any intention to deliver the said flat on time as agreed. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said flat on basis of its false and frivolous promises, which the respondent never intended to fulfill.

VIII. 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. The respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit by agreed timelines.

IX. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver his home on time agreed. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfill its promises and commitments.

X. That the cause of action accrued in favor of the complainant and against the respondent in 2019, when the complainant had booked the said flat and it further arose when respondent failed /neglected to deliver the said flat on the agreed date. The cause of action is

continuing and is still subsisting on day-to-day basis as the respondent has still not handed over the possession of the flat as agreed.

XI. That the complainant further declares that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

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

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

(i) Direct the respondent to provide the possession of the residential unit of the complainant.

(ii) Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs. 20,95,500/- towards the sale consideration paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.

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 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 his 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.



II. That the respondent had obtained the approval on the building plans from DTCP vide letter bearing memo no. ZP-1348/AD(RA)/2019/28186 dated 15.11.2019 and the environment clearance dated 06.02.2020 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 has issued a registration certificate bearing no. RC/REP/HARERA/GGM/381/113/2019/75.

III. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide his booking application form on 23.12.2019. The complainant agreed to be bound by the terms and conditions of booking application form. The complainant was aware and had admitted and accepted vide the said booking application form that they 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. 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.



IV. That on the basis of the application a draw of lot was conducted under the supervision of the concerned departments and subsequently a unit no. B-707 having a carpet area of 645.549 sq. ft. and balcony area of 104.787 sq. ft. together with one two-wheeler parking. The complainant was intimated of the said allotment vide intimation cum allotment letter dated 03.03.2020 whereby the complainant was bound to remit an amount of Rs. 5,33,129/- as per the mutually agreed payment plan on or before 18.03.2020.

V. That out of the demanded amount, the complainant only made part-payment of Rs. 1,32,000/- on 13.10.2020 and hence committed default from the very inception. The respondent strictly as per the terms of the allotment and policy, sent a demand letter dated 06.11.2020 for an amount of Rs 7,33,444/-. However only a part-payment of the said demanded amount was made by the complainant and he failed to remit the total due amount. Thereafter, the respondent was constrained to send another demand letter dated 16.12.2020 for the remaining amount. It is pertinent to mention here that despite the multiple reminders, the complainant failed to remit the due payment.

VI. That the respondent vide reminder letter dated 07.04.2021 demanded a payment of Rs 5,65,760/- inclusive of the previous arrears. The complainant again made only part-payment and failed to pay the total amount as he was liable to pay as per the payment plan and as per the terms of the Affordable Housing Policy, 2013. The respondent after giving ample of time and opportunities to the complainant and after numerous reminders to remit the due amount was constrained to issue final opportunity letter dated 19.04.2022 vide which the respondent had again reminded the complainant of the due payment of



Rs. 8,75,567/- which was to be made by the complainant. The complainant as per the said final opportunity letter was obliged to remit the total amount within 7 days from the date of the said letter.

VII. That despite the service of final opportunity letter only part-payment was made by the complainant and he still failed to make the payment of total due amount. The respondent vide reminder letter dated 25.06.2021 again reminded the complainant of the due amount of Rs 4,15,760/-. Despite the numerous reminders sent by the respondent through telephonic calls, text messages and the aforementioned reminders and letters the complainant did not pay the due amount.

VIII. The complainant was aware that as per clause 22 of the booking application form, timely payment of the installment amount was the essence of the allotment. That vide clause 24 of the booking application form 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. 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 06.05.2022 with the full and final settlement of the account against the unit no. B-707. 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 said policy and the same is valid in the eyes of law. That at the time of cancellation and vide the cancellation letter, the respondent had informed the complainant to collect the balance dues from the



respondent. The complainant has paid Rs. 12,63,500/- only out of the total sale consideration.

IX. That thereafter, the respondent in accordance with the Affordable Housing Policy, 2013, published advertisement in the Newspaper on 13.09.2022 intimating the public that the allotment of the unit in question has been cancelled. The respondent accordingly invited applications for booking of the said unit. The unit has been subsequently allotted to Mrs. Ruby Yadav and Mr. Sachin Yadav vide allotment letter dated 19.11.2022 i.e before the filing of the present baseless, false and frivolous complaint.

X. 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 provide the possession of the residential unit of the complainant.**

**(ii) Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs. 20,95,500/- towards the sale consideration paid by the complainant as sale consideration of the said flat from the date of payment till the date of delivery of possession.**

14. 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."*

15. 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 Alante, located at Sector 108, Gurugram. In response, the complainant was allotted unit bearing no. 707 on the 7th floor in tower B, with a carpet area of 645.549 sq. ft. and balcony area of 104.787 sq. ft. vide allotment letter dated 03.03.2020. 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.

16. 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.*

17. **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 15.11.2019 and 06.02.2020 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 06.02.2024. 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 06.08.2024.

18. Further, the total price of the unit was Rs. 26,32,196/- out of which the complainant has made a payment of Rs. 12,63,500 /-. The occupation certificate for the project was not received till date. The respondent further raised demand of Rs. 7,33,444/- vide letter dated 06.11.2020. Due to the complainant's failure to remit the required payment, the



respondent issued various reminders for payment dated 16.12.2020, 07.04.2021, 19.04.2022. Subsequently, due to continued non-payment of the outstanding dues by the complainant, the respondent on 06.05.2022 cancelled the unit of the complainant. Now, the question before the authority is whether this cancellation is valid or not.

19. 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”.

20. 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.

21. In the present case, it is evident that the demand for payment was raised on 06.11.2020, followed by a reminders dated 16.12.2020, 07.04.2021, 19.04.2022. Despite non-payment of outstanding dues the respondent issued publication in newspaper on 13.09.2022 (annexed at page 64 of reply). It is observed that the complainant failed to pay the remaining amount as per schedule of payment which led to issuance of notice for cancellation by the respondent/builder dated 06.05.2022.
22. It is to be noted that as per the schedule of collection of payment provided under section 5(iii)(b) of Affordable Group Housing Policy 2013, it is time linked payment plan instead of construction linked payment plan.
23. The respondent has cancelled the unit as per the provisions of the policy and is valid one. But there is nothing on record to show that the respondent has refunded the balance amount after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the policy. Therefore, the respondent is directed to refund the paid-up amount of Rs.12,63,500/- to the complainant after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the Affordable Housing Policy, 2013 along with interest at the prescribed rate i.e., 10.85% per annum as prescribed under rule 15 of the Rules, 2017 from the date of cancellation i.e., 06.05.2022 (*inadvertently in proceeding dated 31.10.2025 it was mentioned as 'from the date of each payment'*) till its actual realisation.



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

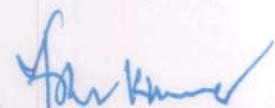
24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- The respondent is directed to refund the paid-up amount of Rs.12,63,500/- to the complainant after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the Affordable Housing Policy, 2013 along with interest at the prescribed rate i.e., 10.85% per annum as prescribed under rule 15 of the Rules, 2017 from the date of cancellation i.e., 06.05.2022 till its actual realisation.
- A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequence would follow.

25. Complaint as well as applications, if any, stands disposed off accordingly.

26. File be consigned to registry.

**HARERA**  
**GURUGRAM**



(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.10.2025