

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

Complaint no. :	3828 of 2025
Date of Filing:	06.08.2025
Date of Decision:	12.12.2025

Sanjay Kumar Singavarapu
R/O: B-601, Type 4 Flats, Faculty Residence,
GGSIIP University, Sector-16 C, Dwarka, New
Delhi-110078

Complainant

Versus

M/s Nani Resorts & Floriculture Pvt. Ltd.
Office: Building no. 80, 1st Floor, Sector-44,
Gurgaon, Haryana - 122003

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Himanshu Gautam
Sh. Garvit Gupta

Advocate 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 Alante, sector-108, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Total area	5.0 acres
4.	RERA Registered/ not registered	Registered vide no. 75 of 2019 dated 09.12.2019 Valid upto 04.03.2024
5.	License no. and validity	43 of 2019 dated 05.03.2019 valid upto 03.10.2024
	Licensee name	MRA Infrastructure Development LLP
6.	Unit no.	201, 2 nd floor, tower-D [Page 32 of complaint]
7.	Unit area admeasuring	645.74 sq. ft. of carpet area 121.536 sq. ft. of balcony area [Page 32 of complaint]
8.	Allotment letter	26.08.2021 [page no. 25 of complaint]
9.	Date of flat buyers' agreement	15.09.2021 [Page no. 28 of complaint]
10.	Approval of building plan	15.11.2019 [as per project details]
11.	Date of environment clearance	Not on records
12.	Possession clause	7. Possession of the said Flat

		7.1 ".....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. [Page 44 of complaint]
13.	Due date of possession	15.05.2024 [calculated from the date of approval of building plans including grace period of 6 months due to covid-19]
14.	Total Sale consideration	Rs.26,32,972/- [As per agreement at page 37 of complaint] Rs.28,26,663/- [as per demand letter annexed with offer of possession at page 68 of complaint]
15.	Total amount paid by allottee	Rs. 28,26,662/- [as per demand letter annexed with offer of possession at page 68 of complaint + Rs. 1,67,358/- on 01.10.2024]
16.	Occupation certificate	20.09.2024 [as per TCP website]
17.	Offer of possession (OP)	20.09.2024 (page no. 67 of complaint)
18.	Newspaper publication	15.07.2025 (page no. 79 of reply)
19.	Cancellation letter	04.08.2025 (page no. 80 of reply)

B. Facts of the complaint

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

- I. That the complainant applied for a flat in the said project vide application and made an initial payment of Rs. 1,31,649/- dated 12.03.2021.
- II. That the complainant was informed by the respondent vide intimation letter of allotment dated 23.07.2021 that he was successful in the draw of lots conducted on 23.07.2021 and a flat bearing unit no. D-201, 2nd floor, tower D, having carpet area of 645.74 sq. ft. and balcony area of 121.536 sq. ft. alongwith a two-wheeler parking site had been drawn on the name of the complainant and through the same letter the respondent further raised a demand for payment of Rs. 5,33,176/-.
- III. That on 06.08.2021 the complainant paid an amount of Rs. 5,33,177/- as demanded by the respondent and subsequently on 26.08.2021 the respondent issued the allotment letter to the complainant confirming his allotment. Further on 02.09.2021 a tripartite agreement was executed between the complainant, respondent and HDFC Ltd. for loan processing.
- IV. That on 15.09.2021 builder buyer agreement was executed between the complainant and the respondent wherein the respondent undertook to construct and deliver the flat as per the Affordable Housing Policy, 2013.
- V. That the complainant was required to make payments in accordance with the time-linked payment plan annexed as annexure-b to the builder buyer agreement. However, the respondent failed to adhere to this payment schedule and instead raised payment demands in an arbitrary and unlawful manner, often demanding amounts exceeding those specified in the plan and that too much before they were actually due.

- VI. Surprisingly, respondent raised a demand of Rs. 15,30,416/- vide demand letter dated 03.08.2021 i.e. 23 days before the allotment of the said flat. Complainant had protested this demand of builder following which respondent revised it's payment demand to Rs. 9,97,239/- which was directly disbursed on 05.10.2021.
- VII. That as per clause 7.1 of the builder buyer agreement, Promoter was to offer physical 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. Building plans were approved on 15.11.2019 and environmental clearance was granted on 06.02.2020 therefore possession was to be handed over to the complainant by 06.02.2024. But the respondent failed to hand over the same.
- VIII. That after a delay of almost 7 months vide offer letter dated 20.09.2024 respondent offered possession to the complainant and demanded the balance amount of Rs. 1,67,358/- in lieu of meter cost, BOCW charges, electrification cost, administrative charges and interest.
- IX. That the vide offer letter dated 20.09.2024, the respondent raised demands for other arbitrary and unjustified charges in the name of operational charges & IFUD (Interest Free Utility Deposit) and also imposed a condition on the complainant to implicitly enter into an Operation and Services Agreement with a third party maintenance agency namely, Home Crew Facility Services Private Limited by paying specified amounts directly to the third party to get the possession of the sad flat.

- X. That vide email dated 22.09.2024, complainant requested the respondent to provide a copy of the occupation certificate, scheduled date of possession and requested the respondent to arrange a physical inspection of the unit.
- XI. That the said email dated 22.09.2024 was neither acknowledged nor replied. The complainant tried to contact the respondent by making calls to the mobile numbers provided but to no avail.
- XII. The respondent had repeatedly failed to address the requests, concerns and grievances of the complainant and kept the complainant in dark without affording him a reasonable opportunity to satisfy himself regarding the mandatory compliances and other terms of conditions specified in the license granted by DTCP, building plans and occupation certificate.
- XIII. Although the demand of Rs. 1,67,358/- in lieu of meter cost, BOCW charges, electrification cost, administrative charges and interest were arbitrary and unlawful but still complainant fulfilled the unjustified demand of respondent and made the payment of Rs. 1,67,358/- under protest on 01.10.2024 just to get possession of the said flat.
- XIV. That instead of acknowledging receipt of payment of Rs. 1,67,358/-, the respondent vide email dated 26.11.2024 had raised an arbitrary and unjust demand for payment of Rs 1,70,284/- which was vehemently protested by the complainant.
- XV. That despite of arbitrary, irregular and unjustified demands raised by the respondent, the complainant paid an amount of Rs. 28,26,663/-, including the unjustified amount of Rs 1,67,358/- out of his personal funds and loan disbursements from HDFC Bank. All payments were

made timely and strictly in accordance with the schedule of payments as per the agreement of sale.

- XVI. That the complainant requested the respondent to share the draft of operation and serving agreement before signing it so that he may have knowledge of the contents of the said operation and serving agreement before executing it but the respondent never entertained complainant's request and never shared draft agreement.
- XVII. That vide email dated 01.12.2024, complainant had once again reminded the respondent of his earlier request regarding date and time of inspection and registration of the Unit allotted to him and reminded that the concerns regarding fulfilment of conditions of occupation certificate, access roads, fire safety, water connection, sewer connection, electricity connection etc which are basic and essential requirements for occupation were not addressed despite repeated communications. The complainant had informed that he will be constrained to take legal action if the respondent fails to complete the process of registration and handing over possession within 15 days.
- XVIII. That on 03.12.2024 the complainant raised his concerns that the invoices issued by respondent has no signature of the authorised representative of the respondent company and also showed his disappointment on not responding to concerns raised by him earlier with respect to the date and time for site inspection, sale deed execution and registration date, water connection, sewer connection, electricity connection, access road, fire safety certificate etc. which are pre-requisites for handing over the possession of any unit to the allottee of residential projects as per the terms and conditions of

license, completion and occupation certificates issued by the concerned government authorities.

- XIX. That the respondent did not bother to respond to any of the emails and the concerns raised repeatedly except one for sending duly signed receipts for all the payments made by the complainant.
- XX. That surprisingly respondent, vide its email dated 11.07.2025 had informed the complainant that his allotment stands cancelled as he had not paid IFUD charges and operation charges to the said maintenance company and in contradiction in the same email also demanded payment for IFUD charges and operational charges.
- XXI. Subsequently, vide email dated 18.07.2025, the respondent again sent a cancellation letter to the complainant, but surprisingly the cancellation letter was dated as 01.07.2025 and in email dated 05.07.2025 there was no mention of such cancellation. Moreover, the respondent also asked the complainant to pay IFUD charges and operation charges to the respondent through the same email. It is pertinent to mention here that on one hand, respondent is claiming that the allotment of the complainant has been cancelled on 01.07.2025 while on the other hand vide email dated 05.07.2025, the respondent again requested the complainant to pay IFUD charges and operational charges. The allotment was not cancelled up to 05.07.2025 and cancellation of the allotment is an afterthought of the respondent just to harass the complainant and to arm twist the complainant, to make payment of IFUD charges and operational charges to execute the Operation and Serving Agreement with the stranger maintenance agency.

- XXII. That vide email dated 04.08.2025 respondent once again sent a cancellation letter dated 04.08.2025 and claimed that the allotment of the complainant in respect to the said flat, has been cancelled with immediate effect. It is interesting to note here that it's third time respondent is cancelling allotment of the same unit. Earlier, vide emails dated 11.07.2025 and 18.07.2025 respondent claimed that complainant's allotment has been cancelled on 01.07.2025 and recently on 04.08.2025 he again claimed that the allotment off the complainant is cancelled but here with immediate effect i.e. 04.08.2025 not 01.07.2025 as claimed earlier. Thus, respondent's claims regarding cancellation are contradictory in nature and clearly shows that allotment has never been cancelled indeed and respondent has malafide intention behind sending these cancellation notice, misusing its dominant position, just to blackmail complainant and to create pressure on the complainant to accept the deficiency in services on part of the complainant and to execute agreement with maintenance agency and pay unjustified IFUD and operational charges
- XXIII. That it is evident from the above facts that the respondent had forged the cancellation letter and created a backdated cancellation letter which amounts to the criminal act of cheating and forgery. Moreover, the complainant has strictly fulfilled all his legal and financial obligations in respect to the flat in dispute and never defaulted any payment payable as per the payment plan annexed with the builder buyer agreement and and the respondent cannot cancel allotment of the complainant at this stage.

- XXIV. That the cancellation of the allotment is absolutely bad in the eyes law and is void ab initio and is therefore liable to be set aside on the following grounds.
- XXV. The complainant has already paid more than the total sale consideration to the respondent as per builder buyer agreement and never defaulted any payment.
- XXVI. That possession has already been offered to the complainant. Complainant can't be compelled to make payment and to execute an agreement with a stranger company.
- XXVII. That despite of multiple emails and letters and visits to the respondent's office and project site, it never tried to resolve the complainant's concerns and always used its dominant position to create undue pressure on complainant to accept its undue and unjustified demands..

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- (i) Declare the cancellation of the unit no. D-201 as illegal, arbitrary and void ab initio and consequently set aside the said cancellation and restore the original allotment in favor of the complainant.
- (ii) Direct the respondent to handover the physical possession of the flat in dispute to the complainant along with all the promised amenities and facilities in a duly completed and habitable condition to the satisfaction of the complainant.
- (iii) Direct the respondent to register and execute conveyance deed in favor of the complainant in respect of the said flat.

- (iv) Direct the respondent to refund the amount charged under the heads of meter costs, BOCW charges, electrification cost, administrative charges and interest.
- (v) Restrain the respondent from charging unjustified charges in the name of IFUD charges and operational charges.

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 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 Dharampur, Sector 108, Tehsil and District Gurugram, Haryana. The respondent had obtained the approval/sanction to develop a project known as 'ROF Alante' from the Director Town and Country Planning, Haryana, Chandigarh (hereinafter referred to as the 'DTCP') vide approval bearing license no. 43 of 2019 dated 05.03.2019 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-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 after scrutiny of all the relevant documents and completing its own due diligence has issued a registration certificate bearing no. RC/REP/HARERA/GGM/381/113/2019/75.

- X. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide her booking application form. 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 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 on the basis of the application a draw of lot was conducted under the supervision of the concerned departments and subsequently a unit no. D-201 having a carpet area of 645.74 sq. ft. and balcony area of 121.536 sq. ft. together with one two-wheeler parking. The complainant was intimated of the said allotment vide intimation cum allotment letter

dated 23.07.2021 whereby the complainant was bound to remit an amount of Rs. 5,33,176/- as per the mutually agreed payment plan on or before 10.08.2021. Thereafter, the respondent vide its allotment letter dated 26.08.2021 confirmed the allotment of the said allotted unit in favour of the complainant.

- XII. That subsequently, a copy of the agreement for sale was sent by the respondent to the complainant and complainant after a careful perusal of the terms contained therein the said agreement signed and executed the same. The complainant was well aware from the very inception of the terms governing the allotment and the stages of the payments to be made by the complainant and the charges to be paid by him. Thus, the parties entered into an apartment buyer's agreement on 26.08.2021.
- XIII. That the complainant was a subsequent allottee of the said unit. As per the Affordable Housing Policy, 2013, all payment demands corresponding to construction milestones already achieved prior to such subsequent allotment are rightfully payable by the subsequent allottee. Accordingly, the demands raised by the respondent were in line with the stage of construction completed before the complainant's allotment and are fully justified and in accordance with the governing policy and agreement.
- XIV. That the respondent, vide demand letter dated 03.08.2021 rightly raised a demand of Rs. 15,30,416/- towards due instalments payable by the complainant. However, the complainant, being a habitual defaulter, failed to make the payment in full and only remitted a part of the demanded amount. Consequently, the respondent was constrained to issue a subsequent demand letter dated 25.09.2021, calling upon the complainant to clear the outstanding balance of Rs. 9,97,239/-.

Complainant has always been a defaulter and has made the payments towards the said allotted unit after multiple reminders from the respondent.

- XV. That the respondent was constrained to issue numerous other demand letters and reminders to the complainant, repeatedly calling upon him to clear the outstanding instalments. Despite several opportunities and sufficient time being granted, the complainant persistently defaulted in making timely payments as per the time-linked payment plan annexed to the builder buyer agreement. The respondent, therefore, had no option but to continue issuing reminders in good faith to secure the dues legitimately payable, which the complainant failed and neglected to discharge despite being fully aware of his contractual obligations.
- XVI. That despite continuous defaults and delays on the part of the complainant in fulfilling his obligations of making timely payments, the respondent duly completed the construction of the project and applied for occupation certificate vide letter dated 12.06.2024 (Received by the competent authority on 21.06.2024) and offered possession of the allotted unit to the complainant after obtaining the occupation certificate (OC) dated 20.09.2024, vide offer of possession letter dated 20.09.2024. As per the terms of the agreement and without considering any force majeure conditions, the due date for possession would have been 06.02.2024 (calculated as four years from the date of grant of Environment Clearance). However, the outbreak of the COVID-19 pandemic constituted a force majeure event, which was duly recognized by this Hon'ble Authority. Consequently, the completion timelines for all registered projects, including that of the respondent, stood automatically extended by six months. Furthermore, due to the severe

impact of the second wave of the pandemic, the Haryana Real Estate Regulatory Authority, Panchkula, through its resolution dated 02.08.2021, granted an additional extension of three months for the period from 01.04.2021 to 30.06.2021. The Authority observed that the pandemic had adversely affected all sectors and being a natural calamity, warranted relief under Section 37 of the Real Estate (Regulation and Development) Act, 2016. It was further directed that no fee or penalty would be leviable on developers for delays arising from such force majeure circumstances. The due date (if computation of 9 months grace period is done) comes to 06.11.2024.

- XVII. That the respondent along with the stated offer of possession continued to demand further payments from the complainant and requested the complainant to comply with his obligations that formed part of the prerequisites of taking over the possession of the said allotted unit. It is pertinent to mention here that the complainant was fully aware of the terms of the agreement and had signed the same only after a careful perusal of the agreement for sale shared by the respondent. The complainant was thus well aware of the clause 12.2 of the agreement for sale as per which it was obligatory for the complainant to enter into a separate maintenance agreement with the designated maintenance agency prior to taking possession of the unit. Execution of such an agreement was a mandatory pre-condition under the terms of the agreement, ensuring proper upkeep and management of the common areas and facilities within the project.
- XVIII. That the respondent, accordingly, vide its email dated 11.01.2025, rightly demanded the dues towards IFUD and operational charges payable to the designated maintenance agency, as per the terms and

conditions of the agreement for sale. However, the complainant, instead of complying with his contractual obligations, unjustifiably refused to make the said payment on baseless and untenable grounds, despite being fully aware that such charges were mandatory and applicable to all allottees of the project. Furthermore, the said charges have been demanded by the respondent from the complainant as per the Office order dated 31.01.2024 issued by DTCP, Haryana vide which clarifications were given regarding the services for which maintenance charges/utility charges can be demanded by the developer.

- XIX. That the respondent continued to demand the said payment from the complainant and, through several telephonic communications, reminder emails, and written correspondences, duly apprised the complainant that the said charges were mandatory and directly flowed from the terms and conditions of the agreement for sale executed between the parties. The complainant was categorically informed that the payment towards IFUD and operational charges was a pre-condition for proceeding with the process of registration and possession of the allotted unit, and that failure to comply would constitute a material breach of the contractual terms. However, despite being granted repeated opportunities and sufficient time to discharge his financial obligations, the complainant deliberately failed, ignored, and neglected to make the requisite payments towards the due instalments and applicable charges. The respondent, while acting in utmost good faith and maintaining consistent communication, extended several leniencies and opportunities to the complainant to regularize his account, but the complainant's persistent non-compliance

- ultimately constrained the respondent to take action strictly in accordance with the provisions of the agreement for sale.
- XX. That the respondent continued to oblige with its contractual obligations as well as complied with the process specified in the Affordable Housing Policy, 2013. Accordingly, the respondent vide newspaper publication dated 15.07.2025 categorically stated that the unit of the complainant is falling under the list of defaulters due to non-payment of dues as per the provisions of the Affordable Housing Policy, 2013.
- XXI. That despite the respondent's multiple efforts, repeated reminders, and ample opportunities granted to the complainant to make the due payments in accordance with the terms of the agreement for sale, the complainant persistently failed and neglected to clear the outstanding dues. The respondent, acting in good faith, continued to engage with the complainant through various modes of communication and afforded him sufficient time to comply with his contractual obligations. However, the complainant's continued default and non-payment left the respondent with no other recourse but to act as per the terms of the agreement. Accordingly, the respondent was constrained to terminate the allotment of the said unit strictly in accordance with the provisions of the executed agreement for sale.
- XXII. The complainant was aware that as per clause 5(iii)(i) of the Affordable Scheme Policy, 2013, 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 04.08.2025 with the full and final

settlement of the account against the unit no. D-201. 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.

XXIII. That thereafter, the respondent in accordance with the Affordable Housing Policy, 2013, published advertisement in the newspaper on 05.08.2025 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.

XXIV. 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 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. The possession of the said allotted unit was already offered to the complainant and demands were raised strictly in compliance of the Affordable Housing Policy, 2013 without any default on part of the respondent whatsoever and on account of the delays and defaults on part of the complainant, the respondent was compelled to terminate the allotment.

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.1 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) Declare the cancellation of the unit no. D-201 as illegal, arbitrary and void ab initio and consequently set aside the said cancellation and restore the original allotment in favor of the complainant.**
 - (ii) Direct the respondent to handover the physical possession of the flat in dispute to the complainant along with all the promised amenities and facilities in a duly completed and habitable condition to the satisfaction of the complainant.**
14. In the present complaint, the complainant intends to continue with the project and is seeking possession of the unit. 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. 201 on the 2nd floor of tower D, with a carpet area of 645.74 sq. ft. and balcony area of 121.536 sq. ft. vide allotment letter dated 26.08.2021. The builder buyer agreement was executed between the parties on 15.09.2021. The said

project is the affordable group housing project and regulated as per the Affordable Group Housing Policy, 2013.

15. 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.

16. **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 on 15.11.2019 and the date of environment clearance is not on records. Therefore, the due date of possession is being calculated from the date of approval of building plan. 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 15.05.2024.
17. Further, the total price of the unit was Rs. 26,32,972/- out of which the complainant has made a payment of Rs. 26,59,304 /-. The occupation certificate for the project was received on 20.09.2024 and subsequently unit was offered for possession on 20.09.2024. Further, the demand of the respondent of Rs. 1,67,358/- was paid by the complainant on 01.10.2024 which was acknowledged by the respondent vide email dated 02.12.2024. Therefore, the complainant

paid the total amount of Rs. 28,26,662/- The respondent raised further demand of Rs. 44,232/- vide letter dated 11.01.2025 for operational charges and IFUD charges. Due to non-payment of the said charges by the complainant, the respondent on 15.07.2025 has published the name of the complainant in the list of defaulter in newspaper and vide letter dated 01.07.2025 and thereafter vide letter dated 04.08.2025 cancelled the unit of the complainant. Now, the question before the authority is whether the cancellation is valid or not.

18. 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".

19. 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.

20. In the present case, it is evident that the demand for payment was raised on 11.01.2025, followed by a cancellation letter dated 01.07.2025 and thereafter newspaper publication was issued on 15.07.2025 and thereafter respondent again issued the cancellation letter on 04.08.2025. Such conduct of the respondent is contrary to the Affordable Housing Policy and the principles governing fair procedure. The sequence of actions clearly reflects a deliberate and mala fide attempt on the part of the respondent. The respondent first issued a cancellation letter, thereafter published the alleged cancellation in the newspaper and subsequently issued another cancellation letter at a later stage.
21. This clearly demonstrates that the respondent adopted a manipulative and unfair approach in order to create an artificial record of cancellation and to justify its actions retrospectively which is not permissible under the Affordable Housing Policy and violates the principles of natural justice. Further, the record reflects that the complainant had already paid an amount of Rs. 28,26,662/- against the total sale consideration of Rs. 26,32,972/-. 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.

22. 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 buyer's agreement dated 15.09.2021 in the said project to the complainant.
- (iii) Direct the respondent to register and execute conveyance deed in favor of the complainant in respect of the said flat.**
23. 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.
24. The possession of the subject unit has already been offered to the complainant after obtaining occupation certificate on 20.09.2024. 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.
- (iv) Direct the respondent to refund the amount charged under the heads of meter costs, BOCW charges, electrification cost, administrative charges and interest.**
- (v) Restrain the respondent from charging unjustified charges in the name of IFUD charges and operational charges.**

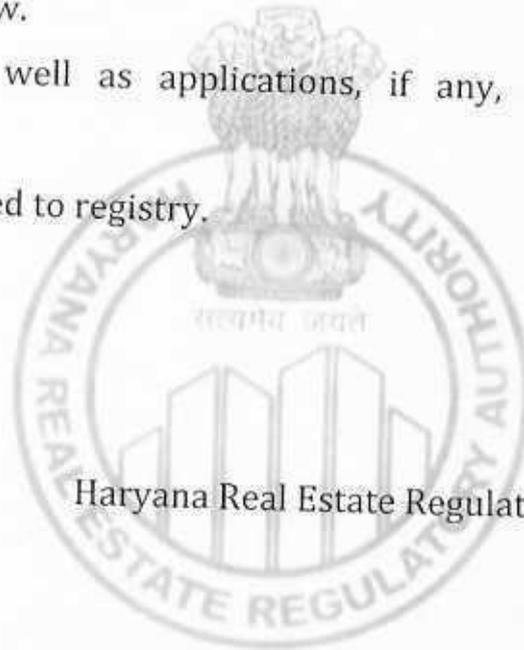
25. The complainant submitted that the respondent company has offered the possession of the allotted unit on 20.09.2024 along with statement of account the said letter contains several illegal/unreasonable demands under different heads i.e., external electrification charges, electric meter charges, BOCW charges, admin charges.
26. 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.

H. Directions of the authority

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. 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 buyer's agreement dated 15.09.2021 in the said project to the complainant.
 - iv. 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.

- v. The respondent shall not charge anything from the complainant which is not provided under Affordable Housing Policy, 2013.
 - vi. 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.
28. Complaint as well as applications, if any, stands disposed off accordingly.
29. File be consigned to registry.




(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2025