

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

Complaint no. : 4856 of 2024
Date of complaint : 09.10.2024
Date of decision : 13.01.2026

Rajesh Verma,
R/o: - W2 B-011, Wellington Estate DLF Phase 5,
Gurgaon, Haryana-122009.

Complainant

Versus

Ganga Global Homes Private Limited
Regd. Office At: 806-807, Best Sky Tower, NSP,
Pitampura, New Delhi-110034.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Shri Krishna Kukreti (Advocate)
Rahul Mangla (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottees 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Nandaka
2.	Project location	Sector-84, Gurugram, Haryana
3.	Nature of the project	Residential Complex
4.	DTCP license no. and validity status	127 of 2023 dated 16.06.2023 valid upto 15.06.2028
5.	RERA registration details	96 of 2023 dated 23.10.2023 valid upto 23.02.2028
6.	Application form	19.10.2023 [page no. 10 of the reply]
7.	Allotment letter dated	09.12.2023 [page no. 29 of the complaint]
8.	Unit no.	1092, Tower- T-1, Floor-9 th [page no. 30 of the complaint]
9.	Unit area admeasuring	3050.173 sq. ft. (super area) [page no.30 of the complaint]
10.	Date of execution of flat buyer agreement	Not executed
11.	Possession clause	N/A
12.	Due date of possession	N/A
13.	Payment Plan	Time Linked [page no. 32 of complaint]
14.	Sale consideration	Rs.4,18,46,325/- [page no. 32 of complaint]
15.	Amount paid by the complainant	Rs. 40,68,036 /- (9.72%) [As mentioned in cancellation letter dated 12.04.2024]

16.	Intimation of execution of BBA vide letter	02.03.2024 [page no. 46 of complaint]
	Intimation of execution of BBA vide email	04.03.2024 (page 25 of reply)
17.	Reminders notice for payment of pending instalments vide email	14.02.2024 (page 24 of reply)
18.	Final cancellation letter Other details mentioned in the said letter	12.04.2024 (page 41 of complaint)
	Reminder-1	13.02.2024
	Reminder-2	20.02.2024
	Pre-cancellation	29.02.2024
	Cancellation letter	16.03.2024
	Newspaper ad dated	01.04.2024
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That the respondent in the year 2023 started advertising the proposed residential project on a large scale by the name and style of “**Nandaka**”, situated in Sector 84, Gurugram, Haryana (hereinafter referred to as the “**Project**”) in various newspapers as well as vide various banners in and around the vicinity of Sector-84 Gurugram inviting the people to invest for a better future. Subsequently, the complainants got attracted towards the said marketing strategy and approached the respondent for securing their future and investing in the aforesaid mentioned project.
- II. That the complainants had considered and agreed to purchase the residential unit based on the assurances given by the respondent and accordingly an allotment letter dated 09.12.2023 (hereinafter referred

to as the “**Allotment Letter**”) was issued by the respondent to the complainants. Further, vide the said allotment letter dated 09.12.2023, the complainants were allotted a unit no. 1092 in Tower-T1 of the project admeasuring 3050 sq. ft., located on First Floor of the said unit (hereinafter referred to as the “**Unit**”) and as such, the complainants paid an booking amount of Rs. 10,00,000/- at the time of booking.

- III. It is pertinent to note that as per the clauses of the said allotment letter the complainants diligently paid the first two instalments amounting to a total amount paid to the respondent is **Rs. 40,68,036/-**. Furthermore, the complainants were obligated to pay the 3rd installment raised by the respondent after a period of 90 days from the issuance of the allotment letter, and the said allotment letter categorically states that the builder buyer agreement will be executed within a period of 30 days of issuance of this allotment letter. However, in total contravention to the terms of the allotment letter, even as of today, no builder buyer agreement has been executed between the complainants and the respondent till date.
- IV. It is further imperative to mention that the respondent even after collecting about 10 % of the total sale consideration of the unit, failed to execute the builder buyer agreement and arbitrarily according to their whims and fancies issued a demand letter for paying the third instalment which was initially decided to be paid within 90 days from the booking and after the execution of the builder buyer agreement.
- V. That at this juncture, it becomes pertinent to bring to the kind notice of the Authority that the respondent promoter in order to usurp more amount of monies from the complainants issued the above-mentioned demand letter and when the complainants denied paying the third installment, as the said demand was arbitrary & illegal, the respondent

issued a pre-cancellation letter to the complainants stating that your installment is due and payable & if this third instalment is not paid within the prescribed time we will be entitled to cancel the allotment of the unit booked by the complainants.

- VI. That despite collecting a substantial amount towards the total sale consideration of the unit, the respondent issued the third instalment which was to be paid by the complainants after entering into an BBA. It is pertinent to note that as per Section 13 of the RERA Act 2016, the respondent promoter can only charge 10% of the total sale consideration before the execution of the builder buyer agreement. However, in the present case, the respondent promoter in clear violation of the provisions of RERA Act as well as the terms of allotment letter, have raised an arbitrary & illegal demand towards sale consideration from the complainants and further went ahead with illegally cancelling the allotment of the complainants.
- VII. That the complainants were further shocked and appalled when the respondent issued the final cancellation letter dated 12.04.2024, stating that due to non-payment of the last instalment by the complainants the allotment of their booked unit has been cancelled.
- VIII. That the grievance of the complainants against the respondent promoter is that; despite receiving the 10% sale consideration of the unit, the respondent promoter have arbitrarily & illegally demanded more monies from the complainant and as such cancelled the allotment of the unit booked by the complainant. It is pertinent to note that till date, the complainants have paid a total amount of **Rs. 40,68,036/-** to the respondent promoter which is equivalent to 10% of the total sale consideration, however, no builder buyer agreement has been executed

by the respondent with the complainants. Further, the respondent has arbitrarily and as per their whims and fancies has cancelled the allotment of the unit booked by the complainants from the project.

- IX. That the complainants are a *bona fide* allottees and has made the booking on the representations and assurances given by the respondent promoter of providing timely possession of the unit. It is submitted that in addition to the grave financial losses, the respondent promoter has cheated the complainants by not executing the builder buyer agreement till date and has arbitrarily cancelled the allotment of their unit and forfeited the entire amount paid by the complainants.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to refund **Rs. 40,68,036/-** with prescribed interest to the complainants.
 - II. Direct the respondent promoter to pay a sum of Rs. 2,00,000/- to the complainants for causing mental agony and harassment.
 - III. Direct the respondent promoter to pay a sum of Rs. 3,00,000/- to the complainants towards litigation cost;
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 vide its reply dated 20.03.2025 on the following grounds: -
- i. That the present complaint filed by the complainant i.e. Sh. Rajesh Verma is not maintainable as the complainant has concealed the

material facts from the Court by stating that the complainant has not signed any agreement with the respondent. It is stated that the complainant at the time of seeking the allotment of the subject flat has signed the application form which bears the signature of the complainant being the applicant of the allotment of the flat. It is pertinent to mention here that the said factum is duly admitted by the complainant in para no. 3 of the present compliant. Wherein it has been stated that the application form has not been executed by the complainant and the respondent.

- ii. That as per the terms and conditions of said application form executed between the parties, it has been duly agreed by the complainant vide Note 4 of the application form that the complainant is required to pay the timely payment of the installment as and when sought by the respondent. It is pertinent to mention here that in the instant matter in order to mislead the Court, the complainant has not elaborated Note 4 of the application form. The Note 4 of the Application Form is reproduced herein below:-

"Timely payment of installments of Total Sale Consideration and allied charges pertaining to the Flat is the essence of the terms of the booking/allotment. However, in the event of breach of any of the terms and conditions of the allotment by the applicant, the allotment will be cancelled at the discretion of the Developer and the earnest money together with the interest on installments due / unpaid and interest on delayed payments shall stand forfeited. The Developer however, in its absolute discretion may condone the delay by charging penal interest as per the Real Estate Act".

- iii. That apart from the above it has been duly agreed by the complainant that he understands that the booking amount is not refundable in the event of withdrawal of the application, non payment of demand amount, the acceptance of the allotment, execution of the agreement

to sell or any other reasons as agreed between the parties. The said factum has been also agreed upon by the complainant as per the Clause

6. The relevant clause i.e. Clause 6 is reproduced herein below:-

"I/We understand that the Booking amount is non-refundable and in the event I/we withdraw our Application or ift/we do not accept the allotment made by the Company on my/our Application or I/we do not execute the Agreement for Sale within the time stipulated by the Company for this purpose, then my/our entire Booking Amount shall be forfeited to the Company and I/We shall be left with no right, interest, claim or lien on the said proposed Unit or its booking or otherwise on the Company in any other manner whatsoever".

- iv. Hence, from the aforesaid it is crystal clear that the forfeiture of the booking amount is valid and is not illegal. It is pertinent to mention here that it has been also agreed between the parties at the time of the application form that the agreement to sell / builder buyer agreement if not executed between the parties within 30 days from the date of communication by the company, the amount shall be forfeited by the company.
- v. That the present complaint is misleading and the complainant has concealed the factum that the complainant has not filed entire application form. It is pertinent to mention here that the allotment-in-question was the joint allotment. It is pertinent to mention here that the application was filed by the complainant and Ms. Kritika Verma. Hence, it is crystal clear from the facts that the complainant since beginning has intention to implicate the respondent in false and frivolous case as well as to mislead the Court.
- vi. That in the instant matter the list of dates and events are as under:

Dates	Events
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19.10.2023	The Complainant applied for residential flat in the group housing complex " Nandka " at Sector-84, Gurugram, Haryana.
09.12.2023	<p>Upon receipt of the application from the Complainant, the Respondent allotted unit no. 1092, in Tower no. 1 of the Nandka project. At the time of allotment, the terms and conditions alongwith the Application Form further agreed by the Complainant wherein the payment plan was also within the knowledge of the Complainant.</p> <p>The Complainant has made the earnest amount of Rs. 10,00,000/- and thereafter further paid the amount of Rs. 30,68,036/- (Rupees Thirty Lakhs Sixty-Eight Thousand and Thirty-Six Only) on 10.12.2023.</p>
20.12.2023	After the receipt of the booking amount as agreed between the parties, the complainant has signed the allotment letter.
14.02.2024	The Respondent vide e-mail dated 14.02.2024 further requested the Complainant to clear the outstanding amount but the Respondent did not paid any heed to make the payment as per the allotment letter executed between the parties.
29.02.2024	Pre cancellation letter was issued and communicated to the complainant stating all the details outstanding details.

02.03.2024 & 04.03.2024	The respondent vide letter dated 2.03.2024 and e-mail dated 04.03.2024 was sent to the Complainant for requesting for execution of builder buyer agreement despite issuance of pre cancellation notice but the complainant failed to do so.
16.03.2024	That vide e-mail dated 16.03.2024, the cancelation letter dated 16.03.2024 was communicated to the Complainant due to the non-payment of the sale consideration as mentioned in the application and the allotment letter.
23.03.2024	That vide e-mail dated 23.03.2024, the Complainant neither agreed to execute the Builder Buyer Agreement not executed the Builder Buyer Agreement as per the terms and conditions of the application form and the allotment letter executed between the Complainant and the Respondent.

5. All other averments made in the complaint were denied in toto.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

6. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it

has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. 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

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

Section 11.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

9. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1)RCR(C), 357 and followed in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount

G. Findings on the relief sought by the complainant.

G.I Direct the Respondent to Refund Rs. 40,68,036/- (Rupees Forty Lakhs Sixty-Eight Thousand and Thirty-Six Only) with prescribed interest to the Complainants.

G.II Direct the Respondent Promoter to pay a sum of Rs. 2,00,000/- (Rupees Two Lakhs Only) to the Complainants for causing mental agony and harassment.

G.III Direct the Respondent Promoter to pay a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) to the Complainants towards litigation cost

12. The complainant booked unit no. 1092 in Tower T-1 pursuant to an allotment letter dated 09.12.2023 and paid a total amount of Rs.40,68,036/-, which is approximately 10% of the total sale consideration of Rs.4,18,46,325/-. As per the terms of the allotment letter, the builder buyer agreement was to be executed within 30 days, however, despite receiving 10% of the sale consideration, the respondent failed to execute the buyer agreement. The complainant further states the respondent raised a further demand for the third instalment without executing the agreement for sale. Upon the complainant's refusal to pay the allegedly illegal demand, the respondent issued a pre-cancellation letter dated 16.03.2024 and subsequently a final cancellation letter dated 12.04.2024, cancelling the allotment. The complainant contends that the cancellation is arbitrary, illegal, and contrary to the provisions of RERA, and that the promoter has wrongfully forfeited the amount paid.
13. On the contrary, the respondent raises a preliminary objection that the complaint is not maintainable as the complainant has concealed material facts, particularly that he had signed the Application Form (along with co-applicant Ms. Kritika Verma), which contained binding terms and conditions. The respondent states that as per the Application Form, timely payment of installments was the essence of the contract, and in case of default, the company had the right to cancel the allotment and forfeit the booking amount. It is further submitted that the booking amount was expressly agreed to be non-refundable in cases of

non-payment or failure to execute the Agreement for Sale within the stipulated time.

14. The respondent further states that the complainant defaulted in making further payments despite repeated reminders dated 13.02.2024, 20.02.2024 and a pre-cancellation notice dated 29.02.2024. The respondent sent a letter dated 02.03.2024 to the complainant and had requested the complainant to execute the builder buyer agreement, but the complainant failed to do so. Consequently, the allotment of unit no. 1092 in Tower-1 of the "Nandaka" project was cancelled on 12.04.2024, and the forfeiture of Rs. 40,68,036/- was valid as per the agreed terms.
15. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainant had paid a sum of Rs.40,58,036/- against the total sale consideration of Rs. 4,18,46,325/- which constitutes merely 9.72% of the total amount. The respondent had sent a letter of intimation as well as an email requesting the complainants to execute the Buyer's Agreement. However, no document has been placed on record to show that the complainants came forward to execute the Buyer's Agreement. As per the terms and conditions of the application form executed between the parties, it has been duly agreed by the complainant vide Note 4 of the application form that the complainant is required to pay the timely payment of the installment as and when sought by the respondent. Further, as per clause 6 of the application form, it has been duly agreed by the complainant that he understands that the booking amount is not refundable in the event of withdrawal of the application, non-payment of demand amount, the acceptance of the allotment, execution of the



agreement to sell or any other reasons as agreed between the parties. While discussing earlier it has been held that the complainant was in default in making timely payments leading to cancellation of the allotted unit by the respondent as per the term and conditions of allotment. Now, the issue for consideration arises as to whether the complainant is entitled for refund of the illegal deduction of earnest amount from the respondent. It is observed that the respondent has raised various reminders letters to the complainant and as per section 19 (6) & (7) of Act of 2016, the allottees were under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. Therefore, the cancellation of the allotted unit by the respondent is valid in the eyes of law. As the complainant had paid a sum of Rs.40,58,036/- against the total sale consideration of Rs. 4,18,46,325/- which constitutes merely 9.72% of the total amount. As per regulation, 11(5) of 2018 prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) the builder can deduct the earnest money which is 10% of the slae consideration.

16. Keeping in view the aforesaid factual and legal provisions, the respondent can deduct the amount paid by the complainant against the allotted unit as the as it is both the earnest money and 10% of the consideration amount. So, the same was liable to be forfeited in terms Regulations 11(5) of 2018. However, the amount paid by the complainant i.e., 40,58,036/- against the total sale consideration of Rs. 4,18,46,325/- which constitutes less than 10% of the sale consideration. Thus, no direction to this effect.

H. Directions of the Authority:

17. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complainant is dismissed being devoid of merits.
18. Complaint stands disposed of.
19. File be consigned to the registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2026