

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

Complaint no.: 2165 of 2025
Date of decision: 29.01.2026

Veena Aggarwal and Arvind Aggarwal
R/o: ground floor, 41-I, Sector-40,
Gurugram-122001

Complainants

Versus

Nani Resorts and Floriculture Private
Limited through its Managing Director
and other Directors
Regd. Office at: Building No. 80, 1st floor,
Sector-44, Gurugram

Respondent

CORAM:

Phool Singh Saini

Member

APPEARANCE:

Sh. Gaurav Rawat (Advocate)
Sh. Garvit Gupta (Advocate)

**Complainants
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



provision of the Act or the Rules and regulations made thereunder 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:

S. No.	Heads	Information
1.	Name of the project	"ROF AALAYAS" sector- 102, Gurugram
2.	Project area	5 acres
3.	Nature of project	Affordable Group Housing
4.	DTCP License no. and validity	11 of 2014 dated 10.06.2014 valid up to 09.08.2019
5.	Name of licensee	Nani Resorts & Floriculture Pvt. Ltd.
6.	RERA registered/not registered and validity	Registered Vide no. 33 of 2019 dated 03.07.2019 Valid up to 4 years from the date of environmental clearance i.e., 05.01.2015
7.	Unit no.	D-1101, 11th floor, tower/block- D, (As per page no.31 of the complaint)
8.	Unit measuring	435.50 sq. ft (carpet area) & 54.08 sq. ft. (balcony area) (As per page no. 31 of the complaint)
9.	Date of approval of building plans	26.03.2015 (page 40 of reply)
10.	Date of grant of environment clearance	05.01.2015 (page 48 of reply)



11.	Offer of allotment letter	14.08.2015 (As per page no.26 of the complaint)
12.	Date of execution of apartment buyer's agreement	09.01.2016 (As per page no.29 of the complaint)
13.	Possession clause	<p>3. Possession</p> <p>3.1 <i>Unless a longer period is permitted by the DGTCP or in the policy and subject to the force majeure circumstances as stated in clause 16 hereof, intervention of statutory authorities, receipt of occupation certificate and timely compliance by the apartment buyer(s) of all his/her/their obligations, formalities and documentation as prescribed by the developer from time to time and not being in default under any part of this agreement, including but not limited to timely payment of instalments of the total cost and other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer possession of the said apartment to the apartment buyer(s) within 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later.....</i></p> <p>(As per page no. 35 of the complaint)</p>
14.	Due date of possession	<p>26.03.2019</p> <p>[Note: Due date of possession can be calculated by the 4 years from approval of building plans i.e., 26.03.2015, being later.]</p>
15.	Total sale consideration	<p>Rs.17,69,040/-</p> <p>(As per payment plan on page no. 57 of the complaint)</p>



16.	Total amount paid by the complainant	Rs.11,47,099/- (As mentioned in demand letter dated 29.11.2023 at page no.59 of the complaint)
17.	Occupation certificate	01.08.2019 (page 57 of reply)
18.	Offer of possession	01.08.2019 (page 60 of reply)
19.	Demand letter	29.11.2023 (As per page 59-60 of complaint)
20.	Cancellation letter [due to non-payment]	03.02.2024 (As per page 58 of complaint)
21.	Publication in newspaper	24.01.2025 (page 75 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -
- i. The respondent advertised about its new project namely 'Rof Aalayas' in Sector 102 of the Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims.
 - ii. In 2014, the respondent company issued an advertisement announcing an Affordable Group Housing Project "Rof Aalayas" at Sector- 102, District Gurugram was launched by respondent, under the license no. 11 of 2014 dated 10.06.2014, issued by DTCP, Haryana, Chandigarh, situated at Sector - 102, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the authority.



- iii. The complainants while searching for a unit was lured by such advertisements and calls from the brokers of the respondent for buying a residential unit in their project. The respondent company told the complainants about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region. The respondent handed over one brochure to the complainants which showed the project like heaven and in every possible way tried to hold the complainants and incited the complainants for payments.
- iv. Relying on various representations and assurances given by the respondent company and on belief of such assurances, allottee, booked a unit in the project by paying an amount towards the booking of the said unit bearing no. D-1101, Tower-D, 11th Floor, in Sector 102, having carpet area measuring sq. ft. 435.50 and balcony area 54.08 sq. ft. to the respondent dated 15.04.2015 and the same was acknowledged by the respondent. It is pertinent to mention here that at the time of booking the complainants was assured that project of the respondent company will be completed within 36 months and agreement will be executed within period of 2 months but same has not been executed till 2016.
- v. That respondent after delay of more than 3 months sent an intimation/allotment letter dated 22.08.2015 to the complainants confirming the booking of the unit dated 15.04.2015, allotting a unit no. D-1101, Tower-D, 11th Floor, Carpet area measuring Sq. Ft. 435.50 and balcony area 54.08 Sq. Ft.in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 17,69,040.00, which includes



when demanded and willing to pay further amount also but kindly resolve the genuine concerns of the complainants against the illegitimate demands raised and arbitrary charges which has been levied upon the complainants but no satisfactory response till date. Thereafter various reminder emails were also sent.

- x. That the arbitrary and uncalled acts of the respondents continued thereafter as well. Complainants on various occasions duly visited office of the respondent to clear out the miscommunication and to seek clarification on the demands being raised but to the misdeeds of respondents, rather than being crystal clear and showing transparency, respondent threatened complainants for the cancellation of the aforesaid flat and further for the forfeiture of the entire amount. That the said conduct of respondent was also highlighted by complainants in e-mail dated 24.12.2018. The unethical and malpractices of respondent reached its height, when respondent sent an e-mail dated 04.10.2019 to complainants thereby informing him qua the cancellation of his unit / Flat due to non-payment of the due amount and demand raised. That complainants duly responded to the said e-mail on dated 04.10.2019. Furthermore, respondent instated of replying to the emails and reminders of the complainants, kept on sending the demand letters to complainants to pay the amount. Further, levying interest at rate.
- xi. It is pertinent to mention here that after coming into force of the RERA Act,2016, builder cannot charge interest against the interest rate provided under the RERA Act,2016 and HARERA Rules framed thereafter. It is pertinent to mention here that another perplexing act of respondent is highlighted from demand letter dated 29.11.2023, which was addressed to complainants, wherein respondent raised a demand for the clearance



- basic price plus other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- vi. That after repeated reminders and follow ups with the respondent, finally on 09.01.2016, Respondent got the buyers agreement executed with the complainants i.e. almost after two years of the booking. It is pertinent to note here that complainants duly and timely made all the payments when demanded but respondent till date has failed to provide the justification for delay in execution of the agreement and charges which has been raised on account of GST and VAT.
- vii. That as per clause 3.1 of the said agreement respondents were under obligation to complete the project within 4 years from date of environment clearance or building plan approval. Hence due date of possession is 26.03.2019 from date of building plan approval i.e. 26.03.2015.
- viii. That respondent sent a demand letter in month of July,2017 to complainants raising demand of Rs.48,535.00 on account of VAT Charges, as after coming into effect of GST same is not applicable and neither legitimate. Further, levying interest at rate of 12% per annum. It is pertinent to mention here that after coming into force of the RERA Act,2016, builder cannot charge interest against the interest rate provided under the RERA Act,2016 and HARERA Rules framed thereafter. It is pertinent to mention here that complainants duly infirmed and raised the objection to said letter vide email dated 31.07.2017 and asked for the rectified demand letter but despite repeated request and reminders till date you failed to provide the same.
- ix. That complainants sent various reminders email, to the respondent company stating that complainants have already deposited the amount



of the due amount of Rs. 1,661,743.11/, which is totally unaccounted and arbitrary, on or before the due date of 29-Nov-2023. That respondent was expecting complainants to clear the entire arbitrary due amount on the date of draft of the same letter which itself is evident to showcase your malafide intention of usurping the hard-earned money of complainants.

- xii. Complainants have already deposited the amount when demanded and willing to pay further amount also but kindly resolve the genuine concerns of the complainants against the illegitimate demands raised and arbitrary charges which has been levied upon the complainants.
- xiii. That February,2024, when complainants again visited the office of the respondent it was shocking for the complainants that representatives of the respondent informed the complainants that their unit has already been stands cancelled on 03.02.2024, when complainants asked to provide the copy of the cancellation letter as they never received the same till date but same was not provided. Further to this, though there is no written communication from respondent side. It is pertinent to mention here that it was very shocking to complainants if the said unit was cancelled on 03.02.2024, but till date no refunds after valid deductions has been made nor any calculation to the refundable amount has been made. Hence, the said letter is void, illegal and needs to be quashed. Hence, the said letter is void, illegal and needs to be quashed. Furthermore, the complainants duly challenged the said cancellation letter vide reply to letter dated 20.02.2024 but till date respondent to provide any reply to notice dated 20.02.2024.
- xiv. That complainants again sent a reminder email mentioning that I fail to understand the intention and motive of not responding to me via mails and in person. I am surprised that because of your reluctant behavior and



constant delay in process you are charging interest and cancellation of unit.

- xv. During the period the complainants went to the office of respondent several times and requested them to resolve the issue and accept the amount and allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- xvi. The complainants contacted the respondent on several occasions and were regularly in touch with the respondent with regard to resolve the genuine concerns of the complainants against the illegitimate demands raised and arbitrary charges which has been levied upon the complainants. The respondent was never able to give any satisfactory response to the complainants regarding the status of the agreement, construction and were never definite about the delivery of the possession.
- xvii. The complainants kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they resolve the genuine concerns of the complainants against the illegitimate demands raised and arbitrary charges which has been levied upon the complainants and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given.
- xviii. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs.



11,47,099/-, towards the said unit against total sale consideration of Rs. 17,69,040/-.

- xix. That complainants requested to the respondent many times to resolve the genuine concerns of the complainants against the illegitimate demands raised and arbitrary charges which has been levied upon the complainants. Further, challenging the demand letters sent by the respondent. Furthermore, complainants repeatedly request the respondent to provide justification and to withdraw the demand letters and issue fresh demand letter after execution of the agreement and without illegal demands and interest charged @ 12% but respondent failed to do so till date.
- xx. That complainants after receiving the aforesaid demand on account of raised/ challenged the aforesaid demand letter on account of non-adjustment of the amount, and raising the concern/objection that on ground reality status of construction of is not the same as the demand of money raised. Furthermore, requested for the inspection of the unit as per the agreement. That thereafter complainants sent several reminders through telephone to the respondent's company but they were never able to give any satisfactory response regarding the aforesaid issues raised by the complainants.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Directing the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
 - ii. It is most respectfully prayed that this Hon'ble Authority be pleased to



- order the respondent to pay/adjust the delay possession charges from due date of possession till handing over of possession of said unit.
- iii. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondent from raising fresh demand for payment under any head.
 - iv. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the Respondent, not to create third party rights.
 - v. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondent to accept the further amount due from the complainants.
 - vi. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondent not charge any penalty/ interest from the complainants & to cooperate by providing the required documents.
 - vii. It is most respectfully prayed that this Hon'ble Authority be pleased to quash the illegal demand letter's.
 - viii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to set aside the cancellation letter 03.02.2024 and restraining the respondents from charging any penalty from complainants.
 - ix. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.

D. Reply by the respondent

5. The respondent has made the following submissions in the reply:
 - i. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has



always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects and in most of these projects large number of families have already shifted after having taken possession.

- ii. That it is submitted that the complainants are 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 their calculations have gone wrong on account of severe slump in the real estate market and the complainants now want to somehow illegally extract benefits from the respondent. Such malafide tactics of the complainants cannot be allowed to succeed.
- iii. That the respondent is the sole, absolute and lawful owner of the land parcel situated in the revenue estate of Village Dhankot, Sector 102, Tehsil and District Gurugram, Haryana. The respondent had obtained the approval/sanction to develop a project known as 'ROF Aalayas Phase -I' from the Director Town and Country Planning, Haryana, Chandigarh vide approval bearing license no. 11 of 2014 dated 10.06.2014 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.
- iv. That the complainants, after checking the veracity of the said project had applied for allotment of an apartment vide their booking application form. The complainants were 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 complainants were 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.

- v. 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-1101 having a carpet area of 435.50 sq. ft. and balcony area of 54.08 sq. ft. together with one two-wheeler parking.
- vi. That subsequently, a copy of the apartment buyer's agreement was sent by the respondent to the complainants. The complainants after a careful perusal of the terms and conditions specified in the apartment buyer's agreement signed the same. Thus, the parties entered into an apartment buyer's agreement on 09.01.2016.
- vii. That the respondent strictly as per the terms of the allotment and policy continued to send demand letters to the complainants and demanded the due payment instalments from the complainants. However, only a part-payment of the said demanded amount was made by the complainants and he failed to remit the total due amounts as raised by the respondent despite numerous reminders sent by the respondent reminding the complainants of the due payment instalments.
- viii. It is pertinent to mention herein that as per the provisions of the Affordable Housing Policy, 2013 and Clause 3.1 of the Agreement, the due date to handover the possession of the unit was 4 years from the date of receipt of the Building Plans or Environment Clearance, whichever was later. Thus, the due date to handover the possession of the unit, subject to



occurrence of the force majeure conditions and timely payment by the Complainant was 26.03.2019. The respondent has already obtained the occupation certificate for the unit in question on 01.08.2019.

- ix. That it is pertinent to mention that despite the issuance of several demand letters and reminders, the complainants have made payment of only a total sum of Rs. 11,05,650/- to the respondent towards the said allotted unit. The respondent, on the other hand, despite non-receipt of the full consideration amount from the complainants, duly completed the construction of the said project and offered possession of the said allotted unit to the complainants after obtaining the occupancy certificate for the project, vide intimation for possession letter dated 01.08.2019. It is respectfully submitted that there was no delay whatsoever on the part of the Respondent in completing the construction and offering possession of the said allotted unit. On the contrary, the complainants were in default of their contractual obligations, having failed to make timely payments as per the agreed terms.
- x. That despite repeated communications, the complainants failed to make the balance payment and take possession of the said allotted unit. The respondent was constrained to issue several demand letters and reminders calling upon the complainants to clear the outstanding dues and take possession of the unit. Such communications including but not limited to e-mails and demand letters enclosed along with the stated emails dated 18.08.2020, 12.03.2022, and 29.11.2023. However, despite the issuance of the aforesaid letters and reminders, the complainants failed to make the requisite payments towards the remaining instalments.
- xi. Therefore, the complainants are 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. It is pertinent to mention herein that at the time of cancellation and vide the cancellation letter, the respondent had informed the complainants to collect the balance dues from the respondent. It is submitted that the complainants have paid Rs. 11,05,650/- only out of the total sale consideration of Rs 18,63,652/- As per the ledger as on dated 03.11.2025, an amount of Rs. 16,89,406/- was payable by the complainants to the respondent.

- xii. That thereafter, the respondent in accordance with the Affordable Housing Policy, 2013, published advertisement in the Newspaper on 17.01.2025 and 24.01.2025 intimating the public that the allotment of the unit in question has been cancelled.
- xiii. 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 complainants 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 complainants, the respondent was compelled to terminate the allotment and re-allot the said unit after termination.

E. Jurisdiction of the Authority:

6. 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee 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 complainant at a later stage.

F. Findings on relief sought by the complainants:

F.I Directing the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.

F.II. It is most respectfully prayed that this Hon'ble Authority be pleased to order



the respondent to pay/adjust the delay possession charges from due date of possession till handing over of possession of said unit.

F.III. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondent from raising fresh demand for payment under any head.

F.IV. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the Respondent, not to create third party rights.

F.V. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondent to accept the further amount due from the complainants.

F.VI. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondent not charge any penalty/ interest from the complainants & to corporate by providing the required documents.

F.VII. It is most respectfully prayed that this Hon'ble Authority be pleased to quash the illegal demand letter's

F.VIII. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to set aside the cancellation letter 03.02.2024 and restraining the respondents from charging any penalty from complainants.

F.IX. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.

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

11. In the present complaint, the complainants intend to continue with the project and is seeking possession of the unit as per section 18(1) of the Act and the same is reproduced below for ready reference:

"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. -

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:



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

(Emphasis supplied)

12. The complainant submitted an application for participation in the draw for the allotment of apartments in the project developed by the respondent company, namely ROF Aalayas, located at Sector 102, Gurugram. In response, the complainants were allotted unit bearing no. D-1101 on the 11th floor of tower D, with a carpet area of 435.50 sq. ft. and balcony area of 54.50 sq. ft. vide allotment letter. The builder buyer agreement was executed between the parties on dated 09.01.2016. The said project is the affordable group housing project and regulated as per the Affordable Group Housing Policy, 2013.

13. 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.

14. **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 26.03.2015 and 05.01.2015 respectively. Therefore, the due date of possession is being calculated from the date of approval of building plans, being later. Therefore, the due date of possession comes out to be 26.03.2019.

15. Further, as per the agreement dated 09.01.2016 the total price of the unit was Rs. 17,69,040/- out of which the complainants have made a payment of Rs. 11,47,099 /-. The occupation certificate for the project was received on



01.08.2019 and subsequently unit was offered for possession on 01.08.2019. The respondent raised further demands vide letter dated 29.11.2023. Due to continued non-payment of the outstanding dues by the complainants, the respondent cancelled the unit of the complainants. Thereafter on 03.02.2024 respondent finally cancelled the unit of the complainants. Now, the question before the authority is whether this cancellation is valid or not.

16. 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 instalments 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 instalments 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".

17. The Authority observes that clause 5(iii)(i) of the Affordable Housing Policy, 2013 provides that if an applicant fails to remit the instalment within the prescribed time period, a reminder may be issued to the applicant, requiring payment of the outstanding instalment 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 continues to default, the allotment may be cancelled within fifteen (15) days thereafter.



18. In the present case, it is evident that the demand for payment was raised on 29.11.2023. Thereafter, respondent did not issue any reminders for payment. Subsequently, due to non-payment of outstanding dues by the complainants, the respondent cancelled the unit of the complainants on 03.02.2024 and thereafter publish a list of defaulters in newspaper on 24.01.2025. The Authority finds that the mandatory procedure prescribed under the Affordable Housing Policy, 2013 has not been duly complied with by the respondent. Notably, the requisite reminders for payment was not carried out prior to cancellation of the allotment. Further, the record reflects that the complainants had already paid an amount of Rs. 11,47,099/- against the total sale consideration of Rs. 17,69,040/-. 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 complainants.
19. **Payment of delay possession charges at prescribed rate of interest:** As delineated hereinabove, the respondent was liable to handover possession of the subject unit by 26.03.2019. The respondent has obtained the occupation certificate from competent authority on 01.08.2019 and subsequently offered the possession on 01.08.2019. The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate



prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 29.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent /promoter



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

24. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date.
25. The Authority is of considered view that there is delay on the part of the respondent/promoter to offer possession of the allotted unit to the complainants. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period.
26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 26.03.2019 till the date of offer of possession 01.08.2019 plus 2 months i.e., 01.10.2019 or actual handing over of possession, whichever is earlier at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
27. 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 09.01.2016 in the said project to the complainants.

G. Directions of the authority:

28. Hence, the Authority hereby passes this order and issue 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 letter dated 03.02.2024 is hereby set aside. The respondent is directed to re instate the allotted unit of the complainants as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainants within a period of 60 days from the date of this order.
- ii. The respondent is directed to pay delay possession charges to the complainants at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 26.03.2019 till the valid offer of possession i.e. 01.08.2019 plus two months after obtaining occupation certificate i.e. 01.10.2019 or actual handing over of possession, whichever is earlier.
- iii. The respondent is directed to hand over the possession of the allotted unit to the complainants complete in all respects as per specifications of the builder buyer agreement within a period of one month from the date of this order.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
- v. The respondent is directed to issue a revised statement of account of the allotted unit of the complainant after adjustment, if any, within a period of 30 days from the date of this order.
- vi. The respondent shall execute the conveyance deed of the allotted unit within a period of 3 months from the date of this order upon payment of stamp duty and registration charges as per applicable norms.



- vii. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement and the Affordable Housing Policy, 2013.
- viii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.
29. Complaint stands disposed of.
30. File be consigned to registry.

Dated: 29.01.2026




(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM