

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

Complaint no. : 4966 of 2023
Order pronounced on: 12.07.2024

Ruchika Sharma

R/o: House no. 635, Street no. 4, Arjun Nagar, Near om sweets, Gurugram, Haryana

Complainant

M/s SRV Automotives Pvt. Ltd.

Regd. Office: Plot no. 65, Institutional area, Sector - 44, Gurugram, Haryana

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Vanshika Chopra (Advocate)

Sh. Amarjeet (Advocate)

Complainant
Respondent

ORDER

1. The present complaint 03.11.2023 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 there under or to the allottee as per the agreement for sale executed inter se the parties.

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. No.	Heads	Information
1.	Name and location of the project	"Landmark the homes 81", Sector-81 , Gurugram
2.	Nature of the project	Residential project with commercial complex (Affordable)
3.	Project area	5 acres
4.	DTCP License	04 of 2021 dated 02.03.2021 valid till 01.03.2026
	Name of the licensee	SRV Automotives Pvt. Ltd.
5.	HRERA registered/ not registered	Registered vide no. 36 of 2021 dated 16.07.2021 valid till 28.02.2026
6.	Application dated	04.04.2022 (As per page no. 29 of complaint)
7.	Allotment letter	03.06.2022 (Page 24 of complaint)
8.	Date of execution of agreement for sale	15.07.2022 (As per page no. 27 of complaint) Registered agreement
9.	Unit no.	H- 0701 on 7 TH floor, tower H (As per page no. 29 of complaint)
10.	Super Area	398.8 sq. ft.

		(As per page no. 29 of complaint)
11.	Total consideration	Rs. 17,60,552 (As per BBA, page no. 30 of the complaint)
12.	Total amount paid by the complainant	Rs. 8,89,670/- (As per page 18 of complaint and also accepted by respondent)
13.	Possession clause	<i>(The Developer shall offer possession of the said to the allottee within a period of 4 years from the date of approval of building plans or grant of EC whichever is later)</i> Taken from another file of affordable project
14.	Date of approval of building plans	01.03.2021 (As per agreement on page 28 of complaint)
15.	Date of EC	Not available
16.	Due date of possession	01.09.2025 (01.03.2025+ 6 months) (Calculated from the date of approval of building plans + grace period of 6 months covid) Grace period is allowed
17.	Demand/Reminders	21.03.2023, 09.04.2023, 25.04.2023 (Page 29-31 of reply)
18.	Final reminder cum cancellation letter	11.05.2023 (Page 32 of reply) (Newspaper advertisement – 26.05.2023) 11.08.2023 - Cancellation letter – collect

		the money Rs. 7,97,257/-
19.	Occupation Certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint

3. That, somewhere in the year 2022 the respondent through its marketing executives had advertisement done through various medium and means approached the complainant with an offer to invest and buy a residential Unit in the proposed project of the respondent, which respondent was going to launch the project under the name and style of Landmark The Homes 81 situated at Sector-81, Gurugram. Relying upon those assurances and believing those to be true, the complainant booked a residential unit /flat No. 0701 in block / tower H, having a carpet area of 398.860 sq. ft. on 7th floor and balcony area 85.336 sq. ft. with one two wheeler parking site and the right in the common areas in the project, for a basic sale consideration of Rs.17,60,552/- @ Rs.4,200/- per sq. ft. for apartment and @ Rs.1,000/- per sq. ft. for balcony by paying the booking amount of Rs.84,350.60/- vide acknowledgment receipt dated 04.04.2022.
4. Thereafter, respondent started raising the demand of money /installments from the complainant as per the agreed timelines and complainant as on today had paid Rs.8,89,670/- which is very much evident from the receipts duly issued by the respondent to her and she is still ready and willing to pay the remaining sale consideration to the respondent subject to the timely handing over the flat.
5. That, as a confirmation of the allotment of the said unit by respondent, the respondent executed an agreement for sale dated 15th July 2022. That, as per clause - 7.1 of the agreement for sale, the respondent was required to

- handover the possession of the said unit to the complainant as provided under Rule 2(1)(f) of Rules 2017, but the respondent has arbitrarily and without raising any demand from the complainant cancelled the unit allotted to the complainant vide cancellation letter dated 11.08.2023.
6. The complainant stood shocked and astonished, when respondent issued a cancellation letter dated 11.08.2023 to the complainant, wherein it has been alleged by the respondent due to non-payment on the part of complainant, they are canceling the unit, allotted to complainant. That, the respondent issued the cancellation letter to the complainant without sending any prior demand notice or warning notice after 30.08.2022.
 7. From the perusal of the cancellation letter dated 11.08.2023 issued by the respondent itself, whereby the respondent mentions the demand as stated in letter dated 11th May, 2023 and clearing the overdue payments along with applicable interest within 15 days of the notice, it is to particularly deny any receiving of such letter dated 11th May, 2023 by the complainant. That, the respondent never issued any demand letter dated 11th May, 2023 to the complainant and shockingly, the respondent has issued the cancellation letter dated 11.08.2023, whereby the complainant never expected such cancellation letter, as the same has been issued without any prior intimation/letter/e-mail/communication, which has no sanctity in the eyes of law and is liable to be declared as null, void ab-initio and non-est in the eyes of law.
 8. She had already informed the respondent regarding the change of its address well in time by way of an E-mail dated 04.07.2022 and sent it to the respondent.
 9. That, there is no possibility that the respondent may complete the construction of the project soon in future, meaning to say that the

respondent had no intention to construct the project and even after this fact has been extorting money from the complainant luring her that her dream home will be delivered to her within the timeline as agreed.

C. Relief sought by the complainant:

- i. Direct the respondent to handover the possession of the said unit to the complainant;
- ii. Direct the respondent to restore the subject unit with immediate effect to the complainant by declaring the cancellation letter dated 11.08.2023 illegal, arbitrary, null, void ab-initio, non-est and not binding upon the complainant in any manner whatsoever;
- iii. Direct the respondent not to alienate, sell, transfer, mortgage the said unit and not to create any third-party interest or charge thereon;
- iv. Directing the respondent to waive off so called unnecessary and unwarranted holding charges;
- v. Direct the respondent to waive off so called unnecessary and unwarranted Interest charged by the respondent from the complainant, if any;
- vi. Direct the respondent to pay the delayed interest at the prescribed rate of 18% per annum on the amount of Rs.8,89,670/- which has been paid by the complainant to the respondent against the sale consideration;
- vii. Direct the respondent to pay the delay possession charges to the complainant on account of delay in delivering possession of the Unit;
- viii. Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation.

D. Reply by the respondent

The respondent has contested the complaint on the following grounds:

10. That the respondent in the year 2022 floated a project for Affordable Group Housing in the name of "Landmark The Homes 81" in village Nawada Fatehpur, Sector-81, Gurugram Manesar Urban Complex, District Gurugram (Haryana), wherein the respondent was constructing residential flat.
11. That the complainant vide application no. 39876, has applied for allotment of a residential unit in the project. In pursuance to the application, she was provisionally allotted, a residential flat type unit - 7 (1 BHK) bearing unit no H-0701 having carpet area 398.860 Sq. Ft. and balcony area 85.336 Sq. Ft along with one 2 wheeler parking for a total consideration of Rs.17,60,552/ in the project vide allotment letter dated 3rd , June, 2022.
12. Thus, it is apparent that the possession of the said flat was subject to timely payment. That subsequent thereafter a flat buyer agreement was executed and was registered on 15.07.2022 for unit nit No H-0701 having carpet area 398.860 Sq. Ft. and balcony area 85.336 Sq. Ft., on 7th floor Tower H. That As per the terms of the allotment letter and buyer's agreement, she has agreed to the payment plan and undertaken to make timely payments of the demands raised in accordance with the payment plan. It is further imperative to mention here that a perusal of the agreement to sell would also reveal that the date of the approval of the building plan was 01.03.2021 vide license no. 4 of 2021.
13. That she till date has only paid a sum of Rs. 8,89,670.60/- in 5 different tranches i.e. Rs. 84,350.60 as booking amount and thereafter deposited Rs. 8,05,320/- towards the payment of the said flat starting from 13.06.2022 till 04.10.2022. It is pertinent to mention here that post 04.10.2022 no payment was ever made by the her towards the said allotment.
14. That pursuant to the default in making payments of the demand/instalments that fell due as per the payment plan, respondent also sent various

reminders/communications calling upon the complainant to clear the outstanding instalments and to comply with the other obligations as set out therein. However, the complainant have continued to default in making the payments and have breached the terms of the allotment letter/ builder buyer agreement. That thereafter, on date 11th May 2023 respondent raised a final reminder- cum cancellation letter for demand upon the complainant to remit the overdue payments along with the applicable interest within 15 days of the date of the notice in respect of the said unit. Unfortunately, respondent neither received any reply from you nor the payments of the outstanding amounts as per the agreed payment plan. That as per the terms of the buyer's agreement/application form/allotment letter, timely payment of instalments was, inter alia, the essence of provisional allotment of the unit and respondent was entitled to cancel the allotment in the event of non-payment of instalments and/or non-compliance of other obligations. Thus, in exercise of the rights vested in the company under the terms of the Affordable Housing Policy of 2013 and other relevant provisions of the allotment letter, the respondent was constrained to issue the cancellation of the allotment of the unit, i.e., 11.08.2023

15. That despite issuance of several notices as the complainant still defaulted in making the payment, the respondent thereafter on 26.05.2023 published in the Newspaper Dainik Savera Times wherein the respondent has categorically stated the allottee code of the complainant i.e. 39876 stating that she is not depositing due despite many reminders and if she continues to default, the respondent would be constrained to cancel the said allotment.
16. That as despite numerous notices and calling the complainant to deposit the dues, the complainant neither came forward nor deposited any due, the

respondent vide letter dated 11.08.2023 cancelled the said allotment of Unit No H-0701 in our project.

17. All other averments made in the complaint were denied in toto.
18. 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 submission made by the parties.

E. Jurisdiction of the authority

19. 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

20. 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

21. The 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

22. 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 relief sought by the complainant

- i. Direct the respondent to handover the possession of the said unit to the complainant;**
- ii. Direct the respondent to restore the subject unit with immediate effect to the complainant by declaring the cancellation letter dated 11.08.2023 illegal, arbitrary, null, void ab-initio, nonest and not binding upon the complainant in any manner whatsoever;**
- iii. Direct the respondent not to alienate, sell, transfer, mortgage the said unit and not to create any third-party interest or charge thereon;**
- iv. Directing the respondent to waive off so called unnecessary and unwarranted holding charges;**
- v. Direct the respondent to waive off so called unnecessary and unwarranted Interest charged by the respondent from the complainant, if any;**
- vi. Direct the respondent to pay the delayed interest at the prescribed rate of 18% per annum on the amount of Rs.8,89,670/- which has been paid by the complainant to the respondent against the sale consideration;**
- vii. Direct the respondent to pay the delay possession charges to the complainant on account of delay in delivering possession of the Unit;**
- viii. Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation.**

23. Some of the admitted facts of the case are that vide allotment letter dated 03.06.2022, the complainant allotted a unit under the affordable housing

policy, 2013 in the project of the respondent detailed above. The complainant being successful was allotted unit bearing no. 0701, tower-H, 7TH floor admeasuring 398.8 sq. ft. by the respondent for a consideration of Rs. 17,60,552/-. It led to execution of a buyer's agreement dated 15.07.2022 between the parties containing various terms and conditions of allotment including dimensions of the unit, its price, due date of possession & payment plan etc. The complainant is seeking restoration of unit, handover of possession and delayed possession charges.

24. The respondent-builder has sent reminder letters dated 21.03.2023, 09.04.2023 and 25.04.2023 to the complainant to pay the outstanding dues as per the payment plan. But despite issuance of that reminder letters the complainant failed to make payments leading to issuance of cancellation notice dated 11.05.2023, wherein providing him 15-day's time to make payment failing which the allotted unit shall stand terminated/cancelled without further notice. While the complainant failed to comply with the reminders as well as cancellation notice.
25. Now, the issue arises before the Authority is whether the cancellation of the subject unit was made as per the provisions of the policy of 2013 or not. In the present case the complainant only paid about 50.5% of the sale consideration but he was also required to pay the amount due on the basis of payment plan as per the policy of 2013, the terms and conditions mentioned in the buyers' agreement. A public notice dated 26.05.2023 through publication in the daily newspaper of "Danik Savera Times" was made by the respondent, when the complainant failed to pay the outstanding dues despite issuance of various reminder. Subsequently, it led to the cancellation of the allotted unit as per the policy of 2013 and buyers' agreement. Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013

talks about the cancellation. The relevant part of the clause is reproduced below:-

“ 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 news-paper 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”.

26. A perusal of the facts detailed earlier, and the policy of 2013 shows that the respondent has sent demand and reminder letters dated 25.04.2023 and 11.05.2023 respectively followed by public notice in the daily newspaper on 26.05.2023. But despite that complainant failed to make payment of the outstanding dues leading to cancellation of the allotment of the said unit. Thus, it shows that the respondent followed the prescribed procedure and cancelled the unit of the complainant with adequate notices. So, the cancellation of the unit is valid as per the procedure prescribed by law.

As per clause 5(iii)(i) of the affordable housing policy, 2013 in the case of cancellation, the respondent can deduct the amount of Rs.25,000/- only from the amount paid by the complainant.

As per clause 5(iii)(b) of the Policy of 2013, the allottee/applicant is under obligation to deposit the amount of the sale consideration of the unit till allotment. However, in the present case, the agreement to sell was executed inter-se the parties on 15.07.2022, and the complainant/allottee has paid an amount of Rs.8,89,670/- which constitutes 50.5% of the sale consideration. Accordingly, the respondent/builder issued reminder letters dated

09.04.2023 and 25.04.2023 to the complainant. Thereafter, the respondent issued pre cancellation notice dated 11.05.2023 followed by cancellation notice dated 11.08.2023. The respondent has also published a list of defaulters of payments in the daily Hindi newspaper "Dainik Savera Times". The authority is of the considered view that the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation notice dated 11.08.2023 is held to be valid.

27. Thus, the respondent is directed to deduct only Rs.25,000/- as per clause 5(iii) (i) of the policy of 2013 and shall also adjust the refunded amount paid to the complainant if any and refund the balance amount within a period of 90 days along with interest on the balance amount from the date of cancellation notice i.e. 11.08.2023 till its actual realization.
28. Vide proceeding dated 24.05.2024, respondent has sated at bar that they are ready to refund the amount provided the complainant return them the original documents of the subject unit.

G. Directions of the Authority:

29. 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 respondent is directed refund the paid-up amount of Rs. Rs.8,89,670/- after deduction of Rs.25000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.95% per annum as prescribed under rule 15 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 from the date of cancellation notice i.e. 11.08.2023 till the actual realization of the amount.

- ii. The above-mentioned amount be refunded to the complainant within a period of 90 days and failing which legal consequence would follow.
- iii. The complainant is directed to return the original documents of the subject unit to the respondent within a period of 30 days.

30. The Complaint stands disposed of.

31. File be consigned to registry.

Dated: 12.07.2024


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory
Authority, Gurugram

HARERA
GURUGRAM