

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

Complaint no.: 4237 of 2023
Date of filing: 22.09.2023
Date of First Hearing: 20.12.2023
Order pronounced on: 05.03.2025

Mr. Ajit Singh

R/o: Village Gangaicha Ahir, Bikaner, Rewari,
Haryana

Complainant

Versus

SRV Automotives Pvt. Ltd.

Regd. Office: Plot no. 146, Gali no. 1, Opposite
Police Chowki, Kapashera, New Delhi- 110037

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Surender Singh Yadav and Sh. Sachin Yadav (Advocates)
Sh. Amarjeet Kumar (Advocate)

Complainant
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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Landmark The Homes", Sector- 81, Gurugram, Haryana.
2.	Project Area	5 acres
3.	Nature of the project	Residential (Affordable Housing)
4.	DTCP license no. and validity status	4 of 2021 dated 02.03.2021 valid upto 01.03.2026
5.	Name of licensee	SRV Automotives Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 36 of 2021 dated 16.07.2021 valid upto 28.02.2026
7.	Allotment letter	09.10.2021 (page 16 of reply)
8.	Date of execution of agreement for sale	06.12.2021 (page 48 of complaint)
9.	Unit no.	H-0802, 8 th floor, tower H (1 BHK) (page 51 of complaint)
10.	Unit area admeasuring (super area)	348.043 sq. ft. Carpet area 85.336 sq. ft. Balcony area (page 52 of complaint)
11.	Possession clause as per the agreement	<p><u>7.1 Schedule for possession of the said Unit/Apartmentfor Residential/Commercial</u></p> <p><i>"The Promoter agrees and understands that timely delivery of possession of the Unit/Apartment for Residential/Commercial (as the case may be) along with one 2 wheeler parking (if applicable) to the Allottee(s) and the common areas to the association of Allottees or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement.</i></p> <p><i>The Promoter assures to hand over possession of the Unit/Apartment for Residential/Commercial (as the case may be) along with one 2-wheeler parking (if applicable) as per agreed terms and conditions unless there is delay due to "force</i></p>

		<p>majeure. Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. The Parties agree that the time limits provided in this Agreement shall not apply in case of Force Majeure Events i.e., events which are beyond the control of any Party and the said time limits shall be extended by the period of the said Force Majeure Events. Such act shall mean any event which by itself or in combination with other events or circumstances could not, by the exercise of reasonable diligence or despite the adoption of reasonable precautions and/or alternative measures, have been prevented, or caused to have been prevented, and which impairs or adversely affects the Parties ability to perform its obligations....."</p> <p style="text-align: right;">(Emphasis supplied)</p>
12.	Possession clause as per Affordable Housing Policy, 2013	<p>Clause 1(iv) of the Affordable Housing Policy, 2013</p> <p>"All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licences shall not be renewed beyond the said 4 years period from the date of commencement of project."</p>
13.	Date of Environmental clearance	<p>16.11.2021 (Additional documents placed on record by the respondent)</p>
14.	Date of approval of building plans	<p>02.06.2021 (Additional documents placed on record by the respondent)</p>
15.	Due date of possession	<p>16.11.2025 (Calculated to be 4 years from the date of environmental clearance)</p>
16.	Total sale consideration	<p>Rs. 14,34,840/- (page 52 of complaint)</p>
17.	Amount paid by the complainants	<p>Rs. 7,25,188/- (Pleaded by complainant at page 7 of complaint and further substantiated by receipts at page no. 36, 41, 43 and 45 of complaint)</p>

18.	Request by the complainant for issuance of further demand letters for payment of further outstanding dues	02.03.2023, 27.03.2023, 14.08.2023 (page 79 of complaint and supplementary documents placed on record by complainant dated 04.02.2025)
19.	Demand letters	21.03.2023- Rs.1,81,150/- 09.04.2023- Rs.1,81,150/- 24.04.2023- Rs.1,81,150/- (page 46 to 48 of reply, respectively)
20.	Final reminder-cum Pre-cancellation notice	11.05.2023-Rs.1,81,150/- (page 49 of reply)
21.	Publication in newspaper	26.05.2023 (page 51 of reply)
22.	Cancellation Letter	11.08.2023 (page no. 52 of complaint)

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- a) That in August 2021 on impressive projections of the respondent and their broker, complainant had booked an apartment in a residential group housing project "Landmark the Homes 81" situated within the Revenue Estate of Village Nawada Fatehpur at Sector- 81, Gurugram.
- b) That the respondent allotted a 1 BHK unit no. H-802, in tower-H having a carpet area of 348.043 sq. ft. in the said project of the respondent vide allotment letter dated 09.10.2021.
- c) That a buyer's agreement was executed between the parties on 06.12.2021 with a promise and assurance that all the terms and conditions of the same were duly complied by the respondent without any default.
- d) That in March 2023, when the complainant had not received the demand notice or letter for the above said unit then the complainant sent an e-mail to the respondent on 27.03.2023 for issuance of demand but the respondent did not reply to the same.
- e) That thereafter the complainant visited the office of respondent and asked the official of respondent to deposit the entire remaining amount in respect of her booked unit. But the officials of respondent instead of depositing the

same had informed that they have cancelled the booking of complainant at their own and handed over the letter dated 11.08.2023.

- f) That the complainant made regularly all payments as per the payment plan that was given to the complainant except the aforesaid delay. That till date complainant has made payment of an amount of Rs. 7,25,188/- out of total amount of Rs. 14,34,840/- including parking amount to the respondent.
- g) That the terms of the agreement are completely one sided and favour only the company and the same has been formulated in a way that they can take undue advantage of their dominant position at the site where the project is being developed and harass the complainant into making payments as and when demanding.
- h) That the complainant has come to know that the respondent has cancelled the booking of complainant and re-allotted the said unit bearing no. H-802 to any other purchaser. The respondent has also committed the offence of "Criminal Breach of Trust" as they had dishonestly misappropriated the hard-earned money of the complainant by making false promises and assurances.
- i) That as per Section 12 of RERA, the respondent has provided false information on the prospectus/brochure and under the same section the complainant is entitled to get the entire amount refunded along with compensation. Further, under the provisions of Section 18 of the RERA Act, the complainant is entitled to refund of amount paid by him to the respondent along with interest.

C. Relief sought by the complainant

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

- I. Direct the respondent not to cancel the booked unit or to handover the possession of the booked unit to the complainant in their ready project. If there is any difficulty to hand over the booked unit then direct the

respondent to give any other unit in the same project on the same terms and condition.

II. Direct the respondent to compensate the complainant as per section 18 and other relevant provisions of HRERA and along with litigation charges Rs. 1,00,000/-.

5. 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 based on these undisputed documents and submissions made by the parties.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:

- a) That the Complainant vide Application no. 15053, has applied for allotment of a residential unit in "Landmark the Homes 81", situated at Sector 81, Gurugram, Haryana ("Project") being developed by the respondent i.e. SRV Automotives Pvt. Ltd. In pursuance to the application, the complainant was provisionally allotted, a residential 1BHK unit no. H-0802 on 8th Floor, having carpet area 348.043 sq. ft. and balcony area 85.336 sq. ft. vide allotment letter dated 09.10.2021.
- b) That perusal of the allotment letter dated 09.10.2021 reveals that the allotment/possession was subject to timely payment of the premium. A flat buyer agreement was executed and registered on 06.12.2021 for unit no. H-0802 having carpet area 348.043 sq. ft. and balcony area 85.336 sq. ft., on 8th floor, tower H. As per the terms of the allotment letter and buyer's agreement, the complainant agreed to the payment plan and undertook to make timely payments of the demands raised in accordance with the payment plan.
- c) That the respondent in accordance with the agreed payment plans had duly raised the demands, however the complainant has failed to make the payment towards the said demand/instalment on time and have defaulted in complying with the terms of the agreement/allotment.

- d) That the respondent in terms of the said allotment letter and buyer's agreement raised the 3rd demand letter for payment of Rs. 1,81,150/- vide demand letter dated 21.03.2023.
- e) That pursuant to the default of the complainant in making payment of the demand/instalments that fell due as per the payment plan, the 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 has continued to default in making the payments and have breached the terms of the agreement.
- f) That thereafter, on 11.05.2023, the respondent raised a final reminder 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, the respondent neither received any reply nor the payment of the outstanding amount as per the agreed payment plan.
- g) That 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. 15053 is not depositing dues despite many reminders and if the complainant continues to default, the respondent would be constrained to cancel the said allotment.
- h) That in terms of the buyer's agreement, 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, the respondent was constrained to issue the cancellation of the allotment of the unit, i.e., unit no. H - 0802 in "Landmark the Homes 81" project, situated at Sector 81, Gurugram, Haryana vide letter dated 11.08.2023.

- i) That pursuant to cancellation notice dated 11.08.2023, all the rights, title and interest in the unit stand annulled forever. The respondent thereafter was discharged of all its obligations towards you and all any instrument(s) executed in pursuance of the unit. As per the deductions (Reference to Affordable Housing Policy of 2013) in buyers' agreement / allotment letter / application form, the balance refundable amount was Rs. 6,44,305/- being offered to the complainant subject to the complainant visiting the corporate office & completing the cancellation formalities as per the Affordable Housing Policy to allow the respondent to initiate the refund process, however in vain.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.I Territorial jurisdiction

8. 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

9. 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 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.

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the 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

F.I Direct the respondent not to cancel the booked unit or to handover the possession of the booked unit to the complainant in their ready project. If there is any difficulty to hand over the booked unit then direct the respondent to give any other unit in the same project on the same terms and condition.

11. The complainant was allotted unit no. H-0802, 8th floor, tower H, in the respondent's project "Landmark the Homes 81" at total sale consideration of Rs.14,34,840/- under the Affordable Group Housing Policy 2013 on 09.10.2021. Thereafter, a builder buyer agreement was executed between the parties on 06.12.2021. The possession of the unit was to be offered within 4 years from approval of building plans (02.06.2021) or from the date of environment clearance (16.11.2021), whichever is later. The date of grant of environmental clearance being later, the due date of handing over possession comes out to be 16.11.2025. The complainant paid a sum of Rs. 7,25,188/- towards the subject unit, and the complainant is ready and willing to retain the allotted unit in question.

12. The counsel for the respondent placed on record various reminder letters dated 21.03.2023, 09.04.2023, 24.04.2023 and final reminder letter dated 11.05.2023 being sent to the complainant intimating the complainant for payment of the outstanding dues. Further, a publication of the same was also

made by the respondent in the newspaper "Dainik Savera Times" on 26.05.2023, followed by cancellation letter dated 11.08.2023. Thus, the foremost question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid or not in the eyes of law?"

13. 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 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".

14. In the present case, the buyer's agreement was executed inter-se the parties on 06.12.2021, and the complainant/allottee has paid an amount of Rs.7,25,188/- which constitutes only 51% of the sale consideration. Accordingly, the respondent /builder issued numerous reminder/demand letters dated 21.03.2023, 09.04.2023, 24.04.2023 and final reminder letter dated 11.05.2023 to the complainant for payment of outstanding dues. Thereafter, the respondent made a publication of the same in the newspaper ""Dainik Savera Times" on 26.05.2023 and finally the unit allotted to the complainant was cancelled on 11.08.2023. The authority is of the considered view that though the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013, it is important to note that the complainants had placed on record e-mails dated 02.03.2023, 27.03.2023, 14.08.2023 requesting the respondents to issue further demand

letters. The said e-mails dated 02.03.2023, 27.03.2023, 14.08.2023 are reiterated as under, respectively for ready reference:

"Sir/Mam,

This is in reference to the demand letter of H-0802. I have not received the demand letter yet by speed post neither have I received it on my mail. Received one which was not correct and have been following up with you for the same but the efforts went in vain. There's no value for the consumer. After numerous reminders nothing has been done and it's been 5 days of no response from your end. Please refer to the thread below and send the revised one asap. Either on mail or via speed post."

"Sir/Mam,

This is in reference to the numerous emails I have sent for the issue of demand notice that I have been facing from a very long time. 2bhk and 3bhk notices have been received but not the 1bhk one. There are no responses from you about this even after I made calls and also visited your office but to no avail. Has all the people who bought 1 bhk not received or it's just me? Reasons are unknown and you are not even trying to clear this up for me. This is not how you care for a customer. I need prompt responses and the reason for it otherwise I am going to contact the upper management or even RERA if you still do not respond. It's going to be a whole month of this. Very dissatisfied from the responses. Waiting for your response."

"Sir/Mam,

This is regarding my residential flat no. H-0802 in your project - Landmark The Homes 81, Sector 81, Gurugram. As per your notice it mentions that you have calls to me and have also mailed me demand notices whereas there was no intimation that I received from your end. In fact, I have emailed about the demand notices to you to which I never got a response. My friend have 2 other flats, they received one but I did not, when made a call to your office they categorically mentioned that right now is not a stage for demand notice and I will get an intimation whenever there is one. Attached are my emails sent to you. Now, after receiving your "Cancellation letter" I visited your office to get proofs of your emails to me but they denied showing me anything related to this matter. I would request you to please check your database and send me the communication proof for the same."

15. On the other hand, the Authority vide its previous orders dated 04.12.2024 and 29.01.2025 directed the respondent to place on record delivery/dispatch proof of demand letters sent to the complainant. However, during the course of hearing today i.e., on 05.03.2025, the proxy counsel for

the respondent submitted that the respondent is unable to trace any record pertaining to dispatch/delivery proof of demand letters sent to the complainant.

16. Based on the documents presented, it is evident that the respondent's actions demonstrate malafide intent as the unit allotted to the complainant was cancelled despite the complainant's clear willingness to pay and continue with the project, as evident from the complaint wherein the complainant is seeking possession of the unit allotted to him. In light of these findings, the cancellation of the allotment dated 11.08.2023 is deemed invalid and hereby quashed.

17. Thus, the Authority is of the view that the respondent is obligated to reinstate the allotment of the complainant. Furthermore, in case third-party rights have been established with respect to the said plot, the respondent is directed to allot an alternative plot of equivalent dimensions within the same project and at the original price agreed with the complainant followed by execution of builder buyer agreement between the parties. Further, the possession of the unit shall be handed over to the complainant after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.

F.II Direct the respondent to compensate the complainant as per section 18 and other relevant provisions of HRERA and along with litigation charges Rs. 1,00,000/-.

18. The complainant is seeking the above-mentioned reliefs w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by

the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

G. Directions of the Authority.

19. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the act of 2016:

- I. Cancellation of the unit allotted to the complainant is set aside. The respondent is directed to reinstate the allotment of the complainant. Furthermore, in case third-party rights have been established with respect to the said unit, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainants followed by execution of builder buyer agreement between the parties. Further, the possession of the unit shall be handed over to the complainant after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainant is obligated to take the possession within 2 months of the occupancy certificate as per Section 19 (10) of the Act, 2016.
- II. The respondent is directed to issue a revised statement of account within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues within a period of next 30 days.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the


promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

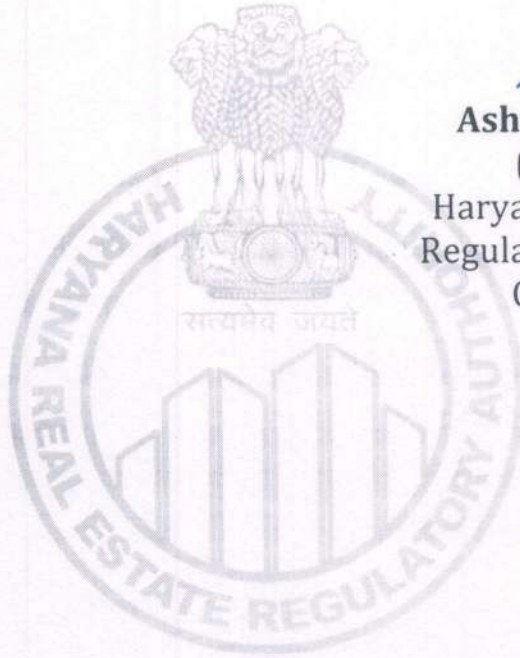
IV. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

20. Complaint stands disposed of.

21. File be consigned to registry.

Dated: 05.03.2025


Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM