

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

Complaint no.: 3499 of 2023
Date of filing: 01.08.2023
Date of First Hearing: 11.10.2023
Order pronounced on: 23.04.2025

Ms. Sunita

R/o: House no. 409, Sector- 15A, Hisar, Haryana-
125001

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:

Ms. Sonali Karwasra Joon, Advocate
Mr. Amarjeet Kumar, Advocate

Advocate for 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 81", Sector 81, Gurugram
2.	Nature of the project	Residential project with commercial complex (Affordable)
3.	Project Area	5 acres
4.	RERA registered/ not registered and validity status	Registered 36 of 2021 dated 16.07.2021 valid up to 01.03.2026
5.	DTCP license no. and validity status	04 of 2021 dated 02.3.2021 valid till 01.03.2026
6.	Name of licensee	SRV Automotives Private Limited
7.	Unit no.	C-0403, 4 th floor, tower C (Allotment letter at page 16 of complaint)
8.	Unit admeasuring	645.484 sq. ft. (carpet area) and 143.817 sq. ft. (balcony area) (Allotment letter at page 16 of complaint)
9.	Allotment-cum-demand letter	09.10.2021 (Page 16 of complaint)
10.	Date of execution of buyer's agreement	05.08.2022 (Page 17 of reply)
11.	Possession clause	7. POSSESSION OF THE UNIT FOR RESIDENTIAL/ COMMERCIAL (AS THE CASE MAY BE): "7.1 Schedule for possession of the said Unit/Apartment for Residential/Commercial 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. 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

		<p><i>unless there is delay due to "force 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....."</i></p> <p>(Emphasis Supplied)</p> <p>*Note as per affordable housing policy 2013</p> <p>"1(iv) 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 licenses shall not be renewed beyond the said 4 years period from the date of commencement of project."</p>
12.	Date of building plan	01.03.2021 (taken from another file CR/4966/2023 decided on 12.07.2024 of same project)
13.	Date of environment clearance	Not Available
14.	Due date of possession	01.09.2025 (Calculated from the date of approval of building plans along with grace period of 6 months in lieu of Covid)
15.	Total sale consideration	Rs.26,31,936/- (Allotment letter at page 16 of complaint and BBA at page 20 of reply)
16.	Amount paid by the complainant	Rs.5,35,467/- (Receipt voucher dated 25.10.2021 annexed at page 42 of reply)
17.	Demand letters sent by respondent to complainant	15.03.2022, 16.08.2022, 30.08.2022 and 16.02.2023 (Page 43, 44, 45 and 46 of reply, respectively)
18.	Publication in newspaper	25.04.2023 (Page 47 of reply)
19.	Cancellation notice	20.06.2023 (Page 20 of complaint)

20.	Occupation certificate	Not obtained
21.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions by way of complaint and written submissions dated 02.04.2025: -
- That on 09.10.2021, the complainant received an allotment-cum-demand letter issued by the respondent. The letter stated that the complainant is one of the successful allottee in the draw of lots which was conducted on 08.10.2021 and further demand of Rs.5,35,467/- was raised in the said allotment cum demand letter which was duly paid by the complainant.
 - That the complainant has made a total payment of Rs.11,14,563/- to the respondent in the following manner:
 - A sum of Rs.1,29,096/- was paid at the time of submission of the application.
 - A sum of Rs.5,35,467/- was paid vide cheque no. 410359 dated 23.10.2021 against the allotment cum demand letter dated 09.10.2021.
 - A sum of Rs.4,50,000/- was paid in cash by the complainant to the agent of the respondent for the 4-wheeler car parking.
 - That the agent of the respondent charged a sum of Rs.4,50,000/- towards the payment of 4-wheeler car parking at a future date. He further assured that he will provide the 4-wheeler designated parking with the help of the respondent to the complainant, and he also assured the complainant that the said amount would be adjusted towards the payment for the flat in case the respondent fails to provide 4-wheeler parking as promised. The complainant also requested for the invoice for payment from the agent of the respondent, however the agent of the respondent assured the complainant that the invoice would be generated only on confirmation of the said 4-wheeler parking by respondent.
 - That in 2023 after the demise of mother-in-law and continuing medical condition of the father-in-law of the complainant, the complainant requested to

forego the 4-wheeler parking and instead adjust the said amount of Rs.4,50,000/- towards the payment for the flat.

- e) That initially the agent provided assurance that they would make the necessary adjustment of the aforementioned amount in the payment of the flat. However, despite repeated requests for the adjustment and for the provision of an invoice for the payment of Rs.4,50,000/-, the agent of the respondent ceased answering the complainant and her husband's calls. The agent was representing the respondent as principal.
- f) That the respondent's actions reached a point where they neglected to proceed with the request of the complainant and her husband to share a copy of the agreement for sale, which was executed between the complainant and the respondent, which is not even registered, after duly receiving a total sum of Rs.11,14,563/- from the complainant. The respondent possesses the said agreement but failed the complainant's legitimate request to provide a copy to the complainant.
- g) That the complainant tried to communicate with the respondent and his agents and has raised all the objections about their inactivity. However, the respondent never addressed the issue raised by the complainant seriously and had always been in denial mode without ever looking in the issues.
- h) That clause 4 of the Agreement for Sale provided for the adjustment/appropriation of payments as follows:

"The Allottee authorizes the Promoter to adjust/appropriate all payments made by him/her under any head(s) of dues against lawful outstanding of the Allottee against the Unit/Apartment for Residential/Commercial (as the case may be) along with one 2 wheeler parking (if applicable), if any, in his/her name and the Allottee undertakes not to object/demand/direct the Promoter to adjust his payments in any manner."

That the said clause is one sided and unfair. However, the said clause can be read to give power to the builder to accommodate the request and adjust the amount received in lieu of parking towards the payment of flat.

- i) That regardless of all payments made by the complainant, the respondent fraudulently with malicious intent to deceive the complainant issued cancellation letter dated 20.06.2023 unilaterally without having any formal conversation with the complainant. The cancellation letter is void-ab-initio. The complainant paid a total sum of Rs.11,14,563/- and the amount which the respondent has quoted to refund is Rs.5,41,892/-. The amount mentioned in the cancellation letter is less than what the complainant has actually paid to the respondent, thus rendering the said cancellation letter void. Further, clause 9.3(iv) of the agreement is also breached as the promoter could have forfeited amount to extent of Rs.25,000/- only.
- j) That the unilateral issuance of cancellation letter by the respondent with malafide intention is because of the latest notice regarding the discontinuation of the DDJAY scheme in the Final Development Plan 2031 of Manesar Urban Complex and Faridabad. Also, the respondent failed to adhere to the prescribed procedure for cancellation process as outlined in clause 5(i) of Annexure-A of the Affordable Housing Policy 2013.
- k) That the respondent unilaterally issued cancellation letter dated 20.06.2023 falsely claiming a refundable amount of Rs.5,41,892/- to dupe the complainant despite the fact that complainant had already paid Rs.11,14,563/- to the respondent. Further, the respondent only made a assertion of creating third party rights and failed to provide any legitimate documentary evidence substantiating the alleged creation of third party rights such as transfers, bank statements, or any legally recognised proofs.
- l) That the respondent claims that the defaulter list was published in newspaper on 25.04.2023, whereas the cancellation was issued on 20.06.2023. The

cancellation letter does not mention any reference to such publication. This establishes that respondent has filed false and concocted documents before the Authority.

- m) That the respondent's calculations are in direct violation of the Affordable Housing Policy, 2013 and clause 9.3(iv) of the agreement for sale which provides for deduction of Rs.25,000/- from entire amount paid by allottee. Thus, cancellation of allotment of the complainant is ultra vires, illegal and non-est in law.

C. Relief sought by the complainant

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

- I. Pass orders setting aside the cancellation letter dated 20.06.2023 and restore the allotment of the complainant in the project of the respondent with immediate effect.
 - II. Direct the respondent to adjust the payment made towards 4-wheeler car parking in the payment towards the flat and accordingly reverse the interest on late payment imposed upon the complainant.
 - III. Direct the respondent to register builder buyer agreement with immediate effect.
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 complainant.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- a) That the respondent in the year 2021 floated a project under Affordable Group Housing scheme in the name "Landmark The Homes 81" situated at village Nawada, Fatehpur, Sector-81, Gurugram Manesar Urban Complex, Gurugram, wherein the respondent was constructing residential unit.
 - b) That the complainant vide application no. 12646, has applied for allotment of a residential unit in the project being developed by the respondent i.e. "SRV Automotives Pvt. Ltd." In pursuance to the application, the complainant was provisionally allotted, a residential unit bearing no. C - 0403 having carpet area

645.484 sq. ft. and balcony area 143.817 sq. ft. along with one 2-wheeler parking for a total consideration of Rs. 26,31,936/- vide allotment letter dated 09.10.2021.

- c) That the allotment letter dated 09.10.2021 categorically states that in order to confirm the allotment the claimant was supposed to deposit a sum of Rs. 5,35,467/- in favour of "LANDMARK THE HOMES 81 MASTER AC" on or before 24.10.2021. The allotment and possession of the said unit was subject to timely payment of the premium.
- d) That an agreement to sell was executed and registered on 05.08.2022 for unit no. C - 0403 having carpet area 645.484 sq. ft. and balcony area 143.817 sq. ft., on 4th floor, tower C. As per the terms of the allotment letter and agreement to sell, the complainant has agreed to the payment plan and undertaken to make timely payments of the demands raised in accordance with the payment plan. It is imperative to mention here that the respondent in accordance with the agreed payment plans had duly raised the demands, however the complainant has failed to make the payment(s) towards the said demand/instalment in/on time and has defaulted in complying with the terms of the agreement/allotment. It is imperative to mention here that agreement to sell was accompanied with a payment plan as "Schedule C". The respondent was supposed to complete the project within 4 years from the date of approval of building plan or environmental clearance, whichever is later. The date of the approval of the building plan was 01.03.2021 vide license no. 4 of 2021.
- e) That the complainant till date has only paid a sum of Rs. 6,64,563/- in different tranches i.e. Rs. 1,29,096 as booking amount directly to the DTCP on 13.10.2021 and thereafter deposited Rs. 5,35,467/- towards the payment of the said unit on 25.10.2021. Post 25.10.2021, no payment was ever made by the complainant towards the said allotment.

- f) That the respondent in terms of the allotment letter and agreement for sale raised the demand for payment of Rs. 3,32,467 /- vide demand letter dated 15.03.2022. However, the respondent never deposited the said amount and started defaulted in making payments. The complainant was not making any payments, the respondent was constrained to issued reminder letter dated 16.08.2022, 30.08.2022 and 16.02.2023, however despite received numerous demand letters the complainant neither paid the due amount nor approached the respondent. Thus, the respondent was constrained to cancel the unit allotted to the complainant.
- g) That as the complainant was not paying the amount due, the respondent on 11.04.2023, raised a Final Reminder/ Cum Cancellation Notice 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. The respondent neither received any reply nor the payment of the outstanding amounts as per the agreed payment plan. 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.
- h) That despite issuance of several notices as the complainant still defaulted in making the payment, the respondent thereafter on 25.04.2023 published in the newspaper "Dainik Savera Times" wherein the respondent has categorically stated the allottee code of the complainant i.e. 12646 stating that the complainant is not depositing due despite many reminders and if the

complainant continues to default, the respondent would be constrained to cancel the said allotment.

- i) That 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 20.06.2023 cancelled the said allotment of unit no. C- 0403.
- j) That the present complaint is liable to be dismissed as it is the complainant who has defaulted in making the payments resulting which the allotment was cancelled. It is further submitted that it's a legal principal "*Nullus Commodum Capere Potest De Injuria Sua Propria*" i.e. A person having done wrong cannot take advantage of his own wrong and plead bar of any law meaning thereby that the complainant himself is a defaulter and presently seeking relief before this Authority is not permissible.
- k) That as per the allotment letter as well as buyers agreement, the complainant, was under an obligation to comply with the terms of the agreement including the payment plan, however in the present case, the complainant has defaulted in making the payments as per the terms of the allotment and thus not entitled to any relief including setting aside of the cancellation letter, which in the present case is valid and subsisting.

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 Pass orders setting aside the cancellation letter dated 20.06.2023 and restore the allotment of the complainant in the project of the respondent with immediate effect.

11. The complainant was allotted unit no. C-0403, 4th floor, tower C, in the respondent's project "Landmark The Homes 81" at total sale consideration of Rs.26,31,936/- under the Affordable Group Housing Policy 2013 on 09.10.2021. However, no builder buyer agreement was executed between the parties. The possession of the unit was to be offered within 4 years from approval of building plans (01.03.2021) or from the date of environment clearance, whichever is later. The details as to grant of environmental clearance are not available and therefore, the due date is calculated from the



date of approval of building plans, which comes out to be 01.03.2025. Further, as per **HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 01.03.2025 i.e., after 25.03.2020.** Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be 01.09.2025. The complainant paid a sum of Rs.5,35,467/- towards the subject unit, and the complainant is ready and willing to retain the allotted unit in question. Further, a sum of Rs.4,50,000/- was paid in cash by the complainant to the agent of the respondent towards a 4-wheeler car parking, however, no documentary evidence is placed on record by the complainant to substantiate the said claim.

12. The complainant is always ready and willing to retain the allotted unit in question. However, the complainant has only paid a sum of Rs. 5,35,467/- on 25.10.2021 towards the unit allotted to him. The respondent vide reminder/demand letters dated 15.03.2022, 16.08.2022, 30.08.2022 and 16.02.2023 intimated the complainant for payment of the outstanding dues but she failed to adhere the same. The continuous default on part of the complainant to make payment of outstanding dues constrained the respondent to make a publication of the same in the newspaper "Dainik Savera Times" on 25.04.2023.
13. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 20.06.2023. In line with the aforesaid facts, the written submission filed by the parties and documents placed on record, the

main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"

14. 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".

15. In the present case, the agreement to sell was executed inter-se the parties on 05.08.2022, and the complainant/allottee has paid an amount of Rs.5,35,467/- which constitutes only 20.34% of the sale consideration. Accordingly, the respondent issued numerous reminder/demand letters dated 15.03.2022, 16.08.2022, 30.08.2022 and 16.02.2023 to the complainant. Thereafter, the respondent made a publication of the same in the newspaper "Dainik Savera Times" on 25.04.2023 and finally the unit was cancelled on 20.06.2023. 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 dated 20.06.2023 is held to be valid.

16. As per cancellation clause of the affordable housing policy of 2013 the respondent can deduct the amount of Rs.25000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after

deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 along with interest at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from date of cancellation of allotment i.e., 20.06.2023 till the actual realization of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 ibid.

F.II Direct the respondent to adjust the payment made towards 4-wheeler car parking in the payment towards the flat and accordingly reverse the interest on late payment imposed upon the complainant.

17. The complainant has submitted that the agent of the respondent charged a sum of Rs.4,50,000/- towards the payment of 4-wheeler car parking. The agent further assured that he will provide the 4-wheeler designated parking with the help of the respondent to the complainant, and assured the complainant that the said amount would be adjusted towards the payment for the flat in case the respondent fails to provide 4-wheeler parking as promised. However, in 2023 after the demise of complainant's mother-in-law and continuing medical condition of her father-in-law, the complainant requested the agent of the respondent to forego the 4-wheeler parking and instead adjust the said amount of Rs.4,50,000/- towards the payment for the flat. Despite repeated requests for the adjustment and for invoice of payment of Rs.4,50,000/-, the agent of the respondent ceased answering the complainant and her husband's calls.

18. The Authority is of the view that the complainant had not placed on record any documentary evidence to substantiate the fact that a payment of Rs.4,50,000/- has been made by her to the respondent. Therefore, the Authority cannot deliberate upon the said relief.

F.III Direct the respondent to register builder buyer agreement with immediate effect.

19. In view of findings of the Authority above, the aforesaid relief stands redundant and therefore, no directions to this effect are required.

G. Directions of the Authority.

20. 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:

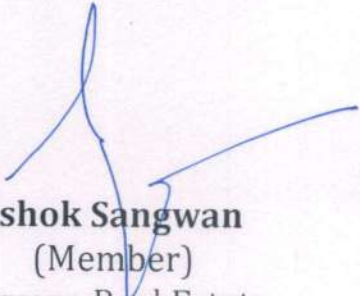
- I. The respondent is hereby directed to refund the paid-up amount of Rs.5,35,467/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 along with interest @11.10% per annum from the date of cancellation of allotment i.e., 20.06.2023 till the actual realization of the amount.
- II. 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.

21. Complaint stands disposed of.

22. File be consigned to registry.

Dated: 23.04.2025

HARERA
GURUGRAM



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority
Gurugram