

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

 Date of decision: **17.10.2025**

<b>NAME OF THE BUILDER</b>		<b>Landmark Apartments Private Limited</b>	
<b>PROJECT NAME</b>		"Landmark Cyber Park "at, Gurugram, Haryana	
<b>Sr. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>Appearance</b>
1.	CR/4430/2024	Roshni Devi, Ishwar Singh, Sanjay Verma and Renu Verma Vs. Landmark Apartment Pvt. Ltd. And Landmark Cyberpark Pvt. Ltd.	Shri Garvit Gupta, Advocate  Shri Ravinder Sharma, (AR)
2.	CR/4431/2024	Ishwar Singh Vs. Landmark Apartment Pvt. Ltd. And Landmark Cyberpark Pvt. Ltd.	Shri Garvit Gupta, Advocate  Shri Ravinder Sharma, (AR)
3.	CR/4432/2024	Ishwar Singh Vs.	Shri Garvit Gupta, Advocate

		<b>Landmark Apartment Pvt. Ltd. And Landmark Cyberpark Pvt. Ltd.</b>	<b>Shri Ravinder Sharma, (AR)</b>
4.	CR/4435/2024	<b>Ishwar Singh Vs. Landmark Apartment Pvt. Ltd. And Landmark Cyberpark Pvt. Ltd.</b>	<b>Shri Garvit Gupta, Advocate</b>
			<b>Shri Ravinder Sharma, (AR)</b>
5.	CR/4436/2024	<b>Ishwar Singh Vs. Landmark Apartment Pvt. Ltd. And Landmark Cyberpark Pvt. Ltd.</b>	<b>Shri Garvit Gupta, Advocate</b>
			<b>Shri Ravinder Sharma, (AR)</b>
6.	CR/4516/2024	<b>Roshni Devi Vs. Landmark Apartment Pvt. Ltd. And Landmark Cyberpark Pvt. Ltd.</b>	<b>Shri Garvit Gupta, Advocate</b>
			<b>Shri Ravinder Sharma, (AR)</b>
7.	CR/4521/2024	<b>Roshni Devi Vs.</b>	<b>Shri Garvit Gupta, Advocate</b>

		Landmark Apartment Pvt. Ltd. And Landmark Cyberpark Pvt. Ltd.	Shri Ravinder Sharma, (AR)
8.	CR/4522/2024	Ishwar Singh Vs. Landmark Apartment Pvt. Ltd. And Landmark Cyberpark Pvt. Ltd.	Shri Garvit Gupta, Advocate  Shri Ravinder Sharma, (AR)

**CORAM:**

Shri Arun Kumar

**Chairman**
**EX- PARTE ORDER**

1. This order shall dispose of the aforesaid 2 complaints titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Signature Global Aspire," situated at Sector-95, Gurugram being developed by the same respondent/promoter i.e., "Signature Infrabuild

Private Limited." The terms and conditions of the allotment letter, buyer's agreements and the fulcrum of the issue involved in all these cases pertain to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

<b>Project Name and Location</b>	"Landmark Cyber Park", Sector 67, Gurugram
<b>Project area</b>	8.3125 acres
<b>DTCP License No. and validity</b>	97 of 2008 dated 12.05.2008 valid up to 11.05.2020
<b>RERA Registered or Not Registered</b>	<b>Registered</b> Registered vide no. 61 of 2019 dated 25.11.2019
<b>Possession clause as per the buyer's agreement</b>	<i>3.a) That the possession of "the said Unit" will be delivered, duly completed in all respects, by the Developer/Company to the Allottee(s) (s) at the time of signing of the Builder Buyer's Agreement subject to Force Majeure circumstances and upon registration of Conveyance Deed provided all amounts due and payable by the Allottee(s) as provided herein and as per Builder Buyer's Agreement have been paid to the Company. It is, however, understood between the Parties that various Blocks comprised in the Landmark Cyber Park shall be ready and completed in phases and handed over to the Allottee(s) accordingly. Irrespective of whether construction of other phase(s) is complete or not, developer will offer possession of the Unit after completion of construction of phase, wherein the Unit situates.</i>
<b>Due date of possession</b>	<b>21.08.2017</b>

<b>Occupation certificate</b>					(Calculated as per the possession clause) <b>26.12.2018</b>				
-------------------------------	--	--	--	--	--	--	--	--	--

S N o	Parti cular s	CR/443 0/2024	CR/4431 /2024	CR/4432 /2024	CR/4435/ 2024	CR/4436/ 2024	CR/4516 /2024	CR/4521 /2024	CR/4522 /2024
1	Com plaint filed on	13.09.20 25	13.09.20 25	13.09.20 25	13.09.2025	13.09.2025	13.09.202 5	13.09.202 5	13.09.202 5
2	Applic ation filed on	16.05.20 25	16.05.20 25	16.05.20 25	16.05.2025	16.05.2025	16.05.202 5	16.05.202 5	16.05.202 5
3	Date of MOU / BBA	21.08.20 17	21.08.20 17	21.08.20 17	21.08.2017	21.08.2017	21.08.201 7	21.08.201 7	21.08.201 7
4	Unit No. & Size	44-A (GF), 2173 sq.ft (Super)	17 (GF), 940 sq.ft	42 (GF), 1295 sq.ft	41 (GF), 2220 sq.ft	18 (GF), 940 sq.ft	43-B (GF), 680 sq.ft	43-A (GF), 618 sq.ft	12-A (GF), 1245 sq.ft
5	Due date of posse ssion	21.08.20 17	21.08.20 17	21.08.20 17	25.08.2017	21.08.2017	21.08.201 7	21.08.201 7	21.08.201 7
6	Total sale consi derati on	₹1,03,04, 366/-	₹44,57,4 80/-	₹61,40,8 90/-	₹1,05,27,2 40/-	₹44,57,480 /-	₹32,24,56 0/-	₹29,30,55 6/-	₹59,03,79 0/-
7	Total amou nt paid	Equity shares: 1,06,230 @ ₹97	Equity shares: 45,953 @ ₹97	Equity shares: 63,308 @ ₹97	1,08,528 shares	Equity shares: 45,953 @ ₹97	Equity shares: 33,243 @ ₹97	Equity shares: 30,212 @ ₹97	Equity shares: 60,863 @ ₹97
8	Occup ation certifi cate	Obtained on 26.12.20 18	Obtained on 26.12.20 18	Obtained on 26.12.20 18	Obtained on 26.12.2018	Obtained on 26.12.2018	Obtained on 26.12.201 8	Obtained on 26.12.201 8	Obtained on 26.12.201 8

4. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/4430/2024 titled as "Roshini Devi Ishwar Singh Sanjay verma and Renu Verma Vs. Landmark Apartments Private Limited & Landmark Cyberpark Private Limited"** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

**A. Project and unit related details**

5. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/4430/2024 - "Roshini Devi Ishwar Singh Sanjay Verma and Renu Verma Vs. Landmark Apartments Private Limited & Landmark Cyberpark Private Limited"**

S. N.	Particulars	Details
1.	Name of the project	Landmark Cyber Park, Sector 67, Gurugram
2.	Total project area	8.3125 acres
3.	Nature of the project	Cyber Park
4.	DTCP license no. and validity status	97 of 2008 dated 12.05.2008 valid up to 11.05.2020
5.	Name of licensee	M/s Landmark Apartments Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 61 of 2019 dated 25.11.2019
7.	Unit no.	44-A, Ground Floor (page 34 of complaint)
8.	Unit area ad measuring (Super area)	2173 sq.ft (super area) (page 35 of complaint)

9.	Builder buyer's agreement	21.08.2017 21.08.2017  (Page 32 of complaint)
10.	Possession clause	1. a) <i>That the possession of "the said Unit" will be delivered, duly completed in all respects, by the Developer/Company to the Allottee(s) (s) at the time of signing of the Builder Buyer's Agreement subject to Force Majeure circumstances and upon registration of Conveyance Deed provided all amounts due and payable by the Allottee(s) as provided herein and as per Builder Buyer's Agreement have been paid to the Company. It is, however, understood between the Parties that various Blocks comprised in the Landmark Cyber Park shall be ready and completed in phases and handed over to the Allottee(s) accordingly. Irrespective of whether construction of other phase(s) is complete or not, developer will offer possession of the Unit after completion of construction of phase, wherein the Unit situates.</i>  (page 36 of complaint)
11.	Reminder notice	14.04.2022, 05.12.2022, 05.01.2023, 05.12.2023, 05.01.2024, 05.06.2024,  (page 50-55 of complaint)
12.	Due date of possession	21.08.2017  [Calculated as per possession clause]
13.	Total consideration	Rs. 1,03,04,366/-  (Page 35 of complaint)
14.	Amount paid by the complainant	Rs. As equity shares to the extent of 106230 at the present rate of Rs. 97/-

		(Page 35 of complaint)
15.	Occupation certificate	26.12.2018  (Page 12 of application filed by respondent)

### **B. Facts of the complaint**

6. The complainant has made following submissions in the complaint:

- That respondent no.1 offered for sale units in a information and technology park known as 'Landmark Cyber Park' which claimed to comprise of commercial units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector 67, Gurugram, Haryana. The respondent no.1 also claimed that the DTCP, Haryana had granted license on a land area of about 8.3125 acres in Badshahpur, Sector 67, Tehsil and District Gurugram to its associates companies for development of a Commercial Colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
- That the complainants received a marketing call from the office of respondent no.1 in the month of april, 2017 for booking in the said project of respondent no.1. The complainants had also been attracted towards the aforesaid project on account of publicity given by the respondent no.1 through various means like various brochures, posters, advertisements etc. The complainants visited the sales gallery and consulted with the marketing staff of the respondent no.1. the marketing staff of the respondent no.1 painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent no.1 in their project. The

marketing staff of the respondent no.1 also assured timely delivery of the unit.

- c) That the complainants, induced by the assurances and representations made by the respondent no.1, decided to book a unit in the project of the respondent no.1 as the complainants required the same in a time bound manner for their own use. This fact was also specifically brought to the knowledge of the officials of the respondent no.1 who confirmed that the possession of the unit to be allotted to the complainants would be positively handed over within the agreed time frame. It is pertinent to mention here that the respondent no.1 also shared a layout plan of the ground floor at the time of the booking.
- d) That accordingly, a copy of the builder buyer's agreement was sent to the complainants. Vide the said Agreement, respondent no.1 allotted, unit bearing no. 44-a admeasuring 2173 sq.ft of super area on ground floor of the project in question. It was agreed that the basic sale price of the unit including EDC/IDW and PLC for allotment of the said unit would be Rs. 4742/- per sq.ft. of super area. The complainants expressed their objections to the arbitrary and unilateral clauses of the apartment buyer's agreement to the respondent no.1. although the respondent no.1 had categorically assured the complainants that the terms of the agreement would be balanced, the agreement which was shared was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favouring the respondent no.1 and was totally against the interest of the purchaser, including the complainants herein.
- e) The respondent no.1 was in a completely dominant position and wanted to deliberately exploit the same at the cost of the innocent purchasers including the complainants is evident from clause 3(e) of the agreement. It

is submitted that the respondent no.1 had given itself an absolute liberty to charge and demand penalty charges @ Rs. 15/- per sq.ft. per month for the said unit in case, the complainants fail to take the possession of the unit. However, respondent no.1 very conveniently omitted the provision in the agreement with respect to the penal consequences which respondent no.1 would be bound by if it fails to offer the possession of the said unit to the complainants within the time period as promised in the agreement.

- f) The above stated provisions of the builder buyer's agreement besides other similar one-sided provisions were on the face of it were highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The legislature has promulgated the Real Estate (Regulation and Development) Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement and the abuse of dominant position is all pervasive in the terms and conditions of the builder buyer's agreement executed by the respondent no.1 vide various clauses imposing all the liabilities on the complainant, while conveniently relieving itself from all obligations on its part.
- g) That the complainants made vocal their objections to the arbitrary and unilateral clauses of the builder buyer's agreement to the respondent no.1. The respondent no.1 categorically assured the complainants that they need not worry and that the respondent no.1 would strictly adhere to the timeline, terms of the allotment and the provisions laid down by Real Estate Regulation and Development) Act, 2016. The complainants were left with no other option but to accept the lopsided and one-sided terms of

the buyer buyer's agreement. The complainants felt trapped and had no other option but to sign the dotted lines. Hence the builder buyer agreement dated 21.08.2017 was executed . As per the calculation provided by respondent no.1 itself, the basic sale consideration of the unit was Rs. 1,03,04,366/- . The said amount was paid by the complainants in the form of adjustment towards their 106230 Equity shares of face value of Rs. 10/- of SRV Automotives Private Limited valued at the present rate of Rs. 97/- per share, vide clause 3(a) of the said agreement, the respondent no.1 confirmed and acknowledged the receipt of the adjustment of the said shares with the sale consideration of the unit in question. stood allotted to the original allottees, and later to the complainant. Vide clause 2(a) of the said agreement, it was specifically stated that the carpet area of the unit was demarcated in the layout plan attached along with the agreement which mentioned the unit no. and the location of the unit.

- h) That it is pertinent to mention here that despite having made the buyer's agreement dated 21.08.2017 containing terms very much favorable as per the wishes of the respondent no.1, still respondent no.1 miserably failed to abide by its obligations thereunder. The respondent no.1 has even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the said unit within the promised time frame to the complainants, which has been delayed for an extremely long period of time. The failure of the respondent no.1 and the fraud played by it is writ large.
- i) That as per clause 3(a) of the agreement, the possession of the unit was to be handed over by the respondent no.1 at the time of signing of the agreement. Since the builder buyer's agreement was executed between the

complainants and respondent no.1 on 21.08.2017, the due date to handover the possession of the unit in question was 21.08.2017.

- j) That it is pertinent to mention herein that the possession of the unit was to be given to the complainants in a bare shell condition. furthermore, as per clause 3(d) of the agreement, respondent no.1 was to provide connections to utility services, including services relating to the supply of electricity and air conditioning till one point in the said unit after paying the connection charges. furthermore, respondent no.1 was to provide necessary assistance to the complainants for fit outs by way of supplying electricity and water.
- k) That at the same time, it is important to mention herein that it was the obligation of the respondent no.1 to either itself or through any agency nominated by it to maintain common areas of the said project and to provide common facilities in the project including but not limited to electricity, power backup, maintenance and operation of lifts, water, firefighting, air conditioning, insurance, cleanliness. Thus, it is clear that the obligation of respondent no.1 was not only to handover the physical possession of the unit in a habitable condition but also provide common facilities as detailed by it in the builder buyer's agreement.
- l) That the Complainants vide several telephonic conversations requested the respondent no.1 to handover the possession of the said unit to them. The respondent no.1 categorically assured the Complainants that the possession would be handed over them soon as the construction was almost complete. It is reasserted that the Complainants have made complete payment to Respondent no.1 towards the sale consideration of the unit in question.

- m) That it was informed by respondent no.1 to the complainants that on account of certain alleged events there was a delay on its part in offering the possession of the unit. It was informed that the respondent no.1 would complete the project expeditiously and would deliver the possession of the unit as early as possible. Since, the complainants had already parted with the complete amount, they had no other choice but to believe the representations of the respondent no.1. However, it was assured by the respondent no.1 that the respondent no.1 would make payment towards the interest amount at the time of offer of possession.
- n) That since the time period to handover the possession stated by the respondent no.1 in the buyer's agreement had lapsed, the complainants requested the respondent no.1 telephonically, and by visiting the office of the respondent no.1 to update them about the date of handing over of the possession. The representatives of the respondent no.1 assured the complainants that the possession of the unit would be handed over to them very shortly as the construction was almost over. The respondent has continuously been misleading the allottees including the complainants by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainants. The respondent no.1 had represented and warranted at the time of booking that it would deliver the unit of the complainants to them in a timely manner. However, the failure of the respondent no.1 company has resulted in serious consequences being borne by the complainants.
- o) That there has been virtually no progress and the construction activity are lying suspended since long. However, despite continuous default on its part, respondent no.1 in collusion with respondent no. 2 started sending payment demands for the unit in question wherein respondent no.2

started demanding payment towards the holding charges and maintenance charges from the complainants for the unit in question. aggrieved by the unilateral and wrongful act of respondent no.2, the complainants met the respondents and informed them that as per the terms of the agreement, the maintenance charges cannot be demanded from the complainants. It is pertinent to mention herein that as per clause 4(d) of the agreement, the payment of monthly common area maintenance charges shall commence only from the date the allottee(s) takes possession of the unit.

- p) Even otherwise, it is humbly submitted that as on date, the possession has not been offered to the complainants and the question of making any payment by the complainants towards maintenance charges, without being offered the possession and eventually, the possession being taken over by the complainants does not even arise. Hence, the said demands have been raised in complete contradiction to the terms of the agreement.
- q) That the complainants visited the project site to inspect the unit in question and were surprised to learn that the unit of the complainants were not in a habitable position and majority of the civil work including partition, glass work, floor work was pending. It became evident that the maintenance charges as demanded by the respondent no.2 in collusion with respondent no.1 did not even correspond with the actual reality at the work site. Since the respondents failed to pay any heed to the genuine concerns of the complainants, they were constrained to send several letters dated 13.08.2022, 04.01.2023, 12.01.2023, 21.02.2023, 29.05.2023, 08.09.2023, 13.12.2023, 10.01.2024, 09.02.2024, 08.03.2024, 10.06.2024 to respondent no.1 informing it about its illegalities committed by the respondents. The complainants reiterated that there was no ground

or locus available with the respondents to have demanded maintenance and holding charges. The contents of the said letters be read as part and parcel of the present complaint in order to avoid unnecessary repetition and for the sake of brevity.

- r) That furthermore, even if for the sake of arguments, it is assumed that clause 4(d) of the agreement is not applicable, it is a settled law that the maintenance charges can only be demanded from the date when the possession is taken by the allottee. The said view has been reiterated by several courts including Hon'ble Supreme Court of India. The said aspect of law has been detailed and explained by this Authority in case titled 'Varun Gupta vs Emaar MGF Land Limited'.
- s) That it is clear that from the very inception, the respondents have misused and converted to its own use the huge hard earned amounts received from the complainants and other buyers in the project in a totally illegal and unprofessional manner and the respondent no.1 was least bothered about the timely finishing of the project and offering of possession of the unit in question to the complainants as per the terms of the builder buyer's agreement. The complainants have been duped of their hard earned money paid to the respondent no.1 regarding the unit in question. The complainants have been running from pillar to post and have been mentally and financially harassed by the conduct of the respondents.
- t) That it is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. Despite making full payment, the respondent no.1 has failed to adhere to the terms and conditions of the builder buyer agreement and the promises, assurances and representations which it made to the complainants at the time of the booking.

- u) That the complainants were shocked to receive letter dated 28.06.2024 from respondent no.1 wherein the respondent informed the complainants that on account of non-payment of dues, respondent no.1 had decided to confiscate the area of the unit allotted to the complainants. The contents of the said letter dated 28.06.2024 are completely illegal and are denied in toto by the complainants. Respondent no.1 had no locus standi to issue confiscation letter on the basis of payment demands sent by respondent no.2. The Complainants on receipt of the said letter dated 28.06.2024 protested against the same and vide their letter dated 03.07.2024 and informed the respondent no.1 that the said act of respondent no.1 in confiscating the area allotted to the complainants were illegal and uncalled for. It is pertinent to mention herein that no illegality has been committed by the complainants in adhering to their contractual obligations. The payment demands by respondent no.2 on the basis of which confiscation is stated to be done were illegal and contrary to the terms of the agreement and despite specific objections by the complainants, no efforts were made to set the same aside. Furthermore, it is very important to mention herein that the cancellation/confiscation done by respondent no.1 is in violation of section 11(5) of the RERA Act, 2016. As per section 11(5) of the said act, a cancellation can be done by a promoter only in accordance with the terms of the agreement for sale.
- v) That it is pertinent to mention herein that as per Clause 4(j) of the agreement, it was decided that even if maintenance charges are not paid by the complainants, then in such event, only the services of the unit could be disconnected.
- w) The complainants visited the project site in July, 2024 and were shocked to see that no construction activity is currently going on there. The

respondents have been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainants. The photographs clicked by the complainants of the unit in question are self-speaking and it is clear that the unit of the Complainants are not at all in a habitable condition.

- x) That due to the fault of the respondents, the complainants have been deprived of a unit for a long time and have suffered very badly. The respondents have continuously been misleading the complainants by giving incorrect information and assurances that it would hand over the possession to the complainants very soon. The respondent no.1 is enjoying the valuable amount of consideration paid by the complainants out of their hard-earned money and the complainants realizing the same, demanded the allotment to be restored and possession to be handed over. But a week ago, the respondent no.1 has in complete defiance of its obligations refused to do the same leaving them with no other option but to file the present complaint. The complainants have been informed that respondent would soon re-allot the unit to a third party and the complainants have also filed an application under section 36 of the RERA Act, 2016 seeking interim relief of stay on creating third party rights of the area confiscated by respondent no.1 pertaining to the unit in question.
- y) That it is submitted that the project is an ongoing project and hence falls under the first proviso to section 3(1) of RERA 2016. The complainants believe that no occupation and completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of this Authority.

z) That it is pertinent to mention herein that the registration certificate of the project in question has already lapsed and the respondents have even failed to get renewed the registration of the project in question with this Authority and has acted in violation of section 3 of the Real Estate (Regulation and Development) Act, 2016. The respondents are liable to be punished under section 59 of the Real Estate (Regulation and Development) Act, 2016 for non-registration of the project under Section 3 of the Real Estate (Regulation and Development) Act, 2016.

aa) That the cause of action for the present complaint is recurring one on account of the failure of the respondent no.1 to perform its obligations. The cause of action arose when the respondent no.1 failed to complete the construction within the time limit prescribed, offer possession and rather confiscated the unit onwards and finally about a week ago, when the respondents refused to revoke the confiscation letter, handover the possession and make payment towards the delayed possession charges.

#### **C. Relief sought by the complainant**

7. The complainant has sought the following relief(s):

- I. Interest for every month of delay at Prevailing rate of interest from 21.08.2017 till actual handing of the possession.
- II. To set aside confiscation letter dated 28.06.2024 issued by Respondent no.1
- III. To handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities.
- IV. To execute the Conveyance deed of the allotted unit in favour of the Complainant.
- V. To direct the Respondents not to charge Maintenance charges from the Complainants till the possession of the unit is handed over to the Complainant.

- VI. To direct the Respondents to waive the maintenance charges and the interest accrued over it.
- VII. To direct the Respondents not to demand holding charges from the Complainants being violative of the provisions laid down by law.
- VIII. To not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the Agreement.
- IX. Pass an order imposing penalty on the respondents on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the Complainant.

8. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.
9. The present complaint was filed on 13.09.2024. The counsel for the respondent appeared and filed the application for dismissal of complaint only. Despite multiple opportunities for filing reply on 18.04.2025, 16.05.2025, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority proceeds with the case ex-parte. The Application for dismissal of complaint is taken on record.
  - a. The complainant herein in the year 2020, being in search of an apartment learned about the affordable housing project titled as 'Signature Global Aspire' at Sector 95, Gurugram being developed by the Respondent in terms of the affordable housing policy and the same was advertised in 2019 and the environmental clearance for the project in question was also granted by the concerned authorities on 20.12.2019.
  - b. That the present complaint has been filed in respect of unit no. 44-a, admeasuring 2173 sq. ft., situated in the project known as "Landmark Cyber Park".

- c. That, before this authority proceeds into the merits of the complaint, the applicant deems it necessary to bring to light a preliminary issue which goes to the root of maintainability. The complainant had entered into a builder buyer agreement in august 2017 in relation to the allotment of unit no. 44A, admeasuring 2173 sq. ft. However, no monetary consideration was paid by the complainant. Instead, the allotment was made through adjustment against equity shares held by the complainant in the company namely SRV Automotives Private Limited
- d. That the applicant has duly completed construction of the project in the year 2015, and the occupancy certificate was received on 26.12.2018. Despite this, the complainant failed to take possession of the allotted unit or comply with the obligations under the bba.
- e. That despite being fully aware of the issuance of the oc, the complainant failed to take possession of the unit and has also defaulted in payment of maintenance charges and other dues payable in accordance with the terms of the bba. That several reminders and communications were issued to the complainant, including notices to take possession and clear pending dues.
- f. That despite repeated requests, the complainant failed to take possession or clear the outstanding dues. Consequently, the applicant had no option but to cancel the allotment of the said unit in accordance with the terms of the bba.
- g. That as a last resort, the applicant issued a notice of cancellation of the allotted area on 28.06.2024, and third-party rights have since been created in respect of the said unit. The unit which is the subject matter of the present complaint already stands cancelled.
- h. That it is pertinent to mention here that the complainant was originally allotted multiple units aggregating to 6,640 sq. ft, out of which 6,001 sq. ft.

already stands cancelled and confiscated. The complainant, at best, is entitled to an area of 639 sq. ft, which the applicant is willing to hand over, subject to the complainant complying with the necessary formalities.

- i. That it is respectfully submitted that the bba in question is terminable in nature, and the complainant cannot seek the relief of specific performance, which is discretionary and not enforceable in cases where the underlying agreement permits termination by either party. Hence, the reliefs claimed in the complaint are legally untenable and not maintainable.
- j. That reference is placed on the judgment of the Hon'ble Supreme Court in Supertech Ltd. v. Rajni Goyal, Civil Appeal Nos. 6649-50 of 2018, wherein it was held that once the builder has obtained the occupancy certificate and has offered possession, the purchaser cannot be permitted to delay acceptance of possession and thereafter raise grievances. In the present case, the occupancy certificate was obtained as early as in 2018 and repeated communications were issued to the complainant to take possession. the complainant, despite being aware of the completion of the project and issuance of the oc, wilfully chose not to take possession and also failed to make the requisite payments despite repeated reminders. Therefore, the complainant, having failed to comply with its own obligations, cannot be permitted to raise belated and untenable allegations against the applicant and seek relief which amounts to specific performance under a terminable agreement.
- k. That it is a settled principle of law that an agreement which is terminable at will or contains an express clause for termination by either party cannot be specifically enforced under law. In the present case, the builder buyer agreement clearly provides for termination under specific circumstances, including breach, non-payment, and failure to take possession despite

offer. The complainant has admittedly failed to fulfill the necessary obligations under the bba, including payment of dues and taking possession despite the offer and issuance of oc. It is thus evident that the agreement is determinable in nature. In such cases, the remedy of specific performance is barred by section 14(d) of the Specific Relief Act, 1963, which expressly prohibits enforcement of contracts which are in their nature determinable. Accordingly, the reliefs claimed by the complainant, being in the nature of specific performance, are not maintainable and the complaint is liable to be dismissed.

10. 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.

#### **D. Jurisdiction of the authority**

11. 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**

12. 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 purposes 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 a complete territorial jurisdiction to deal with the present complaint.

##### **E.II Subject matter jurisdiction**

13. 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) The promoter shall-*

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

**Section 34-Functions of the Authority:**

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

14. 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.

**E. Findings on the relief sought by the complainant**

**F.I Interest for every month of delay at prevailing rate of interest from 21.08.2017 till actual handing of possession**

**F.II To set aside confiscation letter dated 28.06.2024 issued by Respondent no.1**

**F.III To handover the possession of the unit, in a habitable state, after obtaining the Occupation Certificate from the concerned authorities.**

**F.IV To execute the Conveyance deed of the allotted unit in favour of the Complainant.**

**F.V To direct the Respondents not to charge Maintenance charges from the Complainants till the possession of the unit is handed over to the Complainant.**

**F.VII To direct the Respondents to waive the maintenance charges and the interest accrued over it.**

**F.VIII To direct the Respondents not to demand holding charges from the Complainants being violative of the provisions laid down by law.**

**F.IX To not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the Agreement.**

15. Both the above-mentioned reliefs sought by the complainant is being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.

16. The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 seeking, inter alia, delay possession charges, setting aside of the confiscation letter, delivery of possession of Unit No. 44-A, execution of conveyance deed, waiver of maintenance and holding charges, and restraint on raising further demands. Before entering into the merits of the allegations, this Authority deems it appropriate to examine the maintainability of the complaint, as the same goes to the root of the matter.

17. From the record, it emerges that Unit No. 44-A, Ground Floor, admeasuring 2173 sq. ft. (super area) in the project "Landmark Cyber Park", Sector 67, Gurugram, was purportedly allotted to the complainant vide Builder Buyer Agreement dated 21.08.2017. The project is situated on land admeasuring 8.3125 acres and stands licensed under DTCP Licence No. 97 of 2008 dated 12.05.2008. The project has received Occupation Certificate on 26.12.2018 and is registered with this Authority vide Registration No. 61 of 2019 dated 25.11.2019. The possession clause of the Builder Buyer Agreement expressly provides that possession of the unit would be delivered subject to payment of all amounts due and payable by the allottee in terms of the agreement.

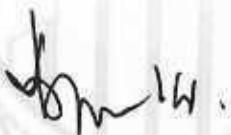
18. The complainant claims to have discharged the entire sale consideration of ₹1,03,04,366/- by way of adjustment against equity shares of SRV Automotives Private Limited and relies upon a recital in the agreement acknowledging receipt thereof. However, a careful scrutiny of the material placed on record reveals that

the complainant has not produced any document to substantiate actual transfer of the said equity shares in favour of the respondent. No share certificates, share transfer forms, statutory filings, acknowledgments, or any other documentary proof evidencing completion of such transfer have been placed on record. The respondent, on the other hand, has categorically stated that no cash consideration was ever received and that no consideration, monetary or otherwise, ever passed from the complainant to the respondent. The said assertion remains unrebutted.

19. In the absence of proof of actual payment or transfer of consideration, the mere recital in the agreement acknowledging receipt cannot be treated as conclusive, particularly when the alleged consideration was conditional and foundational to the accrual of rights under the agreement. It is a settled principle that contractual recitals do not, by themselves, create enforceable rights in the absence of corresponding performance. This Authority, therefore, finds that no consideration ever passed between the parties and, consequently, no enforceable right accrued in favour of the complainant under the Builder Buyer Agreement.

20. The statutory scheme under the Act further reinforces this conclusion. The status of an "allottee" under Section 2(d) of the Act presupposes a valid allotment supported by consideration. The rights under Section 19 of the Act, including the right to claim possession, and the entitlement under Section 18 of the Act, including delay possession charges, arise only where there exists a subsisting and enforceable allotment supported by consideration. In the present case, the foundational requirement of consideration is absent and, therefore, the statutory rights sought to be invoked by the complainant never crystallised. The agreement itself makes delivery of possession conditional upon payment of dues and provides for cancellation in the event of default, rendering the arrangement determinable in nature.

21. In view of the absence of any enforceable right in favour of the complainant, this Authority finds no occasion to examine the remaining factual allegations relating to construction status, site conditions, or demands raised by the respondent, as the complaint fails on the threshold issue of maintainability.
22. In light of the foregoing, this Authority holds that the complainant has failed to establish any subsisting legal right as an allottee so as to seek delay possession charges, possession, or other allied reliefs under the provisions of the Act. The present complaint is, therefore, not maintainable and is liable to be dismissed.
23. In view of the findings recorded above, the present complaint is dismissed as not maintainable. Pending applications, if any, also stand disposed of.
24. Files be consigned to registry.



**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 17.10.2025**