

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

Complaint no.: **6109 of 2024**

Complaint filed on: **12.12.2024**

Date of decision: **23.12.2025**

M/s SRV Automotives Private Limited
Through its authorized representative Sh. Rajesh
Grewal
Office at: - Plot No. 65, Sector- 44, Gurugram

Complainant

Versus

Shri Ramesh Kumar
S/o Sh. Ram Saroop
R/o: - 1706, Near Greenwood Public School, Sector-
10A, Housing Board Colony, Gurugram, Haryana

Respondent

Coram:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

Appearance:

Shri Jatin Sharma
None

Advocate for the complainant
Advocate for the respondent

EX-PARTE ORDER

1. The present complaint has been filed by the complainant/promoter 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(5) of the Act wherein it is inter alia prescribed that the promoter may cancel the allotment only in terms of the agreement for sale. Also, the obligation of allottee to make necessary payments in the manner and within time as specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

A. Project and unit related details

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

S. 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.	F1405, 13 th floor, tower F (Page no. 19 of complaint)
8.	Unit admeasuring	645.258 sq. ft. (carpet area) and 338.075 sq. ft. (balcony area) (Page no. 19 of complaint)
9.	Allotment cum demand letter	09.10.2021 (Page no. 13 of complaint)
10.	Date of execution of buyer's agreement	17.12.2021 (Page no. 16 of complaint)
11.	Possession clause	<p>7. POSSESSION OF THE UNIT FOR RESIDENTIAL/ COMMERCIAL (AS THE CASE MAY BE):</p> <p><i>7.1 Schedule for possession of the said Unit/Apartment for Residential/Commercial</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</p>

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 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....."

(Emphasis Supplied)

***Note as per affordable housing policy 2013**

"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."

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	16.11.2021 (taken from another file CR/4966/2023 decided on 12.07.2024 of same project)
14.	Due date of possession	16.11.2025 (Calculated from date of environment clearance i.e., 16.11.2025 being later)
15.	Total sale consideration	Rs.26,31,032/- (Allotment letter at page 13 of complaint)
16.	Amount paid by the complainant	Not mentioned
17.	Demand letters	18.08.2023, 16.10.2023, 01.11.2023 (Page no.40 to 42 of complaint)
18.	Final reminder/pre cancellation notice	18.11.2023 (Page no. 43 of the complaint)
19.	Publication in newspaper	07.12.2023 (Page no. 44 of complaint)
20.	Cancellation notice	26.12.2023 (Page no. 45 of complaint)
21.	Legal notice sent by the respondent to the complainant w.r.t. handover the copy of allotment letter, Flat buyer's agreement etc.,	18.03.2024 (Page no. 47 of complaint)
22.	Occupation certificate	Not obtained
23.	Offer of possession	Not offered
24.	Refund of cheque an amount of Rs.14,80,423/-	14.01.2024 (Page no. 52 of complaint)

B. Facts of the complaint

3. The complainant/promoter has made the following submissions in the complaint: -
 - i. That the complainant is engaged in the well-known real estate business and is known for its high business values, expertise and adherence to highest standard of quality. The present complaint on behalf of the



complainant/promoter is being filed by Mr. Rajesh Grewal, who has been duly authorized by the Board of Directors of the complainant/company vide board resolution dated 20.08.2024, to sign and verify the present reply and to do all such acts ancillary thereto.

- ii. The complainant Developer had conceived and planned an affordable group housing colony under the name and style of Landmark the Homes 81 comprising of multi-storied flats along with various facilities and amenities on the land situated in Sector 81 Gurugram, Haryana. That the complainant/developer has obtained license no. 04 of 2021 dated 02.03.2021 from the DGTCP/DTCP under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and the rules made there under for using the Land for construction and development of the affordable group housing colony thereon in a planned and phased manner over a period of time by obtaining necessary sanctions, permissions and approvals from the concerned authorities for the development of the group housing colony.
- iii. That after making independent enquiries and only after being fully satisfied about the project, respondent applied for a flat/ unit in the said project i.e. 'Landmark the Homes 81' vide E- Draw dated 08.10.2021. That the respondent had allotted unit no. F- 1405 carpet area 645.258 sq. ft. on 13th floor in the said Project vide Allotment letter dated 09.10.2021 which had clearly mentioned the cost of the unit for carpet area admeasuring 645.258 sq. ft. was Rs.26,31,032/- plus taxes and other charges.
- iv. That thereafter a flat buyer agreement was executed and registered on 17.12.2021 for Unit no. F-1405 having carpet area 645.258 sq. ft., on 13th floor of Tower F. The respondent had also understood the indicative terms and conditions of the flat buyer agreement dated 17.12.2021. All the terms and conditions including the cost of the apartment, size/carpet area of the

unit, time of possession etc. were clearly mentioned in the said flat buyer agreement along with indicative terms and conditions.

- v. That the complainant started raising demands as per the agreement executed between the parties and the respondent made the payment initially, however defaulted in making payment as per the terms of the agreement. That the complainant/developer issued demand notice dated 18.08.2023, raising a demand of Rs.3,30,868/- payable towards outstanding dues by the respondent/allottee. However, the respondent failed to make the payment thereof.
- vi. Despite sending repeated demands/reminders to the respondent on 16.10.2023 and 01.11.2023, the respondent did not come forward to make the payment. Therefore, the complainant vide letter dated 18.11.2013 issued a final reminder cum Pre- cancellation letter against flat no F-1405 to the respondent on account of non-payment of dues against the demand/s raised by the complainant by way of several demand letters and reminders. The respondent/allottee did not come forward to clear the dues and for taking possession of the unit. It is pertinent to mention here that by final reminder/pre- cancellation letter complainant company requested the respondent to remit the over dues payments along with the applicable interest within 15 days of the date of notice in request of the said unit. But unfortunately, the complainant company neither received any reply from the respondent nor the payment of the outstanding dues amount as per the agreed payment plan.
- vii. That as per the buyer's agreement/allotment letter, timely payment of installments was, inter alia, the essence of provisional allotment of the unit and complainant company was entitled to cancel the allotment in the event of non- payment of installments and non- compliance of other obligations. Thus, in exercise of the right vested in the complainant company under the

terms of the Affordable Housing Policy of 2013 and other provisions of the flat buyer agreement, complainant company on 07.12.2023 published in the Newspaper namely “Dainik Savera Times” wherein the complainant company has categorically stated the Unit No. and name of the respondent i.e., unit no. F-1405 & name of allottee Ramesh Kumar stating that the respondent is not depositing due despite many reminders and if the respondent continues to default, The complainant company would be constrained to cancel the said allotment.

- viii. That despite numerous notices and emails the respondent failed to deposit the dues, and the respondent neither came forward nor deposited any dues. Thus, the complainant company vide letter dated 26.12.2023 cancelled the said allotment of unit no. F-1405 in the project “Landmark the Homes 81”, in Sector 81 Gurugram and requested to the respondent to visit the complainant’s corporate office & complete the cancellation formalities as per Affordable Housing Policy & Buyer’s Agreement to allow to the complainant company to initiate the refund process, however in vain.
- ix. Despite repeated request, the respondent failed to appear for cancellation of the said flat buyer agreement and have clearly failed to fulfil his obligation. That due to failure of the respondent in fulfilling the obligations, complainant company is suffering loss on account of the unit not being allotted/sold to the third party, however no flat buyer agreement being executed on account of prior registration of the flat buyer agreement.
- x. That the complainant/promoter also sent a legal notice on 18.03.2024 to the respondent/allottee to come to the corporate office of the complainant company within 15 days from the receipt of the notice to complete the cancellation formalities in order to initiate the refund process, however in

vain. Despite various requests to respondent for initiating the cancellation, the complainant company even issued refund letter dated 14.06.2024 with a cheque of Rs. 14,80,423/- after deducting the 10% earnest money from the deposited amount. It is pertinent to mention here that the cheque was neither encashed by the respondent and nor he comes forward to complete the cancellation formalities.

- xi. That the complainant/promoter has already spent enormous amount of money towards the due construction and development the tower in which the unit of the respondent is situated and the same being ready for occupation. The respondent has severely committed defaults in making payment of the consideration amount in accordance with the agreed time linked payment plan. Therefore, it is the complainant who after having spent enormous sums of money (including funds borrowed from banks and financial institutions and other entities) has been unable to realize the proceeds of the unit from the respondent and the legitimate dues of the respondent have been withheld by the complainant and therefore, on account of such breaches and defaults of the respondent it is the complainant who is entitled to claim compensation from the respondent.
- xii. That the present complaint is filed under section 11(5) read with sections 19(6) and 19(7) of the Act, 2016 in order to seek the delayed interest as prescribed under the Act and also for directing the respondent to come and cancel the agreement executed between the parties. Thus, the complainant is entitled to file the present complaint under section 19 of the Act which provides for the rights and duties of the allottees, read with section 31 and 71 of the Act.
- xiii. That in the assessment of disputes, a comprehensive approach is required to be taken considering all facts such as the whether all respective obligations have been duly performed by the parties. It is submitted that

there are a lot of costs involved in construction and a buyer exiting the contract midway can definitely cause a lot of harm to the builder/developer. Hence, in order to promote healthy market balance while avoiding the situation that has the potential of upsetting the economy as a whole, such practices on the part of the buyers to exit the contract on account of unfavorable market conditions should be seriously taken action against and should not be permitted.

C. Relief sought by the complainant/promoter

4. The complainant/promoter has filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to come forward and cancel the agreement executed between the parties.
 - ii. Direct the respondent to pay delay interest charges from the date of cancellation till actual cancellation of BBA.
 - iii. IN ALTERNATIVE allow the complaint by allowing forfeiting the money to the extent of 25% of the total sale consideration while issuing refund.
5. On the date of hearing, the authority explained to the respondents/allottees about the contravention as alleged to have been committed in relation to section 19(6), (7) & (10) of the Act to plead guilty or not to plead guilty.
6. Registry has sent the notice along with a copy of the complaint through speed post as well as through email to the respondents and the same is shown to has delivered as per the report available in the file. It is proper service of the notice. Despite proper service of notice, neither the respondent put in appearance before the Authority nor any written reply filed till date. In view of the above, the matter was proceeded ex-party against respondent vide order dated 23.12.2025.

7. 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.

D. Jurisdiction of the Authority

8. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with office situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has completed territorial jurisdiction to deal with the present complaint.

D.II Subject-matter jurisdiction

10. The Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of the allottee as per section 19 of the Act leaving aside compensation which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

E. Finding on the relief sought by the complainant/promoter

E. I Direct the respondent to come forward and cancel the agreement executed between the parties.
E. II Direct the respondent to pay delay interest charges from the date of cancellation till actual cancellation of BBA.
E. III IN ALTERNATIVE allow the complaint by allowing forfeiting the money to the extent of 25% of the total sale consideration while issuing refund.

11. In the present case, the complainant/promoter has allotted the unit bearing no. F-1405, 13th Floor, in Tower- F, for an area admeasuring 645.258 sq. ft. carpet area and 338.075 sq. ft. balcony area to the respondent/allottee in the project of the complainant/promoter namely, "Landmark The Homes 81", situated at

Sector-81, Gurugram Haryana vide provisional allotment letter dated 09.10.2021. Thereafter, the buyer's agreement was executed inter se parties on 17.12.2021. The possession of the unit was to be offered with 4 years from approval of building plans (01.03.2021) or from the date of environment clearance (16.11.2021), whichever is later. Accordingly, the due date of possession comes out to be 16.11.2025.

12. It is pertinent to note that vide demand letters dated 18.08.2023, 16.10.2023, 01.11.2023, and final reminder cum pre cancellation notice dated 18.11.2023, the complainant/promoter intimated to the respondent/allottee regarding payment of the outstanding dues, but he failed to adhere the same. The continuous default on the part of the respondent/allottee to make payment of outstanding dues constrained the complainant/promoter make a publication of the same in the newspaper "Dainik Savera Times" on 07.12.2023. It is observed that the respondent/allottee failed to pay the remaining amount as per schedule of payment which led to issuance of final cancellation notice dated 26.12.2023 by the complainant/promoter.
13. Now, the complainant/promoter has filed the present complaint seeking the respondents/allottees to come forward and execute the "cancellation agreement" with the complainant/promoter and also the respondent/allottee to pay delayed interest charges from the date of cancellation till the date of execution of the actual cancellation agreement. Further, allow the complainant/promoter to forfeit the earnest money to the extent of 25% of the sale consideration while issuing refund.
14. On the basis of documents and submissions made by both the parties the Authority observes that Section 31 empowers an aggrieved person to file a complaint before the authority or the adjudicating officer on account of any violation or contravention of the provisions of the Act or rules and regulations. The complainant/promoter has filed the complaint under section 31(1)(b) read

with sections 11(5), 19(6) and 19(7) of the Act 2016, which are reproduced herein for ready reference: -

"Section 11: - Functions and duties of promoter

11(5). *The promoter may cancel the allotment only in terms of the agreement for sale:*

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

Section 19: - Rights and duties of allottees

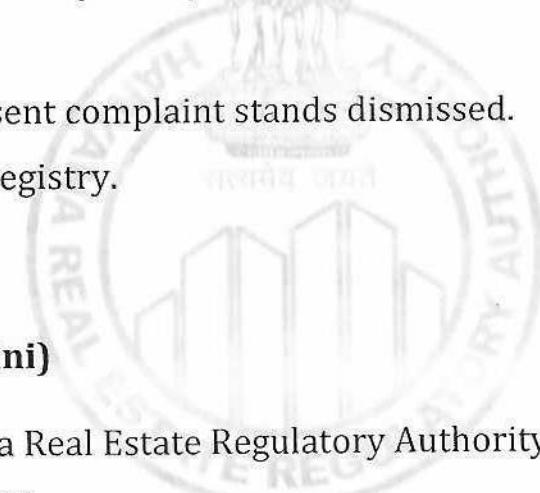
19(6). *Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*

19(7) *The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."*

(Emphasis supplied)

15. From a conjoint reading of Section 31 read with Sections 11(5) and 19(6) & (7) of the Real Estate (Regulation and Development) Act, 2016, it is manifest that the statutory right to approach the Authority in matters relating to cancellation of allotment vests only with the allottee, and that too when such allottee is aggrieved by a cancellation carried out by the promoter in a manner not in accordance with the agreement for sale, or where such cancellation is unilateral and without sufficient cause. Section 11(5) specifically provides a remedial right to the allottee alone and does not contemplate or confer any corresponding right upon the promoter to invoke the jurisdiction of the Authority for seeking confirmation of cancellation, execution of a cancellation agreement, recovery of delayed interest post-cancellation, or forfeiture of earnest money. The promoter's rights, if any, are confined to acting strictly in terms of the agreement for sale and applicable policy provisions.

16. In the present case, it is an admitted position that the promoter has already cancelled the allotment of the respondent/allottee for alleged non-payment of dues. Once such cancellation has been effected, the promoter cannot be treated as an "aggrieved person" within the meaning of Section 31 of the Act. The statutory scheme clearly envisages that only an allottee aggrieved by cancellation may seek relief before the Authority, and not the promoter who has himself exercised the power of cancellation. Consequently, the complaint filed by the promoter, seeking directions against the allottee to execute a cancellation agreement, to pay interest after cancellation, and to permit forfeiture of earnest money, is beyond the scope of Section 31 and is therefore not maintainable.
17. Accordingly, the present complaint stands dismissed.
18. File be consigned to registry.




(Phool Singh Saini)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025



(Arun Kumar)
Chairman