

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**
Date of decision: 30.01.2024

NAME OF THE BUILDER		M/s Savyasachi Infrastructure Pvt. Ltd.	
PROJECT NAME		Amaya Greens at Sector 3, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/7497/2022	Sunny Singh Kaith & Anr. Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Pankaj Kumar None
2.	CR/7713/2022	Sharmila Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Pankaj Kumar None
3.	CR/7827/2022	Karan Singh and Meenakshi Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Pankaj Kumar None
4.	CR/7839/2022	Mamta Kumari Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Pankaj Kumar None
5.	CR/7892/2022	Divya Nandal Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Pankaj Kumar None

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member
Member



ORDER

1. This order shall dispose of the aforesaid 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, Amaya Greens situated at Sector 3, Gurugram being developed by the same respondent/promoter i.e., M/s Savyasachi Infrastructure Pvt. Ltd. The terms and conditions of the buyer's agreements and fulcrum of the issue involved in all these cases pertains 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, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Amaya Greens", Sector 03, Gurugram, Haryana
Nature of the project	Affordable plotted colony under Deen Dayal Jan Awaas Yojna
Project area	9.0375 acres



DTCP License No. and other details	37 of 2017 dated 28.06.2017 Valid up to 27.06.2022 Licensed area : 9.0375 acres Licensee - Sharma Confectioners Pvt. Ltd.
HRERA Registered	212 of 2017 dated 18.09.2017 Valid up to 16.03.2023 (Including 6 months grace period of COVID) Registered area : 9.0375 acres
Completion certificate obtained on	11.01.2021

Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Due date of possession	Total Sale Consideration / Total Amount paid by the complainants	Offer of possession	Relief sought
1.	CR/7497/2022 Sunny Singh Kaith & Anr Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.12.2022 Reply: Not filed	B-66 (Plot) 148.02 sq. yds.	30.09.2021	30.03.2023 [12 months from agreement + 6 months grace period of COVID]	TSC- Rs. 26,00,415 AP- Rs. 26,00,415	Not placed on record Possession certificate - 30.11.2021	<ul style="list-style-type: none"> • Possession • DPC • Complete development work of project • Registration of the plot



2.	CR/7713/2022 Sharmila Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.12.2022 Reply: Not filed	C-28 (Plot) 107.35 sq. yds.	03.12.2021	03.06.2023 [12 months from agreement + 6 months grace period of COVID]	TSC- Rs. 18,78,625 AP- Rs. 11,89,312	Not placed on record	<ul style="list-style-type: none">• Possession• DPC• Complete developme nt work of project• Registratio n of the plot
3.	CR/7827/2022 Karan Singh and Meenakshi Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.12.2022 Reply: Not filed	A-58 (Plot) 1028 sq. ft.	27.03.2019	27.09.2021 [24 months from agreement + 6 months grace period of COVID]	TSC- Rs. 23,25,336 AP- Rs. 22,79,768	Not placed on record	<ul style="list-style-type: none">• Possession• DPC• Complete developme nt work of project• Registratio n of the plot
4.	CR/7839/2022 Mamta Kumari Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.12.2022 Reply: Not filed	A-42 (Plot) 1028 sq. ft.	04.01.2019	04.07.2021 [24 months from agreement + 6 months grace period of COVID]	TSC- Rs. 24,25,052 AP- Rs. 21,63,036	Not placed on record	<ul style="list-style-type: none">• Possession• DPC• Complete developme nt work of project• Registratio n of the plot



5.	CR/7892/2022 Divya Nandal Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.12.2022 Reply: Not filed	A- 41/3 (Plot) 1028 sq. ft.	30.07.2019	30.01.2022 [24 months from agreement + 6 months grace period of COVID]	TSC- Rs. 25,50,468 AP- Rs. 24,35,985	Not placed on record	<ul style="list-style-type: none"> • Possession • DPC • Complete developme nt work of project • Registratio n of the plot
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
DPC	Delayed possession charges
TSC	Total sale consideration
AP	Amount paid by the allottee/s

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking the physical possession of the unit along with delayed possession charges and maintenance charges.
5. 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/7497/2022 titled as Sunny Singh Kaitham and Anr. Vs. M/s Savyasachi Infrastructure Pvt. Ltd.** 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**
6. 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/7497/2022 titled as Sunny Singh Kaith and Anr. Vs. M/s Savyasachi
Infrastructure Pvt. Ltd.*

S.N.	Particulars	Details
1.	Name of the project	"Amaya Greens", Sector 03, Gurugram.
2.	Nature of the project	Deen Dayal Jan Awaas Yojna
3.	Project area	9.0375 acres
4.	License no.	37 of 2017 dated 28.06.2017 Valid up to 27.06.2022 Licensed area: 9.0375 acres Licensee: Sharma Confectioners Pvt. Ltd.
5.	RERA registered or not	212 of 2017 dated 18.09.2017 Valid up to 16.03.2023 (Including 6 months grace period of COVID) Registered area: 9.0375 acres
6.	Completion certificate received on	11.01.2021
7.	Allotment letter issued by the respondent in favour of the complainants on	30.09.2021 [Page 54 of complaint]
8.	Agreement for sale between the respondent and the complainants	30.09.2021 [Page 24 of complaint]
9.	Plot no.	B-66 admeasuring 148.02 sq. yds. (Page 29 of complaint)



10.	Total sale price	Rs. 26,00,415/- as per clause 1.1 of the Agreement to sale (Page 29 of complaint)
11.	Paid up amount	Rs. 26,00,415/- as alleged by the complainants (Page 17 of complaint)
12.	Possession clause	7.2. "Procedure for taking possession of Plot: The promoter upon obtaining the approved demarcation-cum-zoning plan and provision of services by the colonizer/promoter, duly certifying/part completion certificate, as the case may be, in respect of plotted colony shall offer in writing the possession of the plot within twelve months from the date of signing of this agreement to the allottees as per terms of this agreement....." [Page 35 of complaint]
13.	Due date of possession	30.03.2023 [12 months from agreement + 6 months grace period of COVID]
14.	Possession letter	30.11.2021 [Placed on record by the complainants during hearing]

B. Facts of the complaint

7. The complainants have made following submissions in the complaint:
- That after going through advertisement published by respondent in the newspapers and referring to the brochure /prospectus provided by respondent, the complainants desired an allotment of a unit/ plot in the project of the respondent floated by the name of Amaya Greens, in Sector-



- 3, Farukhnagar, Gurugram, Haryana, having super area 148.02 Sq. yds., for basic sale consideration of Rs. 26,00,415/-.
- ii. That deluded by the representations of the respondent, the complainants entered into a builder buyer agreement on 30-09-2021. The complainants thereafter paid a full & final payment of Rs. 26,00,415/- up to 22.01.2022 towards the booking in the project. The respondent thereupon issued the allotment letter on 30.09.2021 in favour of the complainants for plot no. B-66. The respondent represented that it is in right to exclusively develop, construct and build residential building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc. in respect to the project.
- iii. That as per clause-4.1 of the builder buyer's agreement, the respondent was under legal obligation to handover the possession of the above said plot within 24 months from the date of execution of the builder buyer agreement.
- iv. That the complainants visited the site during the course of construction and noticed and found that the construction work was delayed beyond the possession date and since then they have been trying to communicate to the respondent by visiting their offices and through various modes including but not limited to telephonic conversations and personal approach etc.
- v. That the complainants have made and satisfied all the payments against the demands raised by the respondent and as on the date of filing of the present complaint, the complainants have abided by all the payment plan of the builder buyer's agreement without any delay and default. The complainants have also paid the development charges of the project.



- vi. That till today the complainants have not received any satisfactory reply from the respondent regarding the completion of the project. The complainants have been suffering a lot of mental, physical and financial agony and harassment.
- vii. That the respondent has not completed the construction of the said real estate project till now and the complainants have not been provided with the possession of the said plot despite several and repeated promises and representation made by respondent. By committing delay in delivering the possession of the aforesaid plot, the respondent has violated the terms and conditions of the builder buyer's agreement and promises made at the time of booking of said plot.
- viii. That cause of action accrued in favour of the complainants and against the respondent, when complainants had booked the said plot and it further arose when respondent failed/ neglected to deliver the said plot within stipulated time period. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants

8. The complainants have sought the following relief(s):
 - I. Direct the respondent to pay the delayed possession charges till offer of possession of the said plot along-with prevailing interest as per the provisions of the Act.
 - II. Direct the respondent to provide habitable possession of the said plot/unit to the complainants with immediate effect.
 - III. Direct the respondent to complete the development work of the project.



- IV. Direct the respondent for registration of the said plot /unit with immediate effect.
- V. Direct the respondent to pay Rs. 50,000/- as litigation expenses.
- VI. Any other relief /order or direction, which this Hon'ble Authority may deem fit and proper considering the facts and circumstances of the present complaint.
9. The public notice for appearance of the respondent and for filing reply was published on 17.06.2023 in two newspapers. Despite that, the respondent failed to appear on 27.07.2023 and 02.11.2023. None has appeared on behalf of the respondent despite sufficient opportunities. In view of the same, the respondent was proceeded ex-parte vide order dated 02.11.2023.
- D. Jurisdiction of the authority**
10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- D.I Territorial jurisdiction**
11. 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.



D.II Subject matter jurisdiction

12. 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.

13. 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 complainants at a later stage.

E. Findings on the relief sought by the complainants

E.I Direct the respondent to provide habitable possession of the said plot/unit to the complainants with immediate effect.

14. In the present complaint, the grievance of the complainants is that the respondent has failed to handover the physical possession.
15. Vide proceedings dated 16.01.2024, it was observed by the authority that the complainants have submitted copy of the letter of handing over of possession/possession certificate which is not legible and was thus



directed to file clear copy of the same. In compliance of the aforesaid order, the complainants have placed on record possession letter in CR/7497/2022 and CR/7839/2022. Further, it has come to the notice of the authority through LC report dated 26.12.2023 in another matter where it has been stated that the promoter has constructed/sold plots/SCOs in an area of 3.125 acres beyond the licensed area. The complainants in CR/7497/2022 present in person along with counsel stated that the units of the complainants fall in the licensed area.

16. As per possession letter placed on record in CR/ 7497/2022 and CR/7839/2022, the physical possession of the subject floor has already been taken over by the complainants-allottees on 30.11.2021 and 01.09.2021 respectively. However, the counsel for the complainants submitted that the physical possession has not been handed over by the respondent to the complainants.
17. The authority observes that respondent promoter has obtained completion certificate in respect of the said project from the competent authority on 11.01.2021 and has offered the possession of the subject plot/unit(s). Section 17 of the Act obligates the promoter to handover the physical possession of the subject plot/unit complete in all respect as per specifications mentioned in BBA and thereafter, the complainants-allottees are obligated to take the possession within 2 months as per provisions of section 19(10) of the Act, 2016.
18. In view of the above, the respondent is directed to handover the possession of the allotted unit/plot to the complainants complete in all aspects as per specifications of buyer's agreement within one month from date of this order after payment of outstanding dues, if any, as the completion



certificate in respect of the project has already been obtained by it from the competent authority.

E.II Direct the respondent to pay the delayed possession charges till offer of possession of the said plot along-with prevailing interest as per the provisions of the Act.

19. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under:-

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

20. Clause 7.2 of the buyer's agreement (in short, the agreement) dated 30.09.2021, provides for handing over possession and the same is reproduced below:

"7.2 Procedure for taking possession of Plot

"The promoter upon obtaining the approved demarcation-cum-zoning plan and provision of services by the colonizer/promoter, duly certifying/part completion certificate, as the case may be, in respect of plotted colony shall offer in writing the possession of the plot within twelve months from the date of signing of this agreement to the allottees as per terms of this agreement....."

21. **Due date of handing over possession:** As per clause 7.2 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of twelve months from the date of signing of this agreement to the allottees as per terms of this



agreement. The authority 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 has allowed the grace period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 30.03.2023.

22. The following table concludes the due date of handing over possession in the following matters:

S.no.	Complaint no.	Due date of possession	Date of completion certificate
1.	CR/7497/2022	30.03.2023	11.01.2021
2.	CR/7713/2022	03.06.2023	11.01.2021
3.	CR/7827/2022	27.09.2021	11.01.2021
4.	CR/7839/2022	04.07.2021	11.01.2021
5.	CR/7892/2022	30.01.2022	11.01.2021

23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent has already obtained completion certificate in respect of the said project prior to the due date of handing over possession as per the terms of the buyer's agreement executed inter se parties. By virtue of clause 7.2 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of twelve months from the date of signing of this agreement to the allottees as per terms of this agreement. The authority 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 has allowed the grace



period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 30.03.2023.

24. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of completion certificate. The respondent has offered the possession of the subject unit(s) to the respective complainants after obtaining completion certificate from competent authority. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents. In the present complaint, the completion certificate was granted by the competent authority on 11.01.2021. The respondent has obtained completion certificate prior to the due date of handing over possession as per the buyer's agreement. Thus, no case for delayed possession charges is made out under section 11(4)(a) of the Act read with proviso to section 18(1) of the Act. Accordingly, no direction to this effect.

E.III Direct the respondent to complete the development work of the project

25. The grievance of the complainants is that the development work of the project is not complete and the respondent be directed to complete the said development work.
26. The authority observes that the Directorate of Town & Country Planning, Haryana has already granted completion certificate dated 11.01.2021 subject to certain conditions in respect of the said project certifying that the development works are complete. The complainants are at liberty to approach the competent authority if any grievance subsists on account of



any error in granting the completion certificate in respect of the said project.

E.IV Direct the respondent for registration of the said plot /unit with immediate effect

27. The complainants are seeking relief of execution of conveyance deed. Clause 10 of the buyer's agreement provides for 'Conveyance of the said unit/plot' and is reproduced below:

Clause 10. CONVEYANCE OF THE SAID UNIT/PLOT:

"The Promoter on receipt of total price of the Plot as per 1.1, shall execute a Conveyance Deed preferably within three months but not later than six months from possession and convey the title of the Plot for which possession is granted to the Allottee provided that, Developed Plot s equipped with all the specifications, amenities, facilities as per the agreed terms and conditions and common areas as provided under Rule 2(1)(f) of Rules, 2017. However, in case, the Allottee fails to deposit the Stamp Duty and / or Registration Charges, other Ancillary Charges within the period mentioned in the notice, the Allottee authorizes the Promoter to withhold Registration of the Conveyance Deed in his/her favour till such Stamp Duty, Registration Charges, other Ancillary Charges are paid by the Allottee to the Promoter."

28. The authority has gone through the conveyance clause of the agreement and observes that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of section 17 (1) of the Act is also must and it provides as under:

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to



the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

29. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. As delineated hereinabove, the completion certificate in respect of the said project was granted on 11.01.2021 by the competent authority. Thus, the respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act failing which the complainants may approach the adjudicating officer for execution of order.

F. Directions of the authority

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to handover the possession of the allotted unit/plot to the complainants complete in all aspects as per specifications of buyer's agreement within one month from date of this order after payment of outstanding dues, if any, as the completion certificate in respect of the project has already been obtained by it from the competent authority.

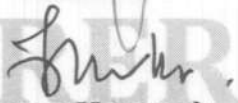


- ii. The respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act with 3 months from the date of this order failing which the complainants may approach the adjudicating officer for execution of order.
- iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and the provisions of Deen Dayal Jan Awas Yojna, 2016.
31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
33. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.01.2024