

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

Complaint no.: 6925 of 2022
Order pronounced on: 10.04.2024

Shri Anubhav Vashishtha

R/o: - 221, 1st floor, Deep Plaza Complex, Opposite Civil
Court, Gurugram- 122001, Haryana

Complainant

Versus

Savyasachi Infrastructure Private Limited

Regd. Office at: - 251-252, Space Edge Building, Tower B,
Sector-47, Sohna Road, Gurugram- 122001, Haryana

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sanjeev Sharma (Advocate)

None

Complainant
Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Amaya Greens" at Sector 03, Gurugram
2.	Nature of the project	Deen Dayal Jan Awaas Yojna
3.	Project area	9.0375 acres
4.	DTCP license no.	37 of 2017 dated 28.06.2017 valid up to 27.06.2022
5.	Name of licensee	Sharma Confectioners Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 212 of 2017 dated 18.09.2017 valid up to 16.03.2023 (Including 6 months grace period of Covid-19)
7.	Plot no.	C-101 admeasuring 117.13 sq. yds. (Page no. 17 of the complaint)
8.	MOU entered into between the complainant and the respondent dated	07.10.2019 (Page no. 17 of the complaint)
9.	Possession clause	Clause 5 <i>"5) That the First Party assures the Second Party that the possession of the said SCO shall be handed over within a period of twelve months from the date of signing of this MOU."</i> (Page no. 17 of the complaint)
10.	Due date of possession	07.10.2020

		(Calculated as 12 months from date of execution of MOU)
11.	Basic Sale Price	Rs.12,81,571/- [As per clause 2 of MOU on page no. 17 of the complaint]
12.	Amount paid by the complainant	Rs.12,81,571/- [As per clause 3 of MOU on page no. 17 of the complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That upon the representation made by the respondent and advertisement done in the said behalf, the respondent was to construct and develop a residential colony being the Affordable Plotted Housing Colony under the Deen Dayal Jan Awaas Yojana, a policy formed by the Government of Haryana located at Sector-3, Gurugram, Haryana.
- II. That the respondent had to construct and develop the plotted housing colony on parcel of land measuring 90375 acres wherein the respondent had been approved and licenced by the Director General Town and Country Planning vide office memo no. LC-3257-JE(BR)-2017/14717 dated 28.06.2017 vide licence no. 37 of 2017.
- III. That the complainant and the respondent entered into one Memorandum of Understanding dated 07.10.2019 wherein the complainant was allotted a plot no. C-101 in the above-mentioned project, tower C, admeasuring super area 117.13 sq. ft. wherein as per the terms of the MOU, it was agreed that the price for the plotted unit



will be Rs. 12,81,571/-, which was paid by the complainant vide cheque no. 000020 dated 01.10.2019 drawn from Kotak Mahindra Bank.

- IV. That as per clause 5 of the MOU dated 07.10.2019, the possession of the unit in question was to be handed over within 12 months from the date of signing of the MOU. i.e., the possession was to be handed over by 07.10.2020 and even if relief of 6 months due to Covid-19 be added, the possession was to be handed over by 07.03.2021 but the same has not been done till date.
- V. That the complainant has paid a total amount of Rs. 132,81,571/- and despite making a payment of the requisite amount, the complainant has not been offered possession of the unit in question even till today and therefore, the complainant has approached the Hon'ble Authority seeking refund of his monied along with interest as all the requests made by the complainant have gone to the deaf ears of the respondent.
- VI. That in addition to he above, the respondent has committed various other discrepancies and defaults under various sections of the RERA Act and the respondent be refrained and directed to stop doing such unlawful acts which are against the duties and obligations of the promoter under Chapter III of the Act.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of payments made by the complainant to the respondent till October, 2022.

5. The present complaint was filed on 26.10.2022 in the Authority. On 17.02.2023 and 02.08.2023, the counsel for the respondent was directed to file the reply within 2 weeks in the registry of the Authority. However, despite specific directions, the respondent has failed to put in appearance before the authority and has also failed to file reply. Therefore, in view of order dated 18.10.2023, the defence of the respondent was struck off on failure of the respondent to file reply despite the lapse of one year. In view of the same, the matter is proceeded ex-parte against the respondent.

D. Jurisdiction of the Authority:

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial Jurisdiction:

7. 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:

8. 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)(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.

9. 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.
10. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on ***12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and

interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant.

- E.1. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest from the date of payments made by the complainant to the respondent till October, 2022.**
12. The complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under Section 18(1) of the Act. Section 18(1) of the Act is reproduced below for ready reference:

"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-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."

(Emphasis supplied)

13. Clause 5 of the memorandum of understanding dated 07.10.2019 provides for the time period for handing over of possession and is reproduced below:

"5) That the First Party assures the Second Party that the possession of the said Plot shall be handed over within a period of Twelve months from the date of signing of this MOU."

14. **Due date of handing over possession:** As per clause 5 of the MOU, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 12 months from the date of signing of the MOU. Therefore, the due date of handing over of possession comes out to be 07.10.2020.

15. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is

reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 10.04.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
18. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under Section 18(1) of the Act of 2016.
19. The due date of possession as per agreement for sale as mentioned in the table above is 07.10.2020 and there is delay of 2 years 24 days on the date of filing of the complaint. The authority has further, observed that even after a passage of more than 3.5 years till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid entire sale consideration. It is also pertinent to mention that complainant has paid the entire amount on the date of entering into the memorandum of understanding, i.e., on 07.10.2019. Further, the authority observes that there is no document placed on record from which it can be ascertained that

whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and is well within the right to do the same in view of Section 18(1) of the Act, 2016.

20. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022, it was observed that-

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of*


the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
23. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 *ibid*.

F. Directions of the authority

24. 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/promoter is directed to refund the entire paid-up amount i.e., Rs.12,81,571/- received by it from the complainant along with interest at the rate of 10.85% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.
25. Complaint stands disposed of.
26. File be consigned to registry.

Dated: 10.04.2024


Ashok Sangwan
Member
Haryana Real Estate
Regulatory Authority,
Gurugram