

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

Date of decision : 04.09.2024

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/6728/2022	Om Prakash Kaktan Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Satish Tanwar None
2.	CR/6729/2022	Surender Kumar Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Satish Tanwar None
3.	CR/6730/2022	Nand Ram Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Satish Tanwar None
4.	CR/6731/2022	Nand Ram Vs. M/s Savyasachi Infrastructure Pvt. Ltd.	Shri Satish Tanwar None

CORAM:

Shri Ashok Sangwan

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 and execution of conveyance deed.
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 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. and size	Date of execution of BBA/MoU	Due date of possession	Basic Sale Consideration / Total Amount paid by the complainants	Relief sought
1.	CR/6728/2022 Om Parkash Kaktan Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.10.2022 Reply: Not filed	SCO No. B-21	20.11.2020 (Page 17 of complaint)	20.11.2021 Calculated to be 12 months from date of MOU being executed i.e., from 20.10.2020	TSC- Rs.20,00,013/- AP-Rs. 10,00,000/-	<ul style="list-style-type: none">• Refund• Litigation expenses
2.	CR/6729/2022 Surender Kumar Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.10.2022 Reply: Not filed	SCO No. B-20	28.10.2020	28.10.2021 Calculated to be 12 months from date of MOU being executed i.e., 28.10.2020	TSC-Rs.20,00,013/- AP- Rs. 10,00,000	<ul style="list-style-type: none">• Refund• Litigation expenses
3.	CR/6730/2022 Nandram Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.10.2022 Reply: Not filed	SCO No. B-22	04.11.2020	04.11.2021 Calculated to be 12 months from date of MOU being executed i.e., 04.11.2020	TSC- Rs. 20,00,013/ AP- Rs. 10,00,000/-	<ul style="list-style-type: none">• Refund• Litigation expenses
4.	CR/6731/2022 Nandram Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 26.10.2022 Reply: Not filed	SCO No. B-27	04.11.2020	04.11.2021 Calculated to be 12 months from date of MOU being executed i.e., 04.11.2020	TSC-Rs. 20,00,013/- AP- Rs. 10,00,000/-	<ul style="list-style-type: none">• Refund• Litigation expenses

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 refund of entire amount paid by the complainants along with interest @ 24% per annum.
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/6728/2022 titled as Om Parkash Kaktan 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/6728/2022 titled as Om Parkash Kaktan Vs. M/s Savyasachi Infrastructure Pvt. Ltd.

Sr. No.	Particulars	Details
1.	Name of the project	"Amaya Greens", Sector 3, Gurugram
2.	Project area	9.0375 acres
3.	Nature of the project	Affordable Plotted Housing Colony under Deen Dayal Jan Awaas Yojna
4.	DTCP license no. and validity status	37 of 2017 dated 28.06.2017 valid upto 27.06.2022
5.	Name of licensee	Sharma Confectioners Pvt. Ltd.
6.	RERA Registered/ not registered	212 of 2017 dated 18.09.2017 valid upto 16.03.2023 (including 6 months grace period of COVID)
7.	Completion Certificate	11.01.2021 (Taken from already decided complaint case no. 7497 of 2022 decided on 30.01.2024)
8.	Unit no.	SCO No. B-21



		(MOU at page 17 of the complaint)
9.	Unit area admeasuring	54.36 sq. yards (tentative)
10.	MOU dated	20.11.2020 (Page 17 of complaint)
11.	Possession clause	Clause 6 of MOU "6. 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. " (As per MOU at page 18 of the complaint)
12.	Due date of possession	20.11.2021 (Calculated to be 12 months from date of MOU being executed i.e., 20.11.2020)
13.	Basic Sale Price	Rs. 36,792/- per square yard = Rs. 20,00,013/- (As per clause 5 of MOU at page 18 of the complaint)
14.	Amount paid by the complainants	Rs. 10,00,000/- (As per clause 4 of MOU at page 18 of complaint)
15.	Forfeiture Clause	"7. That the Second Party assures the First Party that it shall not ask for refund of this invested amount from the First Party. However, if the Second party at any point of time asks for refund than the First Party shall refund the said amount after deducting 10% of the invested amount as fees, within 30 days of request of refund." (MOU at page no. 18 of complaint)

B. Facts of the complaint

7. The complainants have made following submissions in the complaint:
- That after visiting various places in Gurugram in search of a good commercial SCO/shop, the complainant came into contact with the respondent's company officials by the sales/marketing agent of the respondent, where it was informed to the complainant that the respondent's company is s developing a project "Amaya Greens" situated at Sector-3, Farrukh Nagar, Gurugram under Deen Dayal Jan Awas Yojna in



- 9.0375 acre land out of 12.50 acres of total land and it was informed by the builder to complainant that a commercial colony is in the process of development in the remaining 3.50 acre from the said land. It was also putting into the knowledge of complainant that the respondent company has also taken a license no. 37 of 2017. It was further intimated that project is in pre-launching stage and it would be of huge benefit as after launching of the project, the rates of the properties would soar to the great high's and by the reputation of the respondent's company, the complainant decided to have a SCO in the respondent's project.
- ii. That complainant duly believed in statement made by the representative of respondent and applied for the allotment of a SCO bearing no. B-21 having the super area of 54.36 sq. yds. in the said project. The consideration amount was Rs.36,792/- per sq. yds. As disclosed by the respondent as per MOU excluding EDC, IDC, IFMS, electrical connection, sewage connection and water connection and other charges.
 - iii. That apart from issuing the payment of Rs.10,00 000/-, the respondent executed a Memorandum of Understanding with the complainant and as per the MOU the complainant was allotted a unit/SCO no. B-21 in the aforesaid project.
 - iv. That despite several requests of the complainant, the respondent has not executed any allotment Letter or builder buyer agreement in favour of the complainant. The respondent assured the complainant that they have taken all necessary sanctions for the completion of aforesaid project. The respondent always lingers on the matter by one pretext or the other.
 - v. That as per the said MOU dated 20.11.2020 in clause 6, it is mentioned that the possession of the said SCO shall be hand over within a period of twelve months from the date of signing of the MOU. That on account of not constructing the above said project within the stipulated period of 12



months, the complainant kept on requesting the respondent's officials to complete the infrastructure of the said SCO as early as possible and handover the peaceful possession of the same. The respondent kept on misguiding the complainant on one pretext or the other and could not adhere to the terms and conditions as settled and agreed upon between both the parties. The respondent failed to handover the physical possession of the above said SCO to the complainant till date. The builder failed to complete the project and handover the unit to the allottee, in that case, the builder has not right to deduct any amount as per Section 18 of the RERA Act, 2016.

- vi. That thereafter, the complainant tried to approach the respondent and requested them to return his hard-earned money so that he can buy his dream shop/SCO somewhere else. But the respondent/authorized persons never bothered to respond to the complainant's request.
- vii. That till date the complainant is running from pillar to post to get refund of the total amount paid to the respondent till date, but all went futile as the respondent had failed to complete the said project on the assured time, therefore, the complainant requested for the return of amount with interest paid by him. Despite of request of the complainant to refund the amount deposited by the complainant with the respondent, i.e., Rs.10,00,000/- in respect of the abovesaid allotted SCO, the respondent however neither refunded the same nor complied with their assurances/promises, thereby misappropriating the huge hard earned money of the complainant.
- viii. That due to illegal acts and conducts of the respondent, the complainant suffered great mental agony, physical harassment, financial loss, humiliation, hence the complainant is entitled to get the refund of amount of Rs.10,00,000/- along with interest.



C. Relief sought by the complainants

8. The complainants have sought the following relief(s):
- I. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
 - II. Litigation Cost.
9. The authority issued a notice dated 10.12.2022 of the complaint to the respondent by speed post and also on the given email address at satishtanwar12@gmail.com and vijayrajan@gmail.com. The delivery reports have been placed in the file. Despite that, the respondent failed to appear before this Authority on 17.02.2023, 02.08.2023, 18.10.2023, 17.01.2024, 10.04.2024 and 24.07.2024. 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 24.07.2024.

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 reasons given below:

D.I Territorial jurisdiction

11. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by the 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.
14. 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."

15. 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 said amount.

E. Findings on the relief sought by the complainants

E.I Direct the respondent to refund the entire amount paid by the complainant alongwith prescribed rate of interest.

16. The complainant was allotted SCO No. B-21 in the project "Amaya Greens", Sector 3, Gurugram by the respondent-promoter at a basic sale consideration of Rs.20,00,013/-. Thereafter, a MoU dated 20.11.2020 was executed between the parties. As per Clause 6 of the said MOU, the possession of the unit was to be offered within a period of twelve months from the date of signing of this MOU. Thus, the respondent was under a contractual obligation to deliver the possession of the unit by 20.11.2021, which has not been adhered to by the respondent.
17. The complainant has paid an amount of Rs.10,00,000/- against the basic sale consideration of Rs.20,00,013/-. The completion certificate was received on 11.01.2021 but there is nothing on record which shows that respondent-builder offered the possession to the complainant. However, the complainant has surrendered the unit by filing the present complaint on 26.10.2022 i.e., post receipt of completion certificate. Therefore, in this case, a refund can only be granted after certain deductions. It is important to note that clause 7 of the MoU dated 20.11.2020 clearly states that if the second party i.e. complainant at any point of time asks for refund than the respondent shall refund the said amount after deducting 10% of the invested amount as administrative fees within 30 days of request of refund but there is nothing on record which shows that respondent builder



refunded the balance amount after deduction of earnest money. However, the Authority is of view that the respondent cannot not retain more than 10% of the sale consideration and is bound to return the remaining. Even the Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928*, *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as *Jayant Singhal and Anr. Vs. M/s M3M India Ltd.* decided on 26.07.2022 took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above mentioned two cases, the rules with regard to forfeiture of earnest money were framed by the authority known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."



18. Thus, keeping in view the aforesaid legal provisions and the facts detailed above, the respondents-promoter is directed to refund the amount paid by the complainant after deducting 10% of the sale consideration (Rs.20,00,013/-) being earnest money along with an interest @11.10% (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 on the refundable amount, from the date of filing of complaint i.e., 26.10.2022 till actual refund of the amount after adjusting the amount/pre-handover amount paid by respondent, if any within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*.

F.II Direct the respondent to pay litigation expenses amounting to Rs. 1,00,000/-.

19. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

F. Directions of the authority

20. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of 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 amount paid by the complainant after deducting 10% of the sale consideration (Rs. 20,00,013/-) being earnest money along with an interest @11.10% (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 on the refundable amount, from the date of filing of complaint i.e., 26.10.2022 till actual refund of the amount after adjusting the amount/pre-handover amount paid by respondent, if any within the timelines provided in Rule 16 of the Haryana Rules, 2017 ibid.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.
21. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 22. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
 23. Files be consigned to registry.

Dated: 04.09.2024

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram