

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

Complaint no.: 6698 of 2022
Date of filing 19.10.2022
Date of decision: 08.10.2024

Gulshan Rani R/o:- 11C, Gali no. 1, Gufa Wala Shiv Mandir, Shiv Vihar, SHEetla Mata Road, West Rajiv Nagar, Farrukhnagar	Complainant
Versus	
M/s Savyasachi Infrastructure Pvt. Ltd. Regd. office at:- M-166, 2 nd floor, South City-1, Gurugram-122001	
M/s Sharma Confectioners Private Limited Regd. Office at:- 3-B, Mandeville Gardens, Ballygunge, P.S. Gariahat Kolkata WB- 700019 IN	Respondents
CORAM:	
Shri Arun Kumar	Chairman
Shri Ashok Sangwan	Member

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 allotment letter.

A. Project and plot related details

2. The particulars of the project, the details of 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 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 upto 17.09.2022 Registered area : 9.0375 acres
6.	Completion certificate received on	11.01.2021
7.	Allotment letter dated	27.12.2021 [Page 29 of complaint]
8.	Plot no.	A-39 admeasuring 126.06 sq.yds. (Page 29 of complaint)
9.	Basic sale consideration	Rs. 25,84,230/- as per allotment letter dated 27.12.2021(annexure C-1, page 29 of complaint)
10.	Paid up amount	Rs. 23,46,150/-
11.	Possession clause	7.2. "Procedure for taking possession of plot: The promoter upon obtaining the approved demarcation-cum-zoning plan and

		<p>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.....”</p> <p><i>*Note: Taken from another file (Cr no. 6942-2022) of the same project</i></p>
12.	Due date of possession	<p>27.06.2023 (<i>inadvertently mentioned as 05.03.2022, in the proceeding dated 08.10.2024</i>)</p> <p>(Calculated to be 12 months from date of execution of agreement along with grace period of 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)</p> <p><i>*Note: BBA was not executed so calculated from the date of allotment</i></p>
13	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:
 - i. That in 2017, the respondents issued an advertisement announcing a Deen Dayal Jan Awaas Yojna “Amaya Greens” at Sector -3, Faruknagar, Gurugram was launched by respondents, under the license no. 37 of 2017 dated 24.06.2017, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of plot in the said project. Respondents confirmed that the projects had got building plan approval from the authority.

- ii. That the complainants while searching for a plot was lured by such advertisements and calls from the brokers of the respondents for buying a plot in their project namely Amaya Greens. The respondents told the complainants about the moonshine reputation of the company and the representative of the respondents made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region. The respondents handed over one brochure to the complainants which showed the project like heaven and in every possible way tried to hold the complainants and incited the complainants for payments.
- iii. That relying on various representations and assurances given by the respondents and on belief of such assurances, complainants booked a plot in the project by paying an amount of Rs. 5,00,000/- towards the said plot bearing no. A-39, in Sector-3, Gurugram, having super area measuring 126.06 sq. yards. to the respondents dated 05.10.2021 and the same was acknowledged by the respondents.
- iv. That the respondents confirmed the booking of the said plot to the complainant providing the details of the project, confirming the booking of the plot dated 05.10.2021, allotting a plot no. A-39 measuring 126.06 sq. yards. in the aforesaid project of the developer for a total sale consideration of the plot i.e. Rs. 25,84,230/-, which includes basic price, EDC and IDC, Car parking charges and other specifications of the allotted plot.
- v. That at the time of booking of the said plot assurance and representation was made to the complainant the agreement would be executed within 2 months but till date respondent no.1 has failed to execute the buyer's

agreement and also failed to handover the possession the said plot even after delay of more than around 1 year.

- vi. That at the time of purchasing the plot, the complainants was assured that the possession of the plot would be delivered within the promised period of 6 months from the date of booking i.e. by 05.03.2022. Therefore, the due date of possession comes out to be 05.03.2022.
- vii. That the complainants vide booking application form dated 05.10.2021, applied for booking of the said plot. Thereafter, repeated reminders and follow ups only that the respondent provides the copy of the said allotment letter in year 2022. Furthermore, when the complainants received said copy of the allotment letter it was very shocking to the complainant that respondents acting arbitrarily changed the agreed terms and conditions of the booking in allotment letter. Thereafter, the complainants raised the objection to same and respondents provided false assurance to the complainant that it is just for the formality.
- viii. That as per the terms of booking, the respondents was liable to handover the possession of the said plot on or before 05.03.2022, therefore, the respondents was liable to pay interest as per the prescribed rate as laid under the Act, 2016 & Rules, 2017 for the delay in the delivery till the completion of the construction of plot.
- ix. That respondents by falsely mis-representing to the complainants and thereby making them to act in accordance to its misrepresentations.
- x. That the respondents not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainants by making false promises and statements at the time of booking. The respondents is unable to handover a possession even after a delay of year.

- xi. That by falsely ensuring wrong delivery lines and falsely assuring the timely delivery of possession, the complainants has been subjected to unethical/unfair trade practice as well as subjected to harassment in the guise of a biased allotment letter. The above said acts of the opposite parties clearly reveal that the respondent with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services. All such act and omissions on the part of the respondent has caused an immeasurable mental stress and agony to the complainants. By having intentionally and knowingly induced and having falsely mis-represented to the complainants and thereby making them to act in accordance to its misrepresentations, and owing to all the deliberate delays on the part of the respondents, the respondents are liable to make as being claimed by the complainants.
- xii. That during the period the complainants went to the office of respondents several times and requested them to allow them to visit the site and when the respondents would get buyers agreement executed but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once the complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- xiii. That the complainants contacted the respondents on several occasions and were regularly in touch with the respondents. The respondents was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession.

- xiv. That the complainants kept pursuing the matter with the representatives of the respondents by visiting their office regularly as well as raising the matter to when would they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc.
- xv. That the complainants continuously asking the respondents about the status of the project, time by which the project is expected to be completed, when the respondents would get buyers agreement executed and the penalty amount that respondents is liable to pay but respondents was never able to give any satisfactory response to the complainants.
- xvi. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned plot already paid a total sum of Rs. 23,46,150/-towards the said plot against total sale consideration of Rs. 25,84,230/-
- xvii. That allotment of the plot was made on 05.10.2021, after coming into force of the Act,2016 and as per the Act, after coming into force of the Act the respondent can charge only on the carpet of the plot not on the super area of the plot. In the present case, respondent has charge the complainants on the super area i.e. 126.06 sq. yards @ Rs.20,500 per sq. yards which is against the provisions of the Act, 2016 and the Rules, 2017 made thereof. Hence, in accordance to the provisions of the Act, 2016 necessary penal action to be taken against the respondent and direction may kindly be passed to the respondent to charge on the carpet area instead of the super area of the plot.
- xviii. That in the present case respondent has collected approx.. Rs. 23,46,150/- till date without executing the builder buyer agreement.

- xix. That the respondents is in breach and the spirit of the provisions Act, 2016 and Rules, 2017. As after coming into force of the Act, 2016 and Rules, 2017, the respondents was under liability to sell the plot at carpet area not on the super area of the plot but in present case the respondents has sold the plot on super area i.e., 500 sq. ft.
- xx. That the respondents not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainants by making false promises and statements at the time of booking. The respondents is unable to handover a possession even after a delay of 1 year.
- xxi. That further, the complainant having dream of its own plot in NCR booked plot in the hope that the plot would be delivered within 6 months from the date of booking. It is unfortunate that the dream of owning a plot of the complainants were shattered due to dishonest, unethical attitude of the respondents.
- xxii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or completed. The complainants approached the respondents and asked about the status of construction and also raised objections towards non-completion of the project. Such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.

- xxiii. That the above said acts of the respondents clearly reveal that the respondents with prejudice has been indulging in unfair trade practices and has also been providing gross deficient services and thereby causing deficiency in services. All such act and omissions on the part of the respondent has caused an immeasurable mental stress and agony to the complainants.
- xxiv. That the respondents despite having made multiple tall representations to the complainants, the respondents has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.
- xxv. That the respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, allotment letter and the different advertisements released from time to time. Further, such acts of the respondents are also illegal and against the spirit of Act, 2016 and Rules, 2017.
- xxvi. That the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period and paying the monthly assured amount. The respondents had further malafidely failed to implement the allotment letter with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents is filing the present complaint.
- xxvii. That the complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said plot. They have not only been deprived of the timely possession of the said plot but the prospective return they could have got if they had invested in fixed deposit

in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the allotment letter.

xxviii. That the complainants continuously asking the respondents about the status of the project, time by which the project is expected to be completed, assured amount respondents required to pay to the complainants and the penalty amount that respondents is liable to pay but respondents was never able to give any satisfactory response to the complainants.

xxix. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondents in sale of their plot and the provisions allied to it. The modus operandi adopted by the respondents, from the respondents point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.

xxx. That the complainant is the one who has invested their life savings in the said project and are dreaming of a plot for themselves and the respondents have not only cheated and betrayed them but also used their hard earned money for their enjoyment.

xxxi. That the complainants after losing all the hope from the respondents, having their dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the Amaya Greens project and also losing considerable amount, are constrained to approach the Authority for redressal of their grievance.

C. Relief sought by the complainant

4. The complainant has sought the following relief(s):
 - I. Direct the respondents to pay the interest on the total amount paid by complainants -at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.
 - II. Direct the respondents to hand over the symbolic and constructive possession of said plot in question with all amenities and specifications as promised, in all completeness without any further delay.
 - III. Direct the respondents to execute a builder buyer agreement in respect of the plot in question in favour of the complainants.
 - IV. Direct the respondents to execute a conveyance deed registered in respect of the plot in question in favour of the complainant.
5. The Authority issued a notice dated 10.12.2022 to the respondents by speed post and also sent it to the provided email addresses, savyasachi@gmail.com and sndas1953@gmail.com. Delivery reports have been placed on record. Despite this, a public notice for the appearance of respondent no. 1 and for filing a reply was published on 06.12.2023 and 25.04.2023 in two newspapers, namely *Dainik Bhaskar* and *Hindustan Times*. The respondents failed to appear before the Authority on 17.02.2023, 01.08.2023, 31.08.2023, 05.10.2023, 12.12.2023, 06.02.2024, 26.03.2024, 09.07.2024, and 08.10.2024. Neither respondent no. 1 nor respondent no. 2 appeared, despite being given sufficient opportunities. In view of the same, the respondents were proceeded against ex-parte vide order dated 08.10.2024.

D. Jurisdiction of the authority

6. 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

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) 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.

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.

E. Findings on the relief sought by the complainants

E.I Direct the respondent to pay delay possession charges till offer of possession of plot along with prevailing interest.

10. In the present complaint, the complainant intends to continue with the project and is 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.”

11. In the present matter, no BBA has been executed between the parties. Therefore, for the purpose of calculating the due date, the possession clause is being referenced from another file related to the same project (CR No. 6942-2022) and the same 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*

12. **Due date of handing over possession:** In the absence of buyer's agreement the date of allotment letter i.e., 27.12.2021, is taken for calculating the due date. Further, 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 27.06.2023.

13. In the present complaint, the completion certificate was granted by the competent authority on 11.01.2021. The respondent obtained the completion certificate prior to the due date for handing over possession. Despite that, the respondent neither issued an offer letter for possession to the complainant nor provided the handing over letter to the complainant. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at the prescribed rate i.e., @11.10% p.a. w.e.f. due date of possession i.e., 27.06.2023 till the valid offer of possession or actual handing over of possession whichever is earlier, as per sections 18(1) and 19(10) of the Act read with rule 15 of the rules.

E.II Direct the respondent to handover the symbolic and constructive possession of said plot in question with all amenities and specifications as promised, in all completeness without any further delay.

14. In the present complaint, the grievance of the complainant is that the respondent has failed to handover the possession.
15. The Authority observes that respondent promoter has obtained completion certificate in respect of the said project from the competent

Authority on 11.01.2021 but has not offered the possession to the complainant till date. Section 17 of the Act obligates the promoter to handover the physical possession of the subject plot complete in all respect as per specifications mentioned in allotment letter and thereafter, the complainant-allottee are obligated to take the possession within 2 months as per provisions of section 19(10) of the Act, 2016.

16. In view of the above, the respondent is directed to handover the possession of the allotted plot to the complainant complete in all aspects as per specifications of allotment letter 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.III Direct the respondents to execute a builder buyer agreement in respect of the plot in question in favour of the complainants.

17. A project by the name of Amaya Greens situated in sector 3, Faruknagar Gurugram was being developed by the respondent. The complainant came to know about the same and booked a plot in it for Rs. 25,84,230/- and paid an amount of Rs. 23,46,150/-. The complainant has approached the Authority seeking relief w.r.t. execution of buyer's agreement *inter se* parties. The Authority observes that since the plot was booked and the complainant has already paid more than 80% towards consideration of allotted plot. The Act of 2016 under section 13(1) lays down that the respondent shall not receive more than 10% of sale consideration before execution of agreement for sale. The relevant portion reproduce here:

Section 13: No deposit or advance to be taken by promoter without first entering into agreement for sale.

13(1) A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first

entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

18. Hence, keeping in view the provision of section 13(1) of the Act, 2016 the respondent is directed to get the buyer's agreement executed between the parties within 15 days of the date of this order.

E.II Execution of conveyance deed.

19. The complainant is seeking relief of execution of conveyance deed. It is a statutory obligation of the promoter under section 17(1) of the Act, 2016.

The relevant para of section 17(1) is reproduced below:

17. Transfer of title.-

(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.

20. 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

21. 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 pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date 27.06.2023 till the valid offer of possession or actual handing over of possession whichever is earlier, as per sections 18(1) and 19(10) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to handover the possession of the allotted plot to the complainant complete in all aspects as per specifications of allotment letter within 30 days 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.
- iii. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
- iv. The Authority directs the respondent/builder to get the buyer's agreement executed between the parties within 15 days.
- v. The respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainant 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

complainant may approach the adjudicating officer for execution of order.


- vi. The respondent shall not charge anything from the complainant which is not the part of the allotment letter and provisions of Deen Dayal Jan Awas Yojna, 2016.
22. The complaints stand disposed of.
23. Files be consigned to registry.


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.10.2024


(Arun Kumar)

~~Member~~

Chairman