

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

Complaint no.: 21 of 2023
Date of filing 13.01.2023
Date of decision: 08.10.2024

Sher Singh R/o:- K-303, Godrej Summit, Sector 104, Surat Nagar, Gurugram-122006	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 agreement for sale executed *inter se*.

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	06.07.2020 [Page 30 of complaint]
8.	Plot no.	A-22 admeasuring 157.44 sq.yds. (Page 30 of complaint)
9.	Basic sale consideration	Rs. 29,44,128/- as per allotment letter dated 06.07.2020 (annexure C-1, page 29 of complaint)
10.	Paid up amount	Rs. 15,00,000/-
11.	Possession clause	7.2. "Procedure for taking possession of plot: The promoter upon obtaining the approved

		<p>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.....”</p> <p><i>*Note: Taken from another file (Cr no. 6942-2022) of the same project</i></p>
12.	Due date of possession	<p>05.01.2022 (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.	Possession letter	<p>01.03.2021 (page 31 of complaint)</p> <p><i>*Note: Not signed by the complainant.</i></p>

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:
 - i. That in 2017, the respondent issued an advertisement announcing a Deen Dayal Jan Awaas Yojna “Amaya Greens” at Sector -3, Faruknagar, Gurugram was launched by respondent, 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. Respondent confirmed that the projects had got building plan approval from the authority.
- ii. That the complainant while searching for a plot was lured by such advertisements and calls from the brokers of the respondent for buying a plot in their project namely Amaya Greens. The respondent told the complainant about the moonshine reputation of the company and the representative of the respondent made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the National Capital Region. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.
- iii. That relying on various representations and assurances given by the respondent and on belief of such assurances, complainant booked a plot in the project by paying an amount of Rs. 2,00,000/- towards the said plot bearing no. A-22, in Sector-3, Gurugram, having super area measuring 157.44 sq. yards to the respondent dated 05.07.2020 and the same was acknowledged by the respondent.
- iv. That the respondent 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-22 measuring 126.06 sq. yards, in the aforesaid project of the developer for a total sale consideration of the plot i.e., Rs. 29,00,000/- which included 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 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. At the time of purchasing the plot, the complainant 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 05.01.2021. Therefore, the due date of possession comes out to be 05.01.2021.
- vii. That the complainant vide booking application form dated 05.07.2020, applied for booking of the said plot. After repeated reminders and follow ups, the respondent provided a copy of the said allotment letter in year 2022. Furthermore, when the complainant received said copy of the allotment letter it was very shocking to the complainant that respondent acting arbitrarily changed the agreed terms and conditions of the booking in allotment letter. Thereafter, complainant raised the objection to same and respondent provided false assurance to the complainant that it is just a formality.
- viii. That as per the terms of booking, the respondent was liable to handover the possession of the said plot on or before 05.01.2021. Therefore, the respondent 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. The respondent issued handover letter dated 01.03.2021 but till date physical possession of the plot has not been handed over to the complainant despite repeated requests and reminders from the complainant.

- ix. That respondent falsely mis-represented to the complainant and thereby making him to act in accordance to its misrepresentations.
- x. That the respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after undue delay.
- xi. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainant regarding the status of the construction and were never definite about the delivery of the possession.
- xii. That as per the demands raised by the respondent and based on the payment plan, the complainant has already paid a total sum of Rs. 15,00,000/- for the said plot, out of the total sale consideration of Rs. 29,00,000/-.
- xiii. That the allotment of the plot was made on 05.07.2020, after the RERA Act, 2016 came into force. As per the Act, after its implementation, the respondent can charge price based only on the carpet area of the plot and not the super area. In the present case, the respondent has charged the complainant on the super area, i.e., 157.44 sq. yards at Rs. 18,700 per sq. yard, which is against the provisions of the Act, 2016, and the Rules, 2017 made thereunder.
- xiv. The above-mentioned acts of the respondent clearly reveal that the respondent, with prejudice, has been indulging in unfair trade practices and providing grossly deficient services. All such acts and omissions on the

part of the respondent has caused an immeasurable mental stress and agony to the complainant.

- xv. That the present complaint sets out the various deficiencies in services, unfair or restrictive trade practices adopted by the respondent in sale of their plot and the provisions allied to it.
- xvi. That the complainant has invested his life savings in the said project and id dreaming of a plot for himself and the respondent has not only cheated and betrayed them but also used their hard-earned money for their enjoyment.
- xvii. That the complainant after losing all the hope from the respondent, 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 respondent 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.
 - II. Direct the respondent to pay the interest on the total amount paid by complainant -at the prescribed rate of interest as per RERA, from due date of possession till the handing over of possession.
 - III. Direct the respondent 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 02.01.2023 to the respondent 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 09.12.2023 and 25.04.2023 in two newspapers, namely *Dainik Bhaskar* and *Hindustan Times*. The respondent failed to appear before the Authority on 12.09.2023, 05.10.2023, 12.12.2023, 16.01.2024, 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 complainant

E.I Direct the respondent 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.

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., 06.07.2020, 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 06.01.2022.
13. In the present complaint, the completion certificate was issued by the competent authority on 11.01.2021. The respondent has obtained the completion certificate before the due date for handing over possession, which was 05.01.2022. However, no formal offer of possession seems to have been made by the respondent to the complainant. Further, the complainant has placed on record a 'possession letter' dated 01.03.2021 which only bears the signatures of the respondent.

14. 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 complainant is entitled to delay possession charges at the prescribed rate i.e., @11.10% p.a. w.e.f. due date of possession i.e., 05.01.2022 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 Execution of conveyance deed.

15. 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

16. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. 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 complainant as per norms of the state government as per section 17 of the Act failing which the complainant may approach the adjudicating officer for execution of order.

F. Directions of the authority

17. 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 06.01.2022 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 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.
- v. 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.
18. The complaints stand disposed of.
19. Files be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.10.2024

(Arun Kumar)

Chairman