

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Date of filing of complaints :** 05.01.2024
Date of first hearing : 21.02.2024
Date of decision : 30.10.2024

| Name of Builder | | M/s Savyasachi Infrastructure Private Limited | |
|-----------------|--------------|---|--|
| Project Name | | Amaya Greens at Sector 3, Gurugram, Haryana | |
| Sr. No. | Case No. | Case title | Appearance |
| 1. | CR/5675/2023 | Deepak Kumar Vs. M/s Savyasachi Infrastructure Pvt. Ltd. | Shri Pankaj Kumar Yadav, Advocate None |
| 2. | CR/5958/2023 | Naresh Kumar and Sumenta Vs. M/s Savyasachi Infrastructure Pvt. Ltd. | Shri Pankaj Kumar Yadav, Advocate None |
| 3. | CR/5666/2023 | Suresh Kumar Vs. M/s Savyasachi Infrastructure Pvt. Ltd. | Shri Pankaj Kumar Yadav, Advocate 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.

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 | | 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/5675/2023 Deepak Kumar Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 05.01.2024 | Plot No. A-59, 1028 Sq. ft. | 01.04.2019 (Page 25 of complaint) | 01.10.2021 (Calculated to be 24 months from date of execution of agreement along with | BSP- Rs.25,00,096/- AP-Rs. 23,50,000/- | <ul style="list-style-type: none">• Delay possession charges till offer of possession of unit along with prevailing interest.• Complete the development |



| | | | | | | |
|----|---|---------------|--|--|--|---|
| | Reply: Not filed | | | grace period of 6 months in lieu of Covid-19) | | work and provide habitable possession of the said unit to the complainant. • Registration of conveyance deed. • Litigation expenses Rs. 50,000/-. |
| 2. | CR/5958/2023 Naresh Kumar and Sumenta Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 05.01.2024 Reply: Not filed | Plot No. B-21 | 31.10.2018 (Page 24 of complaint) | 31.04.2021 (Calculated to be 24 months from date of execution of agreement along with grace period of 6 months in lieu of Covid-19) | BSP- Rs.26,00,415/- AP-Rs. 19,00,189/- | • Delay possession charges till offer of possession of unit along with prevailing interest. • Complete the development work and provide habitable possession of the said unit to the complainant. • Registration of conveyance deed. • Litigation expenses Rs. 50,000/-. |
| 3. | CR/5666/2023 Suresh Kumar Vs. M/s Savyasachi Infrastructure Pvt. Ltd. DOF: 05.01.2024 Reply: Not filed | Plot No. C-35 | 30.09.2021 (As pleaded by the complainant in para 4 of the complaint) | 30.03.2023 (Calculated to be 24 months from date of execution of agreement along with grace period of 6 months in lieu of Covid-19) | BSP- Rs.26,00,415/- AP-Rs. Rs.26,00,415/- | • Delay possession charges till offer of possession of unit along with prevailing interest. • Complete the development work and provide habitable possession of the said |

| | | | | | | |
|--|--|--|--|--|--|---|
| | | | | | | unit to the complainant. • Registration of conveyance deed. • Litigation expenses Rs. 50,000/-. |
|--|--|--|--|--|--|---|

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 possession of the unit along with delayed possession charges.
5. The facts of all the above captioned complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/5675/2023 titled Deepak Kumar 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/5675/2032 titled as "Deepak Kumar Vs. M/s Savyasachi Infrastructure Private Limited"

| 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. | Plot No. A-59 (BBA at page 32 of the complaint) |
| 9. | Unit area admeasuring | 1028 sq. ft. (BBA at page 32 of the complaint) |
| 10. | Date of execution of builder buyer agreement | 01.04.2019 (Page 25 of complaint) |
| 11. | Possession clause | Clause 4.2 Possession Time and Compensation <i>"That the Seller shall sincerely endeavour to give possession of the Floor to the Purchaser within 24 months from the date of the execution of the Agreement to Sell and after providing the necessary infrastructure specially road, sewer and water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. However, the Seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the period mentioned above....."</i> (As per BBA at page 40 of the complaint) |
| 12. | Due date of possession | 01.10.2021 (Calculated to be 24 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) |
| 13. | Basic Sale Price | Rs. 25,00,096/- (As per Schedule 'C' of the BBA at page 54 of the complaint) |



| | | |
|-----|---------------------------------|--|
| 14. | Amount paid by the complainants | Rs. 23,50,000/- (As pleaded by the complainant at page 14 of the complaint) |
|-----|---------------------------------|--|

B. Facts of the complaint

7. The complainants have made following submissions in the complaint:
- i. That, after going through advertisement published by respondent in the newspapers and referring to the brochure /prospectus provided by respondent, the Complainant desired an allotment of a unit in the project of the respondent floated by the name of Amaya Greens, in Sector-3, Farukh Nagar, Gurugram, Haryana, having super area 1028 sq. ft., for basic sale consideration of Rs. 25,00,096/-.
 - ii. That deluded by the representations of the respondent, the complainant entered into a builder buyer agreement on 01.04.2019. The complainant paid a sum of Rs. 23,50,000/- up to 24.04.2019 towards the said unit. The respondent thereupon issued an allotment letter in favor of the complainant on 17.04.2019 for unit no. A-59/3.
 - iii. That the respondent represented that it had an to exclusive right to develop, construct and build, transfer or alienate the residential unit's space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc. in respect to the project.
 - iv. That as per clause 4.1 of the builder buyer agreement, the respondent was under legal obligation to handover the possession of the above said unit within 24 months from the date of execution of the builder buyer agreement.
 - v. That the complainant visited the site during the course of construction 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.
- vi. That the complainant has 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 complainant has abided by all the payments plan of the builder buyer agreement without any delay and default. The complainant has also paid for the development charges of the project.
 - vii. That the complainant had not received any satisfactory reply from the respondent, till date regarding completion of the project. The complainant has been suffering mental, physical, financial agony and harassment.
 - viii. That the respondent has not completed the construction of the said project till date and the complainant has not been provided with the possession of the said unit despite several and repeated promises and representation made by the respondent. By committing delay in delivering the possession of the aforesaid flat, the respondent has violated the terms and conditions of the builder buyer's agreement and promises made at the time of booking of said unit.
 - ix. That the cause of action accrued in favor of the complainant and against the respondent, when complainant had booked the said unit and it further arose when respondent failed/neglected to deliver the said unit within the 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 delay possession charges till offer of possession of unit along with prevailing interest.
 - II. Direct the respondent to provide habitable possession of the said unit to the complainant.
 - 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 litigation expenses amounting to Rs. 50,000/-.
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. The delivery reports have been placed in the file. However, during the first hearing dated 21.02.2024, the complainant submitted that in other cases pending before the authority, respondent was being served by way of publication, so in this case too respondent may also be served by way of publication. Accordingly, the case was adjourned for 24.04.2024 for service of notice to respondent by way of publication in the English and Hindi edition of Tribune on the expenses of the complainant. During the second hearing dated 24.04.2024, the complainant apprised the authority that publication against the respondent has been duly effected in the newspaper "The Tribune" (English edition dated 21.03.2024) and in the newspaper "Dainik Bhaskar" (Hindi edition dated 21.03.2024). However, none appeared on behalf of the respondent. The respondent was directed to file reply in the registry within a period of three weeks, failing which a cost of Rs.5,000/- would be payable to the complainant. Despite that, the respondent failed to appear before this Authority on the next hearings dated 03.07.2024 and 11.09.2024.
10. Further, even during the further hearings dated 03.07.2024, none appeared on behalf of the respondent. Neither reply was filed within the stipulated period in order dated 24.04.2024 nor cost of Rs.5000/- paid on behalf of respondent to the complainant. Since none has appeared on behalf of the respondent despite being given sufficient opportunities, in

view of the same, the defense of the respondent was struck off and respondent was proceeded ex-parte vide order dated 11.09.2024.

D. Jurisdiction of the authority

11. 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

12. 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

13. 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.

14. 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 complainant.

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

15. 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."

16. Clause 4.2 of the buyer's agreement (in short, the agreement) dated 01.04.2019, provides for handing over possession and the same is reproduced below:

"4.2 POSSESSION TIME AND COMPENSATION

*"That the seller shall sincerely endeavour to give possession of the Floor to the purchaser **within 24 months from the date of the execution of the Agreement to Sell** and after providing the necessary infrastructure specially road, sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the seller. However, the Seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the period mentioned above....."*

17. **Due date of handing over possession:** As per clause 4.2 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 24 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 01.10.2021.

18. 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/5675/2023 | 01.10.2021 | 11.01.2021 |
| 2. | CR/5958/2023 | 31.04.2021 | 11.01.2021 |
| 3. | CR/5666/2023 | 30.03.2024 | 11.01.2021 |

19. 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 in both the above captioned complaints. 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. 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.II Direct the respondent to provide habitable possession of the said unit to the complainant.

20. The grievance of the complainants is that the respondent has failed to handover the physical possession. Though a copy of possession letter is placed on record in complaint case no. 5675 of 2023 and complaint case no. 5958 of 2023, but same is not accepted to by the complainants in both the cases.

21. 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.
22. In view of the above, in case the possession of the unit is not yet handed over to the complainant, 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.III Direct the respondent to complete the development work of the project.

23. 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.
24. 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.

25. 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 DEED:

"10.1 STAMP DUTY AND REGISTRATION CHARGES

The stamp duty, registration fee/charges and other expenses to be incurred at the time of execution of the Conveyance Deed in pursuance to this Agreement to Sell shall be borne by the Purchaser. The Purchaser shall be fully responsible for paying any deficient stamp duty and other charges to the government authorities. The Purchaser also undertakes to pay without demur any increase in stamp duty/registration charges as may be effected by the government even if such an increase takes place after the Purchaser has paid to the Seller all the dues/charges/fees etc. under this Agreement. Similarly, if there is any decrease in the stamp duty/registration charges, the same shall be paid by the Seller to the Purchaser."

26. The authority has gone through the conveyance clause of the agreement. 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.

27. The respondent is under an obligation as per Section 17 of Act to get the conveyance deed executed in favor 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.

E.V Direct the respondent to pay litigation expenses amounting to Rs. 50,000/.

28. 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

29. Hence, the authority hereby passes this order and issues following directions u/s 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority u/s 34(f):
- I. In view of the findings recorded by the authority above, no case of delay possession charges is made out. However, in case the possession of the unit is not yet handed over to the complainant, the respondent is directed to handover the possession of the allotted unit 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 within 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.
30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
32. Files be consigned to registry.

Dated: 30.10.2024

HARERA
GURUGRAM

(Ashok Sangwan)

Member
Haryana Real Estate
Regulatory Authority,
Gurugram