

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

Complaint no.: 7816 of 2022
Date of filing 02.01.2023
Date of decision: 08.10.2024

Krishna Devi R/o:- F081, Sector 36, Suncity Rohtak, Haryana-124001	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 unit 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 <i>*Note: inadvertently mention as 05.03.2021 in proceeding dated 08.10.2024)</i>
7.	Allotment letter dated	01.10.2021 [Page 27 of complaint]
8.	Plot no.	C-26 admeasuring 107.35 sq. yds. (Page 27 of complaint)
9.	Basic sale consideration	Rs. 18,000/- per sq. yards (Page 27 of complaint)
10.	Paid up amount	Rs. 18,00,000/- as alleged by the complainant (Page 23 of complaint)



11.	Possession clause	<p>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....."</p> <p><i>*Note: Taken from another file (Cr no. 6942-2022) of the same project.</i></p>
12.	Due date of possession	<p>01.04.2023 (inadvertently mentioned as 01.10.2022, in the proceeding dated 08.10.2024)</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 executed so calculated from the date of allotment.</i></p>
13.	Possession handover letter	<p>01.10.2021</p> <p>[Page 28 of complaint]</p>

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:
 - i. That the complainant while searching for a plot was lured by such advertisements and calls from the brokers of the respondent for buying a unit 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 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.

- ii. That relying on various representations and assurances given by the respondent and on belief of such assurances, the complainant booked a unit in the project by paying an amount of Rs. 5,00,000/- towards the subject unit bearing no. C-26, in Sector-3, Gurugram, admeasuring super area 107.35 sq. yards. to the respondent dated 22.09.2021 and the same was acknowledged by it.
- iii. That the respondent confirmed the booking of the said unit to the complainant providing the details of the project, confirming the booking of the unit dated 22.09.2021, allotting a unit no. C-26 measuring 107.35 sq. yards. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 18,00,000/-, which includes basic price, EDC and IDC, Car parking charges and other specifications of the allotted unit.
- iv. That at the time of allotment letter 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 offer/handover the possession the said unit even after delay of more than around 1 year.
- v. That at the time of purchasing the unit, the complainant was assured that the possession of the unit would be delivered within the promised period

of 12 months from the date of allotment letter i.e. by 01.10.2021. Therefore, the due date of possession comes out to be 01.10.2022.

- vi. That the complainant vide booking application form dated 22.09.2021, applied for booking of the said unit. Thereafter, repeated reminders and follow ups only that the respondent provides the copy of the said allotment letter in year 2021. 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. Subsequently, the complainant raised the objection to same and respondent provided false assurance to her that it is just for the formality.
- vii. That as per the said allotment letter, the respondents was liable to handover the possession of the said unit on or before 01.10.2022, 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 unit.
- viii. That the respondents 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 respondents is unable to handover a possession even after a delay of year.
- ix. That by falsely ensuring wrong delivery lines and falsely assuring the timely delivery of possession, the complainant 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 complainant.

- x. That during the period the complainant 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 complainant 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.
- xi. That the complainant 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 complainant regarding the status of the construction and were never definite about the delivery of the possession.
- xii. That the complainant 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 it was never able to give any satisfactory response to the complainant.
- xiii. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.18,00,000/- towards the said unit against total sale consideration of Rs.18,00,000/-.
- xiv. That respondents in order to cheat the innocent allottee provide the copy of the possession letter dated 01.10.2021, stating that possession of the said plot has been handed over to the complainant but it is pertinent to

mention here that till date physical possession of the said plot has not been handed over to the complainant. Furthermore, whenever the complainant visit the site she has been brutally harassed by the bouncer of the respondents and never allowed to enter the project site.

- xv. That the allotment of the unit was made on 01.10.2021, after coming into force of the RERA Act, 2016 and as per the Act, after coming into force of the Act the respondent can charge only on the carpet of the unit not on the super area of the unit. In the present case, respondent has charge the complainant on the super area i.e., 107.35 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 unit.
- xvi. That the respondents 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 respondents is unable to handover a possession even after a delay of 1 year.
- xvii. 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.
- xviii. That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. They have not only been deprived of the timely possession of the said unit 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.

C. Relief sought by the complainant

4. The complainant has sought the following relief(s):
 - I. Direct the respondents to hand over the symbolic and constructive possession of said unit in question with all amenities and specifications as promised, in all completeness without any further delay.
 - II. Direct the respondents 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 respondents to execute a conveyance deed registered in respect of the unit in question in favour of the complainant.
5. The Authority issued a notice dated 02.01.2023 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 09.12.2023 and 25.04.2023 in two newspapers, namely *Dainik Bhaskar* and *Hindustan Times*. The respondents 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 complainants

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

10. In the present complaint, the grievance of the complainant is that the respondent has failed to handover the possession.
11. As per possession letter, placed on record, the possession of the subject unit has already been taken over by the complainant-allottee on 01.10.2021. However, during proceeding dated 08.10.2024, the counsel for the complainant submitted that the physical possession has not been handed over by the respondent to the complainant.
12. 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. 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 BBA 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.
13. In view of the above, the respondent is directed to hand over possession of the allotted plot to the complainant, if not already done, complete in all aspects as per the specifications of the allotment letter dated 01.10.2021, within one month from the date of this order, after payment of any



outstanding dues, if any, as the completion certificate for the project has already been obtained by the respondent from the competent authority.

E.II Direct the respondent to pay the delayed possession charges till offer of possession of the said plot along-with prevailing interest as per the provisions of the Act.

14. 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."

15. 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.*

16. **Due date of handing over possession:** In the absence of buyer's agreement the date of allotment letter i.e., 01.10.2021, 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 01.04.2023.

17. 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. 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 allotment letter. 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.

F. Directions of the authority

18. 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 handover the possession of the allotted unit to the complainant, if not already done, 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.
 - ii. 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.

iii. The respondent shall not charge anything from the complainant which is not the part of the provisions of Deen Dayal Jan Awas Yojna, 2016.

19. The complaints stand disposed of.

20. Files be consigned to registry.


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.10.2024


(Arun Kumar)

Member

HARERA
GURUGRAM