

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

**Complaint no.:** 7610 of 2022  
**Date of filing** 19.12.2022  
**Date of decision:** 08.10.2024

Ramesh Kumar <b>R/o:-</b> Mangali Akalan (161), Mangali, Hisar, Haryana-125001	<b>Complainant</b>
Versus	
M/s Savyasachi Infrastructure Pvt. Ltd. <b>Regd. office at:</b> - M-166, 2 <sup>nd</sup> floor, South City-1, Gurugram-122001	
M/s Sharma Confectioners Private Limited <b>Regd. Office at:-</b> 3-B, Mandeville Gardens, Ballygunge, P.S. Gariahat Kolkata WB- 700019 IN	<b>Respondents</b>
<b>CORAM:</b>	
Shri Arun Kumar	<b>Chairman</b>
Shri Ashok Sangwan	<b>Member</b>

**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
7.	Date of MoU	19.09.2020 [annexure C1, page 25 of complaint]
8.	Allotment letter dated	06.05.2022 [Page 28 of complaint]
10.	Plot no.	A-26 admeasuring 157.44 sq. yds. [Page 27 of complaint]
11.	Basic sale consideration	Rs. 22,00,000/- as per clause 4 of the MoU [page 26 of complaint] [Note: BSP is calculate @Rs. 13,975/-per sq. yds. Any other charges i.e., EDC, IDC, IFMS, electricity connection, sewerage connection and water connection shall be in addition to the BSP]

12.	Paid up amount	Rs. 16,50,000/- as per clause 2 of the MoU [Page 26 of complaint]
13.	Possession clause	5. That the first party assured the second party that the possession of the said SCO shall be handed over within a period of Twelve months from the date of signing of this MoU.
14.	Due date of possession	19.03.2022 ( <i>inadvertently mentioned as 19.09.2021, in the proceeding dated 08.10.2024</i> )  (Calculated to be 12 months from date of signing of MoU 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)
15.	Allotment letter issued on	06.05.2022 [Page 28 of complaint]
16.	Possession handover letter	06.05.2022 [Page 37 of complaint]

### B. Facts of the complaint

3. The complainant has made following submissions in the complaint:
  - i. 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 unit in the said project. Respondents confirmed that the projects had got building plan approval from the authority.

- ii. That the complainant while searching for a SCO unit was lured by such advertisements and calls from the brokers of the respondents for buying a unit in their project namely Amaya Greens. The respondents told the complainant 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 complainant 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, the complainant booked a plot in the project by paying an amount of Rs. 16,50,000/- towards the said unit bearing no. A-26, in Sector-3, Gurugram, having super area measuring 157.44 sq. Yards. to the respondents dated 29.08.2020 and the same was acknowledged by it.
- iv. That the respondents confirmed the booking of the said unit to the complainant providing the details of the project, confirming the booking of the unit dated 29.08.2020, allotting a unit no. A-26 measuring 157.44 sq. Yards. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 22,00,000/-, which includes basic price, EDC and IDC, car parking charges and other specifications of the allotted unit.
- v. That MoU was executed between the complainant and respondent no. 1 dated 19.09.2020. At the time of execution of the said MoU 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.
- vi. 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 MoU i.e. by 19.19.2021. Therefore, the due date of possession comes out to be 19.09.2021.
  - vii. That the complainant vide booking application form dated 29.09.2020, applied for booking of the said unit. Thereafter, repeated reminders and follow ups only that the respondent provides the copy of the said MoU in year 2022. Furthermore, when the complainant received said copy of the MoU it was very shocking to the complainant that respondents acting arbitrarily changed the agreed terms and conditions of the booking in MoU. Thereafter, the complainant 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 said MoU, the respondents was liable to handover the possession of the said unit on or before 19.09.2021, 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.
  - ix. That the respondents by falsely mis-representing to the complainant 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 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.
  - 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 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 respondents has caused an immeasurable mental stress and agony to the complainant. By having intentionally and knowingly induced and having falsely mis-represented to the complainant and thereby making them to act in accordance to its misrepresentations, and owing to all the deliberate lapses/delays on the part of the respondents, the respondents" are liable to make as being requisitioned/claimed by the complainant.

- xii. 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 complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- xiii. 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.
- xiv. That the complainant 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 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 respondents was never able to give any satisfactory response to the complainant.
- xvi. 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.20,00,000/- towards the said unit against total sale consideration of Rs. 22,00,000/-.
- xvii. That the allotment of the unit was made on 19.19.2020, 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 unit not on the super area of the unit. In the present case, respondent has charge the complainant on the super area i.e. 157.44 sq. yards @ Rs.13,975 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 RERA Act, 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.
- xviii. In the present case respondent has collected approx Rs. 20,00,000/- till date without executing the builder buyer agreement.
- xix. That the respondents is in breach and the spirit of the provisions/section 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 unit at carpet



- area not on the super area of the unit but in present case the respondents has sold the unit on super area i.e.157.44 sq. yards.
- xx. 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.
- xxi. Further, the complainant having dream of its own unit in NCR signed the MOU in the hope that the unit will be delivered within 12 months from the date of MOU. It is unfortunate that the dream of owning a unit of the complainant 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 done/completed. The complainant 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



- respondents has caused an immeasurable mental stress and agony to the complainant.
- xxiv. That the respondents have played a fraud upon the complainant and cheated him 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 complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents is filing the present complaint.
- xxv. 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 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.
- xxvi. That the complainant 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 complainant and the penalty amount that respondents is liable to pay but respondents was never able to give any satisfactory response to the complainant.
- xxvii. 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 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 21.12.2023 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 16.05.2023, 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 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 physical possession of the subject unit has already been taken over by the complainant-allottee on 06.05.2022. 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 MoU 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 respects as per the specifications of the MoU dated 19.09.2020, 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. Clause 5 of the memorandum of understanding dated 19.09.2020, provides for handing over possession and the same is reproduced below:

*5. "That the First Party assured the Second Party that the possession of the said Plot shall be handed over within a period of Twelve months from the date of signing of this MoU"*

16. **Due date of handing over possession:** As per clause 5 of the memorandum of understanding, the respondent promoter has proposed to handover the possession of the subject unit within a period of 12 months from the date of signing of this MoU to the allottees as per terms of this MoU. 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 19.03.2022.

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. 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 MoU. 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 memorandum of understanding dated 19.09.2020 and the provisions of Deen Dayal Jan Awas Yojna, 2016.



**HARERA**  
**GURUGRAM**

Complaint No. 7610-2022

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

