

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

Complaint no.: 1727 of 2023
Date of filing 26.04.2023
Date of decision: 07.01.2025

Sandeep Kumar Mandeep Rani Both RR/o:- Sakrai, Patiala, Punjab-147202.	Complainants
Versus	
M/s Savyasachi Infrastructure Pvt. Ltd. Regd. office at: - M-166, 2 nd floor, South City-1, Gurugram-122001	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member

APPEARANCE:	
Sh. Pankaj Kumar Yadav (Advocate)	Complainants
None	Respondent

ORDER

1. This complaint has been filed by the complainants/allottees 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 allottees 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 complainants 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 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 up to 27.06.2022
5.	Name of licensee	Sharma Confectioners Pvt. Ltd.
6.	RERA Registered/ not registered	212 of 2017 dated 18.09.2017 valid up to 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.	A-53/2 (as per allotment letter dated 03.08.2019, page 20 of complaint)
9.	Unit area admeasuring	1028 sq. ft. (page 20 of complaint)
11.	Date of allotment	03.08.2019
12.	Date of execution of BBA	22.07.2018
13.	Possession clause	<i>"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...."</i>
14.	Due date of possession	22.01.2021 (24 months from the agreement + 6 months grace period of COVID)

15.	Total Basic Sale Price	Rs. 23,45,896/-
16.	Amount paid by the complainants	Rs. 22,81,488/-

B. Facts of the complaint

3. 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 provided by respondent, the complainants desired an allotment of a plot no. A-53/2 in the project of the respondent floated by the name of Amaya Greens, in Sector-3, Farukh Nagar, Gurugram, Haryana, admeasuring super area 1028 sq. ft., for basic sale consideration of Rs. 23,45,896/-.
 - ii. That deluded by the representations of the respondent, the complainants entered into an agreement for sale on 22.07.2018. The complainants thereafter paid a sum of Rs. 22,81,488/- towards the booking in the project. The respondent thereupon issued the allotment letter on 03.08.2019 in favour of the complainants for plot no. A-53/2. The respondent represented that it is in right to exclusively develop, construct and build residential building, transfer or alienate the plot's space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc. in respect to the project.
 - iii. That as per clause 4.1 of the agreement for sale, the respondent was under legal obligation to handover the possession of the above said plot within 24 months from the date of execution of the agreement for sale.
 - iv. That the complainants visited the site during the course of construction and noticed 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.

- v. That the complainants have 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 complainants have abided by all the payment plan of the agreement for sale without any delay and default. The complainants have also paid the development charges of the project.
- vi. That till today the complainants have not received any satisfactory reply from the respondent regarding the completion of the project. The complainants have been suffering a lot of mental, physical and financial agony and harassment.
- vii. That the respondent has not completed the construction of the said real estate project till now and the complainants have not been provided with the possession of the said plot despite several and repeated promises and representation made by respondent. By committing delay in delivering the possession of the aforesaid plot, the respondent has violated the terms and conditions of the agreement for sale and promises made at the time of booking of said plot.
- viii. That cause of action accrued in favour of the complainants and against the respondent, when complainants had booked the said plot, and it further arose when respondent failed/ neglected to deliver the said plot within stipulated time period. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):

- I. 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.
 - II. Direct the respondent to provide habitable possession of the said plot to the complainants with immediate effect.
 - III. Direct the respondent to complete the development work of the project.
 - IV. Direct the respondent for registration of the said plot with immediate effect.
 - V. Direct the respondent to pay Rs. 50,000/- as litigation expenses.
 - VI. Any other relief /order or direction, which this Hon'ble Authority may deem fit and proper considering the facts and circumstances of the present complaint.
5. The Authority issued a notice dated 27.04.2023 to the respondent by speed post and also sent it to the provided email addresses, raopankaj651991 and savyasachi@gmail.com. Delivery reports have been placed on record. Despite this, a public notice for the appearance of respondent and for filing a reply was published on 12.12.2023 in two newspapers, namely *Dainik Bhaskar* and *Hindustan Times*. The respondents failed to appear before the Authority on 05.10.2023, 12.12.2023, 06.02.2024, 20.02.2024, 28.05.2024, 24.09.2024 and 07.01.2025. None has appeared on behalf of the respondent despite being given sufficient opportunities, in view of the same, the defence of the respondent was struck off and respondent was proceeded ex-parte vide order dated 06.02.2024 and is being decided on basis of facts and documents submitted with the complaint.

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 complainants 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 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."

11. Clause 4.2 of the agreement for sale (in short, the agreement) dated 22.07.2018, provides for handing over possession and the same is reproduce below:

"4.2 POSSESSION TIME AND COMPENSATION

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 time period mentioned above".

12. **Due date of handing over possession:** As per clause 4.2 of agreement for sale, the respondent promoter has proposed to handover the possession of the subject plot within a period of 24 months from the date of signing of this agreement to the allottees as per terms of this agreement. In the present matter, the buyer's agreement was executed on 22.07.2018 and hence the respondent was liable to handover possession by 22.07.2020 in terms of the agreement. Further, the Authority in view of notification no. 9/3-2020 dated 26.05.2020, allows grace period of 6 months on account

of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over of possession comes out to be 22.01.2021.

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. 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 agreement executed inter se parties. Thus, no case of 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 plot to the complainants.

14. During proceeding dated 07.01.2025, the complainants themselves have stated that they are in possession of the subject plot. Hence, no direction is required.

E.III Direct the respondent to complete the development work of the project.

15. 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.
16. 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/plot with immediate effect.

17. The complainants are seeking relief of execution of conveyance deed. Clause 10 of the agreement provides for 'Conveyance of the said 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 purchase. The purchase shall be fully responsible for paying any deficient stamp duty and other charges to the government authorities. The purchase also undertakes to pay 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."

18. 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:

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.

19. 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, if any 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.IV Direct the respondent to pay litigation expenses amounting to Rs.50,000/-

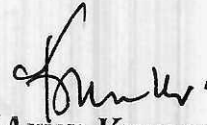
20. The complainants are seeking the above-mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.* has held that an allottee is entitled to claim compensation and litigation charges under Section 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

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 execute the conveyance deed upon payment of outstanding dues, if any and requisite stamp duty by the complainants 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 complainants may approach the adjudicating officer for execution of order.
 - ii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and provisions of Deen Dayal Jan Awas Yojna, 2016.
22. The complaint stand disposed of.
23. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman


(Vijay Kuma Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.01.2025