BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order disposed of: 04.03.2025

NAME OF THE BUILDER		M/s Savyasachi Infrastructure Private Limited
PROJECT NAME		"AMAYA GREENS" (DDJAY), Sector- 3, Farukhnagar Gurugram, Haryana
S. No.	Case No.	Case title
1.	CR/5512/2022	Sunil Kumar and Ashok Kumar V/S Savyasachi Infrastructure Private & Sharma Confectioners Private Limited
2.	CR/5515/2022	Ajeet Kumar Tiwari V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
3.	CR/5516/2022	Upender Verma V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
4.	CR/5517/2022	Surya Kant V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
5.	CR/5518/2022	Chandveer Singh V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
6.	CR/5519/2022	Ravi and Rahul Kumar V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
7.	CR/5520/2022	Satya Dev and Ramesh Chand V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
8.	CR/5625/2022	Chandveer Singh V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
9.	CR/5662/2022	Ramesh Kumar V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
10.	CR/6010/2022	Ruchi Chaudhry V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
11.	CR/6017/2022	Neeraj Gautam V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
12.	CR/6302/2022	Atul Kumar V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
13.	CR/7612/2022	Sukhpal V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
14.	CR/6692/2022	Rajiv Yadav V/S Savyasachi Infrastructures Private Limited and Sharma Confectioner Private Limited
15.	CR/6693/2022	Rajiv Yadav V/S Savyasachi Infrastructures Private Limited and Sharma Confectioner Private Limited
16.	CR/22/2023	Sher Singh V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited

17.	CR/1565/2023	Vinod Kumar V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited
18.	CR/2004/2023	Gulshan Rani V/S Savyasachi Infrastructure Private Limited & Sharma Confectioners Private Limited

CORAM:

CORAM:	
Shri Arun Kumar	**Chairman**
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**
APPEARANCE:	
Gaurav Rawat (Advocate)	Complainant
None (Respondent) Sh. Arjun Parashar Advocate on behalf of Sh. Bharat Bhushan Yadav Ex-director	Respondent

ORDER

1. This order shall dispose of 18 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 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", Sector 03, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s Savyasachi Infrastructure Pvt. Ltd. The terms and conditions of the allotment letter, buyer's agreements, 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 award of refund of the entire paid up amount along with interest and other reliefs.

3. The details of the complaints, 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..
Project area	3.125 acres (Unlicensed)
Nature of the project	Deen Dayal Jan Awaas Yojna
DTCP license no. and other details : Not obtained by DTCP	
RERA Registered/ not registered	Not registered
Possession clause as per buyer's agreement	*6. "That the First Party assures 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 and if in any case First Party unable to handover the SCO within Twelve months then from the month of Thirteen, the First Party assures the Second Party that it shall pay interest of 24% of invested amount p.a. to the Second Party till the time of possession of the said SCO.*

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	MOU executed between respondent no. 1 and the complainant Or date of allotment	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.
1.	CR/5512/2022 Sunil Kumar & Anr. V/S Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 18.08.2022	A-08 54.36 sq. yds. (page 31 of complaint)	**MoU** **23.03.2021**	23.09.2022	**BSP:** **Rs. 19,00,000/-** **AP:** **Rs. 10,00,000/-**
2.	CR/5515/2022 Ajeet Kumar Tiwari Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma	D-07 71.39 sq. yds (page 29 of complaint)	**MoU** **16.12.2020**	16.06.2022	**BSP:** **Rs. 22,60,000/-** **AP:** **Rs. 10,10,000/-**

	Confectioners Pvt. Ltd. DOF: 17.08.2022				
3.	CR/5516/2022 Upender Verma Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 17.08.2022	A-03 59.36 sq. yds (page 24 of complaint)	**MoU:** **27.11.2020**	27.05.2022	**BSP:** **Rs. 21,39,990/-** **AP:** **Rs. 15,00,000/-**
4.	CR/5517/2022 Suryakant Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 18.08.2022	B-33 54.36 sq. yds (page 29 of complaint)	**MoU:** **26.11.2020**	26.05.2022	**BSP:** **Rs. 20,00,000/-** **AP:** **Rs. 11,20,000/-**
5.	CR/5518/2022 Chandveer Singh Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 18.08.2022	SCO C-03 (page 24 of complaint)	**MoU:** **11.11.2021**	11.05.2022	**BSP:** **Rs. 23,00,000/-** **AP:** **Rs. 9,50,000/-**
6.	CR/5519/2022 Ravi and Rahul Kumar Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 17.08.2022	C-13 54.36 sq. yds (page 31 of complaint)	**MoU:** **22.10.2020**	22.04.2022	**BSP:** **Rs. 20,00,000/-** **AP:** **Rs. 10,00,000/-**
7.	CR/5520/2022 Satya Dev and Ramesh Chand Vs Savyasachi Infrastructure Pvt.	B-11 54.36 sq. yds.(page 31 of complaint)	**MoU:** **26.02.2021**	26.08.2022	**BSP:** **Rs. 20,00,000/-** **AP:** **Rs. 11,00,000/-**

	Ltd. & Sharma Confectioners Pvt. Ltd DOF: 26.08.2022				
8.	CR/5625/2022 Chandveer Singh Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 18.08.2022	SCO C-04 (page 24 of complaint)	**MoU: 11.11.2021**	11.05.2022	**BSP: Rs. 23,00,000/- AP: Rs. 9,50,000/-**
9.	CR/5662/2022 Ramesh Kumar Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 23.08.2022	A-15 54.36 sq. yds (page 27 of complaint)	**MoU: 11.08.2021**	11.02.2023	**BSP: Rs. 30,00,019/- AP: Rs. 14,00,000/-**
10.	CR/6010/2022 Ruchi Chaudhary Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 02.09.2022	C-06 54.36 sq. yds. (page 30 of complaint)	**MoU: 26.03.2021**	26.09.2022	**BSP: Rs. 20,00,013/- AP: Rs. 10,00,000/-**
11	CR/6017/2022 Neeraj Guatam Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd DOF: 02.09.2022	A-14 54.36 sq. yds (page 30 of complaint)	**MoU 05.03.2021**	05.09.2022	**BSP: Rs. 19,00,000/- AP: Rs. 10,00,000/-**
12	CR/6302/2022 Atul Kumar Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma	B-18 54.36 sq. yds (page 29 of complaint)	**MoU: 15.07.2021**	15.01.2023	**BSP: Rs. 23,00,000/- AP: Rs. 12,00,000/-**

	Confectioners Pvt. Ltd. DOF: 19.09.2022				
13	CR/7612/2022 Sukhpal Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd. DOF: 19.12.2022	A-11 54.36 sq. yds (page 29 of complaint)	**MoU:** **03.11.2021**	03.05.2023	**BSP:** **Rs. 25,00,070/-** **AP:** **Rs. 12,50,000/-**
14	CR/6692/2022 Rajiv Yadav Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd. DOF: 19.10.2022	A-12 54.36 sq. yds (page 29 of complaint)	**MoU:** **28.09.2021**	28.03.2023	**BSP:** **Rs. 25,00,070/-** **AP:** **Rs. 25,00,000/-**
15	CR/6693/2022 Rajiv Yadav Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd. DOF: 19.10.2022	A-13 54.36 sq. yds (page 29 of complaint)	**MoU** **28.09.2021**	28.03.2023	**BSP:** **Rs. 25,00,070/-** **AP:** **Rs. 25,00,000/-**
16	CR/22/2023 Sher Singh Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd. Ltd. DOF: 13.01.2023	D-01 54.36 sq. yds (page 25 of complaint)	**MoU** **28.01.2021**	28.07.2022	**BSP:** **Rs. 25,00,006/-** **AP:** **Rs. 9,50,000/-**
17	CR/1565/2023 Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd. DOF: 11.04.2023	SCO no. B08 (page 29 of complaint)	**MoU:** **20.03.2022**	20.09.2023	**BSP:** **Rs. 20,00,000/-** **AP:** **Rs. 10,00,000/-**
18.	CR/2004/2023 Gulshan Rani Vs Savyasachi	SCO no. A07 (page 29 of complaint)	**MoU** **23.12.2021**	23.06.2023	**BSP:** **Rs. 22,50,000/-** **AP:**

	Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd. DOF: 02.05.2023				**Rs. 12,00,000/-**

Relief sought by the complainant(s):-
i. Refund along with interest.

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case ***CR/5512/2022*** titled as ***Sunil Kumar & Anr. Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

5. The particulars of the project, the details of unit, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, have been detailed in the following tabular form:

CR/5512/2022 titled as ***Sunil Kumar & Anr. Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd.***

S.N.	Particulars	Details
1.	Name of the project	"Amaya Greens", Sector 03, Gurugram.
2.	Total project area	3.125 acres (Unlicensed)
3.	Nature of the project	Commercial
4.	License no.	Not obtained from DTCP
5.	RERA registered or not	Not registered
6.	MOU executed between respondent no. 1 and the complainants on	23.03.2021
7.	Unit no. (SCO no.)	A-08 admeasuring 54.36 sq. yds. (tentative)

8.	Basic sale consideration	Rs. 19,00,000/- [Note: BSP is calculate @ Rs. 34952/- 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.]
9.	Paid up amount	Rs. 10,00,000/- as per clause 4 of the MOU (Page 31 of complaint)
10.	Possession clause	6. *"That the First Party assures 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 and if in any case First Party unable to handover the SCO within Twelve months then from the month of Thirteen, the First Party assures the Second Party that it shall pay interest of 24% of invested amount p.a. to the Second Party till the time of possession of the said SCO."*
11.	Due date of possession	23.03.2022 + 6 months in lieu of covid-29 = 23.09.2022
12.	Occupation Certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint

6. The complainants have made the 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, Farukh Nagar, Gurugram, under license no. 37 of 2017 dated 24.06.2017, issued by DTCP, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the project had got building plan approval from the Authority.

II. Relying on various representations and assurances given by the respondent and on belief of such assurances, complainant booked a SCO unit in the project by paying an amount of Rs. 10,00,000/- towards the said unit bearing no. SCO A-08, in Sector-3, Gurugram, having super area admeasuring 54.358 sq. yards. to the respondent dated 23.03.2021 and the same was acknowledged by the respondent.

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 09.03.2021, allotting a unit no. SCO No. A-08 in the aforesaid project of the developer for a total sale consideration of the unit i.e., Rs. 19,00,000/- which includes basic price, EDC and IDC, car parking charges and other specifications of the allotted unit. A MoU was executed between the complainant and respondent no. 1 dated 23.03.2021.

IV. That at the time of execution of the said MOU, assurance was made to the complainant that the agreement will 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 complainants vide booking application form dated 09.03.2021, 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 complainants received said copy of the MoU it was very shocking to the complainants that respondent acting arbitrarily changed the agreed terms and conditions of the booking in MoU. Thereafter, complainants raised the objection to same and respondent provided false assurance to the complainants that it is just for the formality.

VI. That as per the said MOU, the respondent was liable to handover the possession of the said unit on or before 23.03.2022, therefore, the

respondent was liable to pay interest as per the prescribed rate as laid under the RERA Act, 2016 and HRERA Rules, 2017 for delay in delivery of possession till the completion of the construction of unit.

VII. That the respondent by falsely mis-representing to the complainants and thereby making them to act in accordance to its misrepresentation.

VIII. That the respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainants by making false promises and statements at the time of booking. The respondent 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 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 respondent clearly reveal that the respondents with prejudice has been indulging in unfair trade practice 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 complainants. By having intentionally and knowingly induced and having falsely mis-represented to the complainants and thereby owing to all the deliberate lapses on the part of the respondent, the respondents are liable to make as being requisitioned/claimed by the complainants.

X. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site and when the respondent will 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 complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after 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 complainants contacted the respondent on several occasions and were regularly in touch with the respondents. The respondents was never able to give any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession.

XII. That the complainants continuously asking the respondents about the status of the project, time by which the project is expected to be completed, when the respondents will get buyers agreement executed and the penalty amount that respondents is liable to pay but respondents were never able to give any satisfactory response to the complainants response to the complainants.

XIII. That as per the demands raised by the respondent, based on the payment plan, the complainants to buy the subject unit already paid a total sum of Rs. 10,00,000/- towards the said unit against total sale consideration of Rs. 19,00,000/-.

XIV. That allotment of the unit was made on 23.03.2021, 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 complainants on the super area i.e., 54.36 sq.yards @Rs. 34,592/- 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 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.

XV. That the respondents not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainants 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.

XVI. That the complainants 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 complainants and the penalty amount that respondents is liable to pay but respondents was never able to give any satisfactory respondent to the complainants.

XVII. That the complainants are the one who has invested their life savings in the said project and are dreaming of a unit for themselves and the respondents have not only cheated and betrayed them but also used their hard earned money for their enjoyment.

C. Relief sought by the complainants: -

7. On 04.03.2025, the counsel for the complainants stated at the bar that the complainants requested to amend the relief in the complaint and now wishes to withdraw from the project. The complainants are seeking a full refund of the amount deposited, along with interest from the date of each deposit, as the allotment of the unit has been made in an unregistered and unsanctioned project. An application for the amendment of relief has been submitted, and the same was allowed in view of the facts and circumstances mentioned above.

8. The complainants through application dated 30.04.2024 for amendment in relief is seeking following relief:

   I. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest as per provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016.

9. The Authority issued a notice dated 26.09.2022 to the respondent by speed post and also sent it to the provided email addresses, rawatgaurav6464@gmail.com, savyasachi@gmail.com, sndas1953@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 06.12.2023 in the newspapers, namely Dainik Bhaskar and Hindustan Times. The respondents failed to appear before the Authority on 02.11.2022, 14.03.2023, 31.08.2023, 05.10.2023, 12.12.2023, 16.01.2024, 26.03.2024, 09.07.2024, 08.10.2024, 07.01.2025, and 04.03.2025. None has appeared on behalf of the respondent despite being given sufficient & multiple opportunities , in view of the same, the defense of the respondent was struck off and matter was proceeded ex-parte vide order dated 12.12.2023 and is being decided on basis of facts and documents submitted with the complaint which are undisputed. It is important to note that during the course of proceeding dated 04.03.2025, Sh. Arjun Parashar Advocate on behalf of Sh. Bharat Bhushan Yadav Ex. Director and filed POA during proceedings and states that Sh. Bharat Bhushan Yadav is not any more associated with the respondent company.

D. Jurisdiction of the authority

10. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

11. 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.

E.II Subject matter jurisdiction

12. 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.

13. 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.

14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** *and reiterated in case of* ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022,*** wherein it has been laid down as under:

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the

powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainants.

E.I Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest as per provisions of section 18 of the Real Estate (Regulation & Development) Act, 2016;

16. The complainants booked a SCO plot no.A-08 admeasuring 54.36 sq.yds. A MoU with regard to the subject unit was executed on 23.03.2021 between the parties. The complainant has paid Rs. 10,00,000/- against the basic sale consideration of Rs. 19,00,000/-. As per clause 6 of the MoU, it was agreed by the promoter-respondent that the SCO plot shall be handed over within a period of 12 months from the date of MoU.

17. As submitted by the complainants that the work at the site was not even started and see no hope of its completion. To ascertain the situation, on 31.08.2023, the Authority appointed an Enquiry Officer, namely, Shri. Ramesh Kumar, retired DSP.

18. In pursuance to above-mentioned directions passed by the Authority, the Enquiry Officer submitted the status report on 23.12.2023 and has concluded as under:-

> *""6. Conclusion:*
>
> *The site of the project i.e., "Amaya Greens", located at Sector-3, Farukhnagar, Gurugram being developed by M/s Savyasachi Infrastructure Pvt. Ltd. has been inspected on 12.12.2023 and it is concluded that: -*
>
> *(A) Collaboration agreement dated 28.06.2016 had been registered between the landowner i.e., Sharma Confectioners Pvt. Ltd. in collaboration with the developer i.e., Savyasachi Infrastructure Pvt. Ltd. for the land admeasuring 97 Karnal 6 marla i.e.,12.1625 acres.*

(B) *The license had been granted by DTCP vide license no 37 of 2017 dated 24.06.2017 valid up to 27.06.2022 for land admeasuring 9.0375 acres only and after that the project had been registered with the interim RERA vide RC no 212 of 2017 dated 18.09.2017 valid up to 16.03.2023 (including 6 months Covid extension).*

(C) Completion certificate had been granted by DGTCP, Haryana vide memo no. LC-3257/JE(SJ)-2021/510 dated 11.01.2021 for license no 37 of 2017 for land admeasuring 9.0375 acres only.

(D) ***The balance part i.e., 3.125 acres has not been granted any license by DTCP, Haryana and not registered with the Authority also.***

(E) *As per the statement of landowner SPA was cancelled on 03.01.2022 by the landowner due to some disputes arise between them and complaints regarding SCO which is to be handed over by the promoter i.e., M/s Savyasachi Infrastructure Pvt. Ltd. falls outside the license no 37 of 2017 and the area on which SCO's are proposed to build has not granted any license from DTCP Haryana.*

(F) *MOU's were signed on different dates as per mentioned in the table between the developer i.e., Savyasachi Infrastructure Pvt. Ltd and complainant i.e., Mr. Vinod Kumar S/o Sh. Ramchander and payment had been received from developer without registering the project with the Authority.*

(G) *Landowner i.e., Sharma Confectioners Pvt. Ltd. stated that they have no objection for the allottees who has been offered possession by the developer i.e., Savyasachi Infrastructure Pvt. Ltd. in the land parcel of 9.0375 acres only and will not create any obstruction to the allottees for taking the physical possession and once the license and registration has been granted for the balance part i.e., 3.125 acres, then they will not have any objections for giving possession to the concerned allottees also.(Statement attached as Annex- C)."*

19. In pursuance of the above-mentioned conclusion, the Authority observes that the total area of the project is 12.1625 acres. The DCTP, Haryana, has granted the license to develop the colony only for an area of 9.0375 acres only. The remaining area, i.e., 3.125 acres, has not been granted any license by DTCP, Haryana, nor it is registered with the Authority. The unit booked by the complainant is part of unlicensed and unregistered area measuring 3.125 acreas. Herein, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest at

the prescribed rate as provided under Section 18(1) of the Act. Section 18(1) of the Act is reproduced below for ready reference:-

> ***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.-*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
>
> *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."* ***(Emphasis supplied)***

20. Clause 6 of the memorandum of understanding dated 21.09.2020 provides for the time period for handing over of possession and is reproduced below:

> *"**6)** That the First Party assures 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** and if in any case First Party unable to handover the SCO within Twelve months then from the month of Thirteen, the First Party assures the Second Party that it shall pay interest of 24% of invested amount p.a. to the Second Party till the time of possession of the said SCO.*

21. **Due date of handing over possession:** As per clause 6 of the MOU, the possession of the allotted SCO plot was supposed to be offered within a stipulated timeframe of 12 months from the date of signing of the MOU. In the present matter, the MoU was executed on 23.03.2021 and hence the respondent was liable to handover possession by 23.03.2022 in terms of the MoU. 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 23.09.2022.

22. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest and intends to withdraw from the project. The prescribed rate of interest as provided under Rule 15 of the Rules, ibid. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

24. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 04.03.2025 is **9.10%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

25. Keeping in view the fact that the allottee/complainants wishe to withdraw from the project and seeking refund of the amount received by the promoter in respect of the SCO plot with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under Section 18(1) of the Act of 2016.

26. The due date of possession as per MoU as mentioned in the table above is 23.09.2022. The Authority has observed that even after a passage of more than 3.5 years till date neither the construction is complete nor the offer of possession

of the allotted unit has been made to the allottee by the respondent/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid more than 80% of sale consideration. It is also pertinent to mention that complainant has paid the more than 80% amount on the date of entering into the memorandum of understanding, i.e., on 23.03.2021. Further, the Authority observes that the total area of the project is 12.1625 acres. The DCTP, Haryana, has granted the Occupation Certificate only for an area of 9.0375 acres. The remaining area of 3.125 acres, which includes the complainant's SCO plot, has not been granted any license by the DTCP, Haryana, nor it is registered with the Authority and neither the promoter is making any efforts to complete the project or even application for grant of permission to develop the colony has been initiated. In view of the above-mentioned facts, the allottee is well within the right to seek refund of the paid up amount in terms of Section 18(1) of the Act, 2016.

27. In the judgement of the Hon'ble Supreme Court of India in the cases ***of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022, it was observed that:-

> 25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the*

project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.

29. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 ibid.

F. Directions of the authority

30. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

    i. The respondent/promoter is directed to refund the entire paid-up amount received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 from the date of each payment till the actual realization of the amount.

ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

iii. The planning branch of the Authority is directed to take necessary action under the provision of the Act of 2016 for violation of proviso to Section 3(1) of the Act by the respondent for sale of units without registration and license.

31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid up amount is mentioned in each of the complaints.

32. Complaint as well as applications, if any, stands disposed of accordingly.

33. Files be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.03.2025