BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**7977 of 2022**
Date of filing	**06.01.2023**
Date of decision:	**11.02.2025**

Chanda Rani **R/o:-** Danoda Wale, Main Gali, Hari Nagar, Narwana, Jind, Haryana-126116.	**Complainant**
Versus	
M/s Savyasachi Infrastructure Pvt. Ltd. **Regd. office at:** - M-166, 2nd floor, South City-1, Gurugram-122001	**Respondents**
M/s Sharma Confectioners Pvt. Ltd. **Regd. office at:** - 3B, Mandeville Gardens, Ballygunge P.S. Gariahat, Kolkata, West Bengal-700019	

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

APPEARANCE:	
Sh. Dhruv Lamba (Advocate)	**Complainant**
None	**Respondents**

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 allotment letter.

A. Project and plot 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.	Total project area	12.1625 acres 9.0375 acres (licensed) 3.125 acres (Unlicensed) *Note: Complainant's SCO plot falls under unlicensed area.
4.	License no.	Not obtained by DTCP
5.	RERA registered or not	Not registered
7.	MOU executed between respondent no. 1 and the complainant on	21.09.2020 [page 18 of complaint]
8.	SCO plot no.	C-85 admeasuring 126.06 sq. yds. (tentative) [page 19 of complaint]
9.	Basic sale consideration	Rs. 18,90,900/- (as per clause 4 of MOU, page 19 of complaint) [Note: BSP is calculate @ Rs. 15,000/- 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.]

10.	Paid up amount	Rs. 15,00,000/- as per clause 2 of the MOU (Page 19 of complaint)
11.	Possession clause	*5. "That the First Party assures 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."*
12.	Due date of possession	21.09.2021 + 6 months in lieu of Covid - 19 = **21.03.2022**
13.	Occupation Certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has 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 complainant desired an allotment of a unit in the project of the respondent floated by the name of Amaya Greens, in Sector-3, Farukh Nagar, Gurugram, Haryana, admeasuring super area 126.06 sq. yds., for basic sale consideration of Rs. 18,90,900/-.

ii. That deluded by the representations of the respondent, the complainant entered into a builder buyer agreement on 07.11.2019. The complainant thereafter paid a full & final payment of Rs. 24,75,424/- up to 20.03.2021 towards the booking in the project. The respondent allotted the SCO plot bearing no. C-85. The respondent represented that it is in right to exclusively develop, construct and transfer or alienate the plot's floor 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 5 of the builder buyer's agreement, the respondent was under legal obligation to handover the possession of the above said plot within 12 months from the date of execution of the builder buyer agreement.

iv. That the complainant 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 complainant has made and satisfied all the payments against the demands raised by the respondent and as on the date of filing of the present complaint, the complainant has abided by all the payment plan of the builder buyer's agreement without any delay and default. The complainant has also paid the development charges of the project.

vi. That till today the complainant has not received any satisfactory reply from the respondent regarding the completion of the project. The complainant has 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 complainant has not been provided with the possession of the said SCO plot despite several and repeated promises and representation made by respondent. By committing delay in delivering the possession of the aforesaid SCO plot, the respondent has violated the terms and conditions of the builder buyer's agreement and promises made at the time of booking of said SCO plot.

viii. That cause of action accrued in favour of the complainant and against the respondent, when he had booked the said unit and it further arose when respondent failed/ neglected to deliver the said SCO 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 complainant

4. On 30.04.2024, the counsel for the complainant requested to file an application to amend the relief from delayed possession charges to a refund. The application for the amendment was filed on the same date, and same was allowed vide proceeding dated 11.02.2025.

5. The complainant 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.

6. The Authority issued a notice dated 07.01.2023 to the respondent by speed post and also sent it to the provided email addresses, lambadhruv9@gmail.com,savyasachi@gmail.com,sndas1953@gmail.com, advdhruvlamba9@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 15.06.2023 in the newspapers, namely Dainik Bhaskar and Hindustan Times. The respondents failed to appear before the Authority on 16.05.2023, 12.09.2023, 06.10.2023, 12.12.2023, 06.02.2024, 30.04.2024, 06.08.2024 and 29.10.2024. 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 06.10.2023 and is being decided on basis of facts and documents submitted with the complaint which are undisputed.

D. Jurisdiction of the authority

7. 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

8. 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

9. 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.

10. 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.

11. 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

12. 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 complainant.

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.

13. The complainant has booked a SCO plot no.C-85 admeasuring 126.06 Sq.Yds. A MoU with regard to the subject unit was executed on 21.09.2020 between the parties. The complainant has paid Rs. 15,00,000/- against the basic sale consideration of Rs. 18,90,900/-. As per clause 5 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.

14. As submitted by the complainant 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.

15. 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)*

16. 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)***

17. Clause 5 of the memorandum of understanding dated 21.09.2020 provides for the time period for handing over of possession and is reproduced below:

> *"5) That the First Party assures 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***

18. **Due date of handing over possession:** As per clause 5 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 21.09.2020 and hence the

respondent was liable to handover possession by 21.09.2021 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 21.03.2022.

19. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed rate of interest and intends to withdraw from the project. The prescribed rate of interestas 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.*

20. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid, 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.

21. 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., 11.02.2025 is **9.10%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

22. Keeping in view the fact that the allottee/complainant wishes 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.

23. The due date of possession as per agreement for sale as mentioned in the table above is 21.03.2022 and there is delay of 9 months 16 days on the date of filing of the complaint. The Authority has further, observe 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 21.09.2020. 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.

24. 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."*

25. 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.

26. 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

27. 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/promoter is directed to refund the entire paid-up amount i.e., Rs.15,00,000/- received by it from the complainant 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 respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of allottee-complainant.

28. The complaints stand disposed of.

29. Files be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.02.2025