

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

Complaint no. 4731 of 2023
Date of filing 26.10.2023
Date of order: 08.05.2025

Ratan Singh Shekhawat

R/o:- R/o H.no. 159/22, Gali no.10, Gandhi
Nagar, Gurugram, Haryana-122001

Complainant

Versus

1. M/s Savyasachi Infrastructure Pvt. Ltd.

Regd. office at: - M-166, 2nd floor, South City 1,
Gurugram-122001

2. M/s Sharma Confectioners Pvt. Ltd.

Regd. office at: - 3B, Mandeville Gardens,
Ballygunge P.S. Gariahat, Kolkata, West Bengal-
700019

Respondents**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Gaurav Rawat (Advocate)

None

**Complainant
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. No.	Particulars	Details
1.	Name of the project	"Amaya Greens", Sector 3, Gurugram
2.	Total project area	12.1625 acres 9.0375 acres (licensed) 3.125 acres (Unlicensed) <i>*Note: Complainant's SCO plot falls under unlicensed area.</i>
3.	DTCP license no. and validity status	Not obtained by DTCP <i>*Note: Vide proceedings dated 08.05.2025 license no. was inadvertently recorded as 37 of 2017 dated 28.06.2017 valid upto 27.06.2022</i>
4.	RERA Registered/ not registered	Not registered <i>*Note: Vide proceedings dated 08.05.2025 RERA registration was inadvertently recorded as 212 of 2017 dated 18.09.2017 valid upto 16.03.2023 (including 6 months grace period of COVID)</i>
5.	Plot no.	A-10 (as per MOU dated 26.11.2021 page of complaint)
6.	Plot area admeasuring	54.36 sq. yds. (page 28 of complaint)
7.	Date of allotment	NA
8.	Date of execution of agreement for sale	NA
9.	MOU	26.11.2021 (page 28 of complaint)
10.	Possession clause	6. <i>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.</i>
11.	Due date of possession	26.11.2022 (calculated from the date of the MOU)

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	Total Basic Sale Price	Rs.22,99,999/- (Rs.42,310.52/- per sq. yds. as per page 29 of complaint)
17.	Amount paid by the complainants	Rs.12,00,000/- (as per MOU page 29 of complaint)

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:

- That the respondents advertised about its new project namely 'Amaya Greens' in Sector 3, Gurugram. The respondents painted a rosy picture of the project in its advertisements making tall claims.
- That in 2017, the respondents issued an advertisement announcing a Deen Dayal Jan Awaas Yojna "Amaya Greens" at Sector -3, Farukh Nagar, Gurugram 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.
- That the complainants while searching for a SCO unit was lured by such advertisements and calls from the brokers of the respondents for buying a unit in its project. The respondents told the complainants about the moonshine reputation of the respondent and the representative of the respondent made huge presentations about the project and also assured that they have delivered several such projects in the NCR.
- That 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.12,00,000/- towards the said unit bearing no. SCO A-10, in Sector-3 admeasuring super area 54.36 sq. yards. to the respondent on 23.11.2021 and the same was acknowledged by the respondent.

- e) That the respondents confirmed the booking of the said unit to the complainant providing the details of the project, confirming the booking of the subject unit for a total sale consideration of the unit i.e. Rs 23,00,000/- which includes basic price, EDC and IDC, car parking charges and other specifications of the allotted unit.
- f) That an MOU was executed between the complainant and respondent no. 1 on 26.11.2021. At the time of execution of the said MOU assurance and representation was made to the complainant 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 of subject unit even after delay of more than around 1 year.
- g) Also, 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 26.11.2022. Therefore, the due date of possession comes out to be 26.11.2022.
- h) That complainants vide booking application form dated 23.11.2021, applied for booking of the said unit. Thereafter, repeated reminders and follow ups the respondent provided 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, complainant raised the objection to same and respondents provided false assurance to the complainant that it is just for the formality.
- i) That as per the said MOU, the respondent was liable to handover the possession of the said unit on or before 26.11.2022, therefore, the respondents were 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

- j) That respondent falsely mis-representing to the complainants and thereby making them to act in accordance to its misrepresentations. 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 are unable to handover a possession even after a delay of year.
- k) 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 "opposite parties" 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 opposite party has caused an immeasurable mental stress and agony to the complainants. That by having intentionally and knowingly induced and having falsely mis-represented to the complainants and thereby making them to act in accordance to its misrepresentations, and owing to all the deliberate lapses/delays on the part of the "opposite parties", the opposite parties" are liable to make as being requisitioned/claimed by the complainants
- l) That during the period the complainants went to the office of respondents several times and requested them to allow them to visit the site and when the respondents 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 complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.

- m) That the complainants contacted the respondents on several occasions and were regularly in touch with the respondents. The respondents were 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.
- n) 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.12,00,000/- towards the said unit against total sale consideration of Rs.23,00,000/-
- o) That the allotment of the unit was made on 23.11.2021, 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 charged the complainants on the super area i.e. 54.36 sq. yards @ Rs.42,310 per sq. yards which is against the provisions of the RERA Act, 2016 and the rules, 2017 made thereof.

C. Relief sought by the complainant.

4. The respondent filed the present complaint seeking delay possession charges along with handover of possession and other reliefs. However, during proceedings dated 08.04.2025, the counsel for the complainant stated at bar that the complainant in the present case is seeking refund of the paid-up amount.
5. The Authority issued a notice dated 30.10.2023 to the respondent by speed post and also sent it to the provided email addresses savyasachi@gmail.com

sndas1953@gmail.com. Delivery reports have been placed on record. However, the respondents failed to appear before the Authority on date listed before the Authority. None has appeared on behalf of the respondent despite being given sufficient and multiple opportunities. In view of the same, the defense of the respondent was struck off and matter was proceeded ex-parte vide order dated 08.05.2025 and is being decided on basis of facts and documents submitted with the complaint which are undisputed.

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.

10. 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

11. 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 paid-up amount.

12. During the hearing dated 08.04.2025, the counsel for the complainant stated at bar that the complainant in the present case is praying for relief of refund to be allowed, as the work at site has not even started and there is no hope of completion of the project.
13. The factual matrix of the present case reveals that the complainant booked plot no. A-10, admeasuring 54.36 sq. yards. A MoU with regard to the subject unit was executed on 26.11.2021 between the parties. The complainant has paid Rs. 12,00,000/- against the basic sale consideration of Rs.22,99,999/-. 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.
14. The Authority in **CR/5512/2022** titled as **"Sunil Kumar & Anr. Vs Savyasachi Infrastructure Pvt. Ltd. & Sharma Confectioners Pvt. Ltd."** in order to ascertain the situation, **on 31.08.2023**, 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 Karnaal 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 is it registered with the Authority. The unit booked by the complainant is part of unlicensed and unregistered area measuring 3.125 acres. Herein, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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.-*

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- (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 6 of the memorandum of understanding dated 26.11.2021 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 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 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 26.11.2021 and hence the respondent was liable to handover possession by 26.11.2022 in terms of the said MoU.

19. **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.

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., 08.05.2025 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 MoU is 26.11.2022. The Authority has further, observed that 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, even after a passage of more than 2.5 years approximately. 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 considerable amount of the sale consideration. It is also pertinent to mention that complainant has paid the more than 50% amount on the date of entering into the memorandum of understanding, i.e., on 26.11.2021. 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.

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-

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

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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.12,00,000/- 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.

28. The complaints stand disposed of.

29. Files be consigned to registry.

Dated: 08.05.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram