

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

Complaint no.	269 of 2024
Date of filing	31.01.2024
Date of first hearing	13.03.2024
Date of decision	28.05.2025

Mr. Sukhdev Singh

R/o:- 220/15, G.T. Road, Rattangarh,
Kurukshetra, Haryana- 136135

Complainant

Versus

M/s Savyasachi Infrastructure Pvt. Ltd.

Regd. office at:- 251-252, Space Edge
Building, Tower B, Sector-47, Sohna Road,
Gurugram- 122001, Haryana

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Pankaj Kumar (Advocate)

None

**Complainant
Respondent**

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:

Sr. No.	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 upto 27.06.2022
5.	Name of licensee	Sharma Confectioners Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Registration no. 212 of 2017 dated 18.09.2017 valid upto 16.03.2023 (including 6 months grace period of COVID)
7.	Plot no. (Complainant's unit falls under the licensed area)	Plot No. A-48/2 (Allotment letter at page 17 of the complaint)
8.	Unit area admeasuring	1028 sq. ft. (Allotment letter at page 17 of the complaint)
9.	Date of execution of builder buyer agreement	06.09.2019 (Page 20 of complaint)
10.	Possession clause	Clause 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 and 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 period mentioned above....."

		(Taken from BBA pertaining to the same project)
11.	Due date of possession	06.03.2022 (Calculated to be 24 months from date of execution of agreement along with grace period of 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic)
12.	Basic Sale Price	Rs. 23,25,336/- (As per Schedule 'C' of the BBA at page 27 of the complaint)
13.	Amount paid by the complainants	Rs. 20,71,531/- (As pleaded by the complainant at page 11 of the complaint and receipts annexed at page 23-26 of complaint)
14.	Completion Certificate	11.01.2021 (Taken from already decided complaint case no. 7497 of 2022 decided on 30.01.2024)

B. Facts of the complaint

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

- a) That, after going through advertisement published by respondent in the newspapers and referring to the brochure /prospectus provided by respondent, the complainant desired an allotment of a plot in the project of the respondent floated by the name of Amaya Greens, in Sector-3, Farukhnagar, Gurugram, Haryana, having super area 1028 sq. feet, for basic sale consideration of Rs. 23,25,336/-.
- b) That the builder buyer agreement was executed between the parties on 06.09.2019. The complainants thereafter made a full and final payment of Rs.20,71,531 upto 26.02.2022 towards the booking in the project. The respondent thereupon issued an allotment letter in favour of the complainants for unit no. A-48/2 on 21.09.2019.
- c) That the respondent represented that it is in right to exclusively develop, construct and build residential building, transfer or alienate the unit's floor ✓



space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc. in respect to the project.

- d) That as per clause 4.1 of the builder buyer agreement, 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 buyer's agreement.
- e) 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.
- f) 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 the payments plan without any delay and default. The complainant has also paid for the development charges of the project.
- g) That, till today the complainant had not received any satisfactory reply from the respondent regarding completion of the project. The complainant has been suffering from mental, physical and financial agony as well as harassment.
- h) That the respondent has not completed the construction of the said real estate project till now and the complainants has 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 and promises made at the time of booking of said plot.

- i) That the cause of action accrued in favour of the complainant and against the respondent, when complainant 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.
- j) That the complainant after losing all the hope from the respondent, having his dreams shattered of owning a flat and having basic necessary facilities in the vicinity of "Amaya Greens" project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

C. Relief sought by the complainant

4. The complainant herein is seeking following relief(s):
 - I. Direct the respondent to pay delay possession charges till offer of possession of the said plot along with prevailing interest as per provisions of the RERA 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.
5. The authority issued a notice dated 01.02.2024 of the complaint to the respondent by speed post and also on the given email address. The delivery reports have been placed in the file. However, during the first hearing dated 13.03.2024, the complainant submitted that in other cases pending before the authority, respondent was being served by way of publication, so in this case too respondent may also be served by way of publication. Accordingly, the case was adjourned for 29.05.2024 for service of notice to respondent by way of publication through newspapers "The Tribune" English edition and "Dainik Bhaskar" Hindi edition on the

expenses of the complainant. During the second hearing dated 29.05.2024, the complainant apprised the authority that publication against the respondent has been duly effected in the newspaper "The Tribune" (English edition dated 21.03.2024) and in the newspaper "Dainik Bhaskar" (Hindi edition dated 21.03.2024). However, none appeared on behalf of the respondent. The respondent was directed to file reply in the registry within a period of three weeks, failing which a cost of Rs.10,000/- would be payable to the complainant. Despite that, the respondent failed to appear before this Authority on the next hearings dated 03.07.2024 and 11.09.2024.

6. Further, even during the further hearings dated 23.04.2025, none appeared on behalf of the respondent. Neither reply was filed within the stipulated period in order dated 29.05.2024 nor cost of Rs.10,000/- paid on behalf of respondent to the complainant. Since none has appeared on behalf of the respondent despite being given sufficient opportunities, in view of the same, the defense of the respondent was struck off and respondent was proceeded ex-parte vide order dated 23.04.2025.

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.

E. Findings on the relief sought by the complainant.

E.I Direct the respondent to pay delay possession charges till offer of possession of unit along with prevailing interest.

11. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to Section 18(1) of the Act which reads as under:-

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

12. Clause 4.2 of the buyer's agreement (in short, the agreement) dated 06.09.2019, provides for handing over possession and the same is reproduced below:

"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. However, the Seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the period mentioned above....."*

13. **Due date of handing over possession:** As per clause 4.2 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 24 months from the date of signing of this agreement to the allottees as per terms of this agreement. The authority in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic has allowed the grace period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 06.03.2022.
14. In the present complaint, the completion certificate was granted by the competent authority on 11.01.2021. The respondent has obtained completion certificate prior to the due date of handing over 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 buyer's agreement executed inter se parties. Thus, no case ✓

for delayed possession charges is made out under Section 11(4)(a) of the Act read with proviso to Section 18(1) of the Act. Accordingly, no direction to this effect.

E.II Direct the respondent to provide habitable possession of the said unit to the complainant.

15. The grievance of the complainant is that the respondent has failed to handover the physical possession.
16. The authority observes that respondent promoter has obtained completion certificate in respect of the said project from the competent authority on 11.01.2021. Section 17 of the Act obligates the promoter to handover the physical possession of the subject plot/unit complete in all respect as per specifications mentioned in BBA and thereafter, the complainant-allottee is obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act, 2016.
17. In view of the above, in case the possession of the unit is not yet handed over to the complainant, the respondent is directed to handover the possession of the allotted unit/plot to the complainant complete in all aspects as per specifications of buyer's agreement within one month from date of this order after payment of outstanding dues, if any, as the completion certificate in respect of the project has already been obtained by it from the competent authority.

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

18. The grievance of the complainant is that the development work of the project is not complete and the respondent be directed to complete the said development work.
19. 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 complainant is 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 /unit with immediate effect.

20. The complainant is seeking relief of execution of conveyance deed. Clause 10 of the buyer's agreement provides for 'Conveyance of the said unit/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 Purchaser. The Purchaser shall be fully responsible for paying any deficient stamp duty and other charges to the government authorities. The Purchaser also undertakes to pay without 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."

21. 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:

"Section 17: - Transfer of title

17(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.

22. The respondent is under an obligation as per Section 17 of Act to get the conveyance deed executed in favor of the complainant. 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 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.V Direct the respondent to pay litigation expenses amounting to Rs. 50,000/.

23. The complainant is seeking the above-mentioned relief with respect to 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 Sections 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

24. Hence, the authority hereby passes this order and issues following directions u/s 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority u/s 34(f):

- I. In view of the findings recorded by the authority above, no case of delay possession charges is made out. However, in case the possession of the

plot is not yet handed over to the complainant, the respondent is directed to handover the possession of the allotted plot to the complainant complete in all aspects as per specifications of buyer's agreement within one month from date of this order after payment of outstanding dues, if any, as the completion certificate in respect of the project has already been obtained by it from the competent authority.

- II. The respondent is directed to execute the conveyance deed upon payment of outstanding dues and requisite stamp duty by the complainants as per norms of the state government as per Section 17 of the Act within 3 months from the date of this order failing which the complainants may approach the adjudicating officer for execution of order.
- III. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement and the provisions of Deen Dayal Jan Awas Yojna, 2016.
25. The complaint stand disposed of.
26. Files be consigned to registry.

Dated: 28.05.2025

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram