

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

Complaint no.:	7078 of 2022
Date of filing	03.11.2022
Date of decision:	04.03.2025

Samunder Singh Dhankar R/o:- 2/7, Devilal Colony, Gurugram, Haryana.	Complainant
Versus	
M/s Savyasachi Infrastructure Pvt. Ltd. Regd. office at: - M-166, 2nd floor, South City-1, Gurugram-122001	Respondent

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

APPEARANCE:	
Sh. Sushil Yadav (Advocate)	Complainant
None	Respondent

ORDER

- 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 unit 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 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	212 of 2017 dated 18.09.2017 valid upto 16.03.2023 (including 6 months grace period of COVID)
7.	Completion Certificate	11.01.2021 (Taken from already decided complaint case no. 7497 of 2022 decided on 30.01.2024)
8.	Plot no.	C-74 (page no. 12 of complaint)
9.	Area admeasuring	117.1 sq.yards (page no. 12 of complaint)
10.	Date of booking	08.08.2019 (page no. 7 of complaint)
11.	Date of allotment	08.08.2019 (page no. 7 of complaint)
12.	MoU entered into between the complainant and the respondent dated	22.08.2019 (page 11 of complaint)
13.	Possession clause	Clause 5 "5) That the First Party assures the Second Party that the possession of the said SC) shall be handed over within a period of twelve months from the date of signing of this MOU." (Page no.11 of the complaint)
14.	Due date of possession	22.02.2021

		(12 months from the agreement + 6 months grace period of COVID)
15.	Total Basic Sale Price	Rs. 17,56,950/- (15,000 * 117.13 sq.yards) (page 12 of complaint)
16.	Amount paid by the complainant	Rs. 14,05,560/- (page 12 of complaint)

B. Facts of the complaint

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

- I. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "project- "Affordable Plotted Housing Colony under The Deen Dayal Jan Awaas Yojna" Project , Sector 3 , Farukhnagar, District Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the complainant, booked an unit admeasuring area 117.13 Sq yards in aforesaid project of the respondent for total sale consideration of Rs 17,56,950/- which includes BSP, car parking, IFMS, club membership, PLC etc. including taxes, out of the total sale consideration amount, the complainant made payment of Rs. 14,05,560/- to the respondent vide different cheques on different dates, the details of which are as annexed with the complaint.
- II. That the respondent had allotted a unit bearing no. C-74 admeasuring 117.13 sq yards. to the complainant on dated 09.08.2019.
- III. That the complainant had requested many time to respondent to sign builder buyer agreement with him but respondent always put the request of complaint to his deaf ears and turn the matter from one pretext to another.



- IV. That as per clause 5 of the MoU between complainant and respondent, the respondent had agreed to deliver the possession of the unit within 12 months from the date of MOU between complainant and respondent i.e., unit was to be deliver till 21.08.2020.
- V. That some of the clauses in the MoU that the complainant/buyer were made to sign by the respondent are one sided. The complainant had signed already prepared documents and that some of the clauses contained therein were totally unreasonable and in favors of the respondent only.
- VI. That the complainant regularly visited the site but was surprised to saw that construction was very slow. It appears that respondent has played fraud upon the complainant. Even the respondent themselves were not aware that by what time possession would be granted. However, subsequent to this there has been very little progress in construction of the project. The only intention of the respondent was to take payments for the unit without completing the work. This shows that respondent mala-fide and dishonest motives and intention to cheat and defraud the complainant.
- VII. That despite receiving of all payment of all the demands raised by the respondent for the said unit and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted plot to the complainant within stipulated period.
- VIII. That this omission on the part of the respondent the complainant suffered from disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the unit on time.

C. Relief sought by the complainant: -

- 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.
4. The Authority issued a notice dated 10.12.2022 to the respondent by speed post and also sent it to the provided email addresses, Sandeep kumar0686@yahoo.in, vijayrajan@mail.com, SushilYadav10@gmail.com, savyasachi@gmail.com, Delivery reports have been placed on record. Despite this, a public notice for the appearance of respondent and for filing a reply was published on 19.04.2023 in the newspapers, namely Dainik Bhaskar and Hindustan Times. The respondent failed to appear before the Authority on 14.03.2023, 31.08.2023, 05.10.2023, 12.12.2023, 06.02.2024, 20.02.2024, 28.05.2024, 24.09.2024, 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.

D. Jurisdiction of the Authority

5. 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

6. 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

7. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.

8. 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.
9. 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.

10. 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;

11. The complainant has booked a plot no.C-74 admeasuring 117.1 sq.yds. A MoU with regard to the subject unit was executed on 22.08.2019 between the parties. The complainant has paid Rs. 14,05,560/- against the basic sale consideration of Rs. 17,56,950/-. As per clause 5 of the MoU dated 22.08.2019, it was agreed by the promoter-respondent that the plot shall be handed over within 12 months from the date of MoU.
12. Although the completion certificate for the project in which the complainant's unit is situated has been granted by the competent authority, the respondent has failed to offer possession to the complainant in accordance with the

Memorandum of Understanding dated 22.08.2019. There is nothing on record to show that the respondent/promoter has offered possession of the plot to the complainant/allottee. The complainant/allottee now wishes to withdraw from the project and is seeking a refund of the amount paid to the promoter in respect of the said unit, along with interest, due to the promoter's failure to complete or inability to hand over possession of the unit in accordance with the terms of the agreement for sale. The matter is, therefore, covered under Section 18(1) of the Act. The provisions of Section 18(1) of the Act, 2016 are 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 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 allottee, 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)

13. Clause 5 of the memorandum of understanding dated 22.08.2019 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

14. **Due date of handing over possession:** As per clause 5 of the MOU, the possession of the allotted 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 22.08.2019 and hence the respondent was liable to handover possession by 22.08.2020 in terms of the agreement. Further the Authority in view of **notification no. 9/3-2020 dated 26.05.2020**, allows grace period of 6 months on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over of possession comes out to be 22.02.2021.

15. **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 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]
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.

16. 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.

17. 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%**.
18. 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 plot with interest on failure of the promoter to complete or inability to hand over the possession of the unit in accordance with the terms of MoU. The matter is covered under Section 18(1) of the Act of 2016.
19. Additionally, in the present matter the builder buyer's agreement has not been executed inter-se parties. As per Section 13 of the Act, 2016 the promoter shall not accept more than ten percent of the cost of the unit from the allottee without first executing the agreement to sale with the allottee which is reproduce as under for ready reference:

13. No deposit or advance to be taken by promoter without first entering into agreement for sale. —

(1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

20. In the present complaint the MoU was executed between the parties on 22.08.2019 for the subject unit which is after the enactment of the Act, 2016. Herein, the complainant has paid an amount of Rs. 14,05,560/- out of the total sale consideration of Rs. 17,56,950/- to the respondent before entering into the Builder buyer agreement. The said amount collected by the respondent is not only more than 10% of the sale consideration of the subject unit but rather 80% of the sale consideration and the respondent has clearly violated Section 13(1)

of the Act, 2016 by accepting more than 10% of the sale consideration before executing the builder buyer agreement.

21. The due date of possession as per MoU as mentioned in the table above is 22.02.2021. The Authority observes that although the completion certificate of the project in which the unit of the complainant is situated has been obtained by the respondent on 11.01.2021 but there is nothing on the record that offer of possession of the allotted plot has been made to the allottee by the respondent. 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 he has paid more than 80% of the sale consideration. 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.
22. 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.

23. 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 under section 11(4)(a). The promoter has failed to offer possession of the unit in accordance with the terms of agreement. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by the promoter in respect of the unit with interest at such rate as may be prescribed.
24. 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

25. 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:
- The respondent/promoter is directed to refund the entire paid-up amount received by it from the complainant i.e, Rs. 14,05,560/- along with interest



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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.

26. Complaint stands disposed of.

27. 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

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