

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

**Complaint no. : 2273 & 2273/I  
of 2021**

**Date of first hearing : 21.01.2021**

**Date of decision : 21.11.2022**

HARERA, Gurugram  
R/o New PWD Rest House, Civil Lines,  
Gurugram

**Complainant**

Versus

M/s Brahma City Pvt Ltd  
10<sup>th</sup> Floor, Building no. 5A,  
DLF Cyber City, Phase-III,  
Gurugram

**Respondent**

**CORAM:**

Shri KK Khandelwal  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Chairman**

**Member**

**Member**

**Member**

**APPEARANCE:**

Sh. Atul Jain

Authorised Representatives for

Sh. Nikhil Srivastava

the respondent

**ORDER**

1. The present matter relates to the violation of section 3(1) of the Real Estate (Regulation and Development) Act, 2016 wherein it is inter alia prescribed that no promoter shall advertise, market, book, sell or offer for sell or invite persons to purchase in any manner any plot, apartment or building, as the case may be in any real estate project or part of it, in any planning area without registering the real estate project with the Real Estate Regulatory Authority established under the Act. Further, it is provided that for projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act.
2. The particulars of the project have been detailed in the following tabular form:

S. No.	Heads	Information
1.	DTCP license no.	64 of 2010



2.	Total licensed area	141.67 acres
3.	Project name and location	"Brahma City", Sector-60-65, Gurugram
4.	Registered area of project	86.04 acres
5.	Unregistered area of project	55.63 acres
6.	Registration applied	53.584
7.	Unregistered areas of the project fall under the Krrish area	2.0425
8.	Nature of the project	Residential plotted colony

3. The details of the phases launched and to be launched along-with registration details are exhibited below

Phase-wise detail of license area	Land Area (in acres)	Registration certificate Number	Relevant status of remaining phases and remarks
Phase-1	8.5718	268 of 2017	Registration taken
Phase-2	8.5718	268 of 2017	Registration taken
Phase-3	6.9681	277 of 2017	Registration taken



Phase-4	2.0006	327 of 2017	Registration taken
Phase-5	53.584	Applied for	
Krrish Part	59.9300	65 of 2019	The registration of Krrish Realtech Private Limited was revoked by the authority u/s 7(1) of the Act
Total	139.6263		
Area under Road	2.0425		The area falls under Krrish Realtech
Grand Total	141.6688		

Note: - Registration Certificate no. 65 of 2019 has been revoked vide orders dated 14.02.2022 for non-compliance with the terms and conditions of the registration certificate.

4. As per information available on the website of DTCP, Haryana regarding the issue of licenses it has been observed that license numbering 64 of 2010 dated 21.08.2010 on an area measuring 141.67 acres for the development of residential plotted colony titled KRRISH GUR-

60,61,62,63,65 RPL situated in sector 60,61,62,63,65 was issued in favor of M/s Brahma City Pvt Ltd by DTCP, Haryana. It has been further noticed that the promoter has not obtained a completion/part completion certificate for the above residential plotted colony in accordance with the terms and conditions of the license.

5. That as on the date of commencement of the Act of 2016, the promoter doesn't have a completion/ part completion certificate for the same. Therefore, the project is not saved from the requirement of registration under exceptions as provided under section 3(2) of the Real Estate (Regulation and Development) Act,2016 which provides as under:

*“(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—*

*(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;*

***(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;***

*(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.*

6. The project is covered under the definition of “on-going projects” as defined under Rule 2(o) of the Haryana Real Estate (Regulation and Development) Rules, 2017 which provides as under: -

*“ongoing project” means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:*

*(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the*



*Competent Authority on or before publication of these rules and*

*(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules."*

7. As per the provisions of the RERA, Act "ongoing projects" where a completion certificate has not been issued are required to be registered with the authority within three months from the date of commencement of the RERA Act. The promoters could not complete the project as on the date of coming into force of the Real Estate (Regulation and Development) Act, 2016 i.e. 1st May 2017, and also on the date of notification of the Haryana Real Estate (Regulation and Development) Rules, 2017, which were notified on 28.07.2017. As the rules were notified on 28.07.2017, the promoter could only apply after notification of the rules. Hence, three months period after the publication of rules is justified for making an application for registration of 'ongoing' real estate projects to comply with the provisions of section 3(1) of the Act *ibid*.
8. As per the record of the authority, eleven blocks of the project are registered out of a total of thirteen blocks, and some other parts of the project like commercial sites, community sites, etc of the project were also not registered. It appears that only 86.04 acres area out of a total of 141.67 acres was registered with the authority and the balance of 55.63 acres is not registered with the authority. Further, there is no such

document available in the registration files which proves that the balance area measuring 55.63 acres is exempted from registration or had been granted a completion certificate/part completion certificate by the competent authority. Except, the 2.0425 acres of landfall in "Krrish Area" and fall under the road there was still an area of 53.584 acre of land i.e. not registered as a 'ongoing project' withing the time allowed as per Act.

9. Accordingly, a show cause notices no. RERA-GRG-2273-2021 dated 21.05.2021 was issued to M/s Brahma City Pvt Ltd as to why penal proceedings under section 59 of the Act for violation of section 3 shall not be initiated against the promoter for the above violations of the Real Estate (Regulation and Development) Act, 2016 as per provisions of the Act *ibid*.
10. Further, as per the record available with the authority, the promoter had sold all 87 plots (i.e. J56-J74, J76-J112, J116-J139, J-141-143, J145-146, J149-150 of block J) falling in the unregistered part of the project in the residential plotted colony named "Brahma City" to M/s Adani Brahma Synergy Pvt Ltd as per conveyance deeds dated 08.10.2018 without registration of that part of the project where these plots are situated with the jurisdiction of Haryana Real Estate Regulatory Authority Gurugram.
11. Keeping in view the above facts, and as per the records of the authority the area of the project where plots, as mentioned in the para 9 of above, have been sold and the area of such plots is registerable under section 3 of the Act *ibid* and the promoter has sold the plots of this area without the registration of the area of the project with the Haryana Real Estate Regulatory Authority. This omission on the part of the promoter is a



violation of provisions of section 3(1) of the Act ibid which provides as under: -

*"No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act.*

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:"*

12. Accordingly, a show cause notices no. RERA-GRG-2273-2021/I dated 21.05.2021 was issued against the promoter M/s Brahma City Pvt Ltd for the above violations of the Real Estate (Regulation and Development) Act, 2016, and the promoter was called upon to show cause why penal proceedings u/s 59 for violation of section 3 of the Act i.e. sale of plots without registering the project with the Authority should not be initiated against the promoter.
13. The promoter was given a time of 15 days to submit its reply to the show cause notices and the next date of hearing was fixed on 21.06.2021. On

21.06.2021 authorised representative of the promoter appeared and sought one week time to file the reply as they are not aware of the notices. The authority gave the last chance to file a reply within seven days and the matter was adjourned to 06.07.2021.

14. In response to the above show-cause notices the promoter had submitted his reply on 25.06.2021 and 28.06.2021 stating that as per the settlement agreement dated 06.08.2012 and addendum dated 31.10.2015, the rights and obligations of M/s Brahma City Pvt. Ltd. on one part and Krrish Group entities including Krrish Realtech Pvt. Ltd. on the other part of the project have been crystallized.
15. The promoter submitted that they had already applied for registration of the above-said area as per section 4 of the Act. Section 3 of the Real Estate (Regulation and Development) Act, 2016 also provides for making application and registration of the complete project or phase-wise. It may also be noted in this regard that applications seeking registrations for the said parts ("balance areas" as referred to in the show cause notice) were also preferred before this Authority in 2018, along with registration fees towards such applications. A list of such applications as preferred before this Hon'ble Authority from time to time towards these balance areas is tabulated hereinbelow for ready reference:

S. No.	Date of Application	Area for which registration sought	Area
1.	20.08.2018 (Dy. No. 135)	Brahma City Phase 6 (Block L)	10598 (2.619)
2.	20.08.2018 (Dy. No. 137)	Brahma City Phase 8 (Block I)	48158 (11.90)
3.	20.08.2018 (Dy. No. 138)	Brahma City Phase 9 (Institutional Plot 1)	33134 (8.188)



4.	20.08.2018 (Dy. No. 139)	Brahma City Phase 10 (Institutional Plot 2)	4937 sq acre)
5.	20.08.2018 (Dy. No. 134)	Brahma City Phase 5 (Block M)	12468.36 (3.081)
6.	20.08.2018 (Dy. No. 136)	Brahma City Phase 7 (Block J)	61968 (15.313)

16. On scrutiny of the above applications, the Authority thereafter pointed out deficiencies in the said applications on 17.09.2018 directing the promoter to remove the same within 15 days, and also an opportunity for a personal hearing was given to the promoter. The promoter requested for extension of 30 days to remove the deficiencies and even within the extended time the promoter failed to remove the deficiencies. One of the relevant fact was that the license extension/renewal application preferred by M/s Brahma City Private Limited was pending consideration before the DTCP, Haryana, and as such the same was awaited at the time of application. As such, on account of the non-renewal of the license and removal of other deficiencies, the authority rejected the aforementioned applications seeking RERA registration as per provisions of section 5 of the Real Estate (Regulation and Development) Act, 2016. The incomplete application is no application in the eyes of law.
17. It was further submitted by the promoter that they have not committed any act of wilful disobedience or non-compliance with the provisions of the Act and rules as averred in the show cause notice and the reason for not applying for registration of the balance areas were solely on account of the previous rejection of the registration applications by the authority for factors beyond the control of the promoter.



18. The promoter further submitted that it had applied for registration of the project again on 26.05.2021 for common registration of balance areas amounting to 48 acres which includes 87 plots (i.e., J56-J74, J76-J112, J116-J139, J141-J143, J145-J146, J149—J150 of block J).
19. The promoter further stated that the conveyance deeds dated 08.10.2018 were extended in favor of M/s Adani Brahma Synergy Pvt Ltd for the purpose of re-development and/or sale to the end users, after obtaining RERA registration by M/s Adani Brahma Synergy Pvt Ltd.
20. The AR appointed by the promoter appeared before the authority and submitted that the reply submitted by the promoter needs to be considered. Keeping in view the reply submitted by the company, the record of the authority was checked wherein it was observed that the promoter made different applications for registration of balance areas of the project on 20.08.2018 which were rejected by the authority on the grounds of non-removal of deficiencies pointed out by the authority. Further, the promoter again applied for registration on 26.05.2021 and the same is under process. The authority on these points is of the considered view that the earlier application of the promoter for registration of the project was rejected with the directions to clear the deficiencies in the application and apply again for registration.
21. On 18.10.2021, in the proceedings of the day, the authority observed that the promoter has applied for registration of the project which is under examination and to be put up for hearing.
22. The matter was heard in detail and various opportunities were granted to the promoter during the proceedings of the day dated 06.07.2021,

07.07.2021, 19.07.2021, 02.08.2021, 16.08.2021, 23.08.2021,  
13.09.2021, 18.10.2021, 20.12.2021 and 24.12.2021.

23. On examination of the application for registration of the project and the documents submitted by the promoter, it was observed that the promoter had applied for registration of 48 acres against the unregistered area of 55.63 acres, and the promoter was directed to apply for registration of balance unregistered area of the license no. 64 of 2010.
24. The promoter had revised its application and applied for registration of 53.584 acres. The total combined area for all phases of the real estate project is 139.6263 acres and the same was compared with the licensed area 141.6688 acres of the residential plotted colony. It was observed that an area of 2.0425 acres is still unregistered. The promoter submitted that this area is in road alignment as well as the same falls in the area allocated to "Krrish Part".
25. Further, during the proceedings of the day, it was observed that promoter had sold 219 plots in the current phase of the project without registration of real estate projects with the RERA Authority Gurugam. The promoter had sold 215 plots to its group companies i.e. M/s Adani Brahma Synergy Pvt Ltd and M/s Achaleshwar Infrastructure Private Limited and 4 plots to individual customers as per conveyance deeds executed on various dates without registration of that part of the project where these plots are situated with the jurisdiction of Haryana Real Estate Regulatory Authority Gurugram
26. The promoter submitted that he did not make any advertisement for the sale of any plot in the said license area and sold the plots within group



companies. He further states that he has already obtained registration of 4 number of Phases and also applied for registration for the remaining left out area. However, the same was not considered for various deficiencies and BIP permission & renewal of license. The DTCP vide latest order dated 22.09.2022 has now granted BIP permission and has also renewed the license which is now valid upto 25.08.2025. Further, the promoter has deposited the requisite processing fee and registration fee along with late fee amounting to Rs. 44,74,448 and Rs. 69,18,001 respectively.

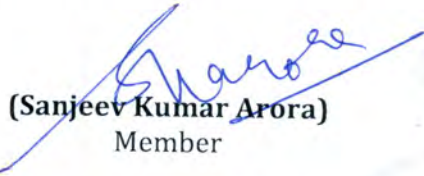
27. However, the fact remains that the applicant promoter sold the plots without registration of real estate projects with the RERA Authority. Therefore, this is a violation of section 3 of the Act by the promoter for which penal proceedings were initiated by the authority.
28. On consideration of the circumstances, the evidence, and other records and submissions made by the promoter during the course of hearings, the authority is satisfied that the promoter has violated section 3(1) of the Real Estate (Regulation and Development) Act, 2016. This omission of the promoter is punishable under section 59 (1) of the Act *ibid*. Section 59(1) of the Act and the authority has concluded penal proceedings for the above violations of 3 of the Act.
29. Therefore, the authority in light of the above-mentioned reasons decided to impose a penalty of Rs. 2, 50,00,000 (Rupees Two Crore Fifty Lacs Only) on the promoter for violating the provisions of section 3(1) (for not applying for registration of 'ongoing project' within time allowed under proviso of section 3(1) of the Real Estate (Regulation and Development)





Act, 2016 and also sale of plots without registration) of the Act which shall be deposited with the authority within one month and shall be credited in the government account within a prescribed period as per the Rules. The promoter is further directed not to violate the provisions of the RERA, 2016.

30. The matter stands disposed off.

  
**(Sanjeev Kumar Arora)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Ashok Sangwan)**  
Member

  
**(Dr. KK Khandelwal)**  
Chairman

*Recd. by head  
9/12/2022*