



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

Complaint no.: 627 of 2019
Date of filing complaint: 18.02.2019
First date of hearing: 12.09.2019
Date of decision: 18.11.2022

1. Chanchal Bhambari

R/o: - MS-6/801 Kendriya Vihar Sector-56,
Gurugram.

Complainant

Versus

1. M/s Krrish Realtech Pvt. Ltd. now Brahma City
Pvt. Ltd.

Regd. Office at: 4th Floor Elegance, Tower 8
Jasola District Centre, New Delhi.

2. Mr. Vipin Jain

Director at M/s Krrish Realtech Pvt. Ltd. now
Brahma City Pvt. Ltd.

Regd. Office at: - 4th Floor Elegance, Tower 8
Jasola District Centre, New Delhi.

3. Mr. Satish Kumar Seth

Director at M/s Krrish Realtech Pvt. Ltd. now
Brahma City Pvt. Ltd.

Regd. Office at: - 4th Floor Elegance, Tower 8
Jasola District Centre, New Delhi.

4. M/s Brahma City Pvt. Ltd.

Regd. Office at: 10th floor, Tower 5A, Epitome
DLF Cyber City Phase 3, Gurugram, Haryana.

5. **Mr. Amit Katyal**

Director at M/s Brahma City Pvt. Ltd.

Regd. Office at: 10th Floor, Tower 5A, Epitome
DLF Cyber City Phase 3, Gurugram, Haryana.

6. **Mr. Gulbir Madan singh**

Director at M/s Brahma City pvt. Ltd.

Regd. Office at: 10th Floor, Tower 5A, Epitome
DLF Cyber City Phase 3, Gurugram, Haryana.

7. **Mr. Ranjan Wazir**

Director at M/s Brahma City pvt. Ltd.

Regd. Office at: 10th Floor, Tower 5A, Epitome
DLF Cyber City Phase 3, Gurugram, Haryana.

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Complainant in person with Hemant Phogat
(Advocate)

Advocate for the
complainant

Sh. Venkat Rao, Ms. Shweta Priyadarshini and
Rishabh Kumar, Advocate for M/s Brahma
City pvt. Ltd. – (Respondent no. 4)

Shri Aditya Rathee, Advocate for M/s Krrish
Realtech Pvt. Ltd. – (Respondent no. 1)

Advocate for the
respondents

ORDER

1. The present 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 there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S.n.	Heads	Information
1.	Project name and location	"Krrish World", Sector 60-65, Gurugram, Haryana
2.	Project area	141.781 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	64 of 2010 dated 02.12 2015
5.	Name of licensee	M/s Brahma City Pvt. Ltd.
6.	HRERA registered/ not registered	Not registered
7.	Allotment letter dated	26.11.2012 [As per annexure PB annexed with the complaint]
8.	Flat buyer's agreement	Not executed
9.	Unit no.	2E28 [As per annexure PB annexed with the complaint]
10.	Super area admeasuring	263 sq. yards [As per annexure PB annexed with the complaint]

11.	Total consideration	Rs. 82,05,600/-
12.	Total amount paid by the complainant	Rs. 57,44,400/- [As per annexure PA annexed with the complaint]
13.	Possession clause	Cannot be ascertained
14.	Due date of possession	Cannot be ascertained
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

3. That the respondent no. 1 is a Private Limited Company which is incorporated under the Companies Act, 1956 having its registered office at 4th Floor, Elegance Tower-8, Jasola, District Centre, New Delhi-110025 and is mainly dealing in the business of development of real estate. The respondent no. 2 and 3 having the position in the company as directors and respondent no. 4 is the current developer of the project and the respondent no. 5 to 7 having the position in the company i.e., respondent no. 4 as directors.
4. That after going through the advertisement published by the respondents in the newspapers and as per the broacher/prospectus provided by them, the complainant had booked a plot bearing no. 2B-28, measuring 263 sq. yards. in their upcoming project named "Krrish World" situated in Sector-60, 61, 62, 63 and 65, Gurugram for a total sale consideration of Rs. 82,05,600/-.

5. That the respondents issued a provisional allotment letter dated 26.11.2012 and till date a total sum of Rs. 57,44,400/- has been paid by the complainant in respect of the above said plot to the respondents.
6. That after the provisional allotment, the complainant requested the respondents to execute the builder buyer agreement in her favour but the respondents linger on the matter on one pretext or the other, due to several litigations on the land where the project of the respondents was being developed; the construction of the project was halted. After several attempts, the complainant came to know that the title of the land where the project was being developed, was not clear and there were several litigations that were filed against the respondents. In compliance of order dated 29.01.2015 passed by DTCP, Haryana Chandigarh, the respondents filed the details of allottees of the project ie. "Krrish World" at the office of DTP Gurugram and the complainant was in an utter shock to see that her allotment was cancelled by the respondents and her name was not mentioned in the list. Thereafter, the complainant visited the office of the respondents and enquired about her plot, where the officials of the project respondents informed her that the layout plan, namely "Krrish World" has been revised and her plot has been allocated to someone else. That the respondents were ready to refund the money and persuaded the complainant to agree to the same. Till today neither the respondents have refunded the invested amount of the complainant, nor they have

allocated her alternative plot. The complainant on several occasions has requested and persuaded the respondents to refund his amount or allocate her alternated plot as per the provisional allotment letter dated 26.11.2012 and sent several reminders to the respondent, but the respondent paid no heed to the just and genuine request of the complainant.

7. That as per section 11 (4) (a) of the Act, which states that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulation 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.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
- i. Direct the respondent to refund the remaining amount of Rs. 32,94,400/- or to allocate the complainant the alternative plot of the same size and at the same price as mentioned in provisional allotment letter dated 26.11.2012 to the complainant with interest as shown above as per section 15 of the Act, alongwith litigation charges Rs. 55,000/-.

D. Reply filed by the respondent no. 4, 6 and 7

9. The respondent has contested the complaint on the following grounds:
- i. That Brahma City is an integrated community spread across more than 141 acres in sectors 60, 61, 62, 63 and 65 of the Golf Course Extension Road, Gurugram, Haryana. The said project's location offers green, open spaces with strong connectivity to the rest of Gurgaon and the broader Delhi/NCR region. It is situated on a contiguous land parcel featuring scenic landscapes. The planned community's residential offerings include plots, villas and floors; and other areas will include retail, commercial, recreational, leisure, spa, schools, daycares, medical facilities and other ancillary areas and facilities.
 - ii. That the respondent no. 4 i.e. Brahma City Private Limited is a completely distinct and separate legal entity and is not connected or concerned with the other respondents i.e. Krrish Realtech Pvt. Ltd. ("**KRPL**") and its associate entities such as Krrish Infrastructure Pvt. Ltd. ("**KIPL**"). In fact, the other respondents herein and their associate entities owe huge financial dues/commitments towards the respondent no. 4.
 - iii. That there were *inter se* disputes between the respondents, with respondent no. 4 and its associate entities on the one part and the other respondents herein along with their associated entities on the

other part. The said issues largely arose on account of unauthorized and illegal actions on the part of the other respondents and their associate entities, in their own name, as well as in the name of the respondent no. 4. The said issues resulted in CLB proceedings being initiated by both sides against each other in 2011, apart from other complaints before other authorities in or around early 2011.

- iv. That the sub-stratum of the issues between the parties *inter alia* included wrongful, unauthorized and collusive transactions of purported provisional/tentative allotment/sale/booking and consequent agreements being entered into by the other respondents and their associate entities in their own name or in the name of the respondent no. 4, as well as purportedly collecting advances/monies against the said transactions, either in their own name or in the name of respondent no. 4, however, for their own benefit.
- v. That further, the respondent no. 5 had wrongly convened EGM dated 25.04.2011 behind the back of respondent no. 4, and passed resolutions in favour of or in recognition of introduction of capital at lower rates, appointment of majority additional directors etc. Accordingly, the respondent no. 4 was constrained to initiate proceedings before the Hon'ble Company Law Board, wherein the CLB was pleased to pass order dated 13.05.2011 restraining the Board of Directors and shareholders of the respondent no. 4



company to hold any further meetings without the permission of the CLB. In fact, the respondent no. 4 was constrained to issue a public notice dated 16.05.2011 whereby it was stated for the benefit of the world at large that no sale is being made by the respondent no. 4 company, and that any such transactions being undertaken, are without the knowledge of the respondent no. 4 company. Accordingly, any such purported transactions would not be binding on the respondent no. 4 company in any manner whatsoever.

- vi. That it became imperative to settle all disputes between the parties during the pendency of the CLB proceedings, and accordingly, all disputes between the Krrish entities on the one part and the Brahma entities on the other part, *vis a vis* the present project, came to be settled and resolved in terms of the settlement agreement dated 06.08.2012. Suffice to submit that in view of the settlement agreement dated 06.08.2012, the respective land areas/plots of each of the parties was bifurcated and segregated into "**Brahma Allocation**" and "**Krrish Allocation**" respectively. Further, it was *inter alia* categorically stated that the "**Indian Shareholders**" and KRPL had made certain tentative/ advance bookings registration for some portion of developable areas (non-binding) in their/ the respondent no. 4 company's name, falling within the Krrish allocation ("Tentative NB Advances") and that they have already bought back/ cancelled most of such advance bookings/ advance

registration (and remaining Tentative NB Advance pertains to an area not exceeding 40,000 square yards). Accordingly, the Indian Shareholders and KRPL acknowledged that all agreements/ transactions/ arrangements as agreed by it with third parties for any advance booking/ advance registration/ allotment of plots (or any part thereof) or built-up/ developed areas shall be deemed to be made from the Krrish Allocation and shall belong to the account of and vest with the Indian Shareholders and KRPL and shall be satisfied only by the Indian Shareholders and KRPL exclusively from the Krrish Allocation and no liability of any nature shall be imposed on the respondent no. 4 company. The Indian Shareholders and KRPL further agreed that the respondent no. 4 company shall not in any way be liable for allotment of any plots or built-up/ developed areas or refund of any money or any costs and/ or compensation in respect thereof to any person to whom the Indian Shareholders and /or KRPL have agreed or promised to allot any plots or built-up/ developed areas in the total licenced land. Further, the illegal share capital of respondent no. 5 and the additional directors introduced at his behest in respondent no. 4 company were also removed.

- vii. That the said settlement agreement was placed before the Hon'ble Company Law Board and by order dated 09.08.2012, the Company Law Board was pleased to take the same on record, and dispose of the pending petitions between the parties, in terms of the said



settlement agreement dated 06.08.2012. The parties are therefore bound by the terms of the settlement agreement as well as the order dated 09.08.2012 passed by the Hon'ble Company Law Board recognising the said settlement agreement as binding between the parties.

viii. That in view of the above, cases such as the present complaint, if at all, are concerned only with the other respondents and their associated entities, and the respondent no. 4, accordingly, has nothing to do with the same. Obligations/responsibilities/liabilities, if any, with respect to any such purported sales/transactions/allotments, were and continue to be entirely that of the other respondents and their associate entities, if at all. Respondent no. 4 is not obligated towards or for any such purported sale/transaction/allotment in any manner whatsoever, whether financially or otherwise. It is admitted position between all parties, as also based on the record and documents, that the respondent no. 4 has no concern with or involvement/role in the said correspondence/communication/demands/ transactions etc. between the said complainant and the other respondent.

10. Notice for hearing to the respondent no.1, 2 3 and 5 was served through E-mail address (amit.katyal@thekrrishgroup.com and krrishinfra@yahoo.com) was sent and the delivery of same is shown as

“delivery complete”. Though the respondent put in appearance through its counsel on 12.09.2019, 06.11.2019, 03.01.2020, 20.02.2020, 15.10.2020, 12.09.2022 and 18.11.2022 but has failed to file written reply despite given several opportunities. Accordingly, the defence of the respondents stand struck off. So, the authority is left with no option but to proceed with the complaint based on averments given during arguments and the documents placed on record.

11. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made.

E. Jurisdiction of the authority:

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

13. 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 completed territorial jurisdiction to deal with the present complaint.



E.II Subject matter jurisdiction

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

15. 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.

F. Entitlement of the complainant for refund:

F.I Direct the respondent to refund the remaining amount of Rs. 32,94,400/- or to allocate the complainant the alternative plot of the same size and at the same price as mentioned in provisional allotment letter dated 26-11-2012 to the complainant with interest as shown above as per section 15 of the Act.

16. In the present complaint, 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 prescribed rate as per provisions of

section 18 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. The counsel for the complainant submitted that in this matter, partial refund has already been made on account of cancellation of unit due to change of layout plan of the project which had been revised by the respondent. An amount of Rs.57,44,400/- has been refunded and balance amount in lieu of interest thereon is pending to be refunded by the respondent. He submitted that this matter is different from the existing issues which is pending before the Hon'ble Supreme Court of India as no claim is being made against any unit in the project and only conclusion of the refund proceeding is being sought.

18. Admissibility of refund along with prescribed rate of interest:

Section 18 of the Act read with rule 15 of the rules provide that in case

the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. 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]

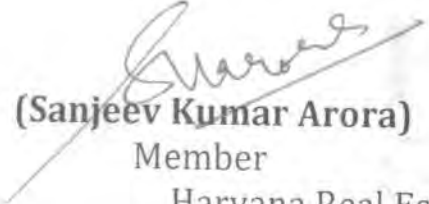
(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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."

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, 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.
20. 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., **18.11.2022** is 8.35%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.35%.
21. In view of the above, the respondent no.1 Krrish Realtech Pvt. Ltd. (who had received the payment from the complainant and has made partial payment) is directed to refund the balance interest amount as per the cancellation proceedings.

G. Directions of the authority:

22. 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 functions entrusted to the Authority under section 34(f) of the Act:
- i) The respondent no.1 is directed to refund the balance amount of the interest i.e., @ 10.35% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 as per the cancellation proceedings.
 - 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.
23. Complaint stands disposed of.
24. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.11.2022