



HARERA
GURUGRAM

Complaint No. 2005 of 2021
and 2095 of 2021

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

Order reserved on : 04.01.2023

Order pronounced on: 21.03.2023

**NAME OF THE
BUILDERS**

**M/S BRAHMA CITY PVT. LTD.
M/S KRRISH BUILDTECH PVT. LTD.**

PROJECT NAME

"BRAHMA CITY"

| S.No. | Case No. | Case title |
|--------------|-----------------|---|
| 1 | CR/2005/2021 | Shruti Gupta Vs. M/s Brahma City Pvt. Ltd. & Anr. |
| 2 | CR/2095/2021 | Anu Gupta Vs. M/s Brahma City Pvt. Ltd. & Anr. |

CORAM:

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Shri Prashant Sheoran

Counsel for the complainant

S/Shri Pankaj Chandola, Rishab Kumar and
Ms. Gauri Desai

Counsels for the respondent

ORDER

1. This order shall dispose both complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules"). Since the core issues

emanating from these complaints are similar in nature and the complainant in the above referred matters are allottee of the project, namely, Brahma City, Sectors 60, 61, 62, 63, & 65, Gurugram, Haryana being developed by the same respondents. The terms and conditions of the plot buyers' agreement that had been executed between the parties *inter se* are also almost similar with some additions or variation. The fulcrum of the issue involved in both these complaints pertain to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking return of the amount paid by the allottee along with interest at the prescribed rate as per section 18 of the Act.

2. Both the aforesaid complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainant-allottee against the respondents on account of violation of the plot buyer's agreement executed between the parties in respect of said plots for not handing over possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act *ibid* apart from contractual obligation. Since, the plot buyer's agreements have been executed prior to the commencement of the Act *ibid*, therefore, the penal proceedings cannot be initiated retrospectively for violation of provisions of section 11(4)(a) of the Act.
3. The details of the complaints, reply status, plot/unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project: Brahma City, Sectors 60, 61, 62, 63, & 65, Gurugram, Haryana
Possession clause: 12.(a) Schedule for possession

12.(a) The Company shall endeavour to offer possession of the said Plot, within 36 (thirty six) months from the date of execution of this Agreement subject to timely payment by the Intending Allottee(s) of sale Price, stamp Duty, Govt. charges and any other charges due and payable according to the Payment plan attached as **Annexure-II**.

Table for both the complaints

| Sr. no | Complaint No., Case Title, and Date of filing of complaint and reply | Plot no. and size of plot | Change in plot no. and size | Date of allotment letter | Date of execution of plot buyer's agreement | Due date of possession & Offer of possession | Total sale consideration and amount paid by the complainant |
|--------|---|---|--|--------------------------|---|--|---|
| 1. | CR/2005/2021 Shruti Gupta V/s Brahma City Private Limited & Anr. DOR- 20.04.2021 Filed by R1 on 11.05.2022 | Plot no. 32, Block no. Y 299.568 sq. yd. | Plot no. 09, Block no. J 298.282 sq. yd. (Vide letter dated 27.03.2019 & 10.04.2019) | 10.10.2012 | 09.10.2013 | 09.10.2016 IOP- 30.12.2019 | TSC: Rs. 2,53,09,036 AP: Rs. 20,00,000 [As admitted by the respondent on page 2 of reply] |
| 2. | CR/2095/2021 Anu Gupta V/s Brahma City Private Limited & Anr. DOR- 20.04.2021 Filed by R1 on 11.05.2022 | Plot no. 31, Block no. Y 299.568 sq. yd. | Plot no. 11, Block no. K 323.31 sq. yd. (Vide letter dated 20.03.2020 'Intimation of offer of possession') | 10.10.2013 | 09.10.2013 | 09.10.2016 IOP- 20.03.2020 | TSC: Rs. 2,72,99,468 AP: Rs. 21,00,000 [As admitted by the respondent on page 2 of reply] |

Relief sought in both the complaints:

1. Direct the respondent to refund the amount paid by the complainant along with interest at the prescribed rate.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

DOR- Date of receiving of complaint
TSC- Total sale consideration
AP- Amount paid by the allottee(s)
IOP- Intimation of possession

4. The facts of both the complaints filed by the complainant/allottee are also similar. So, out of the above-mentioned cases, the facts of the lead case of CR/2005/2021 titled as Shruti Gupta V/s Brahma City Private Limited & Anr. are being taken into consideration for determining the rights of the allottee(s) qua return of the amount paid along with interest as sought by the complainant in the abovementioned complaints.

A. Project and unit related details

5. The particulars of the project, the amount of sale consideration, the amount paid by the complainant(s), 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 | Brahma City, Sectors 60, 61, 62, 63, & 65, Gurugram, Haryana |
| 2. | Nature of the project | Residential plotted colony |
| 3. | DTCP License no. | 64 of 2010 dated 21.08.2010 Valid up to - 20.08.2025 |
| 4. | RERA registered/ not registered | i.) 268 of 2017 dated 09.10.2017 (Block K) |



| | | |
|-----|--|--|
| | | Valid up to 30.06.2019 ii.) 277 of 2017 dated 09.10.2017 (Block J) Valid up to 31.03.2022 |
| 5. | Environment clearance granted on | 03.09.2014 (Page 12 of reply) |
| 6. | Plot no. (as per buyer's agreement) | Plot no. 32, Block no. Y [Annexure-C3 on page no. 34 of complaint] |
| 7. | Plot area admeasuring (as per buyer's agreement) | 299.568 sq. yd. [Annexure-C3 on page no. 34 of complaint] |
| 8. | Change in plot vide letter dated 10.04.2019 | Plot no. 09, Block no. J [Annexure C6 on page 67 of complaint] |
| 9. | Increased plot area vide letter dated 10.04.2019 | 298.282 sq. yd. [Annexure C6 on page 67 of complaint] |
| 10. | Allotment letter | 10.10.2012 [Annexure-C1 on page no. 24 of complaint] |
| 11. | Date of plot buyer's agreement | 09.10.2013 [Annexure-C3 on page no. 32 of complaint] |
| 12. | Total sale consideration | Rs. 2,53,09,036/- [As admitted by the respondent on page 2 of reply] |
| 13. | Amount paid by the complainant | Rs.20,00,000/- [As admitted by the respondent on page 2 of reply] |
| 14. | Possession clause | 12.(a) Schedule for possession |

| | | |
|-----|---|---|
| | | <p>12.(a) The Company shall endeavour to offer possession of the said Plot, within 36 (thirty six) months from the date of execution of this Agreement subject to timely payment by the Intending Allottee(s) of sale Price, stamp Duty, Govt. charges and any other charges due and payable according to the Payment plan attached as Annexure-II.</p> <p>[Page 41 of complaint]</p> |
| 15. | Due date of possession | 09.10.2016 |
| 16. | Completion certificate | Not obtained |
| 17. | Offer of possession not valid /legal as CC not obtained | 30.12.2019 (Annexure- Q on page no. 223 of reply) |

B. Facts of the complaint

6. The complainant has made the following submissions in the complaint:
- i. That the respondent is a real estate developer who is in the process of developing a plotted colony known as Brahma City. The said colony is being developed upon land situated in various sectors namely sectors number 60, 61, 62, 63 and 65, Gurugram, Haryana.
 - ii. That in the year 2011, the respondent advertised and invited interest towards sale of residential plots in the said colony. At that point of time the respondent had been representing to have obtained a license bearing no. 64 of 2010 dated 21.08.2010 on the basis of which the respondent was entitled to develop a residential colony overland admeasuring 151.69 acres situated at village Nangal Umarpur, Ullawas, Maidawas, Kadarpur, Gurugram. The



respondent had been further representing that the land which was to be developed into a residential plotted colony under the aforementioned licence was free from all kinds of encumbrances, litigations, attachment, mortgage, lien, acquisition et cetera and that a free marketable title of the said land vested with the respondent. The respondent further went on to represent that it was competent and fully authorised to accept bookings for allotment of plots in the plotted residential colony and was also fully competent and authorised to receive deposits, booking amount and all other related payments from the prospective allottees either in its own name or in the name of its nominees.

- iii. That relying upon the representations made by the respondent, the complainant proceeded to seek allotment of a residential plot in the said colony. That for the purpose of booking, complainant paid an amount of Rs.20,00,000/- vide cheque bearing no.104924 dated 10.09.2012 drawn on Union Bank of India. That after receiving the said amount, respondent issued a provisional allotment letter dated 10.10.2012. Thereafter, on 10.10.2013, respondent issued a letter to the complainant bearing reference no. BCPL/010/OCT2013, wherein respondent again acknowledged the amount of Rs. 20,00,000/- paid for the allotment of residential plot in Brahma City and further requested to pay 25% of the sale price. However, it was noted in the said letter that the allotment is subjected to execution of plot buyer's agreement, it is pertinent to mention here that the plot buyer's agreement was already got



- executed one day prior to the issuance of said receipt i.e. on 09.10.2013.
- iv. That the complainant had obtained a loan facility against the plot allotted to the complainant i.e., Y-32 through the respondent from ICICI bank and the same was duly sanctioned on 28.09.2013. That the sanctioning of loan was within the notice and knowledge of respondent. It is submitted that after sanctioning of loan and execution of plot buyer's agreement, the respondent issued a letter dated 10.10.2013 to the bank namely ICICI wherein respondent provided certain documents to the bank which were annexed with the said letter. That respondent sent one set of the same to ICICI bank and one set to the complainant. One of the document which was annexed with the letter dated 10.10.2013 is the permission to mortgage plot no. Y-32, wherein it was specifically assured by the respondent that the plot is free and marketable and they have clear, legal and marketable title to the said property.
- v. That soon after the sanctioning of loan and request made by respondent for disbursal of loan vide letter dated 10.10.2013, it came into notice and knowledge of complainant that a writ petition bearing no. 27665/2013 had been filed against the respondent wherein it had been alleged that the land over which the colony is being developed belonged to someone else and the respondent has no legal title over the same.
- vi. That the complainant felt cheated, since she had already obtained loan from the bank for timely payment of the dues but since even

the licence of the project was disputed, the complainant was under a dilemma qua continuation of loan. That since the respondent's officials assured that soon the issue shall be resolved, the complainant chose to wait for some time, but even after waiting for sufficient period, when there was no response from the respondent, the complainant opted out of the loan in the year 2016 and waited for any information qua possession which the respondent assured to deliver in timely manner.

- vii. That after passing of several years, respondent issued another letter to the complainant on 27.03.2019, whereby the respondent disclosed that the Hon'ble High Court of Punjab & Haryana had cancelled the license of the respondent and even the plans were cancelled by the DTCP on the basis of the said order. The respondent reapplied the licence and get it restored on 02.12.2015 and got a revised layout cum demarcation plan approved on 02.11.2016. Thus, in view of new layout plan, the allotment of the complainant was changed from Y-32 to J-09 with a lesser area of 298.282 sq. yards and further requested to pay an amount of Rs. 22,799,199/- against the newly allotted plot. That before 2019, the respondent never informed about any development qua the project, rather respondent was under a bounden duty to handover the possession in the year 2016 itself. It is the high handedness of respondent to ask for an amount of Rs. 2,00,92,286/- without any prior intimation and that too against a plot which was never allotted to the complainant.



- viii. That the complainant was quite shocked after receiving the said letter from respondent as the respondent had changed the allotment of complainant without her consent or even notice. It is submitted that the respondent again issued a similar letter on 10.04.2019, wherein an amount of Rs. 2,00,92,286/- was demanded against the newly allotted plot.
- ix. That alarmed by such letter, complainant enquired about the contents mentioned in the letter dated 27.03.2019 and was quite shocked after acquiring the knowledge that the respondent by way of fraud acquired the license bearing no. 64/2010 by illegally and wrongly including the land of other persons in their own land. That the Hon'ble High Court on the basis of the complaint, filed by several persons passed a specific order wherein Hon'ble High court gave a specific observation that "fraud vitiates everything It has been found by us that the application submitted by respondent no.3 was not with clean hands as in the application, intentionally, parcel of the land of land owners without their consent and without any collaboration agreement with them and in view of above we quash the licence no. 64/2010 dated 21.07.2010."
- x. That it was quite surprising for the complainant since at the time of allotment of the plot bearing no. Y-32 and at the time of execution of plot buyer agreement, the respondent had specifically assured that it was entitled and competent to develop, market and sell plots in the said colony, whereas, actually they never had such authority

as clarified by the Hon'ble High court in its order dated 05.02.2015 in civil writ petition bearing no. CWP 27665 of 2013.

- xi. That even the new plot which was proposed to be allotted to the complainant was never shown to the complainant. That the complainant bonafidely waited for the respondents to come through the contract which had been executed with the complainant. However, despite of having waited sufficiently nothing happened, rather on the other hand respondent arbitrarily changed the plot of complainant without any information and consent.
- xii. That thereafter complainant again contacted the respondent and requested to allot the plot which was allotted through plot buyer agreement, but the respondent showed its inability to hand over the said plot. That at that point of time complainant asked the respondent to compensate the complainant for the loss suffered due to fault of respondent and asked to refund the amount along with interest @ 12% p.a. as per clause 11 of the plot buyer's agreement, since the plot which was allotted to complainant does not exist anymore due to the fact that respondent obtained the licence no. 64/2010 fraudulently over land of someone else and now in order to hide its mistake trying to allot a plot of different size and different number to the complainant.
- xiii. That thereafter, instead of admitting their mistake and refund money to the complainant, the respondent again issued another letter dated 10.04.2019 to the complainant seeking payment of Rs.



22,799,199/- against the new plot bearing no. J-09 which they alleged to be allotted in favour of complainant. It is submitted that as already stated above, no such consent qua allotment of new plot was ever taken from the complainant rather the money was illegally demanded by the respondent without having authority to construct or sell the plots. Again, complainant contacted the respondent and asked to refund the amount already paid along with interest as agreed.

- xiv. That after few months, respondent instead of refunding the amount of complainant issued another letter alleged as the offer of possession. It is submitted that the respondent had no right to issue offer of possession of a plot which was never allotted nor there was any such consent for such plot to be allotted to the complainant, rather the respondent was under a bounden duty to refund the amount with 12 % interest. That even the said offer of possession is illegal, since the respondent has failed to obtain completion certificate qua the project in question.
- xv. That after issuance of alleged offer of possession, complainant immediately contacted the respondent and requested to refund the amount with immediate effect but at that point of time respondent tried to persuade the complainant and offered to compensate the complainant in an appropriate manner. That without accepting the said offer of respondent, the complainant asked to show the completion certificate of the project but the respondent even failed to provide the same to the complainant, which in itself proves that

the fraudulent nature of respondent, since previously respondent allotted a plot without have any right or title to allot the same and received an amount of Rs. 20,00,000 and was now asking for an amount of Rs. 24,976,436/- against a plot which was never allotted or agreed to be allotted to the complainant or no such consent was ever given by complainant qua such allotment of said plot no. J-09. That even the complainant called customer care of respondent and even a mail was sent for seeking information on completion certificate but there was no response or information qua the same. That the complainant checked the site of Town and Country Planning, wherein it shows that no completion certificate was issued to the respondent, thus it is quite clear that conduct of respondent always remains deceitful and fraudulent.

- xvi. That even as on today, no competition certificate was granted to respondent as per DTCP site. That since the developer in the web page of DTCP against licence no. 64 of 2010 is shown as Krrish Buildtech Pvt Ltd, thus for abundant caution said company is also made performa respondent to the present complaint. That it's quite shocking even name of respondent is not mentioned against developer in license no. 64 of 2010.
- xvii. That on 06.04.2021, the complainant received a letter whereby respondent no. 1 gave one month pre-cancellation notice to the complainant. It is submitted that in view of above stated facts said notice is also illegal, since it was regarding alleged plot no. J-9 which

was never allotted to complainant. That said notice in itself clarify the high handedness of respondent no 1.

- xviii. That the respondent has intentionally failed to abide by the terms and conditions of the allotment which had been made in favour of the complainant. The conduct of the respondent has remained deceitful and they induced the complainant to part away with a huge sum of money that is 20,00,000/- and despite of waiting for around more than 7 years now, the respondent tried to allot a different plot. The allotment of alternate plot cannot be a unilateral act. The complainant cannot be forced to accept the alternate plot. Moreover, there is no agreement or privity of contract qua alternate plot. Thus, once the plot agreed to be purchased by the complainant does not exist or has never existed then clearly the complainant is entitled to refund as per section 18 of the Act.

C. Relief sought by the complainant: -

7. The complainant has sought following relief(s):
- i. Direct the respondent to refund the amount paid by the complainant along with interest at the prescribed rate.
 - ii. Any other relief which this hon'ble authority deems fit and proper may also be granted in favour the complainant.
8. On the date of hearing, the authority explained to the respondent/ promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.



D. Reply by the respondent no.1

9. The respondents by way of written reply dated 11.05.2022 made the following submissions:

- i. That the purported complaint is not maintainable as against Brahma City Pvt. Ltd. (hereinafter referred as respondent no. 1 / answering respondent) as it miserably fails to bring on record any deficiency in service or unfair trade practice on its part; or any cause of action against respondent no. 1, in any manner whatsoever.
- ii. That it is most respectfully submitted that the respondent no. 1 is traversing and dealing with only those allegations, contentions and/or submissions that are material and relevant for the purpose of adjudication of present dispute. However, respondent no. 1 reserves its right to make such further submissions and place such additional documents as may become necessary in the course of the proceedings of this case. It is further submitted that save and except what would appear from the records and what is expressly admitted herein, the remaining allegations, contentions and/or submissions shall be deemed to have been denied and disputed by respondent no. 1.
- iii. That the complainant booked plot no. Y-32 admeasuring 299.568 sq. yds. in Brahma City Sector -63, Gurgaon, Haryana, vide application form dated 12.08.2013. Thereafter, the respondent no. 1 allotted the plot vide allotment letter dated 10.10.2012 and executed the plot buyer agreement on 09.10.2013. The said project



is registered under RERA with registration no. 277/2017 dated 09.01.2017.

- iv. That it is submitted that Brahma City is an integrated community township project (hereinafter referred to as the "said project"). The development of the said project is steadily going on.
- v. That the respondent no. 1 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") (hereinafter referred as respondent no. 2) and Krrish Infrastructure Pvt. Ltd. ("KIPL"). In fact, the respondent no. 2 herein and their associate entities owe huge financial dues /commitments towards the respondent no. 1.
- vi. The plot buyer agreement clearly states that " it shall be incumbent on the intending allottee(s) to comply with the terms of payment and/or other terms and conditions of this agreement failing which the company shall forfeit the entire amount of earnest money, interest on delayed payment, brokerage, other charges and taxes, if any incurred by the company etc. and this agreement shall stand cancelled and the intending allottees shall be left with no lien, right, title, interest or any claim of whatsoever nature in the said plot. The company shall thereafter be free to resell and/or deal with the said plot in any manner whatsoever at its sole discretion".
- vii. It is submitted that the complainant has filed the present complaint without disclosing the true facts and to save herself from the liability of making default payments. It is submitted that

respondent no. 1 is suffering unnecessarily and badly without any fault on its part.

- viii. Due to these reasons the respondent no. 1 has to face cost overruns without its fault. Under these circumstances, passing any adverse order against the respondent no. 1 at this stage would amount to complete travesty of justice. The complainants have fallaciously raised illegal and untenable disputes before this Hon'ble Authority. The present complaint is demonstrably filed in gross abuse of the process of this Hon'ble Authority with malafide intent. It is respectfully submitted before this Hon'ble Authority that the present complaint is false, frivolous, vexatious and has been solely filed for gain and therefore is liable to be dismissed.
- ix. It is submitted that there were inter se disputes between the respondents to the present complaint i.e., respondent no. 1 and its associate entities (Brahma entities) on the one part and the respondent no. 2 along with their associated entities (Krrish entities) on the other part. The said issues largely arose on account of unauthorized and illegal acts of Mr. Amit Katyal in entering into illegal transactions without authority, appointing directors to the board of BCPL (then Krrish Buildtech Pvt. Ltd.) etc., unauthorized and illegal actions on the part of the other respondents and associate entities, in their own name, as well as in the name of the respondent no. &. That the aforesaid issues resulted in CLB proceedings initiated by both sides against each other in year 2011, apart from other complaints before other authorities in or around

early 2011. That during the pendency of the CLB proceedings, all the 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. It is further submitted 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.

- x. 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 recognizing the said settlement agreement as binding between the parties. The Company Law Board inter alia directed as under:

Settlement agreement dated 06.08.2012 is perused and taken on record and the same shall form part and parcel of the present order and the parties are directed to be bound by the terms and conditions of the settlement agreement dated 06.08.2012. Both parties shall have uninterrupted and exclusive right in respect of their respective allocations in terms of the settlement agreement.

- xi. That thereafter, in view of the obligations/responsibilities under the settlement agreement dated 06.08.2012 not being fully met by the Krrish entities, on account of intervening circumstances, an addendum dated 31.10.2015 came to be executed between the



parties to the settlement agreement dated 06.08.2012. Under the addendum dated 31.10.2015, inter alia it was further agreed upon that the obligation to develop and construct their respective allocations i.e., the Brahma Allocation and the Krish Allocation shall be that of the respective parties. Furthermore, any development and construction have to be carried out at their own cost and responsibility, without creating any liability of any nature on the other party in any manner. It was further agreed and understood between the parties that neither party shall be liable to fulfil any obligation towards any prospective buyers in respect of the other party's allocation.

- xii. It is further submitted that in the beginning of the year 2015, the license no. 64 of 2010 was quashed by the order dated 05.02.2015 of the ***Hon'ble High Court of Punjab & Haryana at the instance of a third party in CWP 27665 of 2013 titled Fondant Propbuild Pvt. Ltd. & Ors. V. State of Haryana & Ors.*** with the direction to the competent authorities to reconsider the license application afresh. The order of the Hon'ble High Court of Punjab & Haryana was assailed before the Hon'ble Supreme Court of India in SLP (C) CC No. 4115/2015, which Special Leave Petition was disposed off with the direction that the Directorate of Town & Country Planning, Haryana shall consider the application for licence on behalf of the respondent no. 1 uninfluenced by the observations, if any, in the impugned judgment of the Hon'ble High Court of Punjab & Haryana.

- xiii. That vide letter dated 15.05.2015 and email dated 16.05.2015, the respondent no. 1 informed Mr. Devinder Gupta (M/s DSG Real Estate Consultant under which the complainant booked the plot) "that in compliance of directives dated 05.02.2015 issued by Hon'ble High Court of Punjab and Haryana, the Director General Town & Country Planning, Haryana (DTCP) has reviewed our application for license afresh, strictly in accordance with the provisions of Act and Rules and vide its order dated 08.05.2015, DTCP after considering the documents and affording opportunity to concerned parties, have opined that license no. 64/2010 deserved to be restored for 141.781 acres from original date i.e., 21.08.2010.
- xiv. Further the clause 19 of the plot buyer agreement states that:
- "The company shall have a right to terminate this agreement upon serving a 30 days prior written notice to the intending allottee(s), if the intending allottee(s) defaults in payment of the respective instalment towards the payment plan or other charges as stated in this agreement as demanded by the company within 30 days of the such payment becoming due; or the intending allottee(s) violated any of the terms and conditions of this agreement..."*
- xv. That vide letter dated 10.04.2019, the respondent no. 1 company intimated complainant about the changes made in the allotment pursuant to approval of layout-cum demarcation plan of the residential plotted colony- Brahma City. That vide letter dated 30.12.2019, the respondent no. 1 company offered possession and requested for payment of final instalment and other charges/dues for the plot no. J-09 block no. J admeasuring 298.28 square yards, which was revised as earlier, it was plot no. Y-32 block Y

admeasuring 299.568 square yards. It is submitted that till now the complainant out of her own will has not come forward to take possession of the plot.

- xvi. It is submitted that the complainant out of her own will stopped making payments and several reminders were also sent to her with respect to the same. It is submitted that the respondent no. 1 raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainant made the payment of the earnest money and part-amount of the total sale consideration and is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage. It is submitted that the complainant has defaulted in paying the instalments and various reminders and notices were sent to the complainant on 18.12.2014, 09.01.2015, 30.01.2015 and 31.07.2019.
- xvii. That vide letter-dated 06.04.2021, pre-cancellation notice was sent to complainant. That the complainant was categorically made aware of the fact that despite repeated reminders, the complainant has failed to make payments as per the demands raised by the respondent and that in view of the same the unit stands cancelled. It is submitted that even after the pre cancellation notice, the answering respondent gave a grace period 3 months post the expiry of 30 days to the complainant to pay their dues. However,

due to non-compliance of the payment plan as agreed upon by the complainant in the builder buyer agreement, the answering respondent was forced to cancel the said unit vide letter dated 02.08.2021 in terms of clause 18 and 19 of the plot buyer' agreement.

- xviii. That refund at this stage would amount to complete travesty of justice. The complainants have fallaciously raised illegal and untenable disputes before this Hon'ble Authority. The present complaint is demonstrably filed in gross abuse of the process of this Hon'ble Authority with malafide intent. It is respectfully submitted before this Hon'ble Authority that the present complaint is false, frivolous, vexatious and has been solely filed for gain and therefore is liable to be dismissed.
- xix. All other averments made in the complaint were denied in toto.
10. In the present complaint, M/s Krrish Buildtech Pvt. Ltd. i.e., respondent no.2 has been made party to the present complaint as proforma respondent. Despite service of notice, the respondent no.2 has neither contested the complaint nor filed any reply to the present complaint. Also, the complainant has sought no relief against respondent no.2. In view of the above, the authority has decided to proceed with the complaint as such.
11. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.

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. I 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 allottee 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;

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. Findings on the relief sought by the complainant

F.I Direct the respondent to refund the amount paid by the complainant along with interest at the prescribed rate

16. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject plot 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. **Due date of handing over possession:** Clause 12.(a) of the plot buyer's agreement provides the time period for handing over of possession and is reproduced below for the reference:

"12.(a) Schedule for possession

*The Company shall endeavour to offer possession of the said Plot, within 36 (thirty six) months from the date of execution of this Agreement subject to timely payment by the Intending Allottee(s) of sale Price, stamp Duty, Govt. charges and any other charges due and payable according to the Payment plan attached as **Annexure-II.**"*

18. The respondent no.1/promoter has proposed to handover the possession of the said unit within a period of 36 months from the date of execution of plot buyer's agreement. As per the documents available on record, the plot buyer's agreement was executed on 09.10.2013. Therefore, the due date of handing over possession comes out to be 09.10.2016.
19. The counsel for the complainant states that the respondent had initially allotted plot no. Y-32 to the complainant. However, due to certain orders passed by the Hon'ble High Court of Punjab and Haryana, the license for the part plotted colony was cancelled. Subsequently, on 10.4.2019 the respondent offered possession of an alternate unit no. J-9. The complainant vide e-mail dated 17.07.2020, requested for completion certificate and occupation certificate before taking any action towards this plot. Subsequently, the respondent in place of giving the said clarification, sent repeated reminders for payment of dues and ultimately sent pre-cancellation notice dated 06.04.2021.

20. The counsel for the respondent no.1 states that the complainant never disputed the allotment of alternate plot vide letter dated 10.04.2019. The allottee failed to make payments despite repeated reminders and finally pre-cancellation notice was sent to the allottee on 06.04.2021.
21. The authority observes that vide letter dated 10.04.2019, the respondent no.1 has changed the plot allotted to the complainant from Y-32 to J-09. The possession of the plot J-09 was offered to the complainant vide letter dated 30.12.2019. The complainant vide email dated 17.07.2020 had requested the respondent no.1 to provide completion certificate in respect of the subject plot. However, instead of providing the same, the respondent no.1 started raising demands from the complainants. It is pertinent to note that the said plot has been offered to the complainant without obtaining completion certificate from the competent authority. Therefore, the said offer of possession cannot be treated as valid offer of possession. Thereafter on 06.04.2021, the respondent no.1 has sent pre-cancellation letter to the complainant stating that on account of failure on the part of the complainant to clear the outstanding payments, the respondent cancelling the allotment of the subject plot in favour of the complainant.
22. The completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking

possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:***

".....The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

23. Further 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 as under:

"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."

24. The respondent no.1/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) of the Act. The respondent

no.1/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 respondent no.1/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 him in respect of the unit with interest at such rate as may be prescribed.

25. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
26. **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 promoter 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."

27. 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.
28. 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., **21.03.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
29. The authority hereby directs the respondent no.1/promoter to return the amount received by him i.e., Rs. 20,00,000/- with interest at the rate of 10.70% (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 Rules *ibid*.

G. Directions of the authority

30. 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 no.1 is directed to refund the entire amount of Rs.20,00,000/- paid by the complainant along with prescribed rate of interest @ 10.70% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent no.1 to comply with the directions given in this order and failing which legal consequences would follow.
46. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
47. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
48. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.03.2023