

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

Complaint no. :	4 of 2023
Date of Filing Complaint:	02.01.2023
Date of Decision:	23.02.2023

1. Sigma Biotech Private Limited 2. Ramu Ram 3. Neena Chaudhary Address: M-3, First Floor, Hauz Khas, Aurbindo Marg, New Delhi-110016	Complainants
Versus	
M/s Brahma Center Development Pvt. Ltd. Address: 1206 B, Surya Kiran Building, 19, Kasturba Gandhi Marg, New Delhi-110001	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Rahul Bhardwaj (Advocate)	Complainants
Sh. Pankaj Chandola (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottee 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Brahma Bestech Athena, Sector-16, Gurgaon
2.	Project type	Commercial complex
3.	DTCP license	Not provided on record
4.	HARERA registration	Cannot be ascertained
5.	Allotment letter dated	Not provided on record
6.	Unit no.	603 on 6 th floor (As per page no. 66 of complaint)
7.	Unit area admeasuring	4850 sq. ft. (As per page no. 66 of complaint)
8.	Unit buyer's agreement executed between original allottee (Sh. Jagmohan Krishan Dang) and respondent-builder on	11.02.2014 (As per page no. 33 of complaint)
9.	Agreement for sale executed between original allottee and complainants (Sigma Biotech Private Limited, Ramu Ram and Neena Choudhary)	10.09.2021 (As per page no. 74 of complaint)

10.	Application for provisional allotment	08.03.2022
10.	Letter of endorsement dated	04.07.2022 (As per page no. 34 & 85 of complaint)
11.	Possession clause as per original builder buyer agreement	<p>Clause 23</p> <p>Subject to other terms of this Agreement including but not limited to Section 22 above and timely payment of the Total Price and Additional Charges as mentioned in this Agreement, the Company shall endeavour <u>to complete the construction of the Said Unit by [January, 2015]. It is made clear that the Company/s shall be entitled to a grace period of [9]months from the date mentioned above and</u> if there is any delay beyond the grace period of [9]months, the Company agrees to pay an interest @ [12]% per annum. Thereafter, the Company shall offer the possession of the Said Unit to the Buyer within [45] days and shall execute a conveyance deed in respect thereof ("Conveyance Deed") upon the Buyer accepting the offer of possession in writing, as decided by the Company...</p> <p>[Page 55 of complaint]</p>
12.	Due date of possession	<p>October 2015</p> <p><i>(Grace period of 09 months is included being unconditional and unqualified)</i></p>
13.	Total sale consideration	Rs. 3,88,00,000/- (As per page no. 76 of complaint)
14.	Amount paid by the complainant	Rs. 3,88,00,000/- (As per page no. 76 of complaint)
15.	Part Occupation certificate	31.03.2022 (page no. 88 of reply)
16.	Offer of possession	Not offered

B. Facts of the complaint:



3. That the complainants in the present complaint are the subsequent allottees who with the vision of having their own commercial office space in Gurugram purchased the said unit from the original allottee by entering into the unit buyer agreement dated 11.02.2014 with the respondent.
4. That the complainants invested their hard- earned money in booking/purchasing a unit in the respondent's project, namely "Brahma Bestech Athena", commercial project situated at sector 16 Gurugram. The respondent advertised the aforesaid real-estate project as a one-of-a-kind development with impeccable facilities.
5. That the complainant's agreed to enter into an agreement to sale dated 10.09.2021 with the original allottee wherein the complainants agreed to purchase the unit bearing no. 603A, 6th floor admeasuring 4850 sq. ft. in Athena Tower forming part of "Brahma Bestech Athena" for a total sale consideration of Rs. 3,88,00,000/- which has already been paid by the complainants.
6. That as per clause 6 of the agreement to sale, complainant no. 1 acquired the 73.2% of the total area while complainant no. 2 and 3 acquired 26.8% of the total area. The total sale consideration in respect of the said property has already been paid by the original allottee and further the complainants herein have also paid the entire said consideration amount to the original allottee as mentioned in the agreement to sell dated 10.09.2021. That subsequent to the agreement to sell respondent herein duly acknowledged the complainants as the nominee/allottees of the unit 603A vide an endorsement of nomination dated 04.07.2022.



7. That as per clause 23 of the agreement, the estimated and contemplated due date of offer of possession was 01.10.2015 including a period of 9 months as grace period.
8. That the complainant's case is not of a simple or ordinary delay but one of an inordinate delay, wherein the possession of the unit has not been offered till date i.e., even after an inordinate delay of more than 7 years from the date of possession as per the unit buyer agreement executed between the parties, which has caused immense financial burdens on the complainant. The complainant has been severely traumatized by the gross deficiency in service of the respondent, clubbed with mental agony of the fact that the project is still under construction and the complainants have no idea as to when the respondent would be handing the possession of the unit. सत्यमेव जयते
9. That the complainants have paid entire sale consideration with respect to the unit in question at the time of the signing of the agreement to sale. However, when the complainants went to the project site in October 2022 to check the progress of the project along with the authorised representatives of the respondent, to their utter shock and dismay, the complainants found out that the structure of the project has been completed, but still misses out on the fit-outs of the units and also has not received the occupational certificate from the competent authority.
10. That the complainants being the subsequent allottees have the same privileges, rights as well as prerogatives as compared to the original allottee. Also, the RERA Act, 2016 no-where in its provisions makes any distinction between the subsequent allottee and the original allottee. The complainants being in the same shoes as the original allottees are entitled for the same benefits as the original allottee as per the provisions of the RERA Act, 2016.



11. That even after receiving than 100% of the total consideration even at the time of the execution of the unit buyer agreement the respondent has miserably failed to deliver the possession after an inordinate delay of more than 7 years. The respondent has miserably failed to comply with the terms and conditions of the unit buyer agreement. Till date, after a period of more than 7 years, the complainants still have not received the possession of any unit despite being the first few allottees in the project of the respondent.

C. Relief sought by the complainants:

12. The complainants have sought following relief(s):

- (i) Direct the respondent to handover the possession of the nit allotted to the complainants along with delayed possession interest for a delay as per provisions of Rera Act,2016.
- (ii) Direct the respondent to pay a sum of Rs. 1,50,000/- to the complainants towards litigation cost.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

13. That the respondent, is a well-reputed company incorporated under the provisions of the Companies Act, 1956, having its registered office at flat no. 53, block C, upper section flatted factory complex, Jhandewalan, New Delhi - 110055, and is engaged in the real estate sector.
14. That the respondent was allotted plot no. 2, sector 16, Gurugram, admeasuring approximately 12.206 acres ["Plot"] by Haryana State Industrial and Infrastructure Development Corporation ("HSIIDC") by way of regular letter of allotment dated 11.06.2010 and 'in principle'



approval for the allotment was accorded by HSIIDC vide a letter dated 06.01.2011.

15. That pursuant to the allotment of the plot, the respondent in the capacity of a promoter entered into a collaboration agreement dated 16.04.2011, registered as document no. 3693 dated 12.05.2011 followed by certain amendments/addenda/supplementary agreements with M/s Bestech India Private Limited ["Developer"] for the construction and development of a complex comprising of commercial tower and retail mall buildings situated at the plot ["Project Athena"]. Further that, according to the collaboration agreement, the developer was solely responsible for the development and construction of project Athena.
16. That the developer had unilaterally halted the construction and development of the project which resulted in delay in the timely completion of the project. Several disputes arose between the respondent and the developer and to secure the best interest of the project, the respondent promptly executed a settlement agreement dated 07.11.2019 with the developer wherein the developer undertook to complete the construction and development of the project before July, 2021.
17. That soon after the execution of the settlement agreement, a global pandemic in the form of COVID-19 resulted in two major lockdowns in the country, severely hampering labour mobilisation across the country. Further, the Developer cited various NGT notifications prohibiting use of stone crushers, ban on construction in Delhi-NCR to mitigate pollution etc. which further delayed the project.



18. That occupation certificate for the commercial tower along with basements I, II, III and IV has already been granted by HSIIDC vide No. IPD/VV/34/ID/IDC/HSIIDC/1800 dated 31.03.2022.
19. That on 08.02.2014, the respondent allotted unit no. 603A, 6th floor in the commercial tower forming part of project Athena, admeasuring 4850 sq. ft., ["Unit"] to one, Mr. Jagmohan Krishan Dang, [hereinafter "Original Allottee"] without any monetary consideration paid by the original allottee and in lieu of mutual understanding between the respondent and the original allottee.
20. That a unit buyer's agreement dated 11.02.2014 was executed between the original allottee, Mr. Jagmohan Krishan Dang and the respondent.
21. That being well aware of the status of the building at the time, the complainants on 08.03.2022 moved an 'application for provisional allotment of office space/unit in project 'Brahma Bestech Athena' on plot no. 2, Sector 16, Gurgaon, Haryana'. The respondent neither advertised the said unit for sale nor approached the complainants to sell the said unit.
22. That the transfer and alleged 'agreement of sale' dated 10.09.2021 between the original allottee and the complainants was subject to the approval of the respondent in terms of clause 32 of the original unit buyer's agreement dated 11.02.2014 between the original allottee and the respondent.
23. That subject to timely payments of maintenance charges, maintenance security etc. and other terms stipulated under the original unit buyer's agreement, the approval for nomination of complainants was granted by the respondent vide its endorsement letter dated 04.07.2022.



Therefore, the transfer to the complainants was actually effected and came into force only on 04.07.2022 and not earlier.

24. That the commercial tower of project athena is now complete and only the handover of the respondent's allocation by the developer of the project in the commercial tower is awaited. The respondent's hands are tied due to the fact that the respondent's allocation in the commercial tower in which the said unit lies has not been handed-over by the developer of the project. As such, the respondent against whom the complainants seek to extract compensation is itself a victim on account of the delay caused by the developer.
25. 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 by the parties.

E. Jurisdiction of the authority:

26. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

27. 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



28. 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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

29. 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 complainants at a later stage.

F. Entitlement of the complainant:

- (i) Direct the respondent to handover the possession of the unit allotted to the complainants along with delayed possession interest for a delay as per provisions of Rera Act,2016.
30. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....



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

31. It would be relevant to fix the date from which the delay possession charges should be computed before heading further. In the present complaint the unit bearing no. 603 on 6th floor was allotted to the original allottee i.e., J.K Dang and the buyer's agreement was executed between the respondent and the original allottee on 11.02.2014. The total sale consideration for the said unit is Rs. 3,88,00,000/-. The total amount i.e., Rs. 3,88,00,000/- was adjusted by the respondent in lieu of legal services rendered by the original allottee.
32. Thereafter on 10.09.2021 the agreement to sell was executed between the original allottee (J.K Dang) and the complainants (Sigma Biotech Private Limited, Ramu Ram, Neena Chaudhary) for the purchase of said unit. Further on 08.03.2022 provisional allotment letter was issued by the respondent which was duly executed and thereafter the unit was endorsed in favour of the complainants on 04.07.2022. Since the subsequent allottee came into picture on 04.07.2022 vide endorsement and much before this date the respondent issued the provisional allotment dated 08.03.2022. The complainants have applied for fresh allotment which was duly executed therefore, the due date shall be taken as the date of endorsement dated 04.07.2022. Moreover, the complainants on hearing dated 22.12.2023 have agreed and stated that they have no issue if the delay possession charges should be calculated from the date of endorsement.
33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed 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.

34. 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.
35. 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., 23.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85% per annum.
36. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—



- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

38. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession. The due date shall be taken as the date of endorsement dated 04.07.2022 as they have applied for fresh allotment duly executed on 08.03.2022. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by them to the respondent from the date of endorsement i.e., 04.07.2022 till the date of offer of possession or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

- (ii) Direct the respondent to pay a sum of Rs. 1,50,000/- to the complainants towards litigation cost.

39. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-



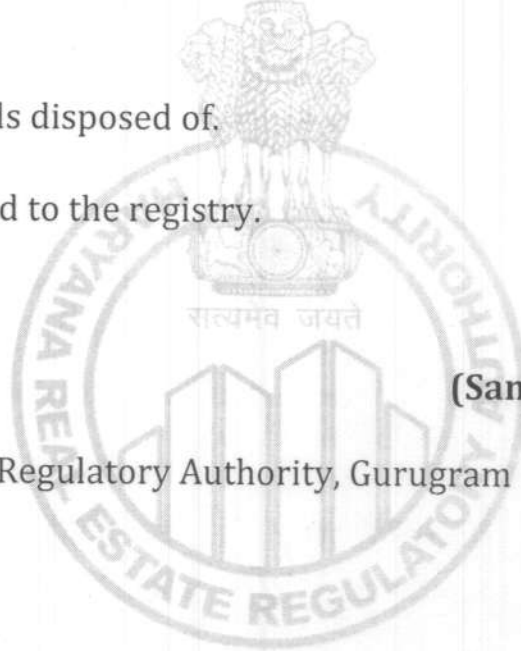
6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority:

40. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The complainants are entitled to delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.85%p.a. for every month of delay on the amount paid by them to the respondent from the date of endorsement i.e., 04.07.2022 till the date of offer of the possession or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.
 - ii) The promoter shall not charge anything which is not part of the buyer's agreement.



- iii) The respondent is directed to pay arrears of interest accrued, if any after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.
- iv) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act
41. Complaint stands disposed of.
42. File be consigned to the registry.



(Signature)
(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.02.2024

HARERA
GURUGRAM