

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

Complaint no.: 3842 of 2023
Date of decision:- 25.09.2024

1. Mr. Rohit Sood
2. Mrs. Dimple Sood
Both R/o:-A-401, Pioneer Presidia Apartment,
Sector-62, Gurugram, Haryana-122001.

Complainants

M/s. Adani Brahma Synergy Pvt. Ltd.
Regd. office:Plot no.-83, Sector-32,
Institutional Area, Gurugram-122001.

Versus

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Gaurav Rawat (Advocate)

Complainants

Sh. Harshit Batra (Advocate)

Respondent

ORDER

1. The present complaint dated 21.08.2023 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 as provided 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1	Name of the project	"Brahma City Phase-V", Scetor-63, Village-Maidawas, District-Gurugram, Haryana.
2	Nature of the project	Residential Plotted colony
3	Area of the project	28199sq. mtrs
4	Hrera Registered	Registered 115 of 2022 dated 05.12.2022
5	DTCP Licence	64 of 2010 dated 21.08.2010 Valid upto-20.08.2025
6	Agreement to sale	04.08.2021 (As on page no. 35 of complaint)
7	Plot no.	J-73, Block-J of Brahma City (As on page no. 37 of complaint)

8	Plot area admeasuring	342 sq. yards (286 sq.mtrs) (As on page no. 37 of complaint)
9	Possession clause	<p>Clause 7 POSSESSION OF THE PLOTS</p> <p>7.1 Schedule for possession of the said Plot:</p> <p><i>The seller assures to hand over possession of the said Plot to the purchaser as per agreed terms and conditions on or before 18 (Eighteen) months from the date of execution of this Agreement unless there is delay due to "force majeure" court orders, government policy/guidelines, decisions affecting the same.</i></p>
10	Due date of possession	04.03.2023 [calculated 18 months from 04.08.2021]
11	Total Sale Consideration	Rs.2,33,07,834/- (As per S.O.A dated 10.06.2022 on page no. 57 of complaint)
12	Total amount paid by the complainants	Rs.2,30,26,806/- (As per S.O.A dated 10.06.2022 on page no. 57 of complaint)
13	Offer of possession	07.02.2022 (As on page no. 61 of complaint)
14	Completion certificate	Not on record.

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:
- I. That in the hope of independent house for family of complainants, they were allured by the advertisement of the respondent. Believing on the plain words of the respondent in utter good faith, the complainants were duped of their hard-earned monies by the respondent by offering plot in a time bound manner. Even after the Act, 2016 came into force, the respondent is still doing illegal, arbitrary and malefic activity in complete violation of the Act.
 - II. That the respondent no. 2 had been doing fraudulent activities. They had advertised and sold the project as a promoter wherein the said project has received registration in the name of another promoter (respondent no. 1). The project was registered under the name of M/s. Brahma City Pvt. Ltd and R.C no. 115 of 05/12/2022.
 - III. While in present case, the respondent no-2 has sold the project without getting RERA Registration in 2021. As per section 3 of the Act 2016, the builder cannot advertise, sell and/or collect the money from buyers without registering the project before the Authority.
 - IV. That the complainants have booked a plot bearing no. J-73 in November 2020 by paying an amount of Rs.10,00,000/-. Thereafter, on 04.08.2021, a Plot Buyer Agreement was executed between the complainants and the respondent. The complainants continued to request for documents and approvals of the project as per RERA guidelines.
 - V. That the respondent no-2 has sold the plot in 2020 much after the commencement of the Act 2016 and executed the plot buyer



agreement that was not registered and not as per the format of RERA guidelines. The respondent no.2 was illegally adding the unilaterally clauses in Agreement. Payment plan of Agreement was also unilateral and in violation of RERA Act and the respondent was demanding and collecting payments based on time bound payment plan which is not permissible in RERA Act. Builder can take payment on the basis of development link plan only in the plotted colony.

- VI. After the allotment of the plot to the complainants, the respondent continued to raise illegal demands for payment without sharing any details about the RERA registration certificate and other approval documents.
- VII. That the complainants regularly followed up with the respondent for sharing the registration certificate and other approval documents of the project and the plot via multiple phone call, meetings and emails dated 14.01.2021, 21.01.2021, 01.03.2021 & 11.04.2021. The respondent continued to ignore all such requests/ follow-ups by the complainants and didn't share any information regarding the approvals of the project.
- VIII. After the execution of the Agreement, the complainants continued to pay the further payment demands and also time and again requested for documents/approvals of the project which were ignored by the respondent and no information was shared.
- IX. That the respondent had issued an offer of possession letter dated 07.02.2022 but the validity of the Offer of Possession is still a question. That the complainants raised the objection on offer of possession and requested for documents and approvals pertaining to the project. The complainants time and again have sought clarity

on the validity of the offer of physical possession of the plot in the absence of availability of grid power, electricity work and many other infrastructure and developments work still pending in colony. But complainant had not received any answer from builder.

- X. That the complainants were offered possession with final demand of Rs 32,49,475/- inclusive of IFMS and possession charges and also outstanding balance of Rs.1,56,07,725 and One Year Advance Maintenance Charges amounting to Rs.48,434/-. Further there was an amount of Rs8,80,895/- demanded on account of "interest on delayed payment".
- XI. Since no details were shared as requested by the complainants , the complainants continued to follow up regarding the details via multiple meetings, but the respondent continued to ignore all such requests and threatened the complainants to pay the balance dues failing which the plot will be cancelled.
- XII. The respondent continued to send threats, the complainants made part payment of Rs.50,00,000/- of the demanded amount on 17.05.2022 followed by balance (and full) payment of Rs.97,67,406/- and the details were again requested.
- XIII. The total sale consideration of the plot was Rs.2,32,59,400/- As per the agreement , the complainants had paid full amount (including the possession charges, IFMS Charges) of Rs.2,32,59,400/- (including applicable TDS charges) till 25.07.2022 and had continued to request for documents and approvals of the project.
- XIV. Instead of responding to the long pending request of the complainants and providing documents and approvals pertaining to the project, the respondent continued their pressure tactics and



threatened the complainants to cancel the allotment and also persuading the complainants to get the Conveyance Deed executed.

- XV. That the complainants were shocked to see the communication shared by the respondent via E-mail dated 06.07.2023 asking for delayed interest charges of Rs Rs.12,61,216/- even after receiving 100% payment . The respondent on making full and final payment of Rs./-97,67,406 have committed to waive off any delay payment charges that they were illegally demanded while they have defaulted on multiple instances. As per clause 11(5)of the agreement:

The promoter may cancel the allotment only in terms of the agreement for-sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

- XVI. That the respondent-2 was doing malpractice and illegality from the very beginning including advertising the project, executing sale deed in a non-prescribed format, time bound payment plan with no reference to the project progress milestones, sending reminder and collecting money without sharing the project details and sale of the project illegally without receiving registration certificate. As per RERA guidelines, the promoter can only collect the amount from allottees in the Master Escrow Account which is registered with the Authority.
- XVII. The project was registered by M/s. Brahma City Pvt. Ltd, and the registered Master Account for receiving payment from Allottees is Bank Account No 251303200801 of IndusInd Bank, but this project



was sold by M/s. Adani Brahma Synergy Pvt. Ltd and all the collection was made in Bank Account No 250002052017 of IndusInd Bank.

XVIII. That the complainant had requested multiple times via phone calls, in person meeting and through email for quashing the cancellation letter and offered the payment of balance amount but was refused by the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to handover peaceful physical possession of the plot to the complainants.
 - ii. Direct the respondent to execute conveyance deed in favour of the complainants.
 - iii. Issue show cause against the respondent for violation of terms of the RERA Certificate.
 - iv. Revoke the registration certificate of the respondent and impose penalty on the respondents.

D. Reply by respondent:

5. The respondent by way of written reply has made following submissions:
 - I. That the respondent had already applied for the RERA registration vide its application HARERA/GGM/REP/136/RPIN/67 dated 20.08.2018 which was rejected by the Authority vide order dated 24.12.2018. That after rectifying all the deficiency as observed by the Authority, the respondent no. 1 further re-applied and obtained the Registration Certificate on 05.12.2022.

- II. It is pertinent to mention that the Authority had imposed a penalty of Rs.2,50,00,000/- (Rupees Two Crore and Fifty Lakhs Only) with respect to the sale of plots prior to registration in suo-moto complaint bearing no. RERA-GRG-2273/2021 in order dated 21.11.2022. It is further submitted that the Respondent Company had without prejudice already paid the penalty amount imposed by the Authority before RERA registration was granted in favour of the respondent no. 1.
- III. That the present complaint pertains to the plot no. J-73 admeasuring 342.05 sq. yards (hereinafter referred to as the "Unit") in the project known under the name and style of "Brahma City" at Sector 61, 62, 63 & 65, Gurugram (hereinafter referred to as the "Project") which was granted license no. 64 of 2010 by the Directorate of Town Country and Planning.
- IV. That the complainants after completely satisfying themselves with all the details of the project, and its development status, through their own independent enquiries, made the booking under a time linked plan, willingly, and voluntarily without any demur, protest or undue influence and coercion.
- V. That the said booking was accepted and subsequently, an Agreement to Sale was executed between the complainants and the respondent no. 2 on 04.08.2021
- VI. That as per clauses 5 and 7.1 of the Agreement, the respondent no. 2 was obligated to give possession in 18 months subject to the timely payment by the complainants and force majeure circumstances. As per Clause 1.2(iii), and 1.4 read with Schedule A, it was an absolute

obligation of the complainants to make the due payment as per the time-linked plan. The said clauses have been reiterated hereunder:

Clause 1.2 (Explanation iii)

....
The Purchaser shall periodically make the payment to the Seller, the Amounts payable under this Agreement within the stipulated time and in the manner specified therein;

Clause 1.4.

The purchaser shall make the payment of the Total Price as per the payment plan set out in Schedule A ("Payment Schedule").

Clause 5.

The Seller shall abide by the time schedule for handing over the Said Plot to the Purchaser Provided that the Purchaser shall abide by the time schedule (Schedule A) for payment of installments and other sums due as per the Payment Schedule and other demands for payment of interest, charges, penalty, stamp duty, deposits, statutory dues, etc.

Clause 7.1

....
Schedule for possession of the Said Plot - The Seller agrees and understands that timely delivery of possession of the Said Plot to the Purchaser is the essence of this Agreement.

The Seller assures to hand over possession of the Said Plot to the Purchaser as per agreed terms and conditions on or before 18 (EIGHTEEN) months from the date of execution of this Agreement unless there is delay due to "force majeure", court orders, government policy/ guidelines, decisions affecting the same.

- VII. It is further submitted that the present complaint is an afterthought as the complainant had filed the present complaint on 14.08.2023 after receiving the offer of possession on 07.02.2022 with an intention to shy away from the liability of paying the outstanding dues as per the payment plan opted by the complainant as enumerated in the agreement for sale dated 04.08.2021.
- VIII. The offer of possession was made to the complainants on 07.02.2022 prior to the due date of possession as per the Agreement



for Sale dated 04.08.2021 with a request to make the outstanding payment for Rs.1,88,57,200 and Rs.48,434 as One Year Advance Maintenance Charges. It is submitted that the respondent had complied its part of the obligation to handover the possession of the plot in question within the time frame as per the Agreement for Sale dated 04.08.2021 and the complainant cannot shy away from the responsibility to remit the outstanding sale consideration against the demand raised by the respondent.

- IX. That the complainants were wilful defaulters and did not remit the payments in a time bound manner as per the demands raised by the respondent due to which the respondent was constrained to charge interest on the delayed payments. It is further submitted that subsequent to the offer of possession dated 07.02.2022, the respondent sent several reminders, however, the complainants simply ignored the requests and did not remit the full payment against the same. As on today, an amount of Rs. 48,434/- and Stamp Duty amount and Registration charges are still due to be paid by the complainants since 07.02.2022.
- X. That the said demand dated 07.02.2022 for Rs.1,88,57,200 and Rs.48,434 was in accordance with the agreed payment plan, including 10% of the total sale price (Rs. 22,23,325), remaining BSP (Rs. 6,84,100), IFMS (Rs. 3,42,050) and outstanding instalments (Rs. 1,56,07,725).
- XI. That the demand for offer of possession was sent to the complainants vide offer of possession letter dated 07.02.2022 and till date the amount of Rs.48,434/- against advance maintenance charges are still due to be paid by the complainants. Hence, the



complainants are liable to pay the interest on various delayed payment as per clause 5 and 9.3 (i) of the Agreement to sale.

- XII. It is further submitted that the respondent gave ample opportunity to the complainants to make payment of the outstanding dues including the stamp duty amount and registration charges. It is further submitted that the complainants are still in default in making the aforementioned charges as levied by the respondent on various occasions and filed the present complaint before the Authority to shy away from its obligations to pay the balance consideration as per the terms of the Agreement for Sale dated 04.08.2021 and arm twist the respondent for illegal demands.
6. The complainants have filed the present complaint on 21.08.2023 against M/s. Brahma City Pvt. Ltd. and M/s. Adani Brahma Synergy Pvt. Ltd. Vide proceedings dated 21.08.2024, the counsel for the M/s Brahma City Pvt. Ltd. appeared and stated that it is not a necessary party in the matter as the plot in question has already been sold by M/s. Brahma City Pvt. Ltd. to M/s Adani Synergy Pvt. Ltd. and conveyance deed was also executed on 08.10.2018. The counsel for the complainants had no objection to the same. Thus, the name of M/s. Brahma City Pvt. Ltd. has been deleted from the array of the parties.
7. 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:

8. 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

8. 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

9. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

10. 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 complainants.

F.I Direct the respondent to handover physical possession of the plot and execute conveyance deed.

11. In the present complaint, the complainants have booked a plot bearing no. J-73 admeasuring 342.05 sq. yards in Block-J of Brahma City "Samsara" situated at Sector-63, Gurugram in November 2020 for a total sale consideration of Rs.2,22,33,250/-. Thereafter, on 04.08.2021, a Plot Buyer Agreement was executed between the complainants and the respondent. According to clause 7.1 of the aforementioned agreement dated 04.08.2021, the respondent committed to handing over possession of the unit to the complainants by 04.03.2023. The said clause is reproduced below:

"Clause 7 POSSESSION OF THE PLOTS:

7.1 Schedule for possession of the sid plot:

The Seller assures to handover possession of the said plot to the Purchaser as per agreed terms and conditions on or before 18 (Eighteen) months from the due date of execution of this Agreement unless there is delay due to "force majeure", court orders, government policy/guidelines, decisions affecting the same."

12. As per the account statement dated 10.06.2022 on page no. 52 of the complaint, the Total Sale Consideration of the plot is



Rs.2,33,00,446/- inclusive of all taxes and the complainants have paid an amount of Rs.2,30,26,806/-. The respondent has offered possession of the plot to the complainants vide offer of possession letter dated 07.02.2022. Vide the offer of possession letter, the respondent raised certain demands and asked to complainants to clear the outstanding dues and take possession of the plot and thereafter, the conveyance deed would be executed within a period of 3 months.

13. In the present complaint, the complainants intends to continue with the project and are seeking possession of the plot along with directions for execution of conveyance deed. As per section 17 of the Act, 2016 the promoter is under an obligation of executing the conveyance deed in favour of the allottee and handover possession of the unit to the allottees. The relevant section is reproduced below:

"17.

(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary

documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws: Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate.

14. The respondent has failed to bring on record the completion certificate and has also not mentioned about the same in the reply filed by it. The offer of possession has been made on 07.02.2022 by the respondent to the complainants but therein also it failed to provide any details regarding the status of the completion certificate in respect of the said project. The respondent stated that there is an outstanding on the part of the complainants and they are ready to handover the possession of the plot to the complainants provided they clear the outstanding dues. It has been observed by the Authority that the total sale consideration of the plot was Rs. 2,33,00,446/- inclusive of taxes and the complainants have paid an amount of Rs.2,30,26,806/- till date as per the account statement dated 10.06.2022 annexed with the complaint.
15. 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.
16. 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., 25.09.2024 is 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

17. The definition of term 'interest' as defined under section 2(za) 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;"

18. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter.
19. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is of the view that the respondent is under an obligation of executing the conveyance deed in favour of the allottees and handover possession of the unit to the allottees as per Section 17 of the Act, 2016.

F.II. Issue show cause against the respondent for violation of terms of the RERA Certificate.

F.III. Revoke the registration certificate of the respondent and impose penalty on the respondent.

20. The Authority observes that the respondent had applied for the RERA registration vide its application HARERA/GGM/REP/136/RPIN/67 dated 20.08.2018 and the same was rejected by the Authority vide order dated 24.12.2018. That after rectifying all the deficiency as observed by the Authority, the respondent no. 1 further re-applied and obtained the Registration Certificate on 05.12.2022.
21. The Authority had imposed a penalty of Rs.2,50,00,000/- (Rupees Two Crore and Fifty Lakhs Only) with respect to the sale of plots prior to registration in suo-moto complaint bearing no. RERA-GRG-2273/2021 in order dated 21.11.2022 and the penalty imposed on the respondent has been paid by the respondent. Thus, no directions with respect to the same needs to be given.

G. Directions of the Authority

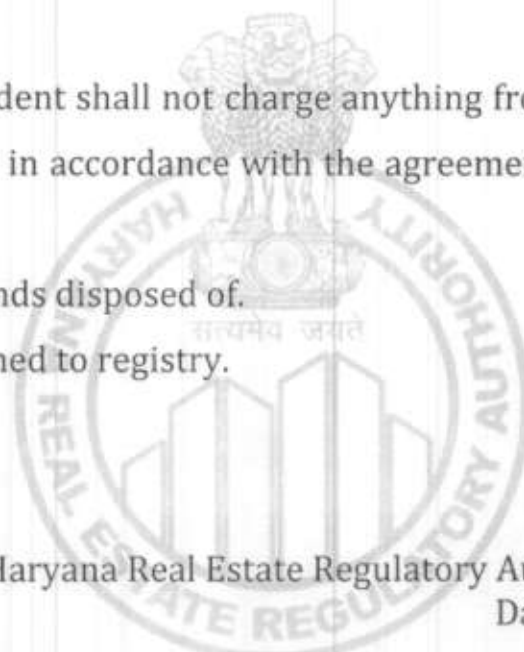
22. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- The complainants are directed to clear the outstanding dues, if any within 30 days of this order. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at

the prescribed rate of interest i.e., 11.10% by the respondent/promoter.

- ii. The respondent is directed to handover the physical possession of the unit to the complainants. Further, the respondent shall execute the conveyance deed in terms of Section 17 (1) of the Act, 2016 on payment of stamp duty and registration charges, as applicable within a period of next 30 days from the date of this order.
- iii. The respondent shall not charge anything from the complainants which is not in accordance with the agreement executed between them.

23. Complaint stands disposed of.

24. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 25.09.2024

HARERA
GURUGRAM