

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

Date of decision: 12.11.2024

NAME OF THE BUILDER		M/s Adani Brahma Synergy Pvt. Ltd	
PROJECT NAME		"Samsara Part- I"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7287/2022	Neha Jain V/s M/s Adani Brahma Synergy Pvt. Ltd.	Sh. Jines J Jain AR Sh. Saurabh Seth (Advocate)
2.	CR/7288/2022	Akash Jante V/s M/s Adani Brahma Synergy Pvt. Ltd.	Sh. Jines J Jain AR Sh. Saurabh Seth (Advocate)
3.	CR/7289/2022	Ajitpal Singh Thind V/s M/s Adani Brahma Synergy Pvt. Ltd.	Sh. Jines J Jain AR Sh. Saurabh Seth (Advocate)

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman**Member****Member****ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before the 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") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and

functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Samsara Part- I" being developed by the same respondent/promoter i.e., M/s Adani Brahma Synergy Pvt. Ltd. The terms and conditions of the builder buyer agreement and allotment letter against the allotment of unit in the said project of the respondent/builder and fulcrum of the issues involved in these cases pertains to failure on the part of the promoter to complete the construction of the project, seeking unpaid assured return along with interest at the prescribed rate, delay possession charges and the execution of the conveyance deeds.
3. The details of the complaints, 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 Name and Location	"Samsara Part- I", Sector 60, Gurugram, Haryana.		
Clause 7.1 POSSESSION OF THE APARTMENT:			
<i>The Promoter assures to hand over possession of the Apartment for residential usage along with parking and right to use of General Common Areas and Limited Common Areas as per agreed terms and conditions <u>within 27 months from the date of registration of this Agreement unless there is delay due to "force majeure", court orders, government policy/ guidelines, grant of departmental sanctions decisions affecting the regular development of the Plot</u></i>			
OC: 09.09.2019			
Comp no.	CR/7287/2022	CR/7288/2022	CR/7289/2022

Allotment letter	07.11.2017 [pg. 9 of compliant]	28.11.2017 [pg. 24 of reply]	20.04.2018 [pg. 9 of compliant]
Unit no.	M5-A, 1 ST Floor [pg. 9 of compliant]	M5-C, 3 RD Floor [pg. 24 of reply]	M5-B, 2 ND Floor [pg. 9 of compliant]
Date of BBA	03.05.2018 [pg. 31 of compliant]	27.04.2018 [pg. 17 of reply]	11.05.2018 [pg. 10 of compliant]
Date of assignment agreement	17.06.2020 [pg. 23 of compliant]	NA	NA
Due Date of possession	03.08.2020	27.07.2020	11.08.2020
TSC & AP	TSC: ₹1,72,52,534/- AP: ₹1,50,80,244/-	TSC: ₹1,74,76,036/- AP: ₹1,52,79,800/-	TSC: ₹1,80,02,414/- AP: ₹1,57,49,780/-
Offer of possession	Not known	Not known	20.11.2019 [pg. 50 of compliant]
Possession letter	19.06.2020 [pg. 12 of compliant]	17.02.2020 [pg. 9 of compliant]	Not known
Conveyance deed	20.11.2020 [pg. 85 of compliant]	19.02.2020 [pg. 22 of compliant]	09.06.2020 [pg. 74 of compliant]

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

TSC: Total consideration

AP: Amount paid by the allottee(s)

4. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

5. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/7287/2022 titled as Neha Jain V/s M/s Adani Brahma Synergy Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees.

A. Project and unit related details

6. The particulars of the project, the details 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:

CR/7287/2022 titled as Neha Jain V/s M/s Adani Brahma Synergy Pvt. Ltd

S. No	Particulars	Details
1.	Name of the project	"Samsara (part-1)", Sector-60, Gurugram, Haryana
2.	Nature of project	Residential plotted colony
3.	RERA registered/not registered	Registered vide registration no. 270 of 2017 dated 15.09.2017
	Validity status	31.03.2022
	Licensed area	9832 sq. mtrs.
4.	DTPC License no.	64 of 2010 dated 21.08.2010
	Validity status	20.08.2025
	Licensed area	141.66875 acres
	Name of licensee	M/s Brahma City Pvt. Ltd. & others
	Name of developer	M/s Achaleshwar Infrastructure Private Limited

5.	Allotment letter	07.11.2017 [As per page no. 09 of complaint]
6.	Floor no.	M5-A, 1 st floor [As per page no. 09 of complaint]
7.	Area admeasuring	1116 sq. ft. [Carpet area] [As per page no. 09 of complaint]
8.	Date of agreement for sale	03.05.2018 [As per page no. 31 of complaint]
9.	Assignment agreement dated	17.06.2020 [As per page no. 23 of complaint] <i>(the unit was booked jointly with Jinesh Jain whereas vide assignment deed, Neha Jain has been assigned rights w.r.t unit)</i>
10.	Possession clause	Clause 7.1 POSSESSION OF THE APARTMENT: <i>The Promoter assures to hand over possession of the Apartment for residential usage along with parking and right to use of General Common Areas and Limited Common Areas as per agreed terms and conditions <u>within 27 months from the date of registration of this Agreement unless there is delay due to "force majeure", court orders, government policy/ guidelines, grant of departmental sanctions decisions affecting the regular development of the Plot.</u></i>
11.	Due date of possession	03.08.2020 [Calculated as 27 months from date of agreement i.e. 03.05.2018]
12.	Total sale consideration	Rs.1,72,52,534/- (TSC)

		Rs.1,54,13,745/- (BSP) [As per page no. 70 of complaint]
13.	Amount paid by the complainant	Rs.1,50,80,244/- [As per conveyance deed on page no. 84 of complaint]
14.	Occupation certificate	09.09.2019 [As per conveyance deed]
15.	Possession letter dated	19.06.2020 [As per page no. 12 of complaint]
16.	Conveyance deed	20.11.2020 [As per page no. 85 of complaint]

B. Facts of the complaint

7. The complainant has made the following submissions in the complaint:-

- a. That the complainant(s) have purchased a Flat in Adani Samsara project located in Sec 60 Gurugram and got the possession in 2020. That the complainant(s) have been raising multiple issues in the Flat and Limited common area arising due to cheap quality of material used and poor workmanship during the construction.
- b. That the complainant(s) would like to bring the issues to the notice of the authority that broad cracks are observed on each and every wall of inside and outside Flat M5-A. There seems to be a structural defect in the building due to which multiple broad cracks are appearing on all walls inside and outside (staircase/terrace/basement/stilt parking) the Flats.

- c. The same have been informed to M/s Adani verbally and through email earlier and some cracks were partially repaired. However, the cracks have appeared again at the same location along with other cracks which were never repaired.
- d. M/s Adani through their employee, Mr. Manish Handa agreed to get the cracks repaired over email on 4th Aug 2021, however the same has now been denied by the promoter.
- e. It's worth noting that the re-appearing of cracks within just 3 years of construction suggests that there is some serious structural defect in the building. M/s Adani through their employee Mr. Avinash informed over email on 7th Dec 2021 that "Consultant is being hired for checking of same and will update once report will be submitted & reviewed by the management". The report has still not been shared with complainants. Any major issue in the structure of the building can have an unrepairable life-threatening consequence for the residents in the building.
- f. Also there is Uneven Slope and Broken tiles/Kota stone installed in the terrace and stilt parking. It's been observed and informed to M/s Adani that the tiles/Kota stone installed in the stilt parking and terrace are broken. It's also worth noting that the stones used in stilt parking is of low quality and completely different from what was shown to us in the sample Flat (M2 and M17).
- g. Also, there is no proper slope constructed both in the terrace and parking area due to which there are multiple areas, where water gets logged. This is becoming a concern as the area is becoming a

breeding ground for mosquitoes and can lead to diseases/health concerns, especially for elders and children's living in the unit.

- h. At the time of possession of the unit, it was also noted in the Possession check-list and M/s Adani representative informed that the same will be repaired/replaced with full satisfaction. Due to incomplete work in the terrace/basement area, it was clearly noted in the possession checklist that the handover of the Terrace is not taken by owners of Flat M5-A and B.
- i. During the construction of the building, the staircase stone were broken by M/s Adani project team. It was informed at the time of possession, and the owners were assured that the broken stone will be replaced. However, the project team have only repaired the broken stone (instead of replacing the same). The same looks very ugly and destroy the whole look of the external façade.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s)
 - a. M/s Adani should get the structural audit of the building immediately by a reputed agency and share the report with the complainants.
 - b. All the cracks appearing on the wall in the building should be repaired.
 - c. Replace all the broken tiles/Kota stone installed in the stilt parking /terrace and a proper slope needs to be created so that water logging issues are not experienced by the residents of the building.

- d. All broken/repaired stones installed in the staircase should be replaced.
 - e. The common area maintenance charges should only be applicable after the flat is completely handed over to the owners, addressing all the identified issues inside the M5 unit.
9. On the date of hearing, the authority explained to the respondent /promoter 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:

10. The respondent contested the complaint on the following grounds:
- a. The present complaint is not maintainable as the present purported grievances raised by the complainant are for their own benefit and has not been filed with bona fide intention to bring on record genuine structural defects. That under the garb of "structural defects" the complainant is attempting to get personal repairs done at the cost of the respondent.
 - b. The present complaint pertains to the project 'Samsara' situated at Sector 60, Gurugram Haryana (**herein after referred to as 'the project'**). That the project comprises of 64 towers/blocks and the total number of independent floors in the said project are 192. It is pertinent to mention that the respondent offered possession of the units in 2018-19 and approx. 150 families are presently residing in the project.
 - c. That in view of the brief facts as enumerated hereinabove, before averting to the para-wise reply to the instant complaint, the

respondent craves leave of this Hon'ble Authority to submit its following preliminary objections, which are taken without prejudice to each other:

- d. That without proper scrutiny and back ground check and the complainant only with the intention to harass the respondent has prayed for a structural audit to take place whereas the same has already been conducted by third party on 05.03.2022.
- e. That the said report categorically states that the floors in block M were handed over for possession on 2020 February. That there appear minor cracks but this falls under "normal wear and tear" and no structural retrofitting or strengthening is required. The report further states that cracks may be repaired for aesthetic purpose however no structural repairs are required. The report states that the cracks visible on walls of the outer and internal structure of the building generally occur and are superficial in nature.
- f. That clause 12 of the BBA states that any defect relating to the development brought to the notice of the promoter within 5 years of handing over of possession from the date of occupation certificate by the allottee shall be the duty of the promoter to rectify within 90 days. It is pertinent to mention that the alleged defects brought to light by the complainant do not fall under the category of 'structural defects' and are in no way a threat to safety. The same has been verified in the audit report.
- g. It is pertinent to mention that as verified from the structural audit report, there are no faults, breakage or cracks appearing over time

in elements such as load bearing columns, walls, slabs, beams. The cracks on the walls and tiles are through normal wear and tear and the promoter is not liable to get the cracks repaired.

- h. Without prejudice to the above submissions, it is pertinent to bring to the attention of this Hon'ble Authority, that during the audit report it was noticed that few cracks have also been repaired. Further the promoter has also taken the initiative to repair all the cracks and tiles which were allegedly faulty as per the complainant. The same occurs due to variation in temperature i.e., from extreme hot to extreme cold and vice versa.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

E. Jurisdiction of the authority

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

E.1 Territorial jurisdiction

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete 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;

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.

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 complainants at a later stage.

F. Findings on the relief sought by the complainants:

F.I. M/s Adani should get the structural audit of the building immediately by a reputed agency and share the report with the complainants.

F.II. All the cracks appearing on the wall in the building should be repaired.

F.III. Replace all the broken tiles/Kota stone installed in the stilt parking /terrace and a proper slope needs to be created so that water logging issues are not experienced by the residents of the building.

F.IV. All broken/repared stones installed in the staircase should be replaced.

F.V. The common area maintenance charges should only be applicable after the flat is completely handed over to the owners, addressing all the identified issues inside the M5 unit.

16. In the present matter the complainant was allotted a unit bearing no. M5-A on 1st floor admeasuring 1116 sq. ft. vide letter dated 07.11.2017. Thereafter a registered agreement for sale was executed between the complainant jointly with Jinesh Jain & respondent company on 03.05.2018. As per clause 7.1 of the agreement the possession of the unit was to be delivered within 27 from the date of the agreement i.e., till 03.08.2020. On 17.06.2020 vide assignment agreement the nomination of the apartment was made in favor of complainant solely. The respondent on 19.06.2020 handed over the possession of the said apartment after receiving OC from the competent authority on 09.09.2019. Also, on 20.11.2020 the conveyance deed was also executed between the parties.
17. Now the complainant filed the said complaint seeking the directions of the authority for getting the structural audit of the building and to rectify *all the defects including seepages issues, cracks apparent on walls and broken tiles*. As per section 11(4)(a) and 14(3) of the Act, the promoter is under an obligation towards allottees with respect to structural defects, seepage issues, substandard plaster, and reinforced steel exposed or provision of services or any other obligations. Section 11(4)(a) & 14(3) are produced below for ready reference:

"Section 11(4) The promoter shall—

(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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed

....."

"Section 14(3)

In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."

18. The Act casts a responsibility on the promoter to rectify the structural defects or any other defect in workmanship, quality, or provision of services when it is brought to the notice of the developer within a period of five years by the allottee(s) from the date of handing over the possession. In the present case, the occupation certificate (hereinafter referred to as the OC) in the project was granted by the DPTC on 09.09.2019. The complaint has been filed within the period prescribed under section 14(3) of the Act. This authority appointed a local commission to submit its findings on the issues involved in the complaint and the relevant part of report dated 16.08.2024 is reproduced as under:

"4. CONCLUSION:

The site of project namely "Samsara Part I" being developed by M/s Adani Brahma Synergy Pvt Ltd. in sector-60, Gurugram has been inspected on 13.08.2024 regarding the level of damage alleged by the AR of the complainant as well

as status of handing over of possession in terms of BBA pertaining to the basement and terrace portion and it is concluded that;

- *There are hairline cracks in the complainant unit. Further, the cracks repaired earlier also start appearing again on the same locations.*
 - *There are large number of visible cracks in the common area (stair case area, terrace area, stilt area) for which repairing work is initiated by the promoter but the same has not been completed till date.*
 - *There is water logging at some locations in stilt area and terrace area. However, the water logging level is minor. Further the Kota stone fixed at terrace is damaged partly and also the maximum joints are opened due to which water penetrates there beneath the Kota stone at one point and there is undulation in the level of Kota stone.*
 - *The Kota stone has been fixed in stilt area and some portion of terrace area but as per sample flat anti-skid parking tiles are to be fixed in stilt area. Further as per BBA specifications Pattern of parking suitable tiles are proposed in the stilt area and Premium finished tiles (Pattern) are proposed in terrace area.*
 - *The complainant has taken over the possession of the basement and has not taken over the possession of terrace but utilizing the same.*
 - *Collection pit/chamber constructed in basement is not properly finished particularly the openable cover.*
 - *The Granite fixed in stair case area was damaged at some locations and the promoter has repaired the same by replacing the damaged cut piece only instead of replacing the complete granite piece installed on stairs step.*
- Site photographs captured at the time of inspection of the project site are attached herewith for reference please”*

19. As per section 14(3) of the Act, the respondent/promoter is liable to rectify the defects in workmanship, quality, or provision of services for a period of five years from the date of handing over possession. From the aforesaid report, it is clear that there are numerous defects in the said project and the same were to be rectified by the promoter within 6 weeks as given by this authority vide order dated 20.08.2024.

20. During the course of arguments in the hearing dated 12.11.2024, it was submitted by the respondent/builder through its counsel that in pursuant to the report of LC dated 16.08.2024 and directions of the authority to rectify the necessary structural defect and deficiency in construction vide order dated 20.08.2024 have been carried out and the respondent submitted the report of site engineer confirming the rectification in complainant no. 7287-2022 & 7288-2022 except for the repair of tiles in stilt parking and terrace. Even this fact is not disputed by the complainant through his counsel. The counsel for the respondent in complaint no. 7289-2022 stated that the defects are not cleared since the complainants did not allow the work to be carried out. The counsel for the complainants stated that the respondent was only carrying out superficial repairs while the cracks were deeper in the brickwork. Keeping in view the defects mentioned in the LC report dated 16.08.2024 the authority hereby directs the respondent to rectify the remaining defects and deficiency in the construction within a period of (3) three months from the date of this order. However, if any such defect and deficiency remain existent and the same is not rectified by the respondent/promoter within the stipulated time, then the complainant is free to approach the Adjudicating Officer upon failure on part of respondent to rectify such defect within such time and the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act as per section 14(3) of the Act of 2016.

G. Directions of the authority

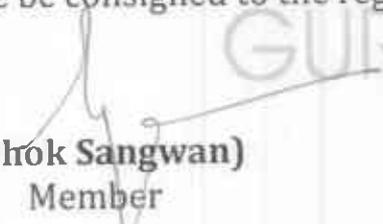
21. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:

a. The authority hereby directs the respondent to rectify the defects mentioned in the LC report dated 16.08.2024 within a period of (3) three months from the date of this order. However, if any such defect and deficiency remain existent and the same is not rectified by the respondent/promoter within the stipulated time, then the complainant is free to approach the Adjudicating Officer upon failure on part of respondent to rectify such defect within such time and the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under the Act as per section 14(3) of the Act of 2016.

22. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

23. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.

24. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 12.11.2024