

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

Complaint no.	:	1146 of 2023
Order reserved on:		07.03.2025
Order pronounced on:		09.05.2025

1. Rahul Kumar Sharma
2. Poonam Saini

**Address at:** House no. 143, 3<sup>rd</sup> floor, Residency  
Green, Sector-46, Jharsa, Gurgaon

**Complainants**

**Versus**

M/s Adani Brahma Synergy Pvt. Ltd.  
**Office:** Block-C, Flat no. 53, Flatted Factory  
Complex, Jhandewalan, New Delhi-110055  
**Also at:** Plot no. 83, Sector-32, Institutional  
Area, Gurugram-122001

**Respondent**

**CORAM:**  
Shri Arun Kumar

**Chairman**

**APPEARANCE:**

Sh. Parmanand Yadav  
Ms. Tanya

Advocate for the complainants  
Advocate for the respondent

**HARERA**  
**GURUGRAM**

**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 provisions 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 unit details, sale consideration, the amount paid by the complainants, 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 and location of the project	"Samsara Vilasa" at sector 63, Gurgaon, Haryana
2	Nature of the project	Residential Floors
3	DTCP license no.	64 of 2010 dated 21.08.2010 valid upto 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 Pvt. Ltd.
4	RERA Registered/ not registered	Registered vide no. 13 of 2019 dated 26.03.2019 valid upto 30.09.2023
	Licensed area	141.66875 acres
5	Unit no.	Plot no. J131 Apt no. J131 C, Type B1, 3 <sup>rd</sup> Floor (page no. 74 of complaint)
6	Unit area admeasuring	1225.21 sq. ft. (Carpet area) 2034.25 sq. ft. (Saleable area) (page no. 71 of complaint)
7	Date of allotment	01.10.2019 (page no. 12 of complaint)
8	Date of builder buyer agreement	21.11.2019 (page no. 65 of complaint)
9	Possession Clause	<b>Clause 7.1</b> <b>POSSESSION OF THE APARTMENT:</b> <i>Schedule for possession of the Apartment - The Promoter agrees and understands that timely delivery of possession of the Apartment along with parking and right to use of General Common Areas and Limited Common Areas of the Building to the Allottee and the General Common Areas of</i>



		<p>the Building to the allottees (having apartments in the Building) as provided under Rule 2(1)(A) of Rules is the essence of the Agreement.</p> <p>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. If the completion of the Building is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment.</u></p> <p>The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the Building/ Project due to Force Majeure and above mentioned conditions, then this allotment shall stand terminated.....</p>
10	Due date of possession	21.08.2022 [calculated 27 months from the date of agreement including grace period of 6 month due to covid-19]
11	Total sale consideration	Rs.1,80,36,689/- (as per payment plan on page 102 of complaint)
12	Amount paid by the complainants	Rs. 1,82,38,324/- (as per SOA dated 06.03.2024 on page no. 50 of reply)
13	Occupation certificate	10.01.2023 (page no. 105 of reply)
14	Offer of possession	21.01.2023 (page no. 99 of reply)

## B. Facts of the complaint

- The complainants have made the following submissions in the complaint:

- I. That the complainants, based on the claims of the respondent purchased a unit admeasuring 1225.21 sq. ft. (Carpet area) and 2034.25 sq. ft. (Saleable area) in the project of the respondent known as "Samsara Vilasa" on 31.08.2019 for a total sale consideration of Rs. 1,80,36,689/-. The original builder buyer agreement dated 21.11.2019 was executed between the parties.
- II. That as per the BBA the respondent was liable to give the possession of the said unit by 21.02.2022 to the complainants. Despite of repeated requests, the actual possession of the said unit is not handed over till date nor the conveyance deed of the unit done in favour of the complainants.
- III. That the respondent has not only duped the complainants, but several other buyers also by refusing to pay the interest of the delayed possession charges on one pretext or the other even the project has not received the completion/occupation certificate from the competent authority till date.
- IV. That the respondent has offered the possession on dated 21.01.2023 without the completion of the work of the said unit in question. On this the complainants emailed the respondent and even visited the office of the respondent, but the respondent has stopped responding to the communications of the complainants and has also restricted entry into its office for the complainants and other buyers and has failed to apprise the complainants regarding the true and correct status of the project and has further refused to pay the delayed possession charges to the complainants for reasons undisclosed.
- V. That the respondent is also demanding the maintenance of the unit from the offer of possession i.e., 21.01.2023 which is contrary to the



clause as mentioned in the builder buyer agreement. As per clause 7.2 the maintenance will start from the actual possession.

- VI. That the respondent is demanding very high maintenance i.e., @ Rs. 6 per sq. ft. in addition to the GST, which is a very high rate according to the building plan and the structure. The same rate of maintenance is nowhere mentioned in the BBA.
- VII. The conduct of the respondent is illegal and arbitrary, and the respondent is guilty of deficiency of services and of unfair and monopolistic trade practices. The respondent is clearly in breach of its contractual obligations and of causing financial loss to the complainants and the conduct of the respondent has caused a great amount of financial loss stress, grief and harassment to the complainants and his family members. Hence the present complaint.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s).
- (i) Direct the respondent to handover possession of the subject unit along with prescribed interest per annum from the promised date of delivery of the unit in the question till handing over/actually delivery of the said unit.
  - (ii) Direct the respondent to execute the conveyance deed for the unit of the complainants and to handover the physical/symbolic possession of the unit booked by the complainant(s) to them, complete and ready in all respects.
  - (iii) Direct the respondent from demanding any amounts from the complainants at the time of offer of possession which do not form a part of the agreements executed between the complainants.
5. 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.**

6. The respondent has contested the complaint on the following grounds.
  - I. That the present complaint pertains to the residential apartment no. J131-C, 3rd Floor, Block J, tentatively admeasuring 1225.21 sq. ft. (Carpet Area) in the project known under the name and style of "Samsara Vilasa" at Sector 63, Gurugram which is part of the project being developed under license no. 64 of 2010 granted by the Directorate of Town Country and Planning.
  - II. That Mr. Rahul Sharma and Ms. Poonam Sharma 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 construction linked plan, willingly, and voluntarily via an application form dated 31.08.2019.
  - III. That the said booking was accepted and subsequently, an allotment letter dated 01.10.2019 was executed and thereafter, an agreement for sale was executed between the complainants and the respondent on 21.11.2019, willingly, voluntarily, and without any demur or protest.
  - IV. That the complainants are defaulters and have subsequently defaulted on various occasions and intentionally delayed in remitting the outstanding amount demanded by the answering respondent. The answering respondent had sent various demand letters and reminder letters which were intentionally ignored by the complainants for the reason best known to them.
  - V. That as per clause 5 and clause 7.1 of the agreement dated 21.11.2019, the respondent was obligated to give the possession in 27 months subject to the timely payment by the complainants and force majeure





circumstances. The complainants, had duly accepted the bi-lateral terms and conditions. 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 construction-linked plan.

- VI. That without prejudice to the above submissions *qua* failure on the part of the complainants to fulfill their essential obligations under the agreement between the parties, the development and implementation of the said Project has been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. That additionally in the year 2020-2022, the world was hit by the Covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. That considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from





12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. Therefore, it is safely concluded that the said in the seamless execution of the Project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay.

- VII. That as per the HARERA notification bearing No. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020 the Ld. Authority had granted extension for 6 months for the project whose completion date, revised completion date or extended completion date as per registration expired on or after 25.03.2020 due to the outbreak of COVID-19 which is a calamity caused by the nature and is adversely affecting the development of the project. The due date of possession of the respective apartment as per the terms of the agreement of sale was 21.02.2022 which is after 25.03.2020 therefore, the answering respondent is clearly entitled for extension of six months as a force majeure for the outbreak of Covid19.
- VIII. That thereafter the respondent successfully completed the construction and development of the project and offered the possession of the unit to the complainants on 21.01.2023 with a request to make the outstanding payment for Rs. 23,55,678/- and Rs. 4,05,060/- as one year advance maintenance charges. The respondent had fulfilled its obligations to offer the possession of the unit to the complainants and thereafter it is the complainants' obligation to make the outstanding payment when demanded by the respondent as per the payment plan in terms of the agreement for sale.
- IX. That the respondent was well within his rights to demand the maintenance charges as per clause 11.1 and 11.2 of the agreement for sale dated 21.11.2019. That a valid offer of possession dated 21.01.2023



was made to the complainants and thereafter, the demand for maintenance charges was raised.

- X. That the present complaint is an afterthought and has intentionally been filed on 13.03.2023 after receiving the offer of possession letter dated 21.01.2023 with an intention to extort money from the respondents, and with a view to avoid the obligations to make payments as per the demand raised with the offer of possession. The answering respondent had offered the possession of the residential apartment in a time bound manner and without any delay and the present complaint is filed with false, baseless averments and without any proof towards any of the unsubstantiated and mistaken allegations recklessly levelled in the said complaint. The complainants took their own convenience and time to remit the outstanding as per offer of possession letter dated 21.01.2023 and executed the conveyance deed dated 12.05.2023.
- XI. That after the execution of conveyance deed the relationship between the parties is contractual in nature, dealt with by the terms and conditions of the agreement for sale. That upon the execution of the conveyance deed, the absolute title in the property stands transferred to the allottee and there exists no subsisting relationship between the promoter and the allottee. The obligations under the agreement also stands discharged by performance of the contract.
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 has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

10. 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) 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;*

**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.*

11. 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 objections raised by respondent:****F.I Objection regarding force majeure conditions:**





12. The respondent-promoter pleaded that the completion of the construction of the project was delayed due to Covid-19 as there was no labourers, contractors etc. for the construction of the project due to complete lockdown. The Government of India ordered a complete lockdown in the entire country for an initial period of 21 days which started on March, 25 2020. Thereafter Government extended the lockdown from time to time. Despite all that the construction of the project was completed and its occupation certificate was received on 10.01.2023 and subsequently offered the possession on 21.01.2023. So, the respondent-builder be allowed extension in offer of possession of the project. The Authority is of the view that due to Covid 19, there was complete lockdown for a number of days resulting in the labour moving to their native places and the construction activities coming to a standstill. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 21.08.2022.

**G. Findings on the relief sought by the complainants:**

- (i) Direct the respondent to handover possession of the subject unit along with prescribed interest per annum from the promised date of delivery of the unit in the question till handing over/actually delivery of the said unit.**





13. In the present complaint, the complainants 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."*

***(Emphasis supplied)***

14. Clause 7 of the buyer's agreement provides possession of the apartment and is reproduced below:

***7. Possession of the Apartment***

*"*

*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 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. If the completion of the Building is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment.*

*"*

***(Emphasis supplied)***

15. **Admissibility of delay possession charges at prescribed rate of interest:** 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.*

16. 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.
17. 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., 09.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
18. 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;"*
19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.



20. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 7 of the agreement executed between the parties on 21.11.2019 the possession of the subject unit was to be delivered within 27 months from the date of registration of this agreement. Further grace period of 6 months is allowed due to covid-19. Therefore, the due date of handing over possession is 21.08.2022. the respondent has obtained the occupation certificate on 10.01.2023 and subsequently offered the possession of the unit on 21.01.2023. The respondent has failed to handover possession of the subject unit within prescribed time. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 21.11.2019 executed between the parties.
21. Accordingly, the 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 21.08.2022 till offer of possession (21.01.2023) after obtaining occupation certificate plus two months i.e., 21.03.2023 at prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.



**(ii) Direct the respondent to execute the conveyance deed for the unit of the complainants and to handover the physical/symbolic possession of the unit booked by the complainant(s) to them, complete and ready in all respects.**

22. The complainants are seeking direction to respondent to execute the conveyance deed of the unit in favour of the complainants. The possession was offered after obtaining of occupation certificate on 10.01.2023 as per clause of the agreement. The respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favour of the allottee but only after receiving full payment of total price of the apartment.
23. It is to be further noted that section 11 (4) (f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.
24. As far as the relief of transfer of titled is concerned the same can be clearly said to be the statutory right of the allottee as per Section 17 (1) of the Act provide for transfer of title and the same is reproduced below:

***"Section 17: Transfer of title.***

*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."*

25. As occupation certificate of the unit has been obtained from the competent authority on 10.01.2023, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the conveyance deed in favour of the complainants after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

**(iii) Direct the respondent from demanding any amounts from the complainants at the time of offer of possession which do not form a part of the agreements executed between the complainants.**

26. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

#### **H. Directions of the authority**

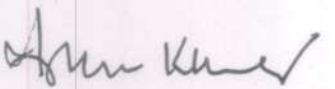
27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 21.08.2022 till offer of possession after obtaining occupation certificate plus two months i.e., 21.03.2023 as per section 18(1) of the Act read with rule 15 of the rules.



- ii. The respondent is directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 after payment of requisite stamp duty and administrative charges by the complainants.
  - iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.
  - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 11.10% by the respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - v. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.
28. Complaint as well as applications, if any, stands disposed of accordingly.
29. File be consigned to registry.

**HARERA**  
GURUGRAM

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.05.2025