

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

Complaint file on : 10.09.2024
Order pronounced on : 09.10.2025

1. Manish Kapoor

2. Pooja Kapoor

Both R/o: - G-106A, Sushant Lok-2, Sector-57,
Gurugram-122011, Haryana.

Complainants

Versus

M/s Brahma City Private Limited

Office at: - Epitome, 10th Floor, Building No. 5A,
DLF Cyber City, Phase-3, Gurugram, Haryana.

Respondent

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

In-person

Ms. Seema Sundd (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainant/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 thereunder 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.No.	Particulars	Details
1.	Name of the project	Miracle Mile
2.	Project location	Sector 60, Gurugram, Haryana
3.	Project type	Commercial Project
4.	HRERA registered/ not registered	Registered vide no. 327 of 2017 dated 23.10.2017
5.	Provisional Application form dated	08.03.2013 (As per page 17 of reply)
6.	Application form dated	11.05.2018 (As per page 33 of reply)
7.	Date of apartment buyer agreement	26.07.2019 (As per page no. 49 of the reply)
8.	Unit no.	FF-59, 1 st Floor (As per page no. 60 of the reply)
9.	Unit area admeasuring	238.30 sq.ft (As per page no. 54 of the reply)
10.	Unit area admeasuring as per site visit report	234.97688 sq.ft
11.	Possession clause	7.1 Schedule for possession of commercial unit <i>xxxx...The promoter assures to handover possession of the commercial unit as per agreed terms and conditions on or before 31.03.2022 unless there is delay due to "force majeure", court orders, govt policy/guidelines, decisions affecting the regular development of the project...xxxx</i> (As per page no. 67 of the reply)

12.	Due date of possession	31.09.2022 (Calculated from the promised date of delivery i.e., 31.03.2022 + 6 months grace period) (Grace period of 6 months is allowed being unconditional)
13.	Sale consideration	Rs.53,54,948/- (As per page no. 60 of the reply)
14.	Amount paid by the complainant	Rs. 32,01,443/- (As per SOA dated 09.09.2019 at page 100 of reply)
15.	Demand letters dated	05.08.2019, 04.09.2019, 18.02.2020, 07.01.2023 (As per page no. 100-101 & 107-110 of the reply)
16.	Occupation Certificate	16.08.2023 (As annexed as annexure B in site visit report)
17.	Offer of possession dated	16.11.2023 (As per page no. 111 of the reply)
18.	Conveyance Deed (Draft)	22.05.2024 (As per page no. 117 of reply)

B. Facts of the complaint

3. The complainants have made the following submission: -

1. That the complainant purchased a commercial shop from the respondent, M/s Brahma City Pvt. Ltd., and made full payment towards the same approximately four months ago. Despite fulfilling all financial obligations, the complainants have not been handed over possession or registry of the said shop.

- II. The complainants have consistently mentioned that the carpet area of the shop is 231.295 sq. ft., as established through three independent measurements — one by the complainant's own assessment, the second through a joint measurement conducted in the presence of both parties, and the third by a qualified architect, who has also issued a certificate confirming the measurement.
- III. However, the respondent has refused to accept these verified measurements, as doing so would require them to make a refund or adjustment of the excess amount collected based on an inflated carpet area. The respondent's refusal appears to be deliberate and intended to avoid their financial liability.
- IV. Despite repeated representations and submission of all supporting documents, the respondent has continued to delay the process of registration and possession by insisting on retaining a disputed clause regarding the carpet area in the handover documents.
- V. The complainants contend that the conduct of the respondent company clearly indicates malafide intentions to pressurize the buyer into taking possession under unreasonable and one-sided conditions, thereby causing undue harassment and financial loss to the complainant.
- VI. Due to the respondent's inaction and arbitrary stand, the complainant is being deprived of the use of his shop and is suffering continuing financial loss and mental agony.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondents to handover the physical possession of the unit.
 - ii. Direct the respondent to get the legitimate and lawful conveyance deed of the unit no. FF-59 executed in favour of the complainants.
 - iii. Direct the respondent to pay compensation of Rs.2,94,415/- for 7.005 sq. ft decreased area of the unit.

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 contested the complaint on the following grounds: -
- I. The complainant vide provisional allotment letter dated 08.03.2013 booked a commercial unit no. FF-109 admeasuring 403 sq. ft. in the project "MIRACLE MILE" in Brahma City. That the allottee herewith paid Rs. 3,60,445/- via cheque no. 178770 dated 08.03.2013.
 - II. The unit got renumbered from 109 to 59 and size of unit was also changed and increased from 403.86 sq. ft. to 476.63 sq. ft. vide the application for allotment form and letter dated 11.05.2018.
 - III. The complainant executed the undertaking dated 12.06.2018 accepting that they shall be bound by the terms and conditions of the commercial unit booked. On 17.12.2018, final cancellation notice for revised shop number FF-59, in the said project was served upon the complainant in which it was clearly stated that if the respondent does not receive the documentation from the complainant, then they would be forced to terminate the process of the application.
 - IV. Agreement for sale was executed on 26.07.2019 and the expected due date of the possession and the schedule of payments was agreed between the parties. As per the clause 7.1 of the agreement the due date of the commercial unit was on or before 31.02.2022 unless there is delay due to "force majeure", court order, government policy/guidelines, decision affecting the regular development of the project. That it is clearly mentioned in this clause that if the completion of the project is delayed due to the above-mentioned condition, then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of the possession of the commercial unit.

- V. On 14.03.2019 the letter regarding the intimation of the due instalments was sent to the complainant, wherein it was clearly stated that 5 instalments amounting to Rs. 23,02,763/- as per the payment schedule opted by the complainant is due and the respondent has the right to reject the allotment and forfeit the earnest money in accordance with the terms and conditions of application if the due payments and interest is not paid within 7 days of this letter.
- VI. Receipt dated 10.06.2019 for an amount of Rs.1,49,113/- and receipt dated 16.08.2019 for an amount of Rs.21,91,885/- were provided to the complainant, receipt dated 10.06.2019 for an amount of Rs.1,49,113/- and receipt dated 16.08.2019 for an amount of Rs.21,91,885/- were provided to the complainant, account statement as per the applicable payment plan of the complainant was provided to the complainant on 09.09.2019, receipts dated 19.09.2019, 03.03.2020, 13.02.2023 and 01.03.2023 of Rs. 5,38,376/-, Rs. 5,38,377/-, Rs.4,00,000/-, Rs.4,07,565/- and Rs.7,94,760/- respectively were again provided to the complainant, on 18.02.2020 and 07.01.2023 again the demand letter of Rs. Rs.5,38,377/- and Rs.807,564.80 were sent to the complainant regarding the due payment.
- VII. On 16.11.2023, letter regarding the offer of possession and request for payment of final instalment and other charges/dues for the commercial unit no. FF 59 was provided to the complainant, wherein again the respondent has requested to pay the outstanding amount along with the guidelines for the registration of sale deed/conveyance deed.
- VIII. Offer of possession is even offered to the complainant by the respondent vide letter dated 16.11.2023. it is further submitted that the there is no reduction in the said commercial unit as alleged by the complainant and the commercial unit is ready for the possession as per the occupation certificate which has been received by the respondent on 16.08.2023. The complainant is intentionally delaying the possession of the commercial unit.

IX. In the light of the above, the answering respondent most humbly prays, that the Hon'ble Authority be pleased to dismiss the present complaint qua the respondent with costs.

7. 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 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

9. 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

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)(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 regarding relief sought by the complainants.

F.I Direct the respondents to to handover the physical possession of the unit.

F.II Direct the respondents to get the legitimate and lawful conveyance deed of the unit no. FF-59 executed in favour of the complainants.

F.III Direct the respondent to pay compensation of Rs.2,94,415/- for 7.005 sq. ft decreased area of the unit.

12. On the above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. On the basis of the documents and submission made by both the parties, the Authority observes that the complainants purchased unit no. FF-59, located on the first floor, situated in Miracle Mile, Sector 60, Gurgaon. The floor buyer's agreement dated 26.07.2019 executed between parties herein. As per clause 7.1 of the buyer's agreement dated 26.07.2019, the possession of the subject unit was to be offered to the complainant on or before 31.09.2022. In the present complaint, the occupation certificate was received from the competent authority on 16.08.2023 and possession of the unit was offered to the complainants herein vide offer of possession letter dated 16.11.2023.
14. The complainants have contended that as per the buyer's agreement executed between the parties, the carpet area of the subject unit was specified as 238.30 sq. ft. However, upon offer of possession and subsequent execution of the conveyance deed, the complainants discovered

that the actual carpet area of the said unit stood reduced to 231.95 sq. ft. The complainants have, therefore, alleged deficiency in service and misrepresentation on the part of the respondent-promoter with respect to the area of the unit delivered, contrary to the terms stipulated in the buyer's agreement.

15. In view of the aforesaid contention, this Authority, vide proceedings dated 28.08.2025, appointed a Local Commissioner (LC) to conduct an independent measurement of the subject unit in order to ascertain whether the carpet area thereof conforms to the definition as prescribed under Section 2(k) of the Real Estate (Regulation and Development) Act, 2016. Pursuant to such appointment, the Local Commissioner submitted his report on 17.09.2025, wherein the carpet area of the said unit has been determined to be 234.97688 sq. ft. as per the methodology and definition laid down under the Act.
16. In view of the report submitted by the Local Commissioner dated 17.09.2025, and there being no substantive objection raised by either party regarding the methodology or findings contained therein, this Authority accepts the said report as fair, accurate, and in conformity with the provisions of the Real Estate (Regulation and Development) Act, 2016. Accordingly, the carpet area of the subject unit is hereby determined and finalized as 234.97688 sq. ft., which shall be treated as the final and binding carpet area for all purposes under the Act and the buyer's agreement executed between the parties.
17. The complainants are seeking the relief for the registration of conveyance deed in accordance with section 17 of the Act of 2016. The respondent/promoter has obtained the occupation certificate on 16.08.2023 thereafter, the respondent offered the possession on 16.11.2023. Whereas the possession was offered by the respondent/promoter obtaining the occupancy certificate as per clause 10

of the buyer's agreement, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favor of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

10. CONVEYANCE OF THE COMMERCIAL UNIT

The Promoter, on receipt of Total Price of the Commercial Unit shall execute a Conveyance Deed in favour of Allottee preferably within three (3) months but not later than six (6) months from the date of possession of the Commercial Unit by Allottee. Provided that, the Commercial Unit is equipped with all the specifications, facilities as per the agreed terms and conditions. However, in case, the Allottee fails to deposit the stamp duty and/or registration charges, other ancillary charges within the period mentioned in the possession notice, the Allottee authorizes the Promoter to withhold registration of the Conveyance Deed in his/her/their favour till such stamp duty, registration charges, other ancillary charges are paid by the Allottee to the Promoter.

18. 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 unit 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.
19. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as 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:

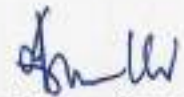
Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

20. As OC of the unit has been obtained from the competent authority on 16.08.2023 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/promoter to execute the conveyance deed as per the carpet area 234.97688 sq. ft. in favour of the complainants after payment of requisite stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any.
21. Consequently, since the carpet area of the subject unit has been determined as 234.97688 sq. ft. against the 238.30 sq. ft. promised in the buyer's agreement, there is a reduction of 3.32312 sq. ft. in the actual carpet area. In terms of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 and the provisions contained in the buyer's agreement, the respondent-promoter is liable to refund to the complainants the cost of the reduced carpet area, calculated at the agreed rate per square foot, along with interest at the prescribed rate.

H. 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 cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -
- The respondent/promoter is directed to execute the conveyance deed in favor of the complainants/allottees within 30 days as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.

- ii. The respondent/promoter is directed to refund to the complainants the cost corresponding to the reduced carpet area of 3.32312 sq. ft., calculated at the rate per square foot as agreed under the buyer's agreement, within a period of 90 days. In the event of failure to make the said payment within the stipulated period, the refundable amount shall carry interest at the rate of MCLR + 2% per annum, computed from the date of default until the date of actual realization.
23. Complaint as well as applications, if any, stand disposed off accordingly.
24. File be consigned to the registry.


(Phool Singh Saini)
Member
(Arun Kumar)
Chairman**Haryana Real Estate Regulatory Authority, Gurugram**

Dated: 09.10.2025

HARERA
GURUGRAM