

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

Complaint no.: 2846 of 2024
Complaint Filed on: 03.07.2024
Date of Decision: 23.12.2025

Renuka Popli and Dheeraj Popli

R/o: 619-B, Sector-15, Part-I, Gurugram

Complainant

Versus

Brahma Center Development Private Limited

R/o: Flat no.B-8, Cabin no.11, Ansal Tower, 38, Nehru
place, New Delhi

Respondent

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Shri Animesh Goyal (Advocate)

Shri Venket Rao (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Athena, Sector 16, Gurgaon
2.	Nature of the project	Commercial
3.	RERA Registered/ not registered	Registered vide Registration no. 239 of 2017 dated 20.09.2017, valid till 31.12.2019 [LAPSED PROJECT]
4.	HSIIDC License No.	Memo No. HSIIDC/IPD/2011/3144 dated 04.03.2011
5.	Unit no.	601 A, 6 th floor [Page 38 of complaint]
6.	Unit area admeasuring	1600 sq. ft. [Page 38 of complaint]
7.	Date of application for provisional allotment	16.06.2013 [Page 85 of reply]
8.	Date of Unit Buyer's Agreement	09.07.2013 [Page 17 of complaint]
9.	Payment Plan	Not on record
10.	Possession clause	<i>23. Subject to other terms of this Agreement including but not limited to Section 23 above and timely payment of the Total Price and Additional Charges as mentioned in this Agreement, the Company shall endeavour to complete the construction of the Said Unit by January 2015. It is made clear that the Company/S shall be entitled to a grace period of 9 (Nine) months from the date mentioned above. Thereafter, the Company shall offer the possession of the Said Unit to the Buyer within 45 days and shall execute a conveyance deed in respect thereof ("Conveyance Deed") upon the Buyer</i>

		<i>accepting the offer of possession in writing, as decided by the Company".</i> Emphasis Applied] [Page 31 of complaint]
11.	Due date of possession	October 2015 [as per possession clause January 2015 plus grace period of 9 months]
12.	Total sale consideration	Rs.1,44,00,000/- [Page 18 of complaint]
13.	Amount paid by the complainant	Rs.1,40,45,382/- [As per payment acknowledgment by respondent at page no. 47 of complaint]
14.	Part Occupation certificate by HSIIDC vide no. IPD/VV/34/ID/HSIIDC/1800 dated 31.03.2022 [for office block-B and Basement -I, II, III & IV]	31.03.2022 [Page 137 of reply]
15.	Occupation certificate for concerned unit [601 A, 6 th floor]	Not obtained
16.	Offer of Possession	Not offered

B. Facts of the complaint:

3. The complainants are making the following submissions:

- i. The respondent through its lucrative advertisements of the commercial complex named "Brahma Bestech Athena" shown the rosy picture and induced the complainants and many more people to purchase and book a commercial unit in the said complex and to part with their hard-earned money. That the complainants booked the commercial unit admeasuring 1600 sq. ft. in July 2013 in the said project "Brahma Bestech Athena" situated in Sector 16, Gurugram at the rate of Rs.9000/- per sq. ft. The respondent allotted a unit number 601-A 6th floor, admeasuring 1600 sq. ft. (hereinafter referred as "unit") in Brahma Bestech Athena Sector-16, Gurugram (herein after

- referred to as the said property) and signed unit buyers' agreement (UBA) dated 09-07-2013 was duly signed between the parties.
- ii. That as per the terms of the unit buyer agreement the complainants paid the 95% of the total sale consideration i.e., Rs.1,41,87,254/- to the respondent regarding the said unit vide cheque no.348740 and cheque no.313029 both drawn on HDFC Bank of Rs.70,22,691/- each, and Rs.1,41,872/- as TDS was deposited the permanent account number of respondent. All these amounts have been duly received by the respondent and the same was duly acknowledged by the respondent in the UBA. After receiving the amount from the complainants, the respondent confirmed the booking of the unit, in the project in favour of the complainants. The respondent assured that the construction of the said unit and the complex will be completed on time by January 2015 as per clause no.23 of the UBA and accordingly the respondent will offer the possession of the said property in writing to the complainants within 45 days and shall execute a conveyance deed in respect thereof after accepting the offer of possession in writing.
 - iii. That the remaining 5% amount of the total sale consideration was agreed to be paid at the time of handing over the actual, physical and peaceful possession of the said property as per the payment plan.
 - iv. That vide letter dated 15.09.2015 the respondent sought confirmation of receipt of the amount of Rs.1,40,45,382/- without TDS despotised with the respondent and the complainants vide confirmation dated 30.09.2015 also confirmed the aforesaid amount.
 - v. That the respondent assured the timely delivery of possession of the said property within 45 days from the date of completion of the construction in January 2015, however the respondent never delivered the same on time and even till date the respondent has been miserably

failed to handover the possession of the said property to the complainants despite there being inordinate delay of more than 9 years from the due date and despite making several telephonically and personal requests and also via email. The respondent even cannot count the grace period in the total period agreed for handing over the actual, physical possession of the said property complete in all respects as the same can only be considered when the respondent is able to deliver the actual physical possession of the said property within the grace period, failing which the respondent is liable to pay the interest and penalty for this period also.

- vi. That the complainants duly adhered their part of the contractual stipulations and the respondent with mala-fide intentions, even after taking the amount as per the prescribed payment schedule, never adhered to its contractual stipulation and liabilities causing huge financial losses to the complainant. That the complainants have been asking the respondent time and again about the delivery of the possession of the said property vide various visits in the office of respondent, through emails and telephonically call to the officials of the respondent company, however the respondent always gave evasive replies and never apprised the complainants about actual state of affairs or the exact date and time of delivery of possession of the said property.
- vii. That the Act and conduct of the respondent in deliberately inducing the complainants to part way with their life saving and cheat them based upon false documents amounts to an act of fraud and cheating for which the present complaint is being filed.
- viii. That the modus operandi of the respondent has caused tremendous financial pressure upon the complainants herein for which the

- complainants are entitled to be reimbursed forthwith as well as for the mental agony caused to the complainants by the acts, omissions and mala fide conduct on the part of the respondent.
- ix. That the conduct of the respondent has resulted in wrongful loss to the complainants and wrongful gain to the respondent herein, for which the respondent is liable to be prosecuted under Indian Penal Code.
 - x. That the Act of receiving the hard-earned money from the complainants and not making delivery of the said property after passing of more than 9 years from the due date of possession, wilfully and knowingly amounts to an act of fraud and deliberate delay for which respondent is solely liable to pay damages also.

C. Relief sought by the complainant:

4. The complainants have sought the following relief(s):
 - I. Direct the respondent to hand over the actual, physical and peaceful possession of the said property i.e. unit number 601-A 6th floor, measuring 1600 sq. ft. in Brahma Bestech Athena Sector-16, Gurugram complete in all respects along with all amenities as agreed to be provided by the respondent in terms of unit buyer agreement dated 09.07.2013 along with all ancillary facilities attached to it and also to execute and get registered the conveyance deed of the said property in favour of complainants.
 - II. Direct the respondent to pay the interest upon the total amount of Rs.1,41,87,254/- w.e.f. January 2015 i.e., the due date for handing over possession of the said property till handing over the actual, physical and peaceful possession of the said property i.e., 601-A 6th floor, measuring 1600 sq. ft. in Brahma Bestech Athena Sector-16, Gurugram complete in all respects along with all amenities.

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) 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. The complaint is not maintainable against Brahma Center Development Pvt. Ltd. (hereinafter referred as the "respondent") as it miserably fails to bring on record any deficiency in service or unfair trade practice on the part of the respondent; or any cause of action against respondent, in any manner whatsoever.
 - ii. The complaint filed by the complainants herein has been filed along with the affidavit of, firstly, only one allottee(s) namely Mr. Dheeraj Popli and affidavit of the other allottee(s) is missing along with the complaint. That that no authorization or power of attorney has been provided by the other allottee(s) namely Mrs. Renuka Popli thereby, authorizing the other allottee to prefer the present complaint before the Authority.
 - iii. The complainant(s) are admittedly aware that the construction of the Project including the unit in question was the sole and complete responsibility of Bestech India Pvt. Ltd. ("Developer") in terms of collaboration agreement dated 16.04.2011 read with the application form executed by the complainant(s) themselves. As such any prayer *qua* delay and delay compensation, if any, ought to be made and directed by the complainant(s) against the developer and not against the respondent herein. As such, the present complaint is liable to be dismissed on this count alone for non-joinder of the developer as a necessary and proper party.

- iv. The Haryana State Industrial and Infrastructure Development Corporation (hereinafter referred to as 'Competent Authority' or 'HSIIDC') had allotted plot no. 2, Sector 16, Gurugram admeasuring 12.206 acres (hereinafter referred to as 'project land') for construction and development of a commercial project.
- v. Subsequently, the respondent had entered into a collaboration agreement dated 16.04.2011 with the developer, for development and construction of the commercial project under the name and style of 'Athena' (hereinafter referred to as 'Project') consisting of commercial tower and a retail mall. In accordance with the aforesaid collaboration agreement the construction was to be completed by the developer in 30 months from the sanctioning of layout / building plans along with grace period of 120 days i.e., 4 months. In other words, the total construction time period was 34 months inclusive of obtaining the occupation certificate for the entire Project.
- vi. Moreover, the developer was obligated to get all approvals and meet the entire cost of construction amongst its other obligations, and the obligation of the answering respondent herein was limited to the payment of money towards the land as per the clauses, terms and conditions contained in and agreed under in the collaboration agreement dated 16.04.2011. In terms of the collaboration agreement dated 16.04.2011, it was agreed between the respondent and the developer that upon completion of the construction of the project including obtaining of the occupation certificate, 65% of the total saleable area/unbuilt area in respect of the said land shall belong to the answering respondent and the remaining 35% of the total saleable built / unbuilt area of the said complex shall belong to the developer.

- vii. That although the developer was entitled to allot or enter into agreements to sell of areas that would fall in its allocation, the same was subject to developer herein completing the project and complying with all of its obligation under the collaboration agreement where after only could it execute sale deeds. Clause 17 of the collaboration agreement further restrained the developer herein to not enter into any transaction until the sanction of layout /building plans. The developer herein was able to obtain the approval of the revised layout plans as late as on 22.04.2016 i.e., almost after a lapse of 5 years from the date of execution of the collaboration agreement.
- viii. However, the developer had failed to meet the development timelines in accordance with the schedule provided under the collaboration agreement. Due to the said failure on the part of the developer, disputes between the respondent and the developer arose and after protracted negotiations, the parties entered into the second addendum dated 25.02.2016 to the collaboration agreement.
- ix. The second addendum was premised on the developer completing the construction of the commercial and retail spaces in all respects as per collaboration agreement including obtaining of the occupation certificate within 26 months from the effective date which was 29.04.2016. A specific schedule was agreed for the stage-wise or milestone completion periods in annexure 1 to the second addendum. A grace period of 120 days was available with the developer. In other words, the maximum period for completion w.e.f. 29.04.2016 was 30 months including the period for obtaining the occupation certificate. Accordingly, in view of the discussions and representations made by the developer herein, the construction of

the project was required to be completed by the developer herein no later than by 29.10.2018.

- x. That one of the conditions for the effective date was the approval i.e., sanction of the building plans which was specifically agreed between developer and herein and the respondent and made as Annexure 3 to the second addendum. Those plans were approved on 22.04.2016. On and from 22.04.2016 these were the only agreed plans between developer and respondent duly sanctioned by the HSIIDC ("2016 Plans") and it was mandated that the construction of the project shall be as per the said plans only. It was further clearly envisaged that the same could not be varied from unless specifically agreed between the parties in writing. Admittedly, there has been no agreement or contract between the parties in writing amending, changing, modifying or substituting the said 2016 Plans, at any time whatsoever.
- xi. On or about January 2017, guideline on Green Rating of Integrated Habitat Assessment Guidelines ("GRIHA Guidelines") was introduced by HSIIDC by way of revisions to the Haryana Building Code, 2016. In light of the GRIHA Guidelines and subject to the fulfilment of varied requirements, it was available as an option for the project to avail the "conditional contingent benefit" of additional floor area ratio ("FAR") once it was successfully able to obtain final certification under GRIHA.
- xii. Accordingly, over the course of the year 2017-2018, multiple correspondences were exchanged between the respondent and the developer whether the project at all should be considered for taking benefit of any additional construction pursuant to the option becoming available in case the parties agree to implementation of

- the GRIHA guidelines and also agree to construction of any additional area pursuant thereto.
- xiii. However, without having reached a consensus and acting in obvious disregard of the terms of the collaboration agreement which clearly mandate the developer herein to submit drawings to the competent authorities in active consultation with the respondent, the developer in or around December 2017, unilaterally carried out revisions, with additional GRIHA area, to the pre-approved drawing (2016 plans) and further unilaterally submitted them with the HSIIDC without obtaining the requisite consent from the Appellant. That despite the respondent consistently seeking the copies of such plans from the developer herein these were never provided by the developer on one pretext or the other. The plans submitted by the developer are hereinafter referred to as "2018 Plans".
- xiv. Accordingly, the respondent repeatedly requested the developer herein to provide the revised project drawings and the consequential financial information. The request for financial information was germane for the respondent to take any decision on the implementation of the GRIHA Guidelines and for availing any additional construction that may be available upon implementation of the same. The developer, however, continuously denied the said information to the respondent on various implausible and mischievous pretexts.
- xv. Further, that irrespective of the unilateral submission of the revised plans, the developer herein and the respondent still had to agree on various matters that would arise as a result of the GRIHA pre-certification. Instead of fairly negotiating the issues, the developer herein resorted to coercive and non-cooperative tactics and insisted

on the execution of a third addendum to the collaboration agreement for allocation of conditional additional area that would have been available pursuant to successful GRIHA certification and payment of exorbitant charges/amounts towards adoption of GRIHA, as a prerequisite to complying with its elementary obligations under the Collaboration Agreement. An expression of the condition of entering into a subsequent addendum shows that there was no understanding or agreement between the parties, with respect to the pro-rata cost etc.

- xvi. That in light of the developer's non-cooperation in providing access to the revised drawings and necessary information to make an informed decision on the adoption of GRIHA, as well as not fairly negotiating the other consequential issues, the Appellant decided to forego the adoption of GRIHA and the same was the last understood position between the developer and the answering respondent. Accordingly, any actions, taken towards submission of revised layout plans or obtaining any sanction for such 2018 Plans were wholly non-est, illegal and contrary to the contract. Notably, in the context of the developer's wrongful conduct and unjustified demands, no conclusive formal agreement on availing the benefit of conditional additional FAR under GRIHA has been executed between the developer and respondent till date. The correspondences exchanged between the parties clearly evidence that the respondent and the developer had in fact agreed to not implement GRIHA and to in fact complete the construction as per the 2016 plans. However, the developer illegally and contrary to the contract between the parties, got sanctioned unilaterally submitted 2018 plans from

HSI IDC, which exercise was wholly non-est, illegal and non-binding on the respondent.

- xvii. In the meanwhile, the developer admittedly largely stopped construction at the project site by March 2018 and finally stopped construction by June 2018 and demobilized the site between July to September 2018 which resulted in disputes between the developer and the respondent with the consequent invocation of arbitration by the respondent for resolution of the said disputes.
- xviii. The disputes that arose between the respondent and the developer over the course of time has been referred to arbitration before the Arbitral Tribunal comprising of sole arbitration former Chief Justice of India Hon'ble Mr. Justice V.N. Khare. In the interest of the allottees and to expedite the completion of the Project, a settlement agreement dated 07.11.2019, executed between the respondent and the developer, wherein the completion of the leftover construction was to be completed by the developer before July, 2021 (with three months of grace period i.e., by October, 2021). That conveyance deed no. 3964 for the Project has already been executed between the respondent and HSI IDC dated 28.06.2022.
- xix. However, on account of force majeure circumstances beyond the control of the respondent (more particularly explained in detail hereunder) and for reasons solely attributable to the developer, the completion of the construction of the project in terms of the collaboration agreement was further delayed. Further, the developer has miserably failed to handover the respondent's demarcated area to the respondent to this date. The respondent has been constrained to initiate proceedings under the Arbitration and Conciliation Act, 1996 against the developer inter alia seeking

orders for completion of construction in order to obtain possession of the respondent's share, of which share the unit of the complainants is a part. The said proceedings are pending consideration before the Gurugram District Court wherein yet again in the interest of all stakeholders, including the allottees such as the complainant(s), efforts are being made to arrive at a mutually acceptable settlement, to enable forward movement in the project, including but not limited to handover of allotted units to the respective allottee(s) as well as conveyance deed(s) to be executed in favour of the respective allottee(s).

- xx. That the after obtaining part Occupation certificate on 21.03.2022 (sic.31.03.2022) for the commercial tower of the project Developer/Bestech was supposed to deliver the physical possession of the respondent's share to the respondent first, but without delivering the physical possession of the respondent's share in the commercial tower wherein the unit in dispute falls (sic. Unit in dispute doesn't fall under part OC), developer attempted to offer possession to the allottees of developer's share, thus acting in violation of the terms of the collaboration agreement.
- xxi. That the respondent was left with no choice but to prefer a petition under Section 9 of Arbitration and Conciliation Act, 1996 in September, 2023 praying for direction before Ld. District and Sessions Court, Gurgaon to restrain the developer to handover physical possession of the allottees of developer's share before physical handover of answering respondent share of the units in the commercial tower wherein the unit in question lies. The Ld. District and Sessions Court vide its order dated 21.09.2023 was pleased to restrain the developer from creating any third party rights in favour

of any buyer/allottee by selling, transferring, handing over of possession of the units in the project.

- xxii. That in the interregnum period, the respondent and the developer has entered into a supplementary agreement on 19.03.2024 whereby the developer had agreed to handover the respondent's share in the commercial tower to the respondent, and had further agreed to appointment of maintenance agency for the commercial tower for the purposes of overseeing the complete operations and maintenance of the commercial tower in which the unit of the complainant(s) is situated. Further, it was agreed that the handing over taking over of all equipment, facilities, amenities in complete state was to be completed from the developer to the maintenance agency within 30 days. The developer was further obligated to cure and rectify all the snags pointed out by the respondent. It is a matter of fact that the developer failed to complete all amenities, facilities, equipment etc. as required under the collaboration agreement and was further unable to complete the handing over and taking over process to the maintenance agency. Furthermore, the entire handing over taking over process was frustrated on account of lack of coordination between the developer and the maintenance agency, resulting in a stalemate. Consequently, due to non-payment of dues by the developer and on account of non-completion of handing over taking over process for a prolonged period of time inter alia due to alleged non-compliance by the developer and the maintenance agency stopped maintenance operations and withdrew its services, thereby rendering the commercial tower and its handing over taking over incomplete in terms of the collaboration agreement and without any maintenance agency being available on site to manage,

maintain and operate the commercial tower and all its facilities, amenities, equipment etc.

xxiii. That contrary to the obligations under the collaboration agreement, the addenda, settlement agreement and the supplementary agreement, the developer failed to complete the commercial tower. The developer has repeatedly failed to perform its obligations under the supplementary agreement, has obstructed in and not cooperated with the agencies appointed under the supplementary agreement for meaningful handover to the said agencies, thereby rendering the commercial tower non-functional and far from being operational. The developer, despite being repeatedly called upon by the maintenance agency and the answering respondent to rectify the said breaches/defaults so as to achieve the objective of the supplementary agreement by making the commercial tower operational and fully functional, has failed to cure the said defaults. Notably, the very purpose of executing the supplementary agreement between the parties was to ensure the operationalization of a fully functional and usable commercial tower. To this effect numerous steps were required to be undertaken by the developer in a time bound manner, all of which formed a material and essential part of the consideration towards the supplementary agreement. Illustratively, the respondent was inter alia required to:

- cure all the snags in commercial tower;
- completely handover the operations and maintenance of the commercial tower to the maintenance agency appointed by the parties and complete the handing over taking over as contemplated therein;
- handover of the documents/ manuals and drawings to the maintenance agency;

- timely payment to the maintenance agency.
- xxiv. Despite compliances under the supplementary agreement having been made by the answering respondent, the developer had failed to comply with its essential, material and critical obligations under the supplementary agreement, thereby rendering the letter and spirit of the supplementary agreement redundant. Thus, due to the failure of the developer to complete the commercial tower, non-completion of the handover process of the commercial tower to the maintenance agency, and presently due to lack of there being any maintenance agency on site, despite the respondent's bona fide and best intent, it has been practically impossible for the respondent to handover physical possession of the unit in question to the complainant(s). The same is on account of reasons beyond the control of the respondent and solely attributable to the developer. Further, the respondent on its part, as has been enumerated hereinabove has made its best efforts at every juncture to try and expedite the above processes to enable handover of possession to the respective allottee(s).
- xxv. That in the year 2013, the complainants in search of a commercial project learned about the project titled as 'Brahma Bestech Athena' (hereinafter referred to as 'Project'), being developed by the developer M/s. Bestech India Pvt. Ltd. respondent over a piece of land admeasuring 12.206 acres, situated at Sector 16, Gurugram, Haryana, India.
- xxvi. That after being satisfied with specification and veracity of the project the complainants decided to purchase a commercial unit and had applied for booking vide application for provisional allotment.

dated 16.06.2013, admeasuring 1600 sq. ft. of area comprising in the project upon own judgment and investigation.

- xxvii. That the responsibility for construction and development of the project was solely of the developer i.e., M/s. Bestech India Pvt. Ltd. and the said fact can be substantiated from the term and condition of the application form, wherein, it is categorically stated that respondent had entered into a collaboration agreement with Bestech India Pvt. Ltd. and the complainants herein were aware about the fact that Bestech India Pvt. Ltd. was sole responsible for the construction and development of the project.
- xxviii. The respondent allotted a unit bearing no. 601 A, sixth floor, in the aforesaid project admeasuring 1600 ft. in the said Project. And, on 09.07.2013, a unit buyer agreement, was executed for the said apartment having total sale consideration of Rs.1,44,00,000/- in the said Project. That the said agreement was signed by the complainants voluntarily with free will and consent without any demur.
- xxix. That as per the provision of clause 23 of the agreement, the respondent had estimated to completed the construction of the unit by January 2015, along with a grace period of 9 months from the said mentioned date. The respondent had proposed to offer the possession of the said unit to the complainants within 45 days and execute conveyance deed in respect thereof.
- xxx. That respondent's hands are tied due to the fact that the respondent's allocation in the commercial tower in which the said unit lies has not been completed in terms of the collaboration agreement by the developer of the project and there is no maintenance agency on site to whom the handing over taking over

of the operations, management and maintenance of the commercial tower can be entrusted, yet again on account of the breaches and defaults on the part of the developer. As such, the respondent cannot be held liable for any delay.

- xxxi. That, on 08.01.2020, the respondent herein through email communication had apprised the complainants regarding the exact status of the project and completion of the development at the project site. The respondent vide said mail had even assured the complainants that the respondent happens to hold *bona fide* intention and considering the interest of allottee(s) shall complete the construction of the project as per the approved plans. The occupancy certificate for the commercial tower has been obtained on 31.03.2022
- xxxii. That the respondent continues to remain ready and willing to handover possession and execute sale deed / conveyance deed in favour of the complainant(s), its ability to do so is being thwarted on account of force majeure circumstances on account of delays and breaches attributable to the developer inter alia on account of non-completion of work in terms of the collaboration agreement, lack of handing over taking over to the previously appointed maintenance agency and there being no maintenance agency on site as on date. It goes without saying that the handover of possession and execution of sale deed as and when carried out can only be steps subsequent to final payment of the dues payable by the complainant(s) to the respondent as per the agreement for the unit in question.
- xxxiii. That there exists no cause of action in favor of the complainant(s) or against the respondent and the complaint under reply is liable to be dismissed as per the facts and averments as explained hereinabove.

xxxiv. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

E. Jurisdiction of the Authority:

7. 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 the entire Gurugram District for all purposes 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 the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

10. Hence, given 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 Respondent raised an objection that the affidavit of, firstly, only one allottee(s) namely Mr. Dheeraj Popli and affidavit of the other allottee(s) is missing along with the complaint and that no authorization or power of attorney has been provided by the other allottee(s) namely Mrs. Renuka Popli thereby, authorizing the other allottee to prefer the present complaint before the Authority.

11. The respondent has raised an objection contending that only the affidavit of one allottee, namely Mr. Dheeraj Popli, has been filed along with the complaint and that the affidavit of the other allottee is not on record. However, upon perusal of the documents available on record, the Authority observes that the affidavit annexed with the complaint at page 16 is duly signed by both the complainant-allottees, namely Mr. Dheeraj Popli and Mrs. Renuka Popli. The respondent has further alleged that no authorization or power of attorney has been furnished by the other allottee, Mrs. Renuka Popli, authorizing Mr. Dheeraj Popli to file the present complaint before the Authority. In this regard, it is noted that the Vakalatnama placed at page 51 of the complaint has been duly executed and signed by both the complainant-allottees, namely Mrs. Renuka Popli and Mr. Dheeraj Popli. Since the complaint, affidavit, and Vakalatnama have all been duly signed by both the complainants, the question of furnishing any separate authorization or power of attorney by Mrs. Renuka Popli in favour of Mr. Dheeraj Popli does not arise. Accordingly,

the objections raised by the respondent are found to be devoid of merit and stand rejected.

G. Findings on relief sought by the complainant:

G.I. Direct the respondent to hand over the actual, physical and peaceful possession of the said property i.e. unit number 601A 6th floor, measuring 1600 sq. ft. in Brahma Bestech Athena Sector-16, Gurugram complete in all respects along with all amenities as agreed to be provided by the respondent in terms of Unit Buyer agreement dated 09.07.2013 along with all ancillary facilities attached to it and also to execute and get registered the conveyance deed of the said property in favour of complainants.

G.II. Direct the respondent to pay the interest upon the total amount of Rs.1,41,87,254/- w.e.f. January 2015 i.e., the due date for handing over possession of the said property till handing over the actual, physical and peaceful possession of the said property i.e. 601A 6th floor, measuring 1600 sq. ft. in Brahma Bestech Athena Sector-16, Gurugram complete in all respects along with all amenities.

12. The above-mentioned relief G.I and G.II are inter-related and hence, taken together for better adjudication.
13. The complainants applied for allotment in project i.e., "Athena" located in sector-16, Gurugram. The respondent allotted a unit bearing no.601-A, 6th floor in favour of the complainants. Thereafter, the unit buyer's agreement was executed between the parties on 09.07.2013 against a sale consideration of Rs.1,44,00,000/- The complainants have paid a sum of Rs.1,40,45,382/- towards the subject unit.
14. As per documents available on record, the complainants took a plea that offer of possession was to be made on or before the due date of possession i.e., January 2015 plus grace period of 9 months that comes out to be October 2015 as per clause 23 of unit buyer's agreement, but the

respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.

15. The respondent submits that the project land was allotted by HSIIDC and a collaboration agreement dated 16.04.2011 was executed with the developer i.e., M/s Bestech India Pvt. Ltd as per terms of collaboration agreement, wherein the developer was responsible for obtaining approvals, construction, and completion of the project within the stipulated time. However, the developer failed to adhere to the agreed timelines, stopped construction in 2018, and also unilaterally revised building plans without the respondent's consent, which led to disputes between the parties and initiation of arbitration proceedings. A settlement agreement dated 07.11.2019 was also executed to facilitate completion of the project. It is further submitted by the respondent that although a part occupation certificate for the commercial tower was obtained on 31.03.2022, the developer failed to complete the remaining works and did not hand over the respondent's share of the project.
16. The counsel for respondent stated respondent also initiated proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 before the District Court, Gurugram, wherein the court restrained the developer from creating third party rights in the project. Subsequently, a supplementary agreement dated 19.03.2024 was executed for handing over the respondent's share and appointment of a maintenance agency; however, the developer failed to comply with its obligations and did not complete the handover process or necessary works, resulting in stoppage of maintenance operations. The respondent submits that due to the developer's breaches and absence of a functional maintenance mechanism, it has become practically impossible to hand over possession of the unit to the complainants.

17. It is further contended that the complainants were aware of the role of the developer at the time of booking the unit and had executed the unit buyer agreement voluntarily. The respondent maintains that it remains ready and willing to hand over possession and execute the conveyance deed, subject to completion of pending obligations by the developer and payment of dues by the complainants.
18. In the present complaint, the complainants intend to continue with the project and are seeking possession of the unit along with 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

"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."

- 19. Due date of handing over possession:** In terms of clause 23 of the unit buyer's Agreement executed between the parties, the promoter has proposed to handover the possession on January 2015 with a grace period of 9 months. In view of the above, the due date of handing over of possession comes out to be October, 2015.

- 20. Admissibility of delay possession charges at prescribed rate of interest:** The complainants are continuing with the project and seeking delay possession charges. Proviso to Section 18 provides that where an allottees 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.

21. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules *ibid*, 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.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
23. 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;"*

24. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% (marginal cost of lending rate +2%) by the respondent/promoter which the same as is being granted her in case of delayed possession charges.

25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 23 of the unit buyer's agreement dated 09.07.2013, and the due date comes out to be October 2015 [including 9 months grace period.]. Part Occupation certificate was granted by the concerned authority on 31.03.2022 for office block-B and Basement -I, II, III & IV. Hence, the aid part Occupation certificate is not for the unit in dispute. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the unit buyer's agreement 09.07.2013 to hand over the physical possession within the stipulated period.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate of the concerned unit in dispute is not yet obtained. Complainants are obligated to take possession within 2 months from the date of receipt of occupation certificate from the competent authority. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.
27. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with 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 the due date of possession i.e., October, 2015 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, *ibid.* Further, respondent is directed to hand over possession of the subject unit to the complainant/allottees, upon payment of outstanding dues, if any, after obtaining the occupancy certificate

G. Directions issued by the Authority:

28. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The respondent is directed to pay delay possession charges at the prescribed rate of interest @10.80% per annum for every month of delay from the due date of possession i.e., October 2015 till valid offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.
- II. The arrears of such interest accrued from October 2015 till the date of order by the authority shall be paid by the respondent/promoter to the complainants within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- V. The respondent is directed to hand over possession of the subject unit to the complainant/allottees, upon payment of outstanding dues, if any, after obtaining the occupancy certificate.
- VI. The respondent is directed to execute the conveyance deed registered in favour of the complainants within 90 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.

VII. The respondent is directed not to charge anything which is not part of unit buyer's agreement.


29. Complaint stands disposed of.

30. File be consigned to the Registry.


Phool Singh Saini
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025


Arun Kumar
Chairman


HARERA
GURUGRAM