

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

Complaint No. :677-2024

Date of Decision: 30.07.2026

1. Babita Tiwari,

2. Yogesh Tiwari,

both residents of H.No.41/7 DLF Phase-I, Gurugram, presently residing at H.No.17, Clifton Terrace Englewood Cliffs N J 07632.

..... Complainants.

Versus

Brahma City Pvt. Ltd. 11, Ansal Tower 38, Nehru Place, New Delhi, South Delhi-110019.

..... Respondent.

APPEARANCE

For Complainants:

Mr. Manish Yadav, Advocate.

For Respondent:

Mr. Venket Rao, Advocate.

ORDER

This is a complaint, filed by Ms. Babita Tiwari & Mr. Yogesh Tiwari (allottees), under section 31 of The Real Estate (Regulation and

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Development), Act 2016 (in brief "Act of 2016") against M/s Brahma City Pvt. Ltd. (promoter).

2. Briefly stated, according to the complainants, they booked a commercial shop admeasuring 507.411 sq. ft. in the project "Miracle Mile (Inspire)" situated at Brahma City, Sector-60, Gurugram and paid Rs.32,01,543/- as provisional booking amount. They were allotted a commercial shop bearing no.30 on ground floor admeasuring 507.411 sq. ft. under the construction link payment plan for a basic sale consideration of Rs.10,000/- per sq. ft. along with preferential location charges at 15%.

3. That they (complainants) wrote an email dated 14.08.2017 addressing their grievances stating that the respondent did not start work and thus asked to refund the amount taken by it, but the same was not refunded. Later on, the respondent informed them (complainants) about the change in the unit number and compelled them to file new application form for unit No.58 on ground floor in Block M admeasuring 569.85 sq. ft. An agreement to sell/Builder Buyer Agreement was executed between the parties.

4. That vide letter dated 12.11.2018, the respondent acknowledged allotment of aforesaid unit No.58. Total sale consideration of

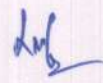

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the said unit was agreed at Rs.80,72,663/-. Due date of handing over of possession was agreed as 31.03.2022. Vide letter dated 08.11.2023, the respondent offered the possession of unit.

5. Citing facts as mentioned above, the complainants prayed for following reliefs: -

- i. to direct the respondent to pay for loss of earning/rental loss @ Rs.1,20,000/- per month, total amounting to Rs.26,40,000/- w.e.f. 31.03.2022 up to the date of actual delivery of possession i.e. 25.01.2024 as prevalent in and around the vicinity of the project;
- ii. to direct the respondent to pay compensation of Rs.10 lakhs for mental agony and harassment;
- iii. to direct the respondent to pay compensation of Rs.10 lakhs for unjust enrichment by sitting over the hard-earned money of the complainants and illegally causing monetary loss by holding the payment made by the complainants since January 2013;
- iv. to direct the respondent to pay Rs.1,50,000/- for litigation cost and expenses.

6. The respondent contested the complaint by filing a written reply. It is averred that the area of the unit got changed/alterd due to revision of Layout cum-Demarcation Plan by DTCP. That between 09.01.2019 to 18.02.2020, it (respondent) sent several demand notices to pay the outstanding dues, which were neglected by the complainants. It


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(respondent) acted bonafide to complete the construction of the project in a time bound manner and even executed the Conveyance Deed in favour of the complainants. With these submissions, the respondent prayed for dismissal of present complaint.

7. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for all parties of case and perused the record.

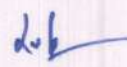
8. It is pointed out that the complainants had approached the Authority seeking delayed possession charges by filing a complaint no.678 of 2024. Said complaint was allowed by the Authority vide order dated 29.01.2025 and the respondent has been directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay on the amount paid by the complainants from the due date of possession i.e. 01.10.2022 till the date of offer of possession plus two months after obtaining the occupation certificate.

9. It is contended by learned counsel for the complainants that despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of section 72 of Act of 2016. Learned counsel reminded that this Forum (AO) has


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jurisdiction to allow compensation in view of Sections 12, 14, 18 and 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to the allottees, if same (promoter) fails to discharge any other obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Learned counsel claims that where the respondent (promoter) failed to discharge its obligation of handing over possession in agreed time, as per terms and conditions of BBA, same is liable to pay compensation.

10. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building, (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (b)-----, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation, in the manner as provided under this Act.**


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11. It is worth mentioning here that the complainants did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of 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 handing over of possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

12. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra"** Appeal No. 70 of 2023 decided on 20.04.2023-----;

"13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest

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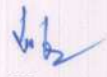
of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

13. Similar was held by Haryana Real Estate Appellate Tribunal in Appeal No.737 of 2023 titled as "TATA Housing Development Company Limited vs. Nitin Singhal & Surendra Kumar Singhal", decided on February 17,2026.

14. When complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession.

15. Complaint in hands is thus dismissed. File be consigned to the record room.

Announced in open Court
today i.e. on 30.07.2026.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory,
Gurugram.

Present: Mr. Manish Yadav, Advocate for the complainants.
Mr. Venket Rao, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
30.07.2026