BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of filing of complaint: 08.05.2025
Date of Order: 08.09.2026

1. Anurag Rohilla
2. Sarla Rohilla
R/o: Flat 401, Tower 12, Weleview Estate, Gawal Phari, Gurugram

Complainants

Versus

M/s Adani Brahma Synergy Pvt. Ltd.
Regd. Office at: Block -C, Flat No. 53, Flatled Factory Complex, Jhandewalan, New Delhi-110055

Respondent

CORAM:

Shri Arun Kumar

Member

APPEARANCE:

Shri Nitin Jaspal (Advocate) — Complainants
Shri Seema Sundd (Advocate) — Respondent

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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and 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, Tehsil-Wazirabad, Gurgaon, Haryana
2.	Nature of the project	Independent Residential Floors
3.	Project area	5.846875 acres
4.	DTCP License no. & validity status	64 of 2010 dated 21.08.2010 valid up to 20.08.2025
5.	Name of Licensee	Brahma City Pvt. Ltd.
6.	RERA registered or not	Registered Vide no. 122 of 2022 dated 20.12.2022 up to 31.12.2026
7.	Allotment letter	17.08.2024 (Page 13 of complaint)
8.	Unit No.	J89-A, 1st Floor (Page no. 40 of complaint)
9.	Unit area admeasuring	208.28 sq. ft. (Carpet Area) (Page no. 15 of complaint)
10.	Date of builder buyer agreement	10.09.2024 (Page no. 43 of complaint)
11.	Possession Clause as per buyer's agreement	***7. POSSESSION OF THE APARTMENT FOR RESIDENTIAL:*** *Schedule for possession of the said Apartment for Residential usage- The Promoter agrees and understands that timely delivery of possession of the Apartment for Residential usage along with Parking to the Allottee and (the common areas to the Association of Allottees or the Competent Authority as the case may be, as provided under Rule 2(1)(f) of Rules, 2017) is the essence of the Agreement.*

		The Promoter assures to hand over possession of the said Apartment for Residential usage along with Parking as per agreed terms and conditions unless there is delay due to "force majeure" such as epidemic, pandemic, court orders, governmental policy/guidelines decision affecting the regular development of the real estate Project. *If the completion of the Project is delayed due to the above condition/s, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment.* (Page 44 of complaint)
12.	Due date of possession	31.12.2026 (As mentioned in allotment letter dated17.08.2024 at page 14 of complaint)
13.	Payment Plan	Construction Linked (Page 59 of complaint)
14.	Total sale consideration	Rs.5,58,63,647/- (As per payment plan at page no. 59 of complaint)
15.	Amount paid by the complainant	Rs. 40,00,000/- (As per final demand letter dated 24.10.2024 at page 11 of reply)
16.	Reminder letter dated	20.10.2024 (Page 11 of reply)
17.	Notice before Cancellation dated	06.12.2024 (Page 98 of complaint)
18.	Demand Letter dated	09.01.2025 (Page 15 of reply)
19.	Cancellation letter dated	17.02.2025 (Page 19 of reply)
20.	Occupation certificate	06.10.2025 (As per project details available on official website of HARERA Gurugram)

21.	Offer of possession	N/A

B. Facts of the complaint:

3. That the complainants have made following submissions:

i. Mr. Anurag Rohilla and Mrs. Sarla Rohilla, permanent residents of Flat No. 401, Tower-12, valley view Estate, Gawal Pahari, Gurugram, Haryana, India, have duly purchased a residential unit bearing No. J-89A, situated on the First Floor, in the project known as "Samsara Vilasa", Unit No. 89A, Block-J, falling within the development project "Brahma City", located in Sector 63, Gurugram, Haryana. The said unit comprises a carpet area of 208.28 square meters, which is equivalent to 2241.93 square feet (as per the conversion rate of 1 square meter = 10.764 square feet). This residential unit, hereinafter referred to as the residential floor, was allotted to the allottees vide allotment letter dated 17.08.2024, under the terms and conditions stipulated therein, with a stipulated date of possession being 31.12.2026.

ii. The allottees paid an advance sum of Rs. 10,00,000/- through cheque No. 264073 dated 07.08.2024 drawn on IndusInd Bank Ltd., Gurugram, towards booking/initial instalment against the property. The said payment was duly acknowledged by the respondent through receipt No. SV/CR/2025/0188 dated 23.08.2024. Subsequently, a builder buyer agreement (BBA) dated 10.09.2024 was executed at Gurugram between the complainants and the respondent company, namely M/s Adani Brahma Synergy Pvt. Ltd.

iii. The agreed total sale consideration for the said Apartment is Rs. 5,58,63,647/-, and the complainants opted for a construction linked payment plan, as mentioned in the said BBA.

iv. In accordance with clause 7.1 of the builder buyer agreement, the respondent/builder is obligated to hand over possession of the

apartment in conformity with the applicable legal framework, more specifically as per Rule 2(1)(f) of the Haryana Real Estate (Regulation and Development) Rules, 2017, read with the corresponding provisions of the Real Estate (Regulation and Development) Act, 2016 ("RERA"). The said clause constitutes the essence of the contract executed between the parties.

v. The complainants have already paid an aggregate amount of Rs. 55,00,000/- to the respondent, under the legitimate expectation and assurance that the respondent would deliver possession of the said unit within the agreed timeline. However, to the utter shock and dismay of the complainants, during a site visit conducted subsequent to the execution of the BBA, it was discovered that the respondent had unlawfully and without authorization, occupied the unit allotted to the complainants and had established a temporary office therein.

vi. Upon further enquiry, it came to the knowledge of the complainants that the respondent has been illegally and unauthorizedly utilizing the said apartment as its site/marketing office without the prior consent or permission of the rightful allottees, thereby infringing the proprietary and contractual rights of the complainants. Such unauthorised use by the Respondent also amounts to a violation of Section 11(4)(a) of the RERA Act, 2016, which mandates that the promoter shall not act in a manner prejudicial to the interest of the allottees.

vii. In view of the above illegal acts and breaches on the part of the respondent, the complainants were constrained to withhold further payments under the construction linked plan and requested the respondent to immediately vacate the premises and cease unauthorised operations from their unit. However, despite repeated

verbal and written requests, the Respondent failed and neglected to comply with the same.

viii. The complainant has been continuously communicating with representative of the builder confirming the due date for balance payment and the status of the illegal occupancy of the unit but he was never given a clear picture and also the builders rep. Ms Munmun Kharbanda confirmed in dec,25 over the WhatsApp chat that we have to complete the payments by Mar,25.

ix. From Jan,2025 the Ms Munmun Kharbanda started avoiding phone calls, meetings and WhatsApp messages of the complainant. Afterwards on 21.04.2025, when the complainant once again sought clarity from one of the respondent's sales staff , namely Vijay Gutam and Mr. Rajat Jain, he was rudely informed that the said unit had been "cancelled" by the respondent and has been sold to third party at the premium rate of 6.8 Cr approximately. That the said unit has been sold to a third party at an approximate premium of ₹6.8 crores. That prior to the said transaction, the agents and representatives of the respondent had deliberately and persistently avoided all attempts at communication by the complainant.

x. On the principles of equity, parity, and fair dealing, the complainant is entitled to the restoration of the allotted unit and the setting aside of the impugned cancellation. The mala fide and arbitrary conduct of the respondent has caused immense mental harassment, agony, and significant financial loss to the complainant, for which appropriate compensation and relief is sought.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

i. Direct the respondent to restore the subject unit to the complainants and set aside the unlawful and arbitrary cancellation of the same; and/or;

ii. Direct the respondent to allot and hand over possession of an equivalent residential unit to the complainants, in the event that any third-party rights have been illegally created by the respondent without the prior consent or knowledge of the complainants.

D. Reply by the respondent:

5. The respondent contested the complaint on the following grounds:

i. At the outset, it is pertinent to note that the complainants herein are habitual defaulters, who have for reasons best known only to them failed to comply with their obligations under the agreement to make timely payments in accordance with the payment plan/schedule. The respondent herein has issued multiple reminder letters and pre-cancellation notices, thereby providing ample opportunity to the complainants to fulfil their payment obligations. In order to give further opportunities, the respondent send multiple demand letters dated 18.09.2024 and reminder notices dated 20.10.2024, 11.11.2024 and 06.12.2024 though the respondent was not obliged to do so, granting multiple opportunities to the complainants and extending the time to make payments. The respondent has further issued reminder letters dated 20.10.2024 followed by pre-cancellation notices dated 06.12.2024 and demand letter dated 09.01.2025 to the complainants. Despite issuing reminder letter and pre-cancellation notices, the complainants failed to make the payment as per the payment plan. Therefore, due to the non-compliance of payment obligation on part of the complainants, the respondent was left with no choice and was

compelled to cancel the allotment vide cancellation notice dated 17.02.2025.

ii. The complainants herein had booked residential unit no. J89-A in Samsara Vilasa-II, situated at sector-60 & 63, Gurugram, Haryana vide application form and paid Rs. 10,00,000/- as the booking amount. The respondent had issued the allotment letter 17.08.2024 to the complainants.

iii. The agreement for Sale dated 10.09.2024 was duly executed between the parties. The agreement clearly explains the terms and conditions which were readily and voluntarily agreed to by both the parties, including the total consideration amount, payment schedule, possession timelines and other relevant clauses.

iv. As per the payment plan opted by complainants, the payment of Rs. 30,00,000/- was made. Further, the respondent has duly acknowledged the payment by issuing payment receipt dated 19.11.2024.

v. Due to repeated defaults and irregular payments, the respondent has issued reminder letter dated 20.10.2024 to the complainant, reminding him to make the timely payment.

vi. Thereafter, upon failure to make the payment, the respondent issued pre-cancellation notices dated 29.11.2024 and 06.12.2024, informing the complainants that the allotment would be cancelled in case of further default.

vii. After giving multiple accommodations to the complainants purely out of goodwill with absolutely no obligation to do so, the respondent was left with no choice and proceeded to issue the formal and final cancellation notice dated 17.02.2025, in accordance with the terms and conditions of the agreement.

viii. As per the cancellation letter dated 17.02.2025, the complainants were called upon to pay either in person or through authorised representative, the balance sum of Rs. 1,044,027/- which was due after forfeiture of booking amount / earnest money and applicable charges, in keeping with the terms of said agreement for sale and as per Act and Rules.

ix. The respondent, on every occasion, provided various opportunities to the complainants to pay the outstanding amount on time. However, despite giving several opportunities, the complainants failed to make the payment within the stipulated time. As a result of the complainants failure to clear the outstanding dues, the respondent was left with no option but to initiate the process of cancellation of the allotment.

x. As per the application form signed by the complainants, the complainants were required to make payment within stipulated time as mentioned in the payment plan, however, despite issuing reminder letter and demand notice, the complainants failed to comply with the terms and conditions.

xi. The complainants on their own will agreed to make the payment as per payment plan, however, despite issuing demand notice and reminder letter, complainants have failed to discharge their payment obligations in accordance with the terms and conditions agreed upon in the application form.

xii. Allotment letter dated 17.08.2024 has been issued to complainants, whereby the respondent has clearly stated that the allotment of the said unit is subject to the terms and conditions mentioned in application form and agreement for sale.

xiii. The complainants have not complied with the payment plan, which was accepted by them voluntarily and without any coercion. Despite

agreeing on the payment plan, the complainants failed to adhere with the same.

xiv. As per clause 9.3(ii) of agreement to sale, if the allottee fails to make the payment as per agreed terms and conditions, the promoter may cancel the allotment of the apartment and refund the amount paid by the allottee after forfeiting the earnest money.

xv. The unit was duly allotted to complainants, however, despite issuing reminder letter and pre-cancellation notices, complainants failed to make payment. Therefore, the allotment was cancelled in accordance with the provisions provided in application form and agreement for sale.

xvi. The said unit was never utilized as sales office by the respondent. The respondent did not occupy, furnish, or operate the said unit for conducting sales, marketing, or any other promotional activities.

6. 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:

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 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

10. 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 complainant at a later stage.

F. Findings on relief sought by the complainants:

F.I Direct the respondent to restore the subject unit to the complainants and set aside the unlawful and arbitrary cancellation of the same.

F.II Direct the respondent to allot and hand over possession of an equivalent residential unit to the complainants, in the event that any third-party rights have been illegally created by the respondent without the prior consent or knowledge of the complainants.

11. The aforesaid reliefs are being taken up and adjudicated conjointly, inasmuch as the same are interlinked and arise out of a common set of facts and cause of action.

12. The complainants were allotted a unit vide allotment letter dated 17.08.2024 in the project of respondent namely "Samsara Vilasa" in

Sector-63, Gurugram for a total sale consideration of Rs.5,58,63,647/-. A builder buyer's agreement was executed between the parties on 10.09.2024 and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.40,00,000/-.

13. The complainants alleged that the respondent has violated section 11(4)(a) of the Act of 2016 as the respondent had unlawfully and without authorization, occupied the unit allotted to the complainants and had established a temporary office therein. The complainants also contended that the unit in question has been arbitrarily cancelled by the respondent.

14. The respondent mentioned that the unit was cancelled by the respondent on 17.02.2025 on account of non-payment of outstanding dues as per payment plan opted by the complainant after issuance of multiple reminders. The occupation certificate of the unit of the complainant was obtained on 16.10.2025 and the complainants have paid only Rs.40,00,000/- against the sale consideration of Rs.5,58,63,647/-.

Now, the question arises whether the cancellation is valid or not?

15. As per the documents placed on record the complainants have opted for construction linked payment plan. As per the opted payment plan, the complainants had to pay 0% of the total sale consideration on application , 10% on or within 30 days from date of Application, 15% on or within 60 days from the date of application, 25% on or within 6 months from date of application and last payment was to be paid on offer of possession.

16. The respondent has raised a reminder letter dated 20.10.2024 for payment of outstanding dues. Subsequently a notice before cancellation dated 06.12.2024 was sent to the complainant. Thereafter demand

letter dated 09.01.2025 was again sent to the complainant for clearing the outstanding dues. Upon non-compliance on part of the complainants, the respondent finally terminated the unit of the complainant vide termination letter dated 17.02.2025. The complainants have paid only Rs.40,00,000/- which is 7.1% of the total sale consideration i.e., Rs.5,58,63,647/-.

17. The Authority has considered the rival submissions and the material placed on record. It is evident that the complainants were required to make payments towards the consideration of the allotted unit in accordance with the agreed payment plan. Section 19(6) and 19(7) of the Act, 2016 obligates the allottee to make timely payments in accordance with the agreement and to comply with the terms and conditions thereof. In the present case, the complainants admittedly paid only Rs.40,00,000/- against the total sale consideration of Rs.5,58,63,647/-, which amounts to approximately 7.1% of the total sale consideration.

18. The record further establishes that the respondent did not proceed to cancel the allotment immediately upon occurrence of the payment default. Rather, the complainants were afforded repeated opportunities to clear the outstanding dues. A reminder letter dated 20.10.2024 was issued, followed by a notice prior to cancellation dated 06.12.2024, and thereafter a further demand letter dated 09.01.2025. Despite the aforesaid repeated demands and opportunities, the complainants failed to discharge their outstanding payment liability. Consequently, the respondent issued the termination/cancellation letter dated 17.02.2025.

19. It is also relevant that the respondent obtained the occupation certificate on 16.10.2025, i.e. well before the stipulated date of possession of 31.12.2026. Thus, there is no material on record to

suggest that the termination dated 17.02.2025 was occasioned by any inability or failure on the part of the respondent to complete the project or deliver possession. Rather, the termination preceded the subsequent grant of the occupation certificate and arose from the complainants' continuing failure to make payments in terms of their contractual obligations.

20. Accordingly, having regard to the persistent payment default of the complainants, the limited amount paid towards the total sale consideration, the repeated demands/notices issued by the respondent, and the failure of the complainants to avail the opportunities granted to them to clear the outstanding dues, the Authority is of the considered view that the termination/cancellation of the allotment vide letter dated 17.02.2025 cannot be said to be arbitrary or unjustified. The said cancellation is, therefore, upheld as valid.

21. Furthermore, the issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136,*** and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Indian Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) ***and followed in CC/2766/2017 in case titled as Jayant***

Singhal and Anr. VS. M3M India Private Limited decided on 26.07.2022, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

> ***"5. Amount Of Earnest Money***
> *Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view* ***that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount*** *of the real estate i.e. apartment /plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"*

22. In view of the law laid down by the Hon'ble Supreme Court and having regard to the provisions of Regulation 11 of the Haryana Real Estate Regulatory Authority, Gurugram Regulations, 2018, the respondent/promoter cannot retain an amount exceeding 10% of the sale consideration towards earnest money in the event of surrender by the allottee or cancellation of the allotment by the promoter. In the present case, although the allotment of the complainants was cancelled vide letter dated 17.02.2025 on account of their payment default, the respondent is not entitled to retain any amount in excess of the permissible limit prescribed under the aforesaid regulatory framework.

23. Accordingly, the respondent is liable to refund the amount of Rs.40,00,000/- received from the complainants, after deducting therefrom the permissible earnest money, i.e. 10% of the basic sale

consideration of Rs.5,58,63,647/-, in accordance with Regulation 11 of the 2018 Regulations. The balance amount so refundable shall carry interest at the rate of 10.80% per annum, being the rate prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation, i.e. 17.02.2025, till the actual date of refund. The aforesaid amount shall be refunded by the respondent within the period stipulated under Rule 16 of the Haryana Rules, 2017.

24. However, in the present case, it is further an admitted position that the complainants have paid only 7.1% of the total sale consideration, which is less than the permissible 10% of the sale consideration liable to be retained towards earnest money in terms of the applicable regulatory framework. Therefore, the entire amount paid by the complainants, i.e. Rs.40,00,000/-, is liable to be adjusted against the permissible amount of earnest money. Consequently, there remains no balance amount refundable to the complainants by the respondent.
25. In view of the above facts and circumstances, no further relief can be granted in favour of the complainants. Accordingly, the present complaint, being devoid of any surviving relief, stands dismissed.
26. Complaint stands disposed of.
27. File be consigned to the registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.09.2026