

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

Complaint no. : 6189 of 2019
Date of first hearing : 03.01.2020
Date of decision : 18.11.2020

Smt. Monika Garg
R/o: R-7, Nehru Enclave, Kalkaji,
New Delhi 110019

Complainant

Versus

1.M/s Krrish Realtech Pvt. Ltd.
Office at: 406, 4th Floor, Elegance Tower 8,
Jasola District Centre,
New Delhi 110025

2.Brahma City Pvt. Ltd.
Office at: DLF Cyber Terraces Building
no.5A, 10th Floor, Cyber City, DLF Phase III,
Gurgaon 122002

3.Mr. Amit Katyal (Director)
Brahma City Pvt. Ltd.
Office at: DLF Cyber Terraces Building
no.5A, 10th Floor, Cyber City, DLF Phase III,
Gurgaon 122002

4.Mr. Satish Kumar Seth (Director)
Krrish Realtech Pvt. Ltd.
Office at:1216, C-1, Vasant Kunj, Vasant
Vihar, New Delhi 110070

Respondents

CORAM:
Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Kuldeep Kohli
Shri Siddharth Das

Complaint no. 6189 of 2019

Advocate for the complainant
Advocate for the respondents

ORDER

1. The present complaint dated 09.12.2019 has been filed by the complainant/allottees in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.
2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Krrish World", Sector 60, 61, 62, 63 and 65, Gurugram
2.	Project area	141.669 acres
3.	Nature of the project	Residential Plotted Colony

4.	DTCP license no. and validity status	64 of 2010 dated 21.08.2010 valid Upto 20.08.2018
5.	Name of the Licensee	Brahma city and 47 others
6.	RERA Registered/ not registered	65 of 2019 dated 22.10.2019 (for 59.93 acres)
7.	RERA registration valid up to	24.12.2022
8.	Plot no. (Vide provisional allotment letter dated 18.12.2012)	2D26 (As per page no. 30 of complaint)
	Revised plot no.	E37 (As per page no. 39 of complaint)
9.	Plot admeasuring (As per provisional allotment letter dated 18.12.2012)	268 sq. yd. (As per page no. 30 of complaint)
10.	Date of provisional allotment (At page no. 30 of complaint)	18.12.2012
11.	Date of plot buyer's agreement	Not executed
12.	Total consideration (As alleged on page no. 56 by the complainant)	Rs. 67,53,600/- (Excluding taxes)
13.	Total amount paid by the complainant (As per receipt information on page no. 32 of complaint)	Rs. 58,53,120/-
14.	Payment plan (As per page no. 15 of complaint)	Down payment plan

15.	Due date of delivery of possession (calculated from the allotment letter)	18.12.2015
16.	Delay in handing over possession till date of decision i.e. 18.11.2020	4 years 8 months

3. The plot buyer's agreement has not been executed and in similar situated case/complaint No. 736/2019 titled as Parvesh Kumar versus Krrish Realtech Pvt. Ltd. where a PBA has been executed between the parties on 21.10.2013 and as per clause 12 (a) of BBA, a period of three years was mentioned for handing over the possession of the unit which comes out to be 21.10.2016. Clause 12(a) read with 12(d) of the plot buyer's agreement is reproduced below:

"12(a) Schedule of possession

The Company shall endeavour to cause offer possession of the Said Plot, within 36 thirty six months for the date of execution of this Agreement subject to timely payment by the intending Allottee (s) of Sale Price, Stamp Duty, Govt Charges and any other charges due and payable according to the Payment Plan attacked as Annexure-II and subject to any delays owing to any force majeure reasons/causes and any reasons beyond the control of the Company....."

4. The clause 12(a) of plot buyer's agreement has been taken from the other case wherein, a period of three years was mentioned for handing over the possession of the unit. Since no PBA has been executed, hence the due date of delivery of possession is being calculated from the date of provisional allotment letter i.e. 18.12.2012. Which comes out to be 18.12.2015.
5. The complainant submitted that she was asked to fill up an application form for booking a residential plot and made an initial advance payment of Rs. 1,00,000/-for booking of a residential plot of approx. 300 sq. yd. @ Rs.25,200.00 per sq. yd. plot in the upcoming project in Sector 60, 61, 62, 63 & 65 Gurugram vide receipt dated 04.11.2010.
5. The complainant submitted that she desired a copy of the plot buyer agreement for understanding the terms and conditions which the respondent no.1 did not provide.

6. The complainant submitted that she was briefed on the project roadmap by the respondent no.1 through meetings and verbal assurances; no further demand was raised by the respondent no.1 for the next two years.
7. The complainant submitted that she had requested for sharing the license details for the layout/provisional zoning of the residential plot of 300 Sq. Yds. Booked by her on 04.11.2010 in the then upcoming project for development of a residential colony in sector 60,61,62,63 and 65 Gurgaon, Haryana.
8. The complainant submitted that the respondents no.1 induced complainant to opt for a down payment plan so that an early offer of possession could be made by respondents. The complainant was asked to deposit at least 70% of the booking amount but for a revised new plot of 268 sq. yds. in place of the plot of 300 Sq. Yds.
9. The complainant submitted that it has been over 6 years that complainant is chasing for allotment of plot and execution of the builder buyer agreement as per terms of her booking but

the respondent no. 1 and respondent no. 2 used all the delaying tactics to defraud the complainant using unfair trade practices.

10. Hence, this complaint for the reliefs mentioned herein below:
- i. To direct the respondents to pay interest for every month of delay at prevailing rate of interest.
 - ii. To direct the respondents, jointly and severally, to execute plot buyer agreement and allot the plot against amount of Rs. 58,53,120/- was demanded and paid by the complainant at the time of booking of said plot along with future and pendent-lite interest from the date of payment till the possession of the plot.
 - iii. To direct the respondents to execute a standard RERA compliant PBA as per terms of provisional allotment letter when 70% of the amount was demanded and paid by the complainant. This is in order to protect complainant's right for claiming delay possession charges from 02.01.2016.
11. On the date of hearing, the authority explained to the respondents/promoter about the contravention as alleged to

have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

12. The respondent contested the complaint on following ground:

(i) That in the year 2010, the complainant after making independent enquiries and only after being fully satisfied about the project, had approached the respondent no.1 to buy a plot in the said residential township.

(ii) That it came in the knowledge of authorities in 2011 regarding a gas pipeline of Indian Oil Corporation is marked on the layout plan of the residential township and thus necessary modification were required in the building plans. Further there was also an issue with respect to the alignment of 66 KV high tension wires passing over the said layout plan submitted and approved by the DTCP.

(iii) That they were forced to re-submit the revised plans taking into consideration reduced area, the Indian Oil Corporation gas pipeline and line alignment of 66 KV high tension wires passing over the lay out plan and was beyond his control.

(iv) That since 2011-2013, the answering respondents could not start the Act development on the above said project

because the layout plan itself in question due to de-license of land admeasuring 4.287 acres, alignment of 66 KV HT Line, realignment of sector roads near junction of Sector 62, 63, 64 and 65 and due to gas pipeline. Thus, as stated above, the respondent no.1 could not start development on the said project despite and the respondent no.1 cannot be held liable/responsible for any act beyond its control.

(v) That because of the above force majeure reasons cited above the respondent no.1 was forced to re submit the revised plans taking into consideration the de-license of area and also the IOC gas pipeline, which took considerable period and it was only in year 2014, the provisional layout plan was issued to the respondent.

(vi) That they entered into a settlement agreement on 06.08.2012 before the Hon'ble Company Law Board, Delhi and the matter was disposed of on 09.08.2012 and further, the agreement was amended on 31.10.2015.

(vii) That the Department, Town and Country Planning, Haryana vide letter dated 08.05.2014 provisionally approved the revised demarcation plan cum lay out plan subject to

outcome of the aforementioned writ petition no. 27665/2013 pending before the Hon'ble High Court of Punjab and Haryana. (viii) That in view of the circumstances beyond its control, they were unable to develop the residential plot allotted to the complainant. Keeping in view the best interest of the complainant, they are ready and willing to refund the amount paid by the complainant along with interest @ 9% per annum from the date of order.

13. 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 submissions made by the parties.
14. The authority, on the basis of information and other submissions made and the documents filed by the complainant and the respondents, is of considered view that there is no need of further hearing in the complaint.
15. Arguments have been heard.
16. On consideration of the circumstances, the documents and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondents is in

contravention of the provisions of the Act. By virtue of clause 12(a) of the plot buyer agreement taken from similar case, possession of the booked unit was to be delivered within a period of 36 months from the execution of agreement. However, no PBA was executed between the parties therefore, the due date of handing over possession has been calculate from the date of provisional allotment which comes out to be 18.12.2015. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities to hand over the possession within the stipulated period.

17. 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 respondents is established. As such the complainant is entitled to delayed possession charges at the prescribed rate of interest @9.30% p.a. w.e.f. 18.12.2015 till the actual handing over of actual possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
18. Hence, the authority hereby passes the following order and issue directions under section 34(f) of the Act:
 - i. The respondents are directed to pay the interest at the prescribed rate i.e. 9.30 % per annum for every month of

- delay on the amount paid by the complainant from due date of possession i.e. 18.12.2015 till the actual handing over of actual possession.
- ii. The respondent is directed to deliver the possession of the impugned plot within a period of two months after obtaining completion certificate from the competent authority failing which the respondent shall be liable to pay penalty of Rs. 10,000/- per day till actual handing over of possession of the unit to the complainant.
 - iii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and subsequent interest to be paid on or before the 10th of each succeeding month.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. Interest on the delay payments from the complainant shall be charged at the prescribed rate i.e. 9.30% by the promoters which is the same as is being granted to the complainant in case of delayed possession charges.

19. Complaint stands disposed of.
20. File be assigned to registry.

(Sami) 
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.12.2020

JUDGEMENT UPLOADED ON 29.12.2020

