

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

Complaint no. : 6185 of 2019
Date of first hearing : 03.01.2020
Date of decision : 18.11.2020

Smt. Madhu 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, Advocate
Shri Siddharth Das, Advocate

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 (Total licensed area)

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 11.12.2012)	2D23 (As per page no. 32 of complaint)
	Revised plot no. (As per plot buyers agreement dated 06.02.2017)	E34 (As per page no. 55 of complaint)
9.	Plot admeasuring (Vide provisional allotment letter dated 11.12.2012)	268 sq. yd. (As per page no. 32 of complaint)
	Revised plot admeasuring (As per plot buyers agreement dated 06.02.2017)	267.509 sq. yd. (As per page no. 54 of complaint)
10.	Date of provisional allotment (At page no. 32 of complaint)	11.12.2012
11.	Date of plot buyer's agreement (As per page no. 52 of complaint)	06.02.2017
12.	Total consideration	Rs. 67,41,227/-

	(As per page no. 55 of complaint)	(excluding taxes)
13.	Total amount paid by the complainant (As per receipts attached at page no. 34 and 78 of complaint)	Rs. 68,84,879/-
14.	Payment plan (As per page no. 14 of complaint)	Down payment plan
15.	Due date of delivery of possession (As per clause 12(a) read with clause 12 (d) of the said plot buyer's agreement i.e. 36 months from the date of execution of agreement + 3 months grace period)	06.05.2020
16.	Delay in handing over possession till date of decision i.e. 18.11.2020	9 months 11 days

3. As per clause 12(a) read with 12 (d) of the plot buyer's agreement, the possession of the unit in question was to be handed over within a period of 36 months from the date of execution of plot buyer's agreement and 3 months grace period which comes out to be 06.05.2020. Clause 12(a) 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 attached as Annexure-II and subject to any delays owing to any force majeure reasons/causes and any reasons beyond the control of the Company.....”

“12(d) Failure of Company to offer Possession and Payment of Compensation

In the event the Company falls to offer possession of the Said Plot, within 36 (thirty six) months from the date of execution of this Agreement then after ninety (90) days from the expiry of 36 (thirty-six) months subject to the Intending Allottee(s) having made all payments in time as per the Payment Plan attached as Annexure-II and Subject to the terms, conditions of this Agreement and barring force majeure circumstances or delay by the Competent Authorities in grant of any necessary consent, permission, approval or change in any law that results in delay or delays owing to any reasons beyond the control of the Company, the Company shall pay compensation to the Intending Allottee(s) calculated at the rate of Rs. 300 per sq. mtr. (equivalent to Rs. 250 per sq. yd. approx.) which both parties have agreed is just and equitable estimate of the damages



that the Intending Allottee(s) may suffer and the Intending Allottee(s) agrees that he/they shall not have any other claims/rights whatsoever. The adjustment of compensation shall be done at the time of execution of the conveyance deed”

4. 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 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 on 28.01.2012 respondent no. 1 in view of ongoing disputes amongst its shareholders expressed their inability to continue with the project and returned the amount as paid by the complainant along with an interest. The complainant did not present the refund the cheques and showed her willingness to continue with the project. The respondent no. 1 assured her that all the desired information for the project shall be shared in due course.
9. 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.

10. The complainant submitted that it has been over 6 years that complainant is chasing for allotment of plot and execution of the plot 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.

11. 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 bearing an execution date as 17.12.2012 when 70% of the amount was demanded and paid by the complainant in order to protect complainant rights for claiming delay possession charges from 17.12.2015 till the date of physical possession.
- iii. To direct the respondents to execute a standard RERA compliant PBA so that anomalies in the current PBA being one-sided clauses are rectified.



- iv. To direct the respondent no. 1 to develop a habitable plot, against which the amount of Rs. 68,84,879/- being 80% of the consideration, has already been paid by the complainant along with future and pendent-lite interest from the date of payment till the possession of the plot.
12. 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.
13. The respondent contested the complaint on following grounds:
- (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 the respondent no. 1 vide provisional allotment letter dated 11.12.2012 provisionally allotted Plot No. 2D23 admeasuring 268 sq. yds. to the complainant.
- (iii) That it is pertinent to bring to the notice of this Hon'ble Authority that the license no. 64 was granted for an area admeasuring 151.569 acres of land for the residential



township. However, a land admeasuring 4.2875 Acres was inadvertently included in the said license. As such the Department, Town and Country Planning, Haryana vide order dated 07.12.2011, revised the land area admeasuring 151.569 to 147.281 acres for the residential township.

(iv) That it came in the knowledge of authorities in 2011 regarding the 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.

(v) 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.

(vi) 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.

(vii) 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 pipe line, which took considerable period and it was only in year 2014, the provisional layout plan was issued to the respondent.

(viii) 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.

(ix) 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.

(x) That in terms of the revised demarcation plan approved by the Department of Town and Country Planning, Haryana, the

respondent no. 1 changed the numbers of the plot and areas allotted to the complainant and allotted plot no. E-34 admeasuring 267.509 Sq. Yds. to the complainant. A plot buyer's agreement was executed between the complainant and the respondent no.1 on 06.02.2017.

(xi) That in view of the circumstances beyond its control, the respondents were unable to develop the residential plots in the township within the stipulated period of time. In view of the aforementioned facts and change of circumstances which upset the foundation of the agreement between the parties, there is no failure on the part of the respondents in developing the plots allotted to the complainant and further there is no deficiency of service on the part of the respondents.

14. 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.
15. 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.

16. Arguments have been heard.
17. 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. That by virtue of clause 12(a) read with 12(d) of the plot buyer's agreement executed between the parties on 06.02.2017, possession of the booked unit was to be delivered within a period of 36 months plus 3 months grace period from the execution of agreement. Therefore, the due date of handing over possession comes out to be 06.05.2020. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the plot buyer's agreement dated 06.02.2017 to hand over the possession within the stipulated period.
18. 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 delay possession charges at the prescribed rate of interest @9.30% p.a. w.e.f. 06.05.2020 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.

19. 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. 06.05.2020 till the actual handing over of actual possession.
- ii. The respondent is directed to deliver the possession of the plot within a period of two months after obtaining completion certificate from the competent authority failing which he 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. The respondents shall not charge anything from the complainant which is not part of the plot buyer's agreement.
- vi. 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.
20. Complaint stands disposed of.
21. File be consigned to registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.11.2020

Judgement uploaded on 04.01.2021