

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

**Complaint no.** : 2272 of 2019  
**Date of first hearing** : 05.09.2019  
**Date of decision** : 18.11.2020

Shri. Surender Sangwan  
R/o: 702, Sector 9A, Gurugram

**Complainant**

Versus

1.M/s Krrish Realtech Pvt. Ltd.  
**Regd. and Corp. office at:** 406, 4<sup>th</sup> Floor,  
Elegance Tower 8, Jasola District centre,  
New Delhi 110025  
2.Brahma City Pvt. Ltd.  
**Regd. and Corp. office at:** Flat no. B-2,  
Cabin no. 11, Ansal Tower 38, Nehru Place

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav  
Shri Siddharth Das

Advocate for the complainant  
Advocate for the respondents

**ORDER**

1. The present complaint dated 24.05.2019 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	"Brahma city", Sector 60, 61, 62, 63 and 65, Gurugram
2.	Project area	141.66875 acres (Total licensed area) 59.93 acres (Under Krrish Buildtech)
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. (As per provisional allotment letter dated 15.02.2013)	2D42 (As per page no. 23 of complaint)
	Revised plot no. (As per allotment letter date 15.11.2013)	D08 (As per page no. 34 of complaint)
9.	Plot admeasuring (As per provisional allotment letter dated 15.02.2013)	268 sq. yd. (As per page no. 23 of complaint)
	Revised plot admeasuring (As per allotment letter date 15.11.2013)	263 sq. yd. (As per page no. 33 of complaint)
10.	Date of provisional allotment	15.02.2013 (At page no. 23 of complaint)
11.	Date of plot buyer's agreement	15.11.2013 (Page no. 31 of the complaint)
12.	Total consideration (As per page no. 34 of complaint)	Rs. 66,27,600/- (Excluding taxes)
13.	Total amount paid by the complainant (till 03.08.2013)	Rs. 65,21,726/- (As per page no. 65 & 66 of complaint)
14.	Payment plan	Down payment plan
15.	Due date of delivery of possession (As per clause 12(a) read with 12(d) of the said plot buyer's	15.02.2017

	agreement i.e. 36 months plus 3 months grace period from the date of execution of agreement i.e. 15.11.2013	
16.	Delay in handing over possession till date of decision i.e. 18.11.2020	3 years 9 months 3 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 i.e. 15.11.2013 plus a grace period of 3 months. Therefore, the due date of possession comes out to be 15.02.2017. 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 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....."*

***"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 the plot buyer's agreement was completely one-sided and imposed completely biased and unilateral terms and conditions upon the complainant thereby tilting the balance of power in favour of the respondents. The complainant/Buyer did not have the option, say or opportunity to alter/change the said terms at any point in time and the said agreement does not specify, define or even mention the quantum of penalty to be paid by the respondents in the event the possession of the plot booked by the complainant is delayed.
5. The complainant submitted that he had sent various emails to the respondent and had also visited their office on various occasions seeking clarity regarding the date of possession of their plot but the respondents failed to give any satisfactory answer to the complainant and have also resorted to blaming each other for the delay.
6. The complainant submitted that the respondents have deliberately and malafidely made false representation and

given wrong assurances to the complainants and have fraudulently induced the complainants to buy a plot in their project which they were incapable of constructing or completing within the specified timelines. It seems that the respondents solely intended to deceive and cheat the complainants since the very beginning and never intended to construct the project and only intended to use the amount paid by the complainants to fund their other projects and for personal gain.

7. The complainant submitted that the plot buyers agreement was executed between the complainant and the respondent no. 2, i.e. Brahma City Private Limited on 15/11/2013, with the respondent no. 1, i.e. M/s Krrish Realtech Private Limited, also a party to the said agreement. In the said agreement it was clearly mentioned that the respondent no. 2 had entered into certain settlement agreements with the respondent no. 1, i.e. M/s Krrish Realtech Private Limited, pursuant to which the respondent no. 1 has made allotments/bookings of certain

plots in the said colony against the considerations received by Krrish Realtech Private Limited.

8. The complainant submitted that the agreement was executed on 15.11.2013 the project was to be completed in 36 months. The project has been inordinately delayed and since the complainant do not wish to withdraw their booking with the respondents, the respondents are jointly and severally liable to compensate the complainant for the delay caused of monthly interest as per the prescribed rate under RERA and the relevant Rules framed there under, on the payments made by complainant, for the entire period of delay to be paid till the time the actual vacant and physical possession of their plot is handed over to the complainants by the respondents.
9. Hence, this complaint for the reliefs mentioned herein below:
  - i. To direct the respondents to handover the actual physical possession of the plot booked by the complainant to them, complete and ready in all respects.



- ii. The respondents, be jointly or severally directed to pay interest to the complainant calculated as per the prescribed rate as per the act on the payments already received by from the complainant, each month to the complainant, for the period of delay in handing over of possession from the scheduled date of delivery i.e. 14/11/2016 till the time the actual physical possession of the plot of the complainants is handed over to them.
10. 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.
11. The complaint was contested by the respondent no. 2 on the following grounds:
- (i) That respondent no. 2 i.e. Brahma City Private Limited is a completely distinct and separate legal entity and is not connected or concerned with the other respondents i.e. Krrish Realtech Pvt. Ltd. and its associate entities such as Krrish Infrastructure Pvt. Ltd. In fact, the other respondents herein and their associate entities owe huge financial dues/commitments towards the respondent no. 2.

(ii) That the said issues resulted in Company Law Board proceedings being initiated by both sides against each other in 2011, apart from other complaints before other authorities in or around early 2011.

(iii) That the sub-stratum of the issues between the parties inter alia included wrongful, unauthorized and collusive transactions of purported provisional/tentative allotment/sale/booking and consequent agreements being entered into by the other respondents and their associate entities in their own name or in the name of the respondent No. 2, as well as purportedly collecting advances/monies against the said transactions, either in their own name or in the name of respondent no. 2, however, for their own benefit.

(iv) That the respondent no. 3 was constrained to initiate proceedings before the Hon'ble Company Law Board, wherein the CLB was pleased to pass order dated 13.05.2011 restraining the Board of Directors and shareholders of the Respondent No. 3 Company to hold any further meeting without the permission of the Company Law Board.

(v) That it became imperative to settle all disputes between the parties during the pendency of the Company Law Board

proceedings, and accordingly, all disputes between the Krrish entities on the one part and the Brahma entities on the other part, vis a vis the present project, came to be settled and resolved in terms of the settlement agreement dated 06.08.2012.

(vi) That the said settlement agreement was placed before the Hon'ble Company Law Board and by order dated 09.08.2012, the Company Law Board was pleased to take the same on record, and dispose of the pending petitions between the parties, in terms of the said settlement agreement dated 06.08.2012. The parties are therefore bound by the terms of the settlement agreement as well as the order dated 09.08.2012 passed by the Hon'ble Company Law Board recognising the said settlement agreement as binding between the parties.

(vii) That the above facts clearly evidence that respondent no 2 does not have anything to do with the allotment that forms part of the present complaint.

12. The respondent no. 1 filed an affidavit in compliance to the order dated 03.01.2020 by the Authority. The respondent no. 1 submitted therein submitted that no alternative plot is

available for reasons beyond its control and is ready & willing to refund the amount paid by the complainant.

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. That the Authority earlier had appointed an investigating commissioner vide order dated 05.03.2020 to enquire into the affairs of the project. However, it has come into the notice of this Authority that the Hon'ble Supreme Court in SLP No.4115 of 2015 has already issued directions to DTCP Haryana to decide the pending cases which were stopped due to pending investigation by CBI. Hence, as per above orders of the Hon'ble Apex Court, at this stage, there is no justification to get conduct enquiry report by the commission as decided by the authority on 05.03.2020. The Authority is therefore of the view that

taking into cognizance of the orders of the Hon'ble Apex Court, the promoter is bound to hand over the possession of plot to the complainant in terms of BBA already executed inter se both the parties after obtaining due completion certificate/part completion certificate from the competent authority along with delayed possession charges.

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. By virtue of clause 12(a) of the plot buyer's agreement executed between the parties on 15.11.2013, possession of the booked unit was to be delivered within a period of 36 months from the execution of agreement. Therefore, the due date of handing over possession comes out to be 15.02.2017. Accordingly, it is the failure of the promoter to fulfil its obligations, responsibilities as per the plot buyer's agreement dated 15.11.2013 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 delayed possession charges at the prescribed rate of interest @9.30% p.a. w.e.f. 15.02.2017 till the actual handing over physical possession of the allotted unit as per provisions of section 18(1) of the Act read with rule 15 of the Rules after obtaining required approvals like part/complete completion certificate from the competent authority.

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. 15.02.2017 till the actual handing over of physical possession of the allotted unit after obtaining required approvals like part/complete completion certificate from the competent authority.
- ii. 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 10<sup>th</sup> of each succeeding month.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. The respondents shall not charge anything from the complainant which is not part of the plot buyer's agreement.
  - v. Interest on the due 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 22.02.2021