



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

20

Day and Date	Thursday and 19.05.2022
Complaint No.	CR/1548/2022 Case titled as Amrit Pal Singh Vs Brahma City Private Limited
Complainant	Amrit Pal Singh
Represented through	Shri Rahul Kumar Singh Advocate
Respondent	1. Brahma City Pvt. Ltd. 2. Achaleshwar Infrastructure Pvt Ltd
Respondent Represented	None for R1 Shri Prashant Sheoran Advocate for respondent No.2
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings/Order

The present complaint has been received on 04.04.2022 and reply has been received from the respondents on 13.05.2022.

Succinct facts of the case as per complaint and reply are as under:

S. N.	Particulars	Details
1.	Name of the project	Samsara Part-4, Sector-60, Gurugram
2.	Nature of project	Residential plotted colony
3.	DTCP license no.	64 of 2010 dated 21.08.2010 Valid till 20.08.2025
4.	Licensed area	147.668 acres
5.	Registered/not	Registered vide no. GGM/305/2018/37 dated 19.12.2018 valid upto 15.10.2020

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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6.	Area of project for registration	0.76 acres
7.	Allotment letter	02.01.2019 (vide allotment issued by respondent no.2 in favour of complainants annexure-C on page 32 of complaint)
8.	Apartment no.	M46-A, 1 st floor, type-B1 (annexure-C on page 32 of complaint)
9.	Apartment area admeasuring	1211 sq. ft. (carpet area) 1878 sq. ft. (super area) (annexure-C on page 32 of complaint)
10.	Date of agreement for sale executed between the Achaleshwar Infrastructure Pvt Ltd and complainants	01.03.2019 (annexure-D on page no. 35 of complaint)
11.	Possession clause	7. POSSESSION OF THE APARTMENT: 7.1 Schedule for possession of the Apartment <i>"The Promoter assures to hand over possession of the Apartment for residential usage along with parking and right to use of General Common Areas and Limited Common Areas as per agreed terms and conditions within 27 months from the date of registration of this Agreement unless there is delay due to "force majeure: court orders, government policy/ guidelines, decisions affecting the regular development of the Plot. If the completion of the Building is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment." (emphasis supplied) (page no. 52 of complaint)</i>

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12.	Due date of possession	01.06.2021
13.	Total sale consideration	Rs. 1,99,92,225/- (as per payment schedule on page 31 of complaint)
14.	Amount paid by the complainants	Rs. 1,98,93,265/- (As alleged by the complainants on page 8 of complaint)
15.	Possession letter dated	14.03.2020 (page 76 of complaint)
16.	Conveyance deed	23.12.2020 (page 78 of complaint)

The complainants have sought following relief:

1. Direct the respondent to pay interest for every month of delay at prevailing rate of interest on amount paid by the complainants.

Considering the above-mentioned facts, the authority calculated due date of possession as per clause 7.1 of the agreement to sale i.e., 27 months from the date of registration of this agreement dated 01.03.2019. As such the due date of possession comes out to be 01.06.2021.

As per documents available on record, the occupation certificate in respect of the project in question was granted by the competent authority on 09.09.2019 and thereafter, the complainants have taken possession of the subject unit on 14.03.2020. As such, the possession of the subject unit has been handed to the allottees prior to the due date of possession as per agreement to sale. So no delay can be attributed to the promoter in handing over of possession of the subject unit in terms of agreement to sale as the possession was delivered to the complainants within the stipulated time period. Therefore, no case is made out in favour of the complainants under proviso to section 18(1) of the Act, 2016 in respect of interest for every month of delay.

2. Direct the respondent to refund the difference of amount along with interest @18% p.a. for decreased carpet area of about 30 sq. ft. @ Rs. 14,312.52/- per sq. ft., totally amounting to Rs. 4,29,375/- .

The respondents have submitted that vide application form dated 14.02.2018, the complainants applied for floor no. M-46-A having an area of 1241 sq. ft. However, vide allotment letter dated 02.01.2019, floor no. M-46-A having



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carpet area of 1211 sq. ft. was allotted to the complainants. It is submitted that in the application form, it was clearly agreed that there could a variance of up to 3% i.e. up to 37.23 sq. ft in the carpet area but sale price shall remain same in case of such variance. It is submitted that when the respondents calculated the carpet area of floor in question, it came to 1211 sq. ft i.e. on 30 sq. ft less , which is under agreed terms and conditions of application form. That accordingly, an allotment letter dated 02.01.2019 was issued stating that area of the subject unit is 1211 sq. ft. That complainants never objected the same, rather the allotment was duly acknowledged by the complainants vide agreement to sale dated 01.03.2019, wherein it was specifically mentioned that **carpet area of floor in question would be 1211 sq. ft** and sale consideration was also agreed upon by the complainants by executing said agreement to sale.

Upon perusal of the documents placed on record, the authority observes that vide application form dated 14.02.2018, the complainants had applied for booking floor having carpet area of 1241 sq. ft. Thereafter vide allotment letter dated 02.01.2019, the respondents had allotted unit measuring 1211 sq. ft. Subsequently, the said fact was also agreed upon between the parties vide agreement to sale dated 01.03.2019 and the complainants took possession of the subject unit vide possession letter dated 14.03.2020. Moreover, the conveyance deed has also been executed inter se parties on 23.12.2020 mentioning the carpet area of the apartment as 1211 sq. ft. In short, the respondents have given the committed area to complainants as was agreed to between the parties in terms of agreement to sale dated 01.03.2019 and allotment letter dated 02.01.2019. Therefore, in the considered opinion of this authority, the complainants are not entitled to raise this grievance before this authority.

The complaint stands disposed of accordingly. This order be uploaded. File be consigned to registry.


Vijay Kumar Goyal
Member


Dr. KK Khandelwal
Chairman
19.05.2022