

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

**Complaint No. : 1744 of 2019**  
**Date of first hearing: 20.08.2019**  
**Date of Decision : 20.08.2019**

1. Mr Gaurav Jain  
2. Mrs. Swati Jain  
Both R/o Flat no. 1618A, DLF, Magnolias  
Golf Course Road,  
Gurugram, Haryana

**Complainants**

Versus

1. M/s Athena Infrastructure Ltd.  
Office at: Indiabulls House, Ground Floor,  
448-451, Udyog Vihar, Phase V,  
Gurugram-122016

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Jawahar Lal  
Shri Rahul Yadav

Advocates for the complainants  
Advocate for the respondents

**ORDER**

1. A complaint dated 23.04.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr Gaurav



Jain and Mrs. Swati Jain, against the promoter M/s Athena Infrastructure Ltd. on account of violation of clause 21 of the flat buyer's agreement executed on 03.11.2014 for unit no. H032 on 3<sup>rd</sup> floor, tower 'H', admeasuring super area of 3830 sq. ft. in the project "Indiabulls Enigma" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act ibid.

2. Since the flat buyer's agreement has been executed on 03.11.2014, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.
3. The particulars of the complaint are as under: -

|    |                                  |  |
|----|----------------------------------|--|
| 1. | Name and location of the project | "Indiabulls Enigma" in Sector-110, Village Pawala Khusrupur, District Gurugram |
| 2. | Nature of real estate project    | Residential complex  |
| 3. | Unit no.                         | H032 on 3 <sup>rd</sup> floor, tower   |



|     |   | 'H'  |
|-----|---|--|
| 4.  | Project area  | 15.6 acres   |
| 5.  | Unit area   | 3830 sq. ft.   |
| 6.  | Registered/ not registered                                      | <b>Registered separately in 3 phases namely:</b><br><b>Phase I- 351 of 2017</b><br><b>Phase 1A- 353 of 2017</b><br><b>Phase II- 354 of 2017</b>    |
| 7.  | Revised date of completion as per RERA registration certificate | For reg. no. 351 of 2017-<br><b>31.08.2018</b><br>For reg. no. 353 of 2017-<br><b>31.03.2018</b><br>For reg. no. 354 of 2017-<br><b>30.09.2018</b> |
| 8.  | DTCP license  | <b>213 of 2007, 10 of 2011 and 64 of 2012</b>  |
| 9.  | Date of flat buyer's agreement                                  | 03.11.2014   |
| 10. | Occupation certificate  | 17.09.2018   |
| 11. | Offer of possession   | 21.01.2019   |
| 12. | Total consideration   | Rs. 1,74,15,851/- as per applicant ledger dated 21.01.2019 page no. 31 of reply  |
| 13. | Total amount paid by the complainants                           | Rs.1,65,57,015/- as per applicant ledger dated 21.01.2019 page no. 31 of reply   |
| 14. | Payment plan  | Construction linked payment plan   |
| 15. | Date of delivery of possession                                  | Clause 21 – 3 years from date of execution of flat buyer agreement + 6 months grace period i.e.<br><b>03.05.2018</b>                               |

|     |  |  |
|-----|--|--|
| 16. | Delay of number of months/ years upto 21.01.2019 | 8 months and 18 days                                       |
| 17. | Penalty clause                                   | Clause 22- Rs. 5/- per sq. ft. per month of the super area |

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondent. A flat buyer agreement dated 03.11.2014 is available on record for unit no. H032 on 3<sup>rd</sup> floor, tower 'H', admeasuring super area of 3830 sq. ft. according to which the possession of the aforesaid unit was to be delivered by **03.05.2018**. The promoter has made the offer of possession of the said unit to the complainants dated 21.01.2019.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The case came up for hearing on 20.08.2019. The reply has been filed on behalf of the respondent and has been perused.

#### **Facts of the complaint**

6. The complainants submitted that they are filing this complaint under section 31 of the Real Estate (Regulation and Development) Act, 2016 (the "Act") read with the Haryana

Real Estate (Regulation and Development) Rules, 2017 and the Haryana Real Estate Regulatory Authority, Gurugram (Adjudication of Complaints) Regulations, 2018 against the respondent for delay in handing over of the possession by the respondent of flat no. H032 in a residential complex named indiabulls enigma, Sector-110, Gurugram, Haryana developed by the respondent.

7. The complainants got to know that the respondent i.e. Athena Infrastructure Limited, was inviting applications for purchase of residential flats in residential complex by the name of Indiabulls Enigma located at Sector 110, Gurugram, Haryana ("**project**") as the developer of the project.
8. On January 25, 2012 a cheque bearing cheque no. 995509 amounting to Rs.5,00,000/- issued by the Complainants was received by the respondent as advance deposit for booking flat no. H032 in the project. The said cheque was cleared on 30.01.2012.
9. The complainants submitted that on February 9, 2012 cheque bearing cheque no. 233139 amounting to Rs.20,54,731/-

issued by the complainants was received by the respondent towards payment of 15 percent of total sale consideration as specified in the flat buyer agreement which was agreed to be paid within 30 (Thirty) days of booking of flat no. H032 in the project. The said cheque was cleared on 18.02.2012.

10. The subsequently cheques bearing cheque no. 995512 amounting to Rs.60,00,000/- (cheque no. 233141 amounting to Rs.37,17,094 ; and cheque no. 995514 amounting to Rs.40,00,000/- issued by the complainants were received by the respondent on 09.03.2012; 12.03.2012 and 19.03.2012 respectively towards payment of 80 percent of total sale consideration as specified in the flat buyer agreement which was agreed to be paid within 60 days from booking of flat no. H032 in the project. The said cheques were cleared on 14.03.2012; 15.03.2012; and 22.03.2012 respectively. Therefore, 86.41% of the total sale consideration was paid by the complainants to the respondent by March 2012.

11. The complainants made payments towards contingency deposit of VAT to the respondent on 10.03.2016 (Rs.1,55,115/-) and 10.03.2017 (Rs.1,30,075/-). Thus, so far

90.431% of the total sale consideration has been paid to the respondent by the complainants.

12. On 08.01.2019 the respondent through its authorized signatory issued a letter to one of the complainants i.e. Mr. Gaurav Jain stating that occupation certificate for tower H of the project in which the complainants' flat no. H032 is located had been received from the Director General, Town & Country Planning Department. The respondent also offered possession of flat no. H032 to the complainants through the said letter and the said letter specified an amount of Rs.17,51,990/- as the amount due for payment by the complainants with respect to the flat no. H032 in the project.
13. On 21.02.2019 the respondent issued a letter to the complainants offering possession of flat no. H032 in the project. The said letter *inter alia* requested the complainants to remit due amount of Rs.17,51,990/- with respect to flat No. H032 in the project on or before March 9, 2019.
14. The complainants submitted that as per clause 21 of the flat buyer agreement dated 13.11.2014 the respondent was to

hand over possession of flat no. H032 in the project to the complainants within a period of 36 months plus 6 months grace period from the date of execution of the flat buyer agreement.

15. It is pertinent to mention herein that while the respondent received 86.41% of the total sale consideration by March 2012, the respondent failed to provide the flat buyer agreement for execution to the complainants at the time of receipt of instalments constituting 86.41% of the total sale consideration. The flat buyer agreement, came to be executed only on 13.11.2014. In this context, it is relevant to submit that the flat buyer agreement is a standard form contract provided by the respondent and the complainants had no power to negotiate the terms. In this view, it is clear that the respondent was aware of the terms of the proposed flat buyer agreement. Hence, irrespective of the date of actual execution of the flat buyer agreement, the obligation of the respondent came into force with effect from March 2012, when nearly 86.41% of the total sale consideration was accepted by the respondent.



16. It is pertinent to mention herein that in a similar case of Mr. Adeep Gupta and his wife Mrs. Rupali Gupta, 75% of the total sale consideration was paid to the respondent between 28.11.2011 and 01.02.2012 towards purchase of flat no. B022 situated in the project and the flat buyer agreement in the aforesaid case was executed on 31.01.2012 itself. In light of the aforesaid, although payments towards purchase of flat no. H032 were made by the complainants around the same time as Mr. Adeep Gupta and his wife Mrs. Rupali Gupta, the flat buyer agreement was executed by the respondent for the complainants only on 13.11.2014 whereas it came to be executed for Mr. Adeep Gupta and his wife Mrs. Rupali Gupta on 31.01.2012.

17. The complainants submitted that this hon'ble authority has ruled in favour of complainant(s) in various recent complaints / cases filed against the respondent by such complainant(s) for delay in handing over of possession of units situated in the project. This hon'ble authority has held in the aforesaid cases that the complainants are entitled to receive delayed possession charges at the prescribed rate of

interest of 10.75% with respect to the period of delay is handing over of possession of the aforesaid unit(s) pursuant to Section 18(1) of the Act. Few precedents where this Authority has directed the Respondent herein to pay delayed possession charges to the complainant(s) therein are specified below: Order dated 23.01.2019 passed by the authority in complaint no. 592/2018 case titled as Mr. Sameer Singh & Anr versus M/s Athena Infrastructure Ltd. where the authority directed the respondent to pay delayed possession charges for delay in handover of possession of unit no. J072, tower-J in Indiabulls Enigma, Secor-110, Gurugram, Haryana; Order dated 31.01.2019 passed by the authority in complaint no. 1481/2018 case titled as Vijay Bhargava & Ors. V/S M/s Athena Infrastructure Ltd. where the authority directed the respondent to pay delayed possession charges for delay in handover of possession of unit no. F042, tower-F in Indiabulls Enigma, Secor-110, Gurugram, Haryana. In the said case the authority also took suo moto cognizance against the promoter for not getting the project registered with the authority under Section 3(1) of the Real Estate

(Regulation and Development) Act, 2016; Order dated 31.01.2019 passed by the authority in compliant no. 1503/2018 case titled as Captain Akhil Mittal and Anr versus M/s Athena Infrastructure Ltd. where the authority directed the respondent to pay delayed possession charges for delay in handover of possession of unit no.C-004, tower-C in Indiabulls Enigma, Secor-110, Gurugram, Haryana.

**18. Issues raised by the complainants**

- I. Whether the offer of possession of flat no.H032 in Indiabulls Enigma, Sector-110, Gurugram, Haryana made by the respondent to the complainants is with delay and in violation of the terms of the flat buyer agreement which was belatedly executed on 13.11.2014 between the respondent and the complainants and there is no reasonable justification for the aforesaid delay on part of the respondent?

**19. Relief sought**

- I. Direct pass an order directing the respondent to pay to the complainants delayed possession charges at the prescribed rates w.e.f. September 2015 up to 21.01.2019 under Section 18(1) of the Real Estate (Regulation and

Development) Act, 2016 for delay in handing over of possession of flat no. H032 in Indiabulls Enigma, Sector-110, Gurugram, Haryana by the respondent to the complainants in violation of the terms of the flat buyer agreement which was belatedly executed on 13.11.2014;

- II. Any other order as this hon'ble authority may be deemed fit and proper in the facts and circumstances of this case.

**20. Respondent reply**

21. The respondent submitted that the instant complaint filed by the complainants is not maintainable, on facts or in law, and is as such liable to be dismissed/ rejected at the thresh hold, being filed in the wrong provisions of the Law.
22. The present complaint is devoid of any merits and has been preferred with the sole motive to harass the respondent. In fact the present complaint is liable to be dismissed on the ground that the said claim of the complainants is unjustified, misconceived and without any basis as against the respondent. That the present complaint is baseless and flagrant abuse of process of law to harass the respondent.
23. It is submitted that the instant complaint filed by the complainants pertains to two units i.e. unit no. B022 & H032 booked in the project of the respondent. It is further

submitted that the complainants are trying to take benefit for both the units via single complaint which is a total abuse of law and provisions of the RERA ACT 2016.

24. It is submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact and law. The respondent denies them *in toto*. Nothing stated in the said complaint shall be deemed to be admitted by the respondent merely on account of non-transverse, unless the same is specifically admitted herein. The instant complaint is devoid of any merits and has been preferred with the sole motive to extract monies from the respondent, hence the same is liable to be dismissed *in limini*.

25. The instant complaint filed by the complainants is outside the purview of this hon'ble authority as the complainants looking into the financial viability of the project and its future monetary benefits willingly approached the respondent and got the said unit booked after making requisite due diligence on their own, post understanding all the terms & conditions of the agreement dated 13.11.2014. It is submitted that as per the FBA /agreement duly executed between the complainants and the respondent, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the

provisional unit booked by the complainants, the same shall be adjudicated through arbitration mechanism as detailed in the agreement. The respondent craves leave of this Hon'ble authority to refer and rely upon the clause no. 49 of the duly executed FBA, which is being reproduced hereunder for ready reference:

*"Clause 49 All or any dispute arising out or touching upon or in relation to the terms of this Application and/or Flat Buyers agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration The arbitration shall be governed by Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The venue of the arbitration shall be New Delhi and it shall be held by a sole arbitrator who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The Applicant(s) hereby confirms that he/she shall have no objection to this appointment even if the person so appointed as the Arbitrator, is an employee or advocate of the company or is otherwise connected to the Company and the Applicant(s) confirms that notwithstanding such relationship / connection, the Applicant(s) shall have no doubts as to the*

*independence or impartiality of the said Arbitrator. The courts in New Delhi alone shall have the jurisdiction over the disputes arising out of the Application/Apartment Buyers Agreement .....*

26. Thus in view of above section 49 of FBA, it is humbly submitted that, the dispute, if any, between the parties are firstly arising out of the said duly executed FBA and it was specifically agreed to refer the dispute, if any, qua the agreement to arbitration. Thus, the complainants are contractually and statutorily barred from invoking the jurisdiction of this hon'ble authority. Moreover, no cause of action ever arose in favor of the complainants and against the respondent. Further the hon'ble authority has no Jurisdiction to entertain the present complaint and decide the same hence the present complaint filed by the complainants is liable to be dismissed on the very same ground.

27. The respondent submitted that the complainants since inception were not diligent in timely payment of their due installments against the unit / apartment booked by him. It is pertinent to mention here that in terms of "**clause 10**" of the flat buyer agreement, timely payment of installments was the very essence of the agreement and that the handing over of

the possession of the booked unit to the complainants was subject to timely payment of dues by the complainants in terms of the payment schedule opted by the complainants at the time of execution of the flat buyer agreement with the respondent/ corporate debtor. Clause 10 of the flat buyer's agreement is reproduced as below:

*"10. Timely payment of the installments/amounts due shall be of the essence of this Agreement. If payment is not made within the period stipulated and or the Buyer commits breach of any of other terms and conditions of this agreement, then this agreement shall be liable to be cancelled..."*

28. It is submitted that timely payment of the installments being essence of the contract was duly agreed to by and between the parties in the flat buyer's agreement dated 13.11.2014. However, the complainants made a number of defaults in timely payment of the installments. Delay in ensuring the timely payment of the installments has serious repercussions on developer's/ respondent ability to deliver the project in time. Vicious circle created by delayed payments obviously results in delay of range of development issues undertaken by the developer delaying the project eventually. It is submitted that the complainants failed to observe the timely



payment contemplated in flat buyer's agreement and hence, cannot take advantage of his own wrongs doings.

29. The respondent submitted that the present complaint is not maintainable and the period of delivery as defined in clause 21 of flat buyer's agreement is not sacrosanct as in the said clause it is clearly stated that "the developer shall endeavor to complete the construction of the said building/unit" within the stipulated time. Clause 21 of the said agreement has been given a selective reading by the complainants even though he conveniently relies on same. The clause reads:

*"The developer shall endeavor to complete the construction of the said building/unit within a period of three years, with a six months grace period thereon from the date of execution of these Flat Buyer' Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to his or as demanded by the Developer..."*

30. The reading of the said clause clearly shows that the delivery of the unit / apartment in question was subject to timely payment of the installments towards the basic sale price. As shown in the preceding paras it is clear that the complainants have failed in observing his part of liability of the said clause.

31. It is submitted that the basis of the present complaint is that there is a delay in delivery of possession of the unit in question, and therefore, interest on the deposited amount has been claimed by virtue of the present complaint. It is further submitted that the flat buyer's agreement itself envisages the scenario of delay and the compensation thereof. Therefore, the contention that the possession was to be delivered within 3 years and 6 months of execution of the flat buyer's agreement is based on a complete misreading of the agreement.
32. A bare perusal of clause 22 of the agreement would make it evident that in the event of the respondent failing to offer possession within the proposed timelines, then in such a scenario, the respondent would pay a penalty of Rs.5/- per sq. ft. per month as compensation for the period of such delay. The aforesaid prayer is completely contrary to the terms of the inter-se agreement between the parties. The said agreement fully envisages delay and provides for consequences thereof in the form of compensation to the complainants. Under clause 22 of the agreement, the respondent is liable to pay compensation at the rate of Rs.5/- per sq. ft. per month for delay beyond the proposed timeline. The respondent craves leave of this hon'ble tribunal to refer

& rely upon the clause 22 of flat buyer's agreement, which is being reproduced hereunder for ready reference:

*"Clause 22 In the eventuality of Developer failing to offer the possession of the unit to the Buyers within the time as stipulated herein, except for the delay attributable to the Buyer/force majeure / vis-majeure conditions, the Developer shall pay to the Buyer penalty of Rs. 5/- (Rupees Five only) per square feet (of super area) per month for the period of delay ....."*

33. The respondent also draws attention of this hon'ble authority to section 4(2)(1)(C) of The RERA Act, 2016 which enables the developer / promoter to revise the date of completion of project and hand over possession. The provisions of RERA, however, do not rewrite the clause of completion or handing over possession in agreement for sale. Section 4(2)(1)(C) enables the promoter to give fresh time line independent of the time period stipulated in the agreements for sale entered into between him and the allottees so that he is not visited with penal consequences laid down under RERA. In other words, by giving opportunity to the promoter to prescribe

fresh time line under section 4(2)(1)(C) he is not absolved of the liability under agreement for sale.

34. The respondent submitted that it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, Non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015. Due to the above mentioned reasons, the project of the respondent was severely affected and it is in these above elaborated circumstances, which were beyond the control of the respondent, that the progress and construction activities, sale of various flats and spaces has not taken place as envisaged.

35. Further, as per the license to develop the project, external development charges were paid to the State Government and the State Government in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. The State Government terribly failed to provide the basic amenities due to which the construction progress of the Project was badly hit.

36. Furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MOEF") and the Ministry of Mines (hereinafter referred to as the "MoM") had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Kiln which is the most basic ingredient in the construction activity. The MOEF restricted the excavation of top soil for the manufacture of bricks and further directed that no manufacturing of clay bricks or tiles or blocks can be done within a radius of 50 (fifty) kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The

shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the project also affected the timely schedule of construction of the project.

37. The respondent submitted that in view of the ruling by the Hon'ble Apex Court directing for suspension of all the mining operations in the Aravalli Hill range in State of Haryana within the area of approx. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat which led to a situation of scarcity of the sand and other materials which derived from the stone crushing activities , which directly affected the construction schedules and activities of the project.

38. The respondent submitted that huge investments has been in obtaining requisite approvals and carrying on the construction and development of '**INDIABULLS ENIGMA**' project not limiting to the expenses made on the advertising and marketing of the said project. Such development is being carried on by developer by investing all the monies that it has received from the buyers / customers and through loans that

it has raised from financial institutions. In spite of the fact that the real estate market has gone down badly the respondent has managed to carry on the work with certain delays caused due to various above mentioned reasons and the fact that on an average more than 50% of the buyers of the project have defaulted in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the project "INDIABULLS ENIGMA" has never been stopped or abandoned and has now reached its pinnacle in comparison to other Real Estate Developers / promoters who have started the project around similar time period and have abandoned the project due to such reasons.

39. It is a respectful submission of the respondent that a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondent. It is submitted that the complainants have merely alleged in their complaint about delay on part of the respondent in handing over of possession but have failed to substantiate the same. The fact is that the respondent, has

been acting in consonance with the FBA dated 13.11.2014 executed and no contravention in terms of the same can be projected on the respondent. The complainants have made false and baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in FBA entered into between the parties. In view of the same, it is submitted that there is no cause of action in favour of the complainants to institute the present complaint.

40. **Determination of issues**

After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

41. With respect to the **sole issue** raised by the complainant, as per clause 21 of the flat buyer's agreement dated 03.11.2014, the possession of the unit was to be handed over within 3 years from date of execution of agreement + 6 months grace period. Therefore, the due date of handing over the possession shall be computed from 03.11.2014. Accordingly,



the due date of possession was **03.05.2018** and the possession was offered on 21.01.2019. Hence, the period of delay in delivery of possession is computed as 8 months and 18 days till the offer of possession.

42. The possession of the apartment was to be delivered by **03.05.2018**, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. The complainant made a submission before the authority under section 34(f) to ensure compliance/ obligations cast upon the promoter as mentioned above. The complainants requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil its obligation.

43. As the promoter has failed to fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso to pay interest to the complainants, at the prescribed rate, for every month of delay till the offer of possession. Therefore, as per section 18(1) proviso read with rule 15 of the Rules *ibid*, the complainants are entitled to prescribed

rate of interest i.e. State Bank of India highest marginal cost of lending rate plus two percent, per annum.

### **Findings of the authority**

44. **Jurisdiction of the authority-** The project “Indiabulls Enigma” is located in Sector-110, Village Pawala Khusrupur, District Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the

adjudicating officer if pursued by the complainants at a later stage.

45. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
46. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
47. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.
48. It has been informed by opposite counsel respondent that they have received OC and they have already offered the possession vide letter dated 21.01.2019. As such, no doubt the complainants is entitled for delayed possession charges. However, respondent is also entitled for maintenance charges which he can levy to the complainants/ buyer's for not taking the possession of the unit. in the interest of justice



both the parties are directed to take over/ handover the possession of the unit within one month.

49. As per clause 21 of the flat buyer's agreement dated 03.11.2014 for unit no. H032, 3<sup>rd</sup> floor, tower-H, in project "Indiabulls Engima" Sector-110, Gurugram, possession was to be handed over to the complainants within period of 3 years from date of execution of agreement + 6 months grace period which comes out to be 03.05.2018. However, respondent has not delivered the unit in time. Complainants has already paid Rs. 1,65,57,015/- to the respondent against a total sale consideration of Rs. 1,74,15,851/-. As such, the complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 03.05.2018 till 21.01.2019 as per provision of section 18(1) of the real estate (regulation and development) Act, 2016.

**Decision and directions of the authority**

50. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- (i) The respondent is directed to pay the interest at the prescribed rate i.e. 10.45% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 03.05.2018 till the offer of possession 21.01.2019.
- (ii) The respondent is directed to pay interest accrued from **03.05.2018** (due date of possession) to 21.01.2019 (date of offer of possession) on account of delay in handing over of possession to the complainants within 90 days from the date of this order. Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid before 10<sup>th</sup> of every subsequent month.
- (iii) Complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (iv) The promoter shall not charge anything from the complainants which is not part of the BBA.

(v) Interest on the due payments from the complainants shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.

51. The complaint is disposed of accordingly.

52. The order is pronounced.

53. Case file be consigned to the registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

सत्यमेव जयते

(Subhash Chander Kush)

Member

Date: 20.08.2019

Judgement uploaded on 11.10.2019