

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

Complaint no. : 5385 of 2023  
Order Pronounced on: 27.03.2025

**1. Madhu Gupta**

**2. Amit Gupta**

Both R/o: Flat No. C2/310, Plot No. 72, Milan Vihar Appts.,  
IP Extn. Delhi-110092

**Complainants**

**Versus**

**1. M/s Varali Properties Limited**

Regd. office: Indiabulls House, 448-451, Udyog Vihar, Phase-III,  
Gurugram-122016

**Respondents**

**2. M/s Athena Infrastructure Limited**

Regd. office: H.Np. 1035, Sector-17 B, Gurgaon- 122001

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Rajeev Kumar Khare (Advocate)

Shri Harshit Batra (Advocate)

**Complainants  
Respondents**

**ORDER**

1. The present complaint has been filed by the complainants/allottees 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 under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project-related details:**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Indiabulls Enigma", Sector-110, Gurugram
2.	Total area of the project	3.256 acres
3.	Nature of the project	Residential Complex
4.	Unit no.	D-034, 3 <sup>rd</sup> Floor, Tower/Block-D [Page no. 20 of complaint]
5.	Area of the unit	3400 sq. ft. [Page no. 20 of complaint]
6.	Builder Buyer agreement dated	02.09.2013 [Page no. 16 of complaint]
7.	Possession clause	<b>Clause 21.</b> <i>The Developer shall endeavour to complete the construction of the said building/Unit within a period of 3 years, with 6 months grace period thereon from the date of execution of Flat Buyers Agreement subject to timely payment by the Buyers(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer.</i> ..... (Emphasis supplied) [page 25 of complaint]
8.	Due date of possession	02.03.2017



		( <b>Note:</b> 36 months from date of FBA i.e., 02.03.2016 + 6 grace period allowed)
9.	Sale consideration as per payment plan	Rs. 2,32,10,000/- [Page no. 20 of complaint]
10.	Total amount paid by the complainant	Rs. 2,45,28,693/- [Page no. 04 of complaint]
11.	Offer of possession	28.06.2019 [Page No. 42 of complaint]
12.	Occupation certificate	Not obtained
13.	Conveyance Deed	22.10.2019 [Page no.46 of complaint]
14.	Transfer Deed in favor of son	31.10.2019 [Page no. 63 of complaint]

### B. Facts of the complaint:

3. The complainants have made following submissions in the complaint:

- i. The complainant booked on 10.08.2012, on payment of Rs. 5,00,000/- only, a residential housing unit No. D034, admeasuring 3400 sq. ft, on 3rd floor, in Tower D in project Indiabulls Enigma, in the then proposed group housing colony of the respondents, located at Pawala Khusrupur Village, Gurgaon, Tehsil and District Gurgaon, Haryana.
- ii. That the respondent no. 2 entered into a flat buyer's agreement with complainant on 02 September, 2013, after, as per statement of account dated 26.06.2019, having received 40% of basic sale consideration and 40% of EDC/IDC amounting to Rs. 1,00,57,585/-
- iii. The unit was to be delivered on 02.09.2016 (as per clause 21 of buyer agreement).

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- iv. The complainant had paid, against various demands raised by the respondent no.2, Rs. 2,48,28,693/-by 26.04.2016 i.e. well before the due date of delivery i.e. 02.09.2016.
- v. The respondent2 issued a letter dated 26.06.2019 informing that Occupation Certificate for the Tower had been issued by DTCP. They further stated that they were offering possession of the property for which the final demand amounting to Rs. 16,02,944/- was also attached with the said letter.
- vi. That the respondent no.2 demanded vide letter dated 28.06.2019 that a sum of Rs. 84,252/- be paid to the maintenance agency as advance for six months' maintenance charges.
- vii. That the complainant made all the payments as demanded by the respondent no. 2 including stamp duty and administrative charges.
- viii. That the respondent1 and respondent2 transferred the suit property in the name of the complainant vide execution of conveyance deed dated 31.10.2019.
- ix. The respondent no.2 got a pre-printed possession letter dated 31.10.2019 signed by the complainant stating, "We hereby accept the possession of the said unit after satisfying ourselves about the physical and legal status of the said unit and shall not make any claim in future against M/s. Varali Properties Limited with regard to size, dimensions, area, location, specifications, construction work in respect of the said Unit. XX XX. We, hereby, declare that we or any person claiming under us have no claim demand or grievance of any nature whatsoever against the developer. "
- x. That it is beyond any doubt that the above letter was obtained by the respondent no.2 without the free consent of the complainant as physical possession was not yet given to her. She being a cancer patient had no





- option but to sign on the dotted line as she desperately wanted to get the physical possession also and handover the same to her son while she was alive. It is also evident to naked eye that such statement by her would benefit the respondents alone. There is no reason for anyone to forego his/her legal rights unless some compulsion exists.
- xi. That in spite of respondents' failure to give timely delivery of the property. the respondents made the unsuspecting complainant with intention to cause further unlawful loss to her and unlawful gains to himself through misrepresentations sign and return to respondent the letter of possession dated 31.10.2019, drafted by the respondent for promoting respondent's illegal interests, which sought to place the harassed allottee under obligation to waive the penalties imposed on the respondent under RERA, 2016 which is preposterous.
- xii. That it is pertinent to mention here that the respondents were under contractual and legal obligations to deliver the possession on the due date without demur after they had taken payments against all their demands. respondents failed to comply with their lawful obligation even after 4 years and 5 months of expiry of the due delivery date. The complainant is under no legal or contractual obligation to relinquish her right to seek DPC when she is eligible for the same u/s 18(1) of the Act.
- xiii. That no individual will forego his/her lawful rights without having been subjected to pressure, misrepresentation and/or dominant position of the respondent.
- xiv. That proviso to 11(4)(g) of the Act states that liabilities of respondent towards allottees /persons/authorities shall not cease to exist after property has been transferred to the allottee/ allottees association.
- xv. Therefore, any coercive act / coercive covenant invoked by the respondent shall go against the law and shall be liable to be set aside.





- xvi. That the complainant was not handed over physical possession of the suit property even after registration of conveyance deed on payment of stamp duty, registration fee, cost of executing registration and all other dues as demanded by the respondent no. 2.
- xvii. That the complainant being a cancer patient, transferred the suit property in favour of her son Shri Amit Gupta on 31.10.2019 itself.
- xviii. That the respondent offered the physical possession of the suit property to the complainant on 01 February, 2021 only, by handing over keys to the apartment. The possession/handover letter gave a maintenance charge waiver for six months.
- xix. That the respondent raised a Bill dated 01.04.2023 for maintenance charges for April-June 2023 amounting to Rs. 42,126/-. It claimed previous dues of Rs. 2,80,840/- up to 31 March 2023. The previous dues were for 20 months from 01 August 2021 to 31 March 2023. He raised a bill dated 11.11.23 for gross dues of Rs. 4,07,218/- only.
- xx. That six months' waiver is applicable from 1.2.2021 to 31.07.2021. Since the complainant has paid six months' advance maintenance charge, the previous dues come to only Rs. 1,96,588/- instead of 2,80,840/-.
- xxi. That the complainant sent an e-mail to respondent no. 2 on 20.06.2023 stating she was not paid any delayed possession charge, nor was the oral assurance to complainant of waiver of 2 years' maintenance charge was honored.
- xxii. That the letter of handover dated 01.02.2021 and the maintenance demand dated 01.04.2023 establish it beyond doubt that possession was handed over on 01.02.2021 only.
- xxiii. That the respondents are liable to pay the stated delayed possession charge (DPC) coming to Rs. 1,19,37,012/- only to the complainant no.1



along with interest on DPC from 01.02.2021 till the date of actual payment of DPC into the hands of the complainant no.1.

**C. Relief sought by the complainants:**

4. The complainants have sought the following relief(s):
  - i. Direct the respondent to pay interest for every month of delay at prevailing rate of interest.
  - ii. Direct the respondent to pay cost of litigation of Rs. 50,000/-.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1:**

6. The respondent has made following submissions
  - i. The instant complainant 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 superfluously impleading the respondent no.1 as a party to the complaint. Hence the instant complaint against the respondent no.1 is liable to be dismissed on the same ground.
  - ii. The present complaint is not maintainable before the Hon'ble Authority and also devoid of any merits, which has been preferred with the sole motive to harass the respondent no.1. It is an admitted fact that there is no privity of contract between the complainants and the respondent no.1, hence the contentions taken in the instant complaint by the complainants against the respondent no.1 are false, baseless and without any veracity. Hence the instant complaint filed against respondent no.1 is liable to be dismissed on the very sole ground.
  - iii. The allegations made in the instant complaint against the respondent no.1 are wrong, incorrect and baseless in the fact and law. The

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respondent no.1 denies them in toto. The instant complaint is devoid of any merits and has been preferred with the sole motive to extract monies from the respondent no.1 and defame the reputation of the respondent no. 1s in the Real Estate sector, hence the same is liable to be dismissed *in limini*.

- iv. There is no privity of contract between the complainants and the respondent no.1, hence in the absence of any relationship between the complainants and the answering respondent, the complainants is not entitled for any claim / relief from the respondent no.1 as contended in the instant complaint by the complainants. Also, it is respectfully submitted that the complainants have not made any payment in the name and account of respondent no.01 with respect to their alleged booked unit.
- v. The relationship that forms the basis of the instant complaint arises out of the documents executed by and between the complainants and the respondent no.2 i.e. the developer. It is pertinent to note that there is no contractual relationship between complainants and the answering respondent since no documents were ever signed/ executed by and between the complainants and the respondent no.1. ergo, there is no legal relationship or privity of contract between the complainants and the respondent no.01. Therefore, in light of the fact that there is no contract between the answering respondent and the complainant and no alleged cause of action qua the answering respondent has arisen in favour of the complainants, much less as alleged.
- vi. That a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondent no.1. It is submitted that the complainants have merely



alleged in their complaint about delay on part of the respondents, but have failed to substantiate the same against respondent no.1. In view of the same the complaint of the complainants against the respondent no.1 is baseless and false and is liable to be dismissed.

- vii. The complainants have made false and baseless allegations against the respondent no.1 and further impleaded them as that the complainants have not made any payment in the name and account of respondent no.01 with respect to their alleged booked unit party in the instant complaint with a mischievous intention to take illicit benefits from the respondent no. 1. It is submitted that there is no cause of action in favour of the complainants and against the respondent no.1 to institute the present complaint against respondent no.1 and hence needs to be dismissed.
- viii. Reliefs sought by the complainants in the instant complaint filed against the answering respondent are wrong, misleading and hence denied. That there was never any privity of contract between the complainants and the answering respondent with respect to the alleged booked unit, hence the answering respondent is not liable to pay any compensation, damages, cost and/or any other monetary claim whatsoever as sought by the complainant in their instant complaint.

**E. Reply by the respondent no. 2:**

- i. The instant complainant 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 superfluously impleading the respondent no.2 as a party to the complaint. Hence the instant complaint against the Respondent no.2 is liable to be dismissed on the same ground.



- ii. The complainant has no locus-standi and no cause of action for filling the present complaint against the answering respondent in any manner whatsoever. The alleged cause of action is totally false and frivolous, as the complainant is neither the allottee nor owner of the unit in question as on the date of filling of present complaint.
- iii. That vide a registered transfer deed dated 31.10.2019 Madhu Gupta already transferred her entire share in the subject unit to her son i.e. Mr. Amit Gupta. Accordingly post execution of the Transfer deed dated 31.10.2019 Madhu Gupta has no right in the subject unit, and thus not legally entitled for any claim whatsoever in the subject unit. Hence, the present complaint filed by Madhu Gupta is liable to be dismissed as no claim is made out in favor of complainant as on the date of filling of the present complaint.
- iv. That the present complaint is barred by limitation. The respondent no.2 vide its letter dated 26.06.2019 followed by letter dated 28.06.2019 informed the complainant that the subject unit was ready for possession. That the present complaint is filed by the complainant on 16.11.2023 i.e. after more than 4 years from offer of possession as such the same is barred by limitation. That this Hon'ble Authority, while adjudicating a number of complaints have given their observation on limitation.
- v. Pursuant to issuance of possession offer letters the complainant executed the conveyance deed for the unit on 31.10.2019, copy of conveyance deed is already placed on record at Page 45 Annexure C4 of the complaint. That further the Complainant discharged the respondent no.2 from any claim demand or grievance of any nature whatsoever with respect to the subject unit.





- vi. The Complainant, immediately after execution of conveyance deed executed a transfer deed dated 31.10.2019 transferring all her rights in the unit in favor of her son Mr. Amit Gupta.
- vii. That the physical possession of the unit including keys of the unit was handover on 01.02.2021 which is evident from the possession/handover letter of flat dated 01.02.2021 (Annexure C-7 of Complaint at page 72) signed and acknowledged by the complainant. That the delay in taking physical handover of the unit was not due to respondent no.2 but the complainant no.2 despite repeated reminders and communications to visit the site for handover, due to their own reasons kept deferring/ rescheduling the same.
- viii. The present complaint is devoid of any merits and has been preferred with the sole motive to harass the answering Respondent. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainant is unjustified misconceived and without any basis against the respondent.
- ix. That the present complaint is baseless and flagrant abuse of process of law to harass the respondent.
- x. The complainant has not come with clean hand before this Authority and have concealed the true and material facts supplying false and fabricated information in their complaint. As such the complainant is guilty of concealing the true and material facts, hence, the complainant is not entitled for any relief whatsoever claimed from this Authority.
- xi. It is a respectful submission of the respondent no.2 that a bare perusal of the complaint will sufficiently elucidate that the complainant has miserably failed to make case against the respondent no.2. That the complainant has 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 complainant to institute the present complaint.

- xii. Reliefs sought by the complainant no.1 in the instant complaint filed against the answering respondent are wrong, misleading and hence denied. It is submitted that Complainant No.1 is neither the allottee nor owner of the subject unit as on date of filling of the present complaint, as such complainant no.1 is not entitled for any relief whatsoever from the answering respondent.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties

**F. Jurisdiction of the Authority:**

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject-matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the agreement for sale. Section 11(4)(a) is

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reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

11. Hence, given the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**G. Findings on relief sought by the complainants:**

**G.I Direct the respondent to pay interest for every month of delay at prevailing rate of interest**

13. The complainant had booked a residential unit in the project titled "Indiabulls Enigma", being developed by the respondent in Sector-110, Gurugram, Flat No. D-034 on the 3<sup>rd</sup> Floor of Tower-D was allotted to the complainant, and a buyer agreement was executed between the parties on 02.09.2013. As per the terms and conditions of the BBA, the respondent was under an obligation to complete the construction and offer possession of the said unit to the complainant within the period stipulated in the agreement. The complainant has raised a grievance that the possession, which was due to be offered in 2017, was in fact delayed by the developer.
14. It is further noted that a conveyance deed was executed in favour of complainant no. 1 on 22.10.2019, and thereafter, the said unit was



transferred to complainant no. 2, his son, through a registered transfer deed dated 31.10.2019.

15. Upon a thorough examination of the documents on record and the submissions made by the parties, this Authority observes that complainant no. 1 has executed the conveyance deed in respect of the subject unit. Consequently, upon execution of the said conveyance deed, complainant no. 1 ceases to retain the status of an allottee with respect to the said unit, as the rights and title therein have been transferred to complainant no. 2.
16. Furthermore, it is noted that complainant no. 2 is not a signatory to the original buyer-builder agreement and, therefore, does not share any contractual obligation with the respondent. In the absence of privity of contract, complainant no. 2 lacks the requisite locus standi to invoke the jurisdiction of this Authority. As such, the complaint, as filed jointly by complainant nos. 1 and 2, is not maintainable in the eyes of law. In view of the foregoing, the complaint is dismissed as not maintainable and accordingly stands disposed of.
17. File be consigned to the Registry.

**Dated: 27.03.2025**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram