

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

Complaint no.:
Date of decision:

5888 of 2023
02.07.2025

M/s Athena Infrastructure Ltd
Registered Office at: M-62 and 63,
First Floor, Connaught Place, New Delhi-110001.

Complainant

Versus

1. Deepak Luthra
2. Mohini Luthra

R/o: Apartment no. 204, Tower-A,
Indianbulls Enigma, Sector-110, Gurugram,
Haryana.

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Rahul Yadav (Advocate)

Complainant

R.P Luthra (Advocate)

Respondents

ORDER

1. The present complaint has been filed by the complainant/promoter under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 19(6) of the Act wherein it is inter alia prescribed that the allottee shall be responsible for making the payments in the manner and within the time as specified in the Agreement For Sale.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Indiabulls Enigma"
2.	Location of the project	Sector-110,Village-Pawala Khusrupur, Gurugram, Haryana.
3.	Nature of the project	Group housing
4.	DTCP license no.	License No.- 213 of 2007 dated 5.09.2007 10 of 2011 dated 29.01.2011 64 of 2012 dated 20.06.2012
5.	Registered/not registered	Registered Vide registration no. 353 of 2017
6.	Allotment letter	19.12.2018 (As on page no. 41 of complaint)
7.	Unit no.	204, Type-5BHK Pent house duplex, Tower-A, Floor no.- 20/21, Parking 03. (As on page no. 41 of complaint)
8.	Area of the unit	3893 sq.ft. [Carpet Area] (As on page no. 41of complaint)



9.	Agreement For Sale	07.03.2019 (As on page no. 55 of complaint)
10.	Possession clause	<p>Clause 5</p> <p>POSSESSION OF THE APARTMENT</p> <p><i>The Promoter shall handover the legal possession of the Apartment to the Allottee upon execution and registration of the sale deed within 18(Eighteen) months of signing of this Agreement. Promoter shall offer in writing the possession of the Apartment to the Allottee(s) upon execution of sale deed.</i></p> <p><i>[Emphasis supplied]</i></p> <p>(As on page no. 63 of complaint)</p>
11.	Due date of possession	07.03.2021 [calculated 18 months from the signing of agreement plus six months on account of covid-19]
12.	Total sale consideration	Rs.4,52,27,640/- (As on page no. 59 of complaint)
13.	Total amount paid by the complainant	Rs.3,23,05,200/- (As per account ledger at page no. 97 of complaint)
14.	Payment plan	<p>Subvention till 550 days</p> <p>Booking amount-Rs.5,00,000/-</p> <p>Within 30 days from booking-</p>

		<p>5% of Sale price + applicable taxes</p> <p>On approval of IBHL-80% of sale price + applicable taxes</p> <p>On offer of permission to use-100% maintenance security + 100% club charges + 100% cost of installation of electricity metre, security deposit, energizing charges.</p> <p>Within 270 days from the date of booking-5% of sale price + applicable taxes.</p> <p>Within 550 days from the date of booking-10% of sale price + applicable taxes.</p> <p>(As per payment plan on page no. 74 of complaint)</p>
15.	Tri-partite Agreement [With Indiabulls Housing Finance Limited]	<p>12.02.2019</p> <p>(As on page no. 45 of complaint)</p>
16.	Occupation certificate	<p>06.04.2018</p> <p>(As per Hrera website)</p>
17.	Possession handover	<p>18.03.2019</p> <p>(As on page no. 77 of complaint)</p>

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint:

- I. That the complainant is Company incorporated under the provisions of the Companies Act, 2013 and is engaged in *inter alia* the business of real estate development, especially in the state of Haryana having goodwill in the market. The complainant has developed a residential project namely "Indiabulls Enigma" in Sector 110, situated at Village Pawala Khusrupur, Gurugram Haryana.
- II. That the respondent approached the complainant and showed their interest to book a residential apartment in the project and submitted an application form no. 4900886 dated 01.11.2018. The complainant acceding to the request of the respondent allotted them a 5BHK- Duplex Pent House bearing no. A-204 having carpet area of 3893sq.ft. on 20th/21st Floor in Tower-A along with basement parking no. 36,37,38 each admeasuring 134.55 sq.ft. in the upper basement.
- III. That the total sale consideration of the unit is Rs.4,52,27,640/- including BSP, EDC, IDC, PLC, Taxes (GST and Cess or any other taxes/fees/charges/levies/etc). That apart from the total price, the respondent was required to pay the Electricity Charges, Club membership charges and Maintenance Security deposit.
- IV. That the payment plan opted by the respondents for the unit is reproduced herein below:

S.no.	Subvention till 550 days_A204	
1.	Booking Amount	Rs.5,00,000/-
2.	Within 30 days from the date of booking (less booking amount)	5% of Sale Price + Applicable Taxes
3.	On Approval from IBHL	80% of Sale Price + Applicable Taxes
4.	On Offer of permission to use	100% Maintenance Security + 100 % Club Charges + 100% Cost of Installation

		of Electricity Meter, Security deposit, energizing Charges
5.	Within 270 Days from the date of booking	5% of Sale Price +Applicable taxes
	Within 550 Days from the date of booking	5% of Sale Price +Applicable taxes

- V. That the respondent at the time of booking the unit, opted for "Subvention Scheme Payment Plan", and availed a home loan from Indiabulls Housing Finance Limited (IHFL) for an amount of Rs.3,00,00,000/- and a Tripartite Agreement was executed on 12.02.2019.
- VI. That an Agreement for Sale was executed between the complainant and the respondents and same got registered before Sub registrar Kadipur vide Vasika no. 8609 dated 07.03.2019.
- VII. As per the arrangement between the complainant and the respondents under the Tripartite Agreement, the complainant had assumed the liability to pay to the financier i.e. IHFL, the Pre-EMI interest on the said loan amount till 04.04.2020. The relevant clause of the Tripartite Agreement is reproduced below for the ready reference:

Clause 4

The Borrower has informed IHFL of the scheme of arrangement between the Borrower and the Builder in terms whereof the Builder hereby assumes the liability on account of interest payable by the Borrower to IHFL (Assumed liability) for a period of 04/05/2020 from the date of first disbursement of loan facility ...

- VIII. That the complainant in view of the aforesaid arrangement, paid to IHFL an amount of Rs.35,32,844/- as Pre-EMI interest against the loan amount till 04.05.2020.
- IX. That as per the Clause 4.1 of the Agreement for Sale, the complainant permitted the respondents to use the unit with effect from the date of the execution of the agreement dated 07.03.2019 and subsequent to execution of the Agreement dated 07.03.2019, the complainant handed over the keys of unit along with other documents to the respondents on 18.03.2019. It is pertinent to mention here that the respondents have been residing in the said unit since 18.03.2019.
- X. That further as per Clause 4.2 of the Agreement for Sale, the respondents agreed to pay and discharge all governmental dues, rates, charges and taxes and other monies, levies, impositions, premiums, damages and/ or penalties and other outgoings, whatsoever, payable with respect to the project to the competent authorities from the date of execution of the Agreement
- XI. That as per Clause 5 of the Agreement for Sale, the complainant agreed to handover the legal possession of the apartment to the respondents after execution and registration of the sale deed within 18 (Eighteen months) from the date of the agreement i.e. 07.03.2019 and further to offer possession in writing to the respondents.
- XII. That the complainant vide letter dated 05.03.2020 offered the possession of the unit to the respondents and raised the final demand of Rs.1,51,00,040/- which were due against the unit.

However, the respondents ignored the said letter and failed to clear the outstanding dues to the complainant till date.

XIII. That the complainant has written various letters to the respondents i.e. on 10.11.2023, 25.03.2021, 24.08.2020, 04.05.2020, 05.03.2020 requesting them to clear the outstanding dues but despite sending repeated reminders, the respondents never came forward to clear the same.

XIV. That computing from the date 05.03.2020 i.e. when Possession-Cum-Demand letter was issued to the respondents and as on the date of filing of the present complaint, an amount of Rs.2,12,59,512/- i.e. principal amount plus interest @10.75% is the outstanding amount which is due and payable by the respondents towards the unit, and the interest on the same is continuing till final realisation of the said amount.

XV. That the respondents are in clear violation of section 19(6) of the Real Estate (Regulatory and Development) Act 2016 wherein the respondents are required to make the necessary payments against the unit since 05.03.2020 along with interest from the due date till actual realisation as per section 19(7) of the Real Estate (Regulatory and Development) Act 2016.

C. Relief sought by the complainant:

4. The complainant has filed the present complaint for seeking following reliefs:
 - i. Direct the respondents to clear all the outstanding towards the sale consideration of the unit along with interest at the prescribed rate w.e.f 05.03.2020 till final realization.

5. On the date of hearing, the Authority explained to the respondent /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.

D. Reply by respondents:

6. The respondents have contested the present complaint on the following grounds:
- I. That the present complaint is liable to be dismissed as the complainant has concealed material facts in relation to the subject unit allotted to the respondents.
 - II. That the present complaint is liable to be dismissed as the respondents had filed an appeal bearing no. *SA No. 105/2022* against the India Bulls Finance Ltd. before the Hon'ble DRT-II; Delhi wherein the complainant is also arrayed as respondent no. 2 and the matter is pending sub-judice.
 - III. That the complainant has miserably and wilfully failed to make payments in time or in accordance with the terms of the Builder Buyer Agreement.
 - IV. That the complainant has not fulfilled his obligation and has not even paid the installments on time that had fallen due. Accordingly, no relief can be granted to the complainant whereas the respondent has suffered a lot financially due to the defaults of the complainant.
 - V. That after a detailed representation about a group housing project ie., "Indiabulls Enigma", Sector 110, Gurugram, Haryana launched by the complainant, the respondents agreed to visit the site and purchase a "Pent House" on the 20th floor of A Block of the society.

- VI. That in the month of November 2018, the employees of complainant showed a fancy brochure which contained a detailed representation of fittings and fixtures of the flats and a plan of development of the said society. That since respondent no. 2 had sold their house in Delhi, the only condition put forth was that the flat is made ready to move in two months, to which the complainant agreed.
- VII. That the said pent house was available under subvention scheme i.e. the complainant will arrange for a partial loan for the said property and will pay pre-EMI interest on behalf of the respondents for 18 months. The possession of the said flat will be delivered within two months from the execution of the Agreement to Sell and the Sale Deed will be executed after 18 months/550 days from the date of possession in accordance to the terms and conditions of the tripartite agreement. The total area of said pent house was 6780 sq. ft. and the price of the said flat was Rs.4.67crores all inclusive.
- VIII. That in the month of November 2018 paid a booking amount of Rs.5 Lakhs and in the month of December 2018 paid Rs.17.61,382/- by cheque and paid Rs.6,90,000/- by cash for which a receipt was issued.
- IX. That it was assured by complainant that the abovementioned flat will be ready for possession in the month of January 2019. That in the month January 2019, the complainant sought documents from respondent no. 1 for the approval of loan by India Bulls Housing Finance Ltd. and on 31.01.2019, India Bulls Housing Finance Ltd. Home Loan issued a sanctioned letter of Rs.3 crore to respondent no. 1.

- X. That since the flat was purchased under subvention scheme, the pre EMI's interest for 18 months/ 550 days was to be paid by complainant to India Bulls Housing Finance Ltd. from the date of possession of the said flat. The respondents hatched criminal conspiracy with active connivance with each other and on 18.03.2019 the approved loan of Rs.3 crore was disbursed by India Bulls Housing Finance Ltd. to the complainant and the interest EMI's for 18 months were to be paid by the complainant as per the terms of the agreement. Since the flat was under Subvention Scheme, no sale deed has been executed between the India Bulls Housing Finance Ltd. and the respondents till date, thereby making the present loan unsecured in nature as no equitable mortgaged or charge was created on the unit.
- XI. That the said flat is not a secured asset of the India Bulls Housing Finance Ltd. as no Mortgage Deed has ever been signed and executed between the respondents and the India Bulls Housing Finance Ltd. that there is no charge on property in question, thereby making proceeding under SARFAESI Act does not lie, therefore making notice under Section- 13 (2) and (4) void ab-initio.
- XII. That in the month of April, promoters informed that the said flat is ready for possession and since the respondents have sold their property and was living in a rented accommodation, agreed to shift to the said flat. Upon shifting, it came to the light that said flat is incomplete and the society and facilities are still under construction. It is pertinent to mention that respondents were the second occupant of the society. It was assured by the complainant that all the fitting and fixtures mentioned in the brochure and all the

discrepancies will be cured within a month. The respondents were allured by the complainant to take possession of the said unit in order to increase occupancy of the said property and to sell the unsold inventory by showing occupancy.

- XIII. That various E-mails were written to India Bulls Housing Finance Ltd. and the complainant to complete the said flat as promised by them. That in August 2019, the respondent no. 1 applied for a personal loan of Rs.25 Lakhs with the HDFC Bank whereby the bank informed him that his CIBIL scored is low due to the bounced EMI's of his loan. The respondent no. 1 herein contacted India Bulls Housing Finance Ltd. stating that the said pre interest EMI's were to be paid by the complainant and they have been illegally placed in his account, thereby, disrupting his CIBIL score which will cause problems in the future for arranging his finance as agreed in the tripartite agreement.
- XIV. That the respondents kept writing E-mails to the customer care about the incompleteness of flats and poor quality of construction but no response was received from the complainant. On 12th of December due to heavy winds, the entire PVC window of the living room collapsed inside on the sofa of drawing room, nearly hitting the occupant of the flat. The said incident was reported and a boulder was placed above the window. The entire PVC window of the said flat are still weak and could fall anytime due to heavy winds.
- XV. That on 07.02.2020, the complainant made his first demand towards the outstanding of Rs.85,00,000/-to be paid to the complainant as per agreement. In the said letter, it is mentioned "we refer to a

letter dated 13.09.2019 requesting you to pay the outstanding dues for the provisional booking of the unit in our residential project pertinent to mention that no demand was made towards the outstanding before 07.02.2020 and the dates are mentioned in the letter are fabricated. The balance payment was due on 15.01.2020, therefore, the first demand for outstanding gives received on 07.02.2020. The contents of the letter dated 07.02.2020 were concocted since the dispute about the incomplete construction had already started.

XVI. That in the month of Feb 2020, a legal notice through the counsel of respondent no. 1 was sent to complainant describing the details of structure defaults in the flat and that 10 months of subvention has been wasted since the said flat is incomplete. The complainant was invited to rectify the said defaults in the flat and till that time payments will be kept in abeyance till the flat is completed and subvention will have to restart.

XVII. That the complainant had already received a sum of Rs.3,30,00,000/- from the respondents and India Bulls Housing Finance Ltd. and still the flat was left incomplete. That on 05.03.2020 another frivolous, fabricated & concocted letter was sent by the complainant on India Bulls Housing Finance Ltd.'s letter head demanding Rs.1,51,00,000/- as outstanding. In the said letter it is stated that we are offering you possession of the flat upon receipt of this balance payment. In-fact the possession of incomplete flat had already been handed over in April, 2019 , therefore, making the letter concocted.

XVIII. That on 24.06.2020, another letter stating fabricated facts was sent to the respondents seeking outstanding. In all the letters complainant has fraudulently changed the dates of subvention scheme.

XIX. That the respondents have filed securitization appeal/application under the SERFAESI Act 2002 before the DRT, Delhi in 2022.

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 these undisputed documents and submission made by the parties.

E. 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

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 entire Gurugram District for all purpose 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

9. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the allottee.
10. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the

adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

- F.1 Direct the respondents to clear all the outstanding towards the sale consideration of the unit along with interest at the prescribed rate w.e.f 05.03.2020 till final realization.**

12. In the present case, the complainant-promoter is seeking compliance of Section 19(6) of the Act, 2016 and make payment of the outstanding dues along with the prescribed rate of interest as provided under section 19(6) of the Act. Sec. 19(6) of the Act is reproduced below for ready reference.

"Section 19: - Rights and duties of allottees
19(6)

Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(Emphasis supplied)

13. The complainant-promoter issued a Provisional Letter of Allotment dated 19.12.2018 in favour of the respondents-allottees, thereby allotting Apartment No. 204, Type-5BHK penthouse duplex, situated on the 20th/21st floor of Tower-A, having a carpet area of 3893 sq. ft., under the complainant-promoter's "Subvention 5:80:15 for 550 days - A204 Payment Plan". Pursuant thereto, an Agreement for Sale was executed between the parties on 07.03.2019, stipulating the total sale

consideration of the apartment at Rs. 4,52,27,640/-. Till date, the respondents-allottees have paid a sum of Rs. 3,23,05,200/- to the complainant-promoter.

14. As per Clause 5 of the Agreement for Sale dated 07.03.2019, the complainant-promoter undertook to hand over possession of the unit within 18 months from the date of execution of the said Agreement, subject to execution and registration of the Sale Deed. The respondents-allottees opted for a Subvention Scheme Payment Plan and availed a home loan of Rs. 3,00,00,000/- from Indiabulls Housing Finance Limited (IHFL). In this regard, a Tri-Partite Agreement was executed between the parties on 12.02.2019.
15. The Occupation Certificate for the said apartment had already been obtained by the complainant-promoter on 06.04.2018. Consequently, the possession of the unit was handed over to the respondents-allottees on 18.03.2019, the apartment being in a ready-to-move-in condition.
16. The respondents-allottees, in their reply, submitted that due to the complainant-promoter's failure to pay the Pre-EMI amounts to Indiabulls Housing Finance Limited (IHFL) under the Subvention Scheme, they received a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. Subsequently, on 08.04.2022, the respondents-allottees were served with a possession notice in respect of the mortgaged property, i.e., the subject apartment, pursuant to an order dated 22.03.2022 passed by Sh. Anil Kaushik, Chief Judicial Magistrate, Gurugram, in Case No. 38 of 2022, titled

Asset Care and Reconstruction Enterprise Limited vs. Deepak Luthra and Another.

17. Upon perusal of the documents on record and after considering the submissions advanced by both parties, this Authority is of the considered view that, in accordance with the order dated 22.03.2022 passed by Sh. Anil Kaushik, learned Chief Judicial Magistrate, Gurugram, in **Case No. 38 of 2022 titled *Asset Care and Reconstruction Enterprise Limited vs. Deepak Luthra and Another***, Mr. Chirag Gaur, Advocate, was appointed as Receiver with directions to take possession of the subject unit. Pursuant to the said order, the Receiver has taken possession of the unit, with instructions to hand over the same to the applicant bank, namely Indiabulls Housing Finance Limited (IHFL).
18. In light of the fact that possession of the subject unit has already been taken over by the court-appointed Receiver, the reliefs sought by the complainant-promoter have become infructuous. Accordingly, the present complaint stands dismissed.
19. File be consigned to the registry.

Dated: 02.07.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram