

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

Complaint no. : 4976 of 2024
Date of filing: 07.10.2024
Date of decision : 12.08.2025

Sunil Kumar

R/o: - 421, 2nd floor, tower-IV, Naval Technical
Officers CGHS Ltd., Plot No. 3A, Sector-22, Dwarka,
New Delhi-110077

Complainant

Versus

M/s Virali Properties Ltd.

Regd. Office At: Office no. 202, 2nd floor, A-18,
Rama House, Middle Circle, Connaught Place, New
Delhi

M/s Athena Infrastructure Limited

Regd. Office At: Office no. 202, 2nd floor, A-18,
Rama House, Middle Circle, Connaught Place, New
Delhi

M/s Enigma Residents Welfare Association

Address: D-124, Sector 110, Dwarka Expressway,
Gurugram, Haryana-122017

Respondents

CORAM:

Arun Kumar
Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Shri. Pawan Kumar (Advocate)
Shri. Rahul Yadav (Advocate)

**Complainant
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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	Enigma, Sector-110, Gurgaon
2.	Project type	Group housing project
3.	Unit no.	D-091, 9 th floor, Tower D admeasuring 3400 sq. ft. [pg. 34 of complaint]
4.	BBA with original allottee	21.12.2012 [pg. 96 of complaint]
5.	Agreement to sell between original allottee & complainant	02.09.2013 [pg. 90 of complaint]
6.	Possession clause	<i>As per Clause 21</i> <i>The developer shall complete the construction of the said building/unit within a period of 3 years with a 3 months grace period from the date of execution of BBA</i>
7.	Due date of possession	21.03.2016
8.	Total sale consideration	₹2,00,65,000/- [pg. 35 of complaint]
9.	Amount paid by the complainants	₹2,00,65,000/- [pg. 35 of complaint]
10.	Occupation certificate	06.04.2018 [pg. 146 of complaint]
11.	Offer of possession	11.03.2019 [pg. 122 of complaint]
12.	Possession letter	13.12.2019 [pg. 121 of complaint]
13.	CD	12.12.2019 [Pg. 31 of complaint]

14.	Settlement agreement with R2	06.09.2021 [pg. 42 of reply]
-----	------------------------------	---------------------------------

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. The Complainant is owner of Flat No.091, on 9th Floor, in Tower -D, in the project Indiabulls Enigma, Sector-110, Village Pawala Khusrupur, Gurugram, Haryana by virtue of Conveyance Deed registered at the office of Sub-Registrar, Kadipur, Gurugram vide vasika No.10872 dated 12.12.2019, executed by respondents No.1 & 2 in favour of complainant along-with undivided & impartible proportionate share in the land under the said Tower/Building in which the said apartment is situated together with right to use all the common area, facilities and amenities within the said Tower /Building and common areas, facilities & amenities within the said complex.
 - b. That, as per the clause-V of para no.10 of the conveyance deed, the respondents no.1 & 2 undertook that till the said complex is handed over to the association of the apartment owners, the vendor (respondents no.1 & 2) or any maintenance agency appointed by the vendor (respondents No.1 & 2) shall be solely responsible for providing uninterrupted maintenance service to the said complex.
 - c. That, now the respondents no.1 & 2 in utter contravention of their own promise are adamant to handover over the charge of the maintenance to the respondent no.3 without completing the said project in all aspects and when complainant and other inhabitants of the project came to know about this fact that the respondents no.1 & 2 are going to handover the charge of the maintenance etc. even without completing the deficiency from the project to the respondent no.3.

- d. The aforesaid deficiencies were conveyed to the respondents No.1 & 2 with a request not to handover the charge of the maintenance to the respondent No.3 until and unless the respondents No.1 & 2 remove the said deficiencies. For kind perusal of this Hon'ble Court, the deficiency as averred in this paragraph have been shown in the form of photographs and the VIDEO in the Pen-Drive.
- e. From the aforesaid submissions, it is clear as crystal that the aforesaid project is still not ready for the handover to the respondent No.3, who is alleged to be the RWA of the said project and in case, the respondents No.1 & 2 succeed in handing over the charge of the building to the respondent No.3 in that eventuality, the respondent No.3 shall not remove and rectify the aforesaid deficiencies, as stated above in para No.5 of the complaint.
- f. That, when Complainant along-with other inhabitants of the said building started raising their voice not to handover the charge of the maintenance etc. to the respondent No.3, then the respondents in collusion with each other started threatening/intimidating the Complainant as well as other inhabitants criminally with the following threats.
- g. The said threatening letters/demands/emails were duly replied by the Complainant to the respondents stating that they were ready and willing and are still ready and willing to pay the dues, if any, to the respondents at once subject to remove the deficiencies as stated in para No.5 of the complaint but no reply has yet been received by the Complainant from the respondents.
- h. That, it is not out of place to mention here that the respondents illegally and unlawfully have withdrawn the Maintenance Service of the



Complainant in the year 2021 without assigning any reasons and despite this fact, the Complainant has regularly been paying the Maintenance charges to the respondent No.3.

- i. That, it is not out of place to mention here that the respondents have charged an amount of Rs.6,00,000/- (Rupees Six Lakhs) from the Complainant on account of Parking, which is impressible in the eyes of law because the respondents cannot charge the parking charges in terms of the law down by the Hon'ble Supreme Court as well as various Hon'ble High Court in catena of cases.
- j. That, when respondents started demanding the CAM from the Complainant, then the Complainant replied and requested to the respondents that, for the month of June, 2024, the Complainant would pay 20% of the Maintenance/CAM charges on account of POOR SERVICES & MAINTENANCE Standards rendered by SORIL no where commensurate with the Rs.3.50/- per Sq. ft., being charged. The Complainant would continue to do so till he sees a marked improvement in quality and standard to services being rendered commensurate with the money being charged.
- k. That, in order to make their desires tangible and to harass the Complainant unnecessarily, the respondents have withdrawn the Basic Amenities Services of the Complainant and when respondents have withdrawn the Basic Amenities Services of the Complainant, then the Complainant wrote an email, showing his protest stating that:-
- l. The respondents are clever, shrewd and cunning type of persons and in order to make their desires they can go to any extent and now the respondents No.1 & 2 are hell bent upon to handover the charge of the building to the respondent No.3 without clearing/removing the



deficiencies, in which a huge amount in Crores of rupees is likely to be incurred and even has disconnected the Basic Amenities Services of the Complainant illegally and unlawfully. However, this act of the respondents is out and out illegal, unlawful and against the settled principal of law, which is not sustainable in the eyes of law and in case, the respondents No.1 & 2 succeed in achieving their nefarious designs & ulterior oblique motive in handing over the charge of the maintenance etc. to the respondent No.3 without clearing /removing the deficiencies, in that eventuality, the Complainant shall suffer an irreparable loss and injury, which cannot be compensated in terms of money.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Restrain the respondents No.1 & 2, their agents, attorneys, administrators, successors, assignees, or any other person acting for and on behalf of respondents No.1 & 2 from handing over the charge of the maintenance etc. of the said project, named, Indiabulls Enigma-110, to the respondent No.3 until and unless the respondents No.1 & 2 clear /remove the deficiencies, fully detailed and described in para No.4 of the plaint, in any manner whatsoever may kindly be passed in favour of the plaintiff and against the respondents.
 - b. Direct the respondents to restore the basic amenities services of the plaintiff in respect of his unit i.e., flat no. D-091, Indiabulls Enigma, Sector-110, Gurugram, Haryana with immediate effect.
 - c. Direct the respondents to restore the maintenance service of the complainant with immediate effect.
 - d. Direct the respondents to refund the amount of Rs.6,00,000/- taken by the respondents on account of parking.

e. Pass an order to direct the respondent to pay an amount of Rs.1,00,000/- to the complainant as cost of the present litigation.

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) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:

- a. That the present complaint is devoid of any merits and has been preferred with the sole motive to harass the answering Respondents. 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 Answering Respondent. That the present complaint is baseless and flagrant abuse of process of law to harass the Respondent No.1.
- b. That it is submitted that the allegations made in the instant complaint against the Respondent No.1 & Respondent No.2 are wrong, incorrect and baseless in the fact and law. The Answering Respondents 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 & Respondent No.2 and to defame the reputation of the Answering Respondents in the Real Estate sector, hence the same is liable to be dismissed in limini.
- c. That it is submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact and law as such denied in toto. Nothing stated in the said complaint shall be deemed to be admitted by the Respondents No.1 & 2 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 Answering Respondents, hence the same is liable to be dismissed.
- d. That the instant complaint filed by the Complainant against the Answering Respondents is outside the purview of this Hon'ble Authority as the Complainant through the present Complaint is disputing the Maintenance services which does not falls under the ambit of this Hon'ble Authority as such the said claim qua the Respondent No.1 & 2 is not maintainable.
- e. That the Complainant by way of the present complaint has alleged deficiency on part of Respondent No.1 & 2 which is wrong and denied. It is submitted that no deficiency is done by Respondent No.1 & 2 as alleged as such the contentions raised by the Complainant in the present complaint are liable to be rejected.
- f. That the Respondent No.1 offered possession of the Unit booked by the Complainant after receipt of Occupational Certificate for the Tower wherein the Complainants got booked their unit. It is submitted that the Occupational Certificate was issued the Director General, Town and Country Planning Department, Haryana by the competent authority i.e. after conducting inspection. As such the averments raised by Complainant w.r.t to non-completion of project is wrong and denied.
- g. That any dispute/ grievance of the Complainants if any with respect to Occupational certificate/ non-completion of project is to be taken up before the competent Authority only and not before the Hon'ble Authority. That it pertinent to mention herein that the Complainant preferred a complaint before this Authority seeking delay possession charges for the period of delay in offering possession, and this Hon'ble

Authority awarded delay possession to the Complainant vide order dated 07.12.2018.

- h. That it is an admitted fact that the possession of the unit was offered to the Complainant on 11.03.2019 (page 122 of the Complaint). Subsequently, only after being satisfied with the Project in totality that the Complainant took the physical handover of the Subject unit by way of a registered Conveyance Deed dated 12.12.2019 vide vasika no. 10872.
- i. That the Complainant has not come before this Hon'ble Authority with clean hands and have suppressed vital and material facts from this Hon'ble Authority. The Complainant has not disclosed the material fact that a Settlement Agreement dated 06.09.2021 got entered between the Complainant and Respondent No.1 wherein all the disputes and grievance of the Complainant qua the Respondent No.1 were settled. That the present complaint is barred by limitation. It is own admission of the Complainant that possession was offered to the complainant on 11.03.2019 and the present complaint is filed by the Complainant after almost 5 years of offer of possession as such the same is barred by limitation.
- j. This Hon'ble Authority has already adjudicated various complaints filed after limitation period and have also dismissed such complaints being barred by Limitations. The Answering Respondent crave leave of this Hon'ble Authority to rely on order dated 04.09.2024 in complaint no. 6744 of 2022 titled Mrs. Neeru Bhatia Vs. M/s. Emaar MGF Land Ltd. Decided by this Hon'ble Authority on similar facts and has dismissed the Complaint being barred y limitation.

- k. That it is worth to highlight that conveyance Deed was also executed by the Complainant on 12.12.2019 and the present complaint is filed by the Complaint on 04.10.2024 i.e. after more than 4.5 years from taking possession of the unit. A such the present complaint is liable to be dismissed for being barred by limitation.
- l. That the Complainant is a habitual litigant who simultaneous to filling of the present complaint before this Hon'ble Authority also filed 2 complaints before the District Court Gurugram bearing no. CM 659/2024 & CS/3404/2024 raising same allegations. However, the Complainant by recording statement got the same withdrawn from the District Court Gurugram whereby confirming that he do not intent to proceed with the said Complaints. It is stated that the Complainants by way of present Complaint wishes to take advantage of the provisions of the RERA, which have been propagated for the benefit of Customers who have suffered wrongful losses in the Real Estate Sector, however the present complaint is mere an afterthought with purpose to harass the Answering Respondent.
- m. 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 No.1 & Respondent No.2.
5. 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.

E. Jurisdiction of the authority

6. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

8. 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) The promoter shall-

(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 of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I. Restrain the respondents No.1 & 2, their agents, attorneys, administrators, successors, assignees, or any other person acting for and on behalf of respondents No.1 & 2 from handing over the charge of the maintenance etc. of the said project, named, Indiabulls Enigma-110, to the respondent No.3 until and unless the

respondents No.1 & 2 clear /remove the deficiencies, fully detailed and described in para No.4 of the plaint, in any manner whatsoever may kindly be passed in favour of the plaintiff and against the respondents.

F.II. Direct the respondents to restore the basic amenities services of the plaintiff in respect of his unit i.e., flat no. D-091, Indiabulls Enigma, Sector-110, Gurugram, Haryana with immediate effect.

F.III. Direct the respondents to restore the maintenance service of the complainant with immediate effect.

F.IV. Direct the respondents to refund the amount of Rs.6,00,000/- taken by the respondents on account of parking.

10. In the present complaint, the original allottee booked the unit bearing no. D-091 9th floor, tower D in the year 2012. The buyer's agreement was executed in this regard on 21.12.2012. As per clause 21 of the said agreement the due date of possession comes out to be 21.03.2016. The said unit was endorsed in favour of the complainant on 02.09.2013. The respondent subsequently obtained the Occupation Certificate from the competent authority on 06.04.2018 and offered possession of the newly allotted unit to the complainant on 11.03.2019. thereafter the conveyance deed was executed in favour of the complainant on 12.12.2019.
11. The Authority observes that the complainant has already approached the Authority seeking delay possession charges and the relief of quashing the arbitrary demand towards car parking. The Authority on 07.12.2018 has already adjudicated upon the merits of the case and accordingly awarded delay possession charges in favour of the complainant payable @10.75% from due date of possession i.e., 21.06.2016 to 07.12.2018. In view of the above, the present complainant is liable to be dismissed being barred on the principle of *res-judicata*.
12. The Authority further observes that a settlement agreement dated 06.09.2021 has been placed on record by the respondent wherein in terms of clause A(1) it has been stated as under:

"That in respect of the subject property against the amount of Rs. 59,55,679/- awarded by the learned authority to the first party the company has a goodwill and gesture has offered to pay an amount of



Rs. 33,10,743/- towards full and final settlement amount against the subject unit and in turn there of the first party agrees to accept the said offer of the company and to forgo the remaining amount of delay interest penalty against subject property towards full and final settlement of this entire claims, disputes, compensation, issues, grievances, costs, damages, etc of the first party from the company who are the subject property and nothing shall remain payable by either of the parties post giving effect to the present settlement"

13. In view of the above, the complainant is estopped from filing a fresh complaint after having settled all claims with the respondent.

Accordingly, the complaint stands dismissed.

File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 12.08.2025