

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Complaint received on : 26.03.2024****Order pronounced on : 23.12.2025****Kanta Jaglan****R/o: A-802, Plot No.98, Sector-54, Gurgaon, Haryana-125001****Complainant****Versus****M/s Athena Infrastructure Limited****Regd. office: 202, 2nd Floor, A-18, Rama House,
Middle Circle, Cannaught Place, New Delhi-110005****Respondent****CORAM:****Shri Arun Kumar****Shri Phool Singh Saini****Chairman
Member****APPEARANCE:****Shri Pawan Kumar (Advocate)****Shri Rahul Yadav (Advocate)****Complainant
Respondent****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:

S. No.	Heads	Information
1.	Project name and location	"Indiabulls Enigma", Sector-110, Gurugram
2.	Project area	15.6 acres
3.	Nature of the project	Residential complex
4.	DTCP license no. and validity status	64 of 2012 dated 20.06.2012 valid upto 19.06.2020
5.	Name of licensee	Varali Properties
6.	RERA Registered/ not registered	346 of 2017 dated 08.11.2017 valid up to 31.08.2018
7.	Unit no.	B081, 08 th Floor, Tower/Block- B [Page no. 35 of complaint]
8.	Unit measuring	2605.54 sq. ft. [Page no. 35 of complaint]
9.	Date of execution of flat buyer agreement	31.10.2011 [Page no. 31 of the complaint]
10.	Possession Clause	<i>21. The Developer shall endeavour 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 the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction/development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit. In the event of his/her failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/ cost and any other levies on account of</i>

		<p><i>the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the Buyer has not taken possession of the Unit or has not been enjoying benefit of the same. The Buyer in such an eventuality shall also be liable to pay the holding charges@ Rs. five per sq. ft (of the super area) per month to the Developer, from the date of expiry of said thirty days till the time possession is actually taken over by the Buyer.</i></p> <p>[Page 39 of complaint]</p>
11.	Due date of delivery of possession	<p>01.05.2015</p> <p>[Calculated 3 years from date of execution of agreement i.e., 31.10.2011 Also, 6 Month grace period is allowed being unqualified.</p> <p>[Note: Inadvertently mentioned as 15.09.2017 vide proceedings dated 23.12.2025]</p>
12.	Sales consideration	<p>Rs.1,88,31,000/-</p> <p>[as per applicant ledger dated 24.12.2015 at page no. 58 of complaint]</p>
13.	Total amount paid by the complainant	<p>Rs.1,83,30,991/-</p> <p>[as per SOA dated 24.12.2015 at page no. 60 of complaint]</p>
14.	Occupation Certificate	<p>12.10.2021</p> <p>[Page no. 42 of the reply]</p>
15.	Offer of possession	<p>13.05.2022</p> <p>[Page no. 33 of the reply]</p>
16.	Physical possession handed over dated	<p>16.10.2023</p> <p>[Page no. 61 of the complaint]</p>

B. Facts of the complaint:

3. The complainant has made the following submissions:

- The complainant is allottee of a residential apartment in the project "INDIA BULLS ENIGMA" located at Sector-110, Gurugram developed by the respondent. As per the agreement, the respondent promised to deliver

possession of the said unit to the complainants within three years, with extra 6 months grace period from the date of the execution of flat buyer agreement. The flat buyer agreement was executed on 31st Oct 2011 therefore, the possession of the booked unit shall be delivered to the complainants by 30th march 2014. However, the respondent miserably failed to complete the unit & deliver the possession within the promised time period. The respondent herein has arbitrarily offered the possession of the booked unit on 16th oct 2023 to the husband of the complainant and the same has not been acknowledged by the complainant till date. Aggrieved, the complainants have filed the present complaint seeking appropriate directions by this Hon'ble Authority to the respondent to deliver the immediate peaceful possession of the apartment complete in all aspects and as per the agreement along with compensation for delay in delivery of possession in the form of interest.

- b. The respondent promoted the project with aggressive and extensive print and electronic media advertisements and through agents and sale representatives. In 2010-11, the complainants were looking for a flat and were approached by the representatives/ agents of the respondent and were informed that the respondent is coming up with aforesaid project. The representatives made various tall claims and misrepresented various facts about the project. The representatives informed that the respondent had obtained all the requisite sanctions and approvals for starting constructions at the project site and the construction will be started soon and the project will be delivered within the prescribed time period. The complainants were impressed by the highlights of the project and representations made by the agents of the respondent and decided to book a flat in the project.

- c. The complainants made an application for allotment of a flat in the said project in the year 2011 and paid the initial booking amount of Rs. 5,00,000/-. At the time of the booking, the complainants opted for construction linked plan for payment of total consideration of the flat. Pursuant to receiving the booking application and booking amount, the respondent entered into flat buyer agreement dated 31.10.2011 to the complainants and allotted the unit to them in the project.
- d. As per the clause 21 of the flat buyer agreement dated 31.10.2011, the respondent promised to complete the construction of the apartment within 3 years from the date of signing of the flat buyer's agreement with 6 months grace period. The respondent miserably failed to hand over possession within the prescribed date of 30.03.2014 with 6 months grace period.
- e. The clause 22 of the agreement stipulated that in case of delay in possession by the respondent, the respondent shall a delay compensation @Rs. 5/sq. ft. of super area per month of delay. Therefore, when the respondent failed to hand over possession by the stipulated period of time the respondent made themselves liable for paying delay penalty along with adequate compensation. The delay penalty levied upon the buyers for delay in making payment is way more than the delay penalty charged upon the developer/respondent also, the builder has levied various arbitrary charges on the buyers. Therefore, the delay charges shall be paid to the complainant as per various rulings/judgements of the Authority and Hon'ble Supreme Court. The respondent herein has arbitrarily offered the possession of the booked unit on 16th oct 2023 to the husband of the complainant and the same has not been acknowledged by the complainant till date. Therefore, the delay compensation is

- recurring since 28.10.2013 until the unit is handed over to the complainant.
- f. The actual date of possession as per the agreement was 30.03.2014, the respondent had demanded and the complainant has paid a total sum of Rs. 1,83,30,991/- for the said flat which is more than total sale consideration of the booked flat. There is an inordinate and unexplained delay of around 8 years in delivery of possession from scheduled date of possession including grace period. Also, the respondent has failed to compensate the complainant for such long delay of 8 years, the complainants are left with no other option but to approach this Hon'ble Authority by way of the present complaint seeking the intervention of this Hon'ble Authority for passing appropriate direction to the respondent to complete the apartment and deliver the immediate peaceful possession of the apartment complete in all aspects and as per the specification mentioned in the agreement along with compensation for delay in delivery of possession in the form of interest.
- g. That since booking of the unit till today, the respondent never informed the complainant about any *force majeure* or any other circumstances which are beyond their reasonable control, which have caused the delay in the completion of the project within the time prescribed in the Agreement. It is clear that the delay in the construction of the project is intentional and solely due to the deliberate negligence and deficiency on the part of respondent. Further, the delay of 8 years in handing over possession is no way reasonable and no reason can be attributed to such delay except wilful and deliberate negligence and ignorance of respondent.
- h. Once the respondent has entered into an agreement with the complainants and promised to deliver possession latest by 30.03.2014,

the respondent was bound to fulfil its contractual obligation and deliver possession of the unit within the time prescribed in the allotment letter. However, the respondent has miserably failed to complete the project and offer legal possession of the booked unit even after 8 years from promised date. It clearly shows that there is deficiency in service on the part of the respondent. The Hon'ble Supreme Court of India in Lucknow Development Authority v. M.K. Gupta [1994 AIR 787, 1994 SCC (1) 243] has held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service". Also, the inordinate delay in handing over possession of the booked unit amounts to deficiency of service.

- i. That no other similar complaint is pending between the same parties before any Court/Tribunal/Authorities in India.

C. Relief sought by the complainants:

4. The complainant has sought the following relief(s):
 - i. Direct the respondent to provide an immediate peaceful possession of the booked unit after completing it in all aspects along with the delay penalty/interest from the respective date of payments till the date of actual payment for the period of delay.
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:

6. The respondent has made the following submissions:
 - i. The complainant booked a unit bearing number 081, situated on the 8th floor in Tower-B in the project named as India Bulls Enigma. Pursuant to the provisional allotment, the Complainants executed a builder buyer's agreement (BBA) dated 31.10.2011 with the

answering respondent post understanding the terms & conditions of the said agreement. That as per the agreed terms of the builder buyer's agreement the complainants were aware of the fact that the answering respondent shall endeavor to complete the construction of the said building/unit" within the stipulated time as mentioned in the said agreement.

- ii. As per the terms of the agreement, it was specifically agreed that in the eventuality of any dispute, with respect to the subject unit shall be adjudicated through the Arbitration mechanism as detailed therein. The respondent craves leave of this Hon'ble Authority to refer and rely upon the clause no. 49 of the duly executed agreement.
- iii. The claim of the complainant is that possession was offered to them on 16.10.2023 however the complainant has with malafide intent not placed on record letter dated 13.05.2022 which was sent to the complainant by the respondent offering possession of the unit and vide the said letter also informed the complainant of the possession outstanding dues to be cleared by the complaint.
- iv. The complainant themselves is at fault in taking the physical possession of their unit post offer of possession on 13.05.2022. That the complainant is at violation of the provisions of the Act especially 19(10) of the Act, which obligated the complainant to take the physical possession of the unit post receiving of occupational certificate.
- v. Despite offering possession on 13.05.2022 the complainant failed to take the physical possession of their unit and delayed the same despite repeated request and reminder sent by the Respondent vide email(s) dated 08.06.2023, 09.06.2023, 24.07.2023, 22.09.2023. That the complainants may equally be held liable and accountable for violation

of the provisions of the RERA ACT and equally liable to compensate to the respondent.

- vi. The respondent post completing construction of the tower wherein unit was booked by the complainant submitted application dated 19.04.2021 before the Director Town and country Planning Department, Haryana for grant of occupational certificate, and the same was granted/ approved by the DTCP, Haryana on 12.10.2021.
- vii. That till date of filling of the present complaint there has been no communication on part of the complainant ever disputing the issues as raised in the present complaint. That it is a clear case of afterthought wherein the complainant post accepting the unit and credit penalty given as per the agreed terms of the BBA is now trying to extort more money from the respondent taking benefits of provisions of the RERA ACT.
- viii. The following circumstances also contributed to the delay in timely completion of the Project: Commonwealth Games were organized in Delhi in October 2010. Due to this mega event, construction of several big projects including the construction of Commonwealth Games village took place in 2009 and onwards in Delhi and NCR region. This led to an extreme shortage of labour in the NCR region as most of the labour force got employed in said projects required for the Commonwealth Games.
- ix. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a sudden shortage of labour/workforce in the real estate market as the available labour preferred to return to their respective states due to guaranteed employment by the Central /State Government under

NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region.

- x. Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization. During Demonetization, the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on the site of magnitude of the project in question is Rs. 3-4 lakhs approx. per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour.
- xi. In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of Respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal.
- xii. Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
- xiii. Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many

weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

- xiv. In view of the outbreak of COVID-19, the Government of India took various precautionary and preventive steps and issued various advisories, time to time, to curtail the spread of COVID 19 and declared a complete lockdown in India, commencing from 24th March, 2020 midnight thereby imposing several restrictions mainly non-supply of non-essential services during the lockdown period, due to which all the Construction work got badly effected across the country in compliance to the lockdown notification. Additionally, the spread of COVID 19 was even declared a 'Pandemic 'by World Health Organization on March 11, 2020, and COVID-19 got classified as a "Force Majeure" event, considering it a case of natural calamity i.e. circumstances to be beyond the human control, and being a Force Majeure period.
- xv. The project of the respondent i.e., Indiabulls Enigma, which is being developed in an area of around 19.856 acres of land, in which the complainant has invested its money is an on-going project and is registered under The Real Estate (Regulation and Development) Act, 2016. The respondent has already completed 95% construction of the alleged tower wherein the unit was booked by the complainant. The respondent is in process of obtaining occupational certificate for the same and shall handover the possession of units to its respective buyers post grant of occupational certificate from the concerned Authority.
- xvi. The complainant accepted the delay of the subject unit and took physical handover of the same on 16.10.2023 and not raised a single objection with respect to delay and filed the present complaint before

the Hon'ble Authority seeking delay interest which is clear misuse of the provisions of the RERA Act which were introduced for safeguarding the rights of the genuine buyer(s) who have invested their hard money for dream home. However, the motive of the Complainant behind purchasing the subject unit was purely investment purpose and to gain monetary profits out of it. 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.

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.

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

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 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.

F. Findings on the objections raised by the respondent:**F.1 Objections regarding Force Majeure.**

12. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Environmental Pollution Prevention & Control Authority, NGT, and orders of other courts/authorities to curb the pollution in NCR. It further requested that the said period be excluded while calculating due date for handing over of possession. Further, in the instant complaint, as per clause 21 of agreement dated 31.10.2011, the due date of handing over of possession was provided as 01.05.2015 (grace period of 6 months is allowed being unconditional).
13. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 01.05.2015. Further, the time taken in governmental bans/guidelines cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and

are for very shorter period of time. The promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to pay to pay delayed possession interest at prescribed rate of interest.

14. The complainant was allotted a unit in the project of respondent "Indiabulls Enigma" in at Sector 110, Gurgaon. The builder buyer agreement was executed between the parties on 31.10.2011 for a total sum of Rs. 1,88,31,000/- and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs. 1,83,30,991/-.
15. As per documents available on record, the respondent has offered the possession of the allotted unit on 13.05.2022 after obtaining occupation certificate from competent authority on 12.10.2021. The complainant took a plea that offer of possession was to be made in made in 2015, however, the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.
16. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is continuing with the project and seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
20. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 21 of the agreement dated 31.10.2011, and the due date comes out as 01.05.2015. Occupation certificate was granted by the concerned authority on 12.10.2021 and

thereafter, the possession of the subject flat was offered to the complainants on 13.05.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the agreement dated 31.10.2011 to hand over the physical possession within the stipulated period.

21. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 12.10.2021. The respondent offered the possession of the unit in question to the complainant only on 13.05.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.
22. In view of the above, the complainants are entitled for delayed possession at the prescribed rate of interest @ 10.80% per annum from the due date of possession till offer of possession i.e., plus two months after obtaining occupation certificate or till actual handing over of possession, whichever is earlier.

H. Directions issued by the Authority:

23. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount of Rs.1,83,30,991/- at the prescribed rate of interest @ 10.80% per annum from the due date of possession i.e., 01.05.2015 till offer of possession i.e., 13.05.2022 plus two months after obtaining occupation certificate or till actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to the Registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025