

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

Complaint no. : 3884 of 2024
Date of Decision: 27.01.2026

1. Rashmi Kaur Dadyalla
2. Snehpal Singh Dadyalla
Both R/o: LGF-6/34, Vikram Vihar,
Lajpat Nagar-IV, new Delhi-110024.

Complainants

Versus

1. M/s Athena Infrastructure Limited.
Office At: 202, Floor-2nd, A-18, Rama
House, Middle Circle, Connaught Place,
new Delhi-110001.

**Respondent
no.1**

2. Samman Capitals Limited.
(Formerly known as India Bulls Housing
Finance Limited)
Office At: A-34, 2nd and 3rd Floor, Lajpat
Nagar-II, Lajpat Nagar, South Delhi, New
Delhi-110024.

**Respondent
no.2**

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

HARERA
GURUGRAM

**Chairman
Member**

APPEARANCE:

Sh. Awanish Sinha
Sh. Rahul Yadav

Advocate for the complainants
Advocate for the respondent
no. 1

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 complainant, date of proposed handing over the possession, 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, Gurugram.
3.	Project area	19.856 acres
4.	Nature of project	Group Housing
5.	RERA registered	Registered Vide registration no. 357 of 2017 dated-20.11.2017
6.	DTCP License	License no. 213 of 2007 dated 05.09.2007 License no. 10 of 2011 dated 29.01.2011 License no. 64 of 2012 dated 20.06.2012.
7.	Allotment letter	Not on record

8.	Unit no.	H001, Floor-G, Tower/Block No.-H (As per the Flat Buyer's Agreement on record)
9.	Unit area	3880 sq.ft. [Super area] 2964.73 sq.ft. [Covered area] Alongwith 2 covered car parking spaces (As per the Flat Buyer's Agreement on record)
10.	Flat Buyer Agreement	30.10.2015 (As provided to the Authority during the proceedings)
11.	Tri-partite agreement	30.10.2015 (As on page no. 47 of complaint)
12.	Clause for payment of Pre-EMIs	Clause 3 <i>It is agreed that till the commencement of EMI the borrower shall pay Pre-EMI, which is the simple interest on the loan amount disbursed calculated at the rate of interest as mentioned in the respective loan agreement of the Borrower, however, 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 during the period be referred to as the "liability Period" i.e., till the date of issuance of Offer for Possession by the Builder (and the Liability be referred to as "Assumed Liability"). The</i>



		<p>assumption of liability by the Builder in no manner whatsoever releases, relinquishes and/or reduces the liability of the Borrower and the same shall not be affected in any manner on account of any difference and/or dispute between the Borrower and the Builder under the arrangement between them and it is agreed that the repayment liability to IHFL is joint and several by and between the Borrower and the Builder as per the terms contained herein.</p> <p><i>[Emphasis supplied]</i> (As on page no. 50 of complaint)</p>
13.	Loan sanction letter [Of an amount of Rs.2,24,68,650/-]	20.10.2015
14.	Possession clause	<p>Clause 21</p> <p>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 Buyer's Agreement subject to timely payment of the Buyer(S) of Total Sale Price payable according to the payment Plan applicable to him or as demanded by the Developer.</p> <p><i>[Emphasis supplied]</i> (As per Flat Buyer's Agreement placed on record)</p>
15.	Due date of possession	30.04.2019

		[Calculated 3 years from the date of execution of the agreement plus 6 months grace period]
16.	Basic sales consideration	2,81,48,000/- As per the Flat Buyer's Agreement on record)
17.	Amount paid by the complainants	Rs.31,00,000/- paid by the complainants themselves and Rs.2,24,68,650 /- was disbursed by the bank.
18.	Payment plan	<u>Subvention scheme (10:75:15)</u> <u>Payment plan Till Possession</u> <ol style="list-style-type: none"> 1. On Booking-5 Lakh 2. 1st installment within 30 days of Advance towards Booking-10% of Sale Price + 15% of EDC/IDC 3. 2nd installment on Loan Approval within 0 days - 75% of Sale price + 85% 4. 3rd installment on Offer of Possession-15% of sale price + 100% Maintenance Security + 100% Club.
19.	Cancellation letter	03.12.2020 (As on page no. 45 of reply)
20.	Occupation certificate	17.09.2018 (As on page no. 43 of reply)
21.	Offer of possession	31.12.2018 (As on page no. 58 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. That as per the report available on internet of an Independent Auditors, respondent no.1 is hundred percent (100%) subsidiary of Indiabulls Real Estate Limited. Accordingly, the respondent no.1 and respondent no.2 are part of the Indiabulls group of companies.
 - II. That respondent no.1 is owner of the land situated in Sector 110, Gurgaon, Haryana, on which a housing project in the name and style of "Indiabulls Enigma" is being developed by it. The project had 10 no. of towers and in all 472 number of residential units.
 - III. The complainant had, based on the aforementioned advertisements, purchased a five-bedroom residential apartment admeasuring 3880 sq. ft of super area with two covered basement parking space in the project vide application dated 14.10.2015 at the basic selling price of Rs.2,81,48,000/-. The complainants had made payment of Rs.1,00,000/, Rs.25,00,000/- and Rs.5,00,000/- vide cheques to the respondent no.1. Accordingly, respondent no.1 had allotted a residential unit bearing no. H001, Block H, Ground Floor vide Allotment Letter dated 19.10.2023.
 - IV. That the complainants and respondent no.1 entered into Flat Buyer Agreement dated 30.10.2015 for sale of the residential unit at the basic selling price of Rs.7,254.64 per sq. ft., amounting to Rs.2,81,48,000/- only. In addition to the basic selling price, the complainants were further required to pay security, club and other charges to respondent no.1.
 - V. That the complainants, approached and requested the respondent no.2 for financing the balance amount of Rs.2,24,68,650/- to which

respondent no.2 had agreed. Accordingly, the complainant submitted the Loan Application Form with respondent no.2.

- VI. Based on the application, respondent no.2 issued a Loan sanction letter dated 20.10.2015, thereby sanctioning the loan amount of Rs.2,24,68,650/- wherein the complainants were required to pay EMI of Rs.2,91,971/- for a period of 120 months or 12 years. Subsequently, respondent no.1, respondent no.2 and the complainants entered into Tripartite Agreement dated 30.10.2015.
- VII. That the respondent no. 1 was to pay Pre-EMIs of the flats till completion and handing over of the said flat to the complainant. It was also decided in the Agreement to Sale that the exclusive physical vacant possession of the Flat was to be handed over by respondent no.1 to the complainants within 42 months from the date of the Allotment Letter.
- VIII. Clause 3 of the Tripartite Agreement provides for "Liability Period" and the same is extracted hereunder for ready reference:

The housing loan advanced to the Borrower by IHFL shall be repayable by the Borrower by way of Equated Monthly Installment (EMI) shall be the first day of the month following the month in which the disbursement of the loan will have been completed and consequently the due date of payment of first EMI shall in such case be the last day of the said following month.

*It is agreed that till the commencement of EMI, the Borrower shall pay Pre-EMI, which is the simple interest on the loan disbursed calculated at the rate of interest as mentioned in the respective loan agreement of the Borrower, however, Borrower has informed IHFL of the scheme of arrangement between the Builder and the Borrower in terms whereof Builder hereby assumes the liability on account of interest payable by the Borrower to IHFL during the period be referred to as the "Liability Period" i.e. **till the date of issuance of Offer for the Possession by the Builder** (and the liability is hereby referred to as "Assumed Liability"). The assumption of liability by the Builder in no manner whatsoever release, relinquishes and /or reduces the liability of the Borrower and that same shall not be affected in any manner on account of any difference and / or dispute between the Borrower and the Builder under the arrangement between them and it is agreed that the repayment liability to IHFL is joint and several by and between the Borrower and the Builder as per the terms and conditions contained herein.*

- IX. That in terms of the aforesaid provisions of the Tripartite Agreement, respondent no.1 paid the pre-EMI amount from November 2015 to November 2018. The respondent no.1 had further assured the complainant, that in case the possession is delayed beyond the assured and expressed timeline of 42 months, then inter alia, they would continue to keep paying the Pre-EMI interest to the respondent no. 2.
- X. That respondent no.1 vide letter dated 30.10.2018 issued an "Invoice" for an amount of Rs.59,72,137/- .Subsequently, respondent no. 2 issued letter dated 31.10.2018, offering possession of the Flat no.H001 despite of the fact that the letter should have been issued by the respondent no.1, being developers and builders of the project. Vide the said letter, respondent no.2 demanded payment of Rs.69,78,095/- by way of an amount due and payable as per Schedule I annexed to the said letter. However, this was way above the amount raised vide invoice dated 30.10.2018 by respondent no.1.
- XI. That the project is far from completion and there was no way that respondents could have handed over the flat to the complainants. The letters had been issued solely with the intent to dubiously and unfairly end the term of "Assumed Liability Period" and commence / initiate the liability of the complainants to pay the EMI on the loan facility and unfairly extract money from complainants. Considering the incomplete status of the project, the complainant decided not to make any further payment to respondent no.1. As is evident, both the respondents are related and have acted in collusion with one another to deceive, deceit and cheat the complainants of their hard earned money.

- XII. That the respondents with the intent to perpetrate the fraud, coerced and threatened the complainants to issue signed undated cheques, in favor of respondent no.2, without any amounts mentioned on it. This was done deliberately and with fraudulent intent by the respondents, under planned deceit and collusion / connivance. Further, in the event complainants failed to pay the said amount of the pre-EMI to respondent no.2, then the respondent no.2 would encash the "signed undated cheques without any amount mentioned on it by filling the amount and date as per its convenience and presenting the same to the concerned branch of the bank, without duly informing the complainants. This is illegal and there are various judicial dicta in respect of the same.
- XIII. That the respondent no.1, after making initial payment of interest stopped making payment of the same, even though the project was far from completion. Accordingly, the complainant was constrained to make payment of EMI of over Rs.2,00,000/- to the respondent no.2. The EMI was subsequently increased to Rs.3,00,743/- by the respondent no.2 even though the complainant vehemently protested against such raise. The complainant continued to make payment of the EMI till November 2019. The total payments made by the complainants including the payment of EMI from December 2018 onwards till the year December 2020 paid a sum of Rs.59,98,900/- to the respondent no.2 before December 2019.
- XIV. Further, the complainant had also paid a sum of Rs.2,24,68,650/- to respondent no.1 by way of loan amount in terms of the Tripartite Agreement. Accordingly, the complainants have paid a sum of Rs.2,84,67,550/- to the respondent no.1 till date.

- XV. That in March 2020, the complainant was grounded from his job as pilot from the airline company on account of COVID pandemic and was not receiving his due salary. The complainants were in financial distress and accordingly approached the representative of the respondents for suspension of the payment of the EMI which was blatantly refused by the representatives of respondent no.2. This was done even when the respondent was not in position to hand over the possession of the residential unit to the complainant, notwithstanding the fact that the Letter for Possession had been issued by the respondent no.1.
- XVI. That the complainant subsequently received notice dated 04.03.2020, from the respondent no.2, demanding payment of the outstanding amount of Rs.9,22,709/-. Thereupon, the complainant received notice for "Recall of Loan" dated July 31, 2020 from respondent no.2, inter-alia, demanding:-
- *Recall of loan amount of Rs.2,34,24,046/- (Rupees Two Crore Thirty Four Lakhs Twenty Four Thousand and Forty Six only) (referred as "Amount Due") that had become due and payable on July 31, 2020;*
 - *Pay the outstanding amount within 15 days from the date of notice*
 - *In the event, the Due Amount is not paid by the Complainants within the specified period, then the security under the Tri Partite Agreement shall be stand revoked.*
- XVII. Further, the complainants apprehend that the respondents, without duly informing the complainant have handed over the said allotted residential unit in the project to a third party. The possession of the said residential unit has also been illegally handed over to the third party.
- XVIII. That the residential units were taken under subvention scheme wherein the financing for purchase of flat was to be done by the respondent no. 2 under a loan arrangement. The respondent no. 1 was



- to pay Pre-EMIs of the flats till completion and handing over of the said flat to the complainant. That the exclusive physical vacant possession of the flat was to be handed over by the respondent no.1 to the complainants within 42 months from the date of the Allotment Letter.
- XIX. That from the very beginning, there had been numerous defaults and breaches on the part of the respondents which led to extensive delay in even start of the work. From the very beginning, the respondents had started putting forth one or the other excuses. Despite passage of about 6-10 months from the date of issue of Allotment Letter, there was miniscule progress in the construction of the project.
- XX. Therefore, in view of the delay in handing over the due possession of flat and executing the sale deed of the flat in favour of the complainant, the respondents have committed deficiency in services and therefore, they are liable to refund the amounts paid by the complainant, along with interest thereon.
- XXI. That the respondents no. 1 and 2 are acting maliciously and unfairly together and in concert with each other to deceive and cheat the hard earned money extreme detriment of the complainant and the same amounts to unfair trade practice and deficiency of services.
- XXII. That despite repeated requests made by the complainant, the respondent no. 2 has deliberately till date, not disclosed the account statement related to the loan account of the complainant.
- XXIII. That the respondent no.2 had sent a notice dated 25.03.2021, to the complainants, under the Securitization and Restoration of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitization Act) demanding payment of Rs.2,21,49,870/- that was "disbursed" to the claimants under the Loan A/c No.HHLGRG00244321. In view of



the above, the purchase consideration of the residential unit stands paid. However, the respondent no.1 in connivance with respondent no.2 have not handed over the residential unit to the complainant with explicit intent to cheat and make deceitful gains against the complainants.

- XXIV. That the complainant had filed complaint with the Economic Office Wing, Gurugram, Haryana dated 25.10.2021 against the respondents for initiating Criminal Proceeding on account of perpetration of fraud, cheating, criminal intimidation and breach of trust. The complaint further stated, that the respondents apprehends and has reasons to believe that the residential unit has been handed over to third party, without the due consent / approval of the complainants.
- XXV. That the Economic Offence Wing has not informed the complainants regarding the progress of the investigation made in respect of the complaint filed by the complainant neither has it offered any assurance towards the progress made in the investigation. The complainants have repeatedly met the Economic Office Wing, Gurugram officers but have met with little success. Subsequently, to their utter surprise, **the complainants received a sum of Rs.27,73,076/- in their account from the respondent no.1 on 07.02.2022.** When the complainants approached the Economic Offence Wing, Gurugram Officer, to the utter disgust and dismay, they verbally asked the complainants to accept the aforesaid amount as full and final settlement to the outstanding dispute with the respondents.
- XXVI. That the deficient services rendered by the respondents and unfair trade practices followed by them, have caused enormous losses and



mental harassment to the complainants as well as their family members.

XXVII. That the complainants are also entitled for the refund of money paid by them from respondent no.1 and respondent no.2 along with interest thereon, till the date of realization of the refund amount.

XXVIII. That the complainants have been left at a total mercy of the respondents hoping against the hope that they would be refunded the outstanding amount paid to the respondent no.1 or the residential units shall be handed over to the complainant. However, there is an inordinate delay of more than 7 years. Now having lost all hopes and being totally frustrated by the conduct of the respondents, the complainant has no other option but to seek justice from this Authority and hence the present complaint.

C. Relief sought by the complainants:

4. The complainants are seeking the following relief(s).
 - i. Direct the respondents to pay interest on delayed possession on account of delay in handing over possession of the unit.
 - ii. Direct the respondents to pay an amount of Rs.2,50,000/ as cost of litigation.

D. Reply by the respondent no. 1.

5. The respondent no. 1 has contested the complaint on the following grounds.
 - I. That the present complaint is barred by limitation. Respondent no.1 vide its letter dated 30.10.2018 informed the complainant that the Occupation Certificate for the Tower wherein the unit is located was received by the respondent and offered the possession of the unit.

The present complaint has been filed on 06.08.2024 i.e. after almost 7 years from offer of possession as such the same is barred by limitation.

- II. That the complainant is claiming to have paid a total amount of Rs.2,84,67,550/- towards the sale consideration of the unit and is claiming refund, which is factually incorrect and wrong. The complainant booked the unit under the *Subvention Scheme Payment Plan Till Possession*, wherein further availing a home loan of Rs.2,21,49,870/- from respondent no.2. Further, the complainant only paid an amount of Rs.31,00,000/- on her own contribution towards the sale consideration of the subject unit.
- III. That under the Subvention Scheme, a Tripartite Agreement dated 30.10.2015 was executed between the complainant, respondent no.1 and the respondent no.2. As per clause 3 of the TPA, the Builder assumed the liability of the interest component payable to the financier during the subvention period, relevant para of the Clause 3 is being reproduced hereunder for ready reference:
- "..... It is agreed that till the commencement of EMI the borrower shall pay Pre-EMI. Which is the simple interest on the loan amount disbursed calculated at the rate of interest as mentioned in the respective loan agreement of the Borrower, however, the Borrower has informed IHFL of the scheme of Arrangement between the Borrower and the Builder in terms thereof the Builder hereby assumes the liability on account of interest payable by the Borrower to IHFL during the period be referred to as the "liability period" i.e., till the date of issuance of offer for possession by the Builder..."*
- IV. Accordingly, the respondent no.1 assumed the liability to pay the Pre-EMI interest to respondent no.2 on behalf of the complainant till respondent no.1 offers possession of the subject unit to the complainant. In terms of the arrangement, respondent no.1 has paid to respondent no.2 an amount of Rs.63,76,420/- towards Pre-EMI.

- V. That the basis of the present complaint is that there is a delay in delivery of possession of the unit and therefore, refund plus interest has been claimed by virtue of the present complaint. As per Clause 21 of the Flat Buyer's Agreement, the possession of the unit was to be handed over within 3 years and 6 months i.e. by or before 30.04.2019. It is an admitted fact that the respondent no. 1 after completing the construction of the unit/ tower in question applied for grant of Occupation Certificate on 30.04.2018 and on 17.09.2018, the Occupation Certificate was granted to respondent no.1.
- VI. That vide letter dated 30.10.2018, the respondent no.1 informed the complainant that the Occupation Certificate for the tower wherein the unit is located is received and possession of the unit was offered to the complainant. As such, no deficiency in service is committed by respondent no.1 as the possession was offered well within the agreed time as per the Flat Buyer Agreement.
- VII. That the complainant never came forward either to take the physical handover of her unit nor cleared the balance sale consideration amounting to Rs.69,78,095/-
- VIII. That pursuant to offer of possession by respondent no.1, the EMI obligation of the complainant towards respondent no.2 started, however due to non-payment of the EMI's dues, the respondent no.2 issued notice dated 04.03.2020 and 31.07.2020, followed by notice dated 13.08.2020 sent by respondent no.1 informing the complainant to clear the pending dues towards respondent no.2 as per their notices.
- IX. That the respondent no. 1 also sent a notice dated 03.03.2020 to the complainant informing the pendency of outstanding and called

upon her to clear the outstanding. However, the complainant never came forward to make clear the balance sale consideration.

- X. That upon not making payment of their dues towards, respondent no.2, vide notice dated 31.07.2020 recalled the loan facility advanced to the complainant. Upon recall of the loan facility by respondent no.2, the respondent no.1 being bound by the terms of the Tripartite Agreement entered into between the parties, had to cancel the provisional booking of the complainants and pursuant to the said cancellation refunded the loan amount to respondent no.2.
- XI. That the cancellation of the provisional allotment of the complainant was done by respondent no.1 as per the terms and conditions of the duly Agreement dated 30.10.2015. In terms of Clause 9 the FBA, the complainant agreed that the Earnest money shall be calculated @15% of the Basic Sale Price of the unit and further the complainant also authorized the respondent no. 1 to forfeit the earnest money alongwith the interest and cost of delayed payments in case of non-fulfilment of the terms and conditions herein contained.
- XII. That as per Clause 1(f) of the Agreement, the earnest money was 15% of the Basic Sale Price alongwith interest on delay payments, processing fees and brokerage paid, if any. Accordingly, upon cancellation, deductions by the respondent was as per the agreed terms of the Agreement.
6. Vide proceedings dated 26.11.2025, the complainants were directed to serve notice to respondent no.2 through publication and submit the affidavit about the same in the registry. The complainants complied with the same and submitted the same on 12.11.2025. Despite the same,



respondent no.2 failed to put in appearance and file reply to the present complaint. Thus, respondent no.2 is proceeded against ex-parte.

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 complete territorial and 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, 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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;

11. 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 objections raised by respondent no. 1

F.I Objection regarding the complaint being barred by limitation.

12. The respondent no.1 has taken a stand that the present complaint is barred by limitation. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principles of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
13. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.



14. In the present matter the cause of action arose on 31.12.2018 when the offer of possession was made by the respondent. Thereafter, the respondent cancelled the allotment of the complainants' unit on 03.12.2020. The complainants have filed the present complaint on 08.08.2024. In the present case the period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

G. Findings on the reliefs sought by the complainants:

G.I Direct the respondents to pay interest on delayed possession on account of delay in handing over possession of the unit.

15. The complainants in the present complaint have booked a unit in the project of the respondent namely "Indiabulls Enigma" situated at Sector-110, Gurugram, Haryana. The complainants were allotted a unit bearing no. H001, situated at the ground floor in Tower-H, admeasuring 3880 sq.ft of super area and 2964.73sq.ft. of covered area, alongwith Two covered car parking. The Flat Buyer's Agreement for the said unit was executed between the complainants and respondent on 30.10.2015. The sale consideration of the unit was Rs.2,81,48,000/- and an amount of Rs.31,00,000/- has been paid by the complainants on their own and an amount of Rs.2,24,68,650/- was disbursed by respondent no.2.

16. The complainants have sought the relief of refund of the amount paid by the complainants along with interest. As per possession clause of the Flat Buyer's Agreement dated 30.10.2018, the respondent no.1 was under an obligation to handover the possession of the unit or before 30.04.2019. The occupation certificate was issued on 17.09.2018.

Subsequently, the respondent /promoter offered possession to the complainants on 31.12.2018. At the offer of possession, the complainants neither took possession of the unit nor clear the balance sale consideration amounting to Rs.69,78,095/-. The complainants opted for "Subvention Scheme Payment Plan Till Possession". A Tripartite agreement was executed between the complainants, respondent no.1 and respondent no.2 on 30.10.2015. As per clause 3 of the said Agreement dated 30.10.2015, the respondent no.1 undertook the liability to pay Pre-EMI till the date of issuance of offer of possession by the promoter. Clause 3 is reproduced below:

" It is agreed that till the commencement of EMI the borrower shall pay Pre-EMI, which is the simple interest on the loan amount disbursed calculated at the rate as mentioned in the respective loan agreement of the Borrower, however, 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 during the period be referred to as the "Liability period" i.e., till the date of issuance of Offer For possession by the Builder (and the liability be referred to as "Assumed liability").

[Emphasis supplied]

17. The complainants submit that Respondent No. 1 paid the pre-EMIs from November 2015 to November 2018. Upon a site visit, it was manifestly clear that the project was substantially incomplete and that the respondent no. 1 was not in the position to hand over possession of the flat to the complainants. The so-called Offer of Possession was issued with the sole and mala fide intention of prematurely terminating the "Assumed Liability Period" and unlawfully shifting the burden of EMI repayment onto the complainants. In view of the incomplete status of the project, the complainants ceased making further payments to respondent no. 1. Subsequently, the complainants received a notice dated 31.07.2020 from respondent no. 2 for recall of the loan amount. It is further alleged that, without any prior intimation to the

complainants, the respondents proceeded to hand over the said unit to a third party.

18. The respondent no. 1, in its reply, contends that the unit in question was booked by the complainants under the Subvention Scheme Payment Plan Till Possession and that the complainants had availed a home loan of Rs.2,21,49,870/- from respondent no. 2. It is stated that the complainants contributed only Rs.31,00,000/- from their own funds. Respondent no. 2 further submits that, in accordance with the arrangement between the complainants and respondent no. 1, an amount of Rs.63,76,420/- was paid by respondent no. 1 to respondent no. 2 towards pre-EMIs. It is further asserted that the Occupation Certificate was issued by the competent authority on 17.09.2018, and thereafter possession of the unit was offered to the complainants vide letter dated 30.10.2018. Subsequently, respondent no. 2, by notice dated 31.07.2020, recalled the loan facility, and in terms of the Tripartite Agreement, respondent no. 1 cancelled the allotment in favour of the complainants and, pursuant to such cancellation, refunded the loan amount to respondent no. 2.
19. The Authority after considering all the documents on record observes that the Flat Buyer's Agreement was executed on 30.10.2015, in terms of the possession clause, the respondent was obligated to hand over possession of the unit on or before 30.04.2019. The Occupation Certificate was issued on 17.09.2018. Thereafter, possession of the unit was offered to the complainants on 31.12.2018. After the offer of possession, the complainants neither accepted possession of the unit nor cleared the balance sale consideration amounting to Rs.69,78,095/.

20. The complainants had opted for the "Subvention Scheme Payment Plan Till Possession," pursuant to which a Tripartite Agreement was executed on 30.10.2015 between the complainants, respondent no. 1, and respondent no. 2. In terms of Clause 3 of the said Tripartite Agreement, respondent no. 1 undertook the liability to pay the pre-EMIs until the date of issuance of the offer of possession by the promoter and the same was paid by respondent no. 2. After the offer of possession was issued, the obligation to pay the EMIs stood transferred to the complainants. However, the complainants failed to discharge the said obligation and, despite repeated reminders, neither cleared the outstanding dues nor came forward to take possession of the unit. They also defaulted in making EMI payments to respondent no. 2. Consequently, respondent no. 2 issued notices dated 03.03.2020 and 04.03.2020 calling upon the complainants to regularize the defaulted amounts, followed by a "Notice for Loan Recall and Enforcement of Security" dated 31.07.2020. Pursuant thereto, and at the request of respondent no. 2, respondent no. 1 terminated the allotment which was in favour of the complainants on 03.12.2020. As per the complainants' own admission, an amount of Rs.27,73,076/- was received by them from respondent no. 1 on 07.02.2022. Respondent no. 1, after cancelling the allotment and deducting the earnest money, refunded the remaining amount to the complainants. Further, the respondent no.1 has paid the loan amount as disbursed by the respondent no.2. In view of the aforesaid facts and circumstances, the present complaint is devoid of merit.

21. Accordingly, the Authority is of the view that no relief whatsoever is made out in favour of the complainants and against the respondents in the present complaint. The complaint is, therefore, dismissed.
22. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:27.01.2026



HARERA
GURUGRAM