

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

Complaint No. :940-2025

Date of Decision: 04.05.2026

Mr. Jitender K. Shokeen, resident of Flat No.C-012, Engima Apartments, Dwarka Expressway, Pawala Khusrupur, Sector-110, Kadipur Choma, P.O. Carterpuri, District Gurugram.

..... **Complainant.**

Versus

M/s Athena Infrastructure Ltd. through its Managing Director and other Directors, Office No.202, 2nd Floor, A-18, Rama House, Middle Circle, Connaught Place, New Delhi.

..... **Respondent.**

APPEARANCE

For Complainant:

Ms. Medhya Ahluwalia, Advocate.

For Respondent:


Mr. Rahul Yadav, Advocate.

ORDER

This is a complaint, filed by Mr. Jitender K. Shokeen (allottee), under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) against M/s Athena Infrastructure Ltd. (promoter).

2. Briefly stated, according to the complainant, he booked a residential unit in the project "Indiabulls Enigma" Sector-110, in Pawala Khusrupur, Gurugram, being developed by the respondent and he opted for construction linked plan and paid a sum of Rs.5 lakhs towards the booking amount. A Flat Buyer Agreement (FBA) between the parties was executed on 09.07.2011. Total sale consideration of the said flat was agreed at Rs.1,78,85,000/-Due date of possession was 08.07.2014.

3. That after 15 months from the date of booking, the respondent vide letter dated 02.01.2012, allotted a 4 BHK apartment bearing No.C-012 on Ist Floor in Tower/Block-C, approximately 3400 sq. ft. with two covered parking in the aforesaid project. Till February 2018, the complainant has almost made a payment of around 100% of the total sale consideration, but the respondent failed to complete the project, in promised time frame.


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4. That despite obtaining Occupation Certificate on 12.10.2021, the respondent delayed offering possession of the unit because the units in Tower-C were unfit for habitation. On 11.03.2022, the respondent offered possession to him (complainant) and raised a demand of Rs.3,76,192/- as outstanding amount. When the complainant approached the respondent regarding inspection of the unit, the respondent delayed the inspection on one pretext or the other. Due to delay in completion of the project, he (complainant) was compelled to reside in rented accommodation from year 2015 to 2023.

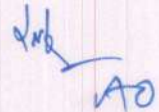
5. That being aggrieved by the acts and omission of the respondent, the complainant filed a complaint (No.6822 of 2022) before the Authority seeking penalty for delay in offering of possession and other reliefs. The Authority vide its order dated 25.07.2024 directed the respondent to pay delay possession charges to him (complainant) against the paid-up amount at the prescribed rate of interest at the rate of 11% per annum for every month of delay from due date of possession i.e. 09.01.2015 till the date of offer of possession i.e.11.03.2022 plus two months after adjustment of credited amount of Rs.12,99,933/- .

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6. That despite glaring shortcomings, on 27.10.2023, the complainant reluctantly took possession of the unit under protest and Conveyance Deed was executed on 18.12.2023.

7. Citing facts as mentioned above, the complainant has prayed for following reliefs: -

- i. to direct the respondent to compensate the complainant for the inordinate delay in handing over possession of the unit from 11.03.2022 until the actual offer of possession i.e.27.10.2023;
- ii. to direct the respondent to reimburse the rental expenses of Rs.50,000/- per month incurred by the complainant from January 2015 to October 2023;
- iii. to direct the respondent to compensate the complainant for an amount of Rs. 13,97,120/- towards the cost of rectifying defects in the unit;
- iv. to direct the respondent to reimburse the legal expenses of Rs. 5,00,000/- incurred by the complainant in pursuing the complaint bearing no. 6822 of 2022 and the present complaint, including court fees, advocate fees, and other related expenses;
- v. to direct the respondent to pay an amount of Rs. 10,00,000/- as compensation for the immense mental agony, harassment and emotional distress suffered by the complainant due to prolonged delay, false assurances, and substandard construction of the unit.

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8. The respondent contested the complaint by filing a written reply. It is averred that the when the Authority vide its order dated 20.11.2024 allowed delay possession compensation to the complainant along with interest, there is no reason to allow compensation to the complainant. As such, the present complaint is liable to be rejected on this ground alone.

9. That it is an admitted fact that the respondent offered possession to the complainant on 11.03.2022, however, the complainant took physical possession of the unit on 12.10.2023. Therefore, the complainant himself delayed taking of physical possession despite offer, for which it (respondent) cannot be held liable.

10. That the complainant took possession and executed conveyance deed for the unit after inspection and satisfying himself with respect to the construction and quality status for the same.

11. Denying all averments, the respondent prayed for dismissal of complaint.

12. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for all parties of case and perused the record.

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13. As described above, the complainant approached the Authority seeking delayed possession charges by filing a complaint (no.6822 of 2020). Said complaint was allowed by the Authority vide order dated 25.07.2024 and the respondent has been directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e.11% per annum for every month of delay from the due date of possession i.e. 09.01.2015 till the date of offer of possession i.e. 11.03.2022 plus two months after adjustment of credited amount of Rs.12,99,933/- .

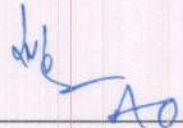
14. It is contended by learned counsel for the complainant that despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of section 72 of Act of 2016. Learned counsel reminded that this Forum (AO) has jurisdiction to allow compensation in view of Sections 12, 14, 18 and 19 of said Act. Section 18 (3) prescribes for liability of promoter to pay compensation to the allottees, if same (promoter) fails to discharge any other obligation imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale. Learned counsel claims that where the respondent (promoter) failed to discharge its obligation of handing over possession in

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agreed time, as per terms and conditions of BBA, same is liable to pay compensation.

15. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building, (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (b)-----, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation, in the manner as provided under this Act.**

16. It is worth mentioning here that the complainant did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of 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 handing over of possession, at such rate as may be prescribed. The



parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

17. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **“Greater Noida Industrial Development Authority vs. Ranjan Misra” Appeal No. 70 of 2023 decided on 20.04.2023-----;**

“13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project.”


18. When complainant has already been allowed delayed possession compensation by the Authority for delay in handing over

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possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession.

19. Complaint in hands is thus dismissed. File be consigned to the record room.


Announced in open Court
today i.e. on **04.05.2026**.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory,
Gurugram.

Present: Ms. Medhya Ahluwalia, Advocate for the complainant.
Mr. Rahul Yadav, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
04.05.2026