

PROCEEDINGS OF THE DAY

Day and Date	Wednesday and 16.01.2019
Complaint No.	757/2018 Case titled as Dr. Sanjay Mahendru V/S Athena Infrastructure Limited And Indiabulls Real Estate Pvt Ltd
Complainant	Dr. Sanjay Mahendru
Represented through	Shri Divjyot Singh with Nipur Dwivedi Advocate for the complainant.
Respondent	Athena Infrastructure Limited And Indiabulls Real Estate Pvt Ltd
Respondent Represented through	Shri Rahul Yadav, Advocate for the respondent.
Last date of hearing	First hearing
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is registered with the authority.

Arguments heard.

As per clause 21 of the Builder Buyer Agreement dated 12.9.2011, for unit No.C031, 3rd floor, Tower-C, in project "Indiabulls Enigma", Sector-110, Gurugram, possession was to be handed over to the complainant within a period of three years months + 6 months grace period which comes out to be **12.3.2015**. However, the respondent has not delivered the unit in time. Complainant has already deposited Rs.1,87,19,660/- against total sale consideration amount of Rs.1,92,45,000/-.

Project is registered and revised date of possession expired on 31.8.2018. As such, complainant is entitled for delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f **12.3.2015** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over the offer of possession failing which the complainant is entitled to seek refund of the amount with interest.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)

Dr. K.K. Khandelwal
(Chairman)
16.01.2019

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

Complaint No. : 757 of 2018
Date of first hearing : 16.01.2019
Date of Decision : 16.01.2019

1. Dr. Sanjay Mahendru
2. Smt. Shama Mahendru
Both R/o Flat no. 2424, Sector-C, Pocket-2,
Vasant Kunj, New Delhi-110057

...Complainants

Versus

1. M/s Athena Infrastructure Ltd.
Office at: M-62 & 63, First floor,
Connaught Place, New Delhi-110001

2. Indiabulls Real Estate Pvt. Ltd.
Office at: Indiabulls House, Ground Floor,
448-451, Udyog Vihar, Phase V,
Gurugram-122016

...Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Divjyot Singh with Sh.
Nipun Dwivedi
Sh. Rahul Yadav

Advocates for the complainants
Advocate for the respondents

ORDER

1. A complaint dated 23.08.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read



with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Dr. Sanjay Mahendru and Smt. Shama Mahendru, against the promoters M/s Athena Infrastructure Ltd. and Indiabulls Real Estate Pvt. Ltd. on account of violation of clause 21 of the flat buyer's agreement executed on 12.09.2011 for unit no. C031 on 3rd floor, tower 'C', admeasuring super area of 3400 sq. ft. in the project "Indiabulls Enigma" for not giving possession on the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid.*

2. Since the flat buyer's agreement has been executed on 12.09.2011, i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Indiabulls Enigma" in Sector-110, Village Pawala Khusrupur, District Gurugram
2.	Nature of real estate project	Residential complex



3.	Unit no.	C031, 3 rd floor, tower 'C'
4.	Project area	15.6 acres
5.	Unit area	3400 sq. ft.
6.	Registered/ not registered	Registered separately in 3 phases namely: Phase I- 351 of 2017 Phase 1A- 353 of 2017 Phase II- 354 of 2017
7.	Revised date of completion as per RERA registration certificate	For reg. no. 351 of 2017- 31.08.2018 For reg. no. 353 of 2017- 31.03.2018 For reg. no. 354 of 2017- 30.09.2018
8.	DTCP license	213 of 2007, 10 of 2011 and 64 of 2012
9.	Date of booking	26.07.2011 (as per applicant ledger in annexure-H, pg 121 of the complaint)
10.	Date of allotment letter (as per annexure D)	08.08.2011
11.	Date of flat buyer's agreement	12.09.2011
12.	Total consideration	BSP- Rs.1,72,60,000/- (as per agreement) Total cost- Rs.1,92,45,000/- (as per applicant ledger in annexure-H, pg 121 of the complaint)
13.	Total amount paid by the complainants	Rs.1,87,19,660/- (as per applicant ledger in annexure-H, pg 122 of the complaint)
14.	Payment plan	Construction linked



		payment plan
15.	Date of delivery of possession	Clause 21 – 3 years from date of execution of agreement + 6 months grace period i.e. 12.03.2015
16.	Delay of number of months/ years upto 16.01.2019	3 years 10 months
17.	Penalty clause	Clause 22- Rs. 5/- per sq. ft. per month of the super area

4. The details provided above have been checked on the basis of the record available in the case file which have been provided by the complainants and the respondents. A flat buyer's agreement dated 12.09.2011 is available on record for unit no. C031, 3rd floor, tower 'C', admeasuring super area of 3400 sq. ft. according to which the possession of the aforesaid unit was to be delivered by 12.03.2015. The promoter has failed to deliver the possession of the said unit to the complainants. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and for appearance. The case came up for hearing on 16.01.2019. The reply has been filed on behalf of the respondents and has been perused.



Facts of the complaint

6. The complainants submitted that sometime in the year 2010-2011, the respondents invited applications for allotment of residential apartments in the project "Indiabulls Enigma". A rosy picture was portrayed about the project thus inducing the complainants to book an apartment in the said complex. Accordingly, the complainants booked a unit in the project named "Indiabulls Enigma" in Sector-110, Village Pawala Khusrupur, District Gurugram by paying an advance amount of Rs. 5,00,000/- to the respondents. Accordingly, the complainant was allotted a unit bearing no. C031, 3rd floor, tower 'C'.
8. The complainants submitted that during the time of initial booking of the apartment the respondents offered to the complainants a four bedroom apartment on the 3rd floor in tower C having a super area of 3400 square feet. The apartment was offered at a BSP of Rs.4,900/- per sq. ft. along with two car parking spaces at the rate of Rs.6,00,000/-. In addition to the BSP and parking charges, the total sale consideration also included preferential location charges (PLC) at the rate of Rs.200/- per sq. ft, EDC/IDC at the rate of



Rs.315/- per sq. ft, maintenance security at the rate of Rs.100/- per sq. ft. and clubhouse charges of Rs.2,00,000/-.

9. The complainants submitted that pursuant to the submission of application form and the payment of booking amount, the complainants were allotted apartment no. C031 in tower C of the apartment complex having a super area of 3400 square feet vide allotment letter dated 08.08.2011.
10. The complainants submitted that at the time of execution of flat buyer's agreement, the complainants were surprised to find that in the draft agreement, the BSP of the flat was unilaterally increased by the respondents from Rs.4,900/- per sq. ft. to Rs.5,076.47/- per sq. ft. The complainants found that there was no mention of parking charges in the draft agreement and the same was wrongly adjusted in the BSP of the flat without their consent. The above said discrepancy was immediately pointed out by the complainants to the respondents vide e-mail dated 08.09.2011 wherein the complainants expressed their unwillingness to include the parking charges in the BSP of the flat. However, the respondents threatened to forfeit a sum of Rs.17,70,445/- already deposited by the complainants with the respondents, in case the flat buyer's agreement is not executed. The



complainants did not wish to complicate the matter as they had already deposited a sum of Rs.17,70,445/- therefore, signed the flat buyer's agreement under misrepresentation and duress.

11. The complainants submitted that thereafter, a flat buyer's agreement dated 12.09.2011 was executed between the parties. In terms of clause 21 of the agreement, the respondents had agreed to complete the construction of the project within a period of 36 months from the date of execution of the agreement with a further grace period of six months. the respondents therefore should have completed construction by 12.09.2014 or latest by the end of March 2015. However, till date the possession of the flat has not been handed over to the complainants.

12. The complainants submitted that handing over the possession not not only included possession of flat but also included the right to use other facilities such as clubhouse, gymnasium, swimming pool, men and women SPA, aerobics and yoga room, indoor sports room, fitness trails, tennis courts, jogging tracks, kids playing areas, entertainment zones like reading lounge, card room, kids play/activity room, restaurant cum bar and business center etc. Therefore, the



respondents were required to hand over the possession of the flat along with the other necessary facilities as a whole and not in a piecemeal manner within the stipulated time period. However, the respondents have failed to handover the possession within the stipulated timeframe without any reasonable and justifiable cause.

13. The complainants submitted that the BSP of the flat was agreed to be Rs.1,72,60,000/-. It is submitted that as on 16.09.2015, the complainants have already paid a sum of Rs.1,87,19,660/- to the respondents. The above said amount has been paid by the complainants as per the CLP and as per the demands raised by the respondents from time to time.
14. The complainants submitted that they have paid the installments to the respondents as and when demanded, even though the construction was delayed and was not progressing as per the stipulated time frame. Several times the respondents have demanded installments contrary to the payment schedule. The complainants even objected to said arbitrary demands made by the respondents however, no satisfactory reply was ever received from the respondents. The respondents rather threatened the complainant to forfeit the monies paid or charge penal interest at the rate of 18%



per annum on the delayed payments if the installments were not paid.

15. The complainants submitted that they had to take a huge home loan of Rs.1,48,00,000/- in order to purchase the flat. The rationale behind taking such a huge home loan was that the complainants were assured guaranteed possession of the flat by 12.09.2014. However, due to the delay in handing over the possession, the complainants were forced to pay huge EMI every month along with high interest rates during the period of delay. It is submitted that due to the non-delivery of the flat within the stipulated timeframe the complainants were forced to stay in rented accommodation which invariably increased their financial burden.

16. The complainants submitted that throughout this period, the complainants along with the other apartment owners regularly and repeatedly followed up with the representatives of the respondents and enquired about the status of the project. However, the representatives of the respondents on every occasion made false assurances that the possession of the flat would be delivered as per schedule and kept on prolonging the matter unjustifiably without any cogent reason.



17. The complainants further submitted that the project comprises of towers A to J. At the time of initial booking it was represented by the respondents that towers A to D will have 17 floors. However, during the construction the respondents unilaterally has changed the original building plan by adding 4 more floors in towers A to D. It is submitted that at the time of allotment and execution of the agreement, the complainants were informed that there would be 17 floors and the payment plans were also set up accordingly. As per the payment plan the instalments of the complainants were linked to the construction of each floor and the respondents have collected payments as if only 17 floors were to be constructed. The respondents therefore by unfair and deceptive means has unilaterally added 4 additional floors to towers A to D which is detrimental to the rights and interest of the home buyers including the complainants. The above said conduct of the respondents clearly amounts to unfair trade practice and as such the respondents should be penalized for the said acts. It is further submitted that the project was already running behind schedule, the respondents further delayed the completion of the project by constructing these additional floors. Due to the addition in the floor area ratio (FAR), the respondents have unlawfully



earned crores of rupees by illegally utilizing the investments made by the home buyers including the complainants. Therefore, by raising the said additional floors unilaterally, the respondents have not only compromised with the safety of the building structure but has also unlawfully earned huge profits at the cost of the complainants.

18. The complainants submitted that the respondents have collected covered car parking charges from the complainants however, the same cannot be charged as the covered car parking is in the basement, which is not a part of the FAR and is thus not saleable. The parking area is not an integral part of the flat and is a part of the common area not belonging to the respondents. It is submitted that the covered car parking charges has been included in the BSP paid to the respondents therefore, the same has been illegally charged and is liable to be refunded to the complainants.

19. The complainants further submitted that the respondents have arbitrarily and illegally collected EDC and IDC from the flat buyers including the complainants. EDC/IDC are the development charges collected by the state government from the builders. These may include scrutiny fee, institution of land use, change of land use, license & permission fees and



infrastructure charges etc. EDC/IDC are in addition to BSP and these are calculated on pro-rata basis as per the rates applicable. The respondents have charged the EDC/IDC at a rate of Rs.315/- per sq. ft. from the complainants which is much higher than the applicable rate. The complainants along with the other flat buyers have raised objections with the respondents for charging EDC/IDC at higher rate. After continuous follow-ups by the complainants, the respondents finally agreed to reverse the EDC/IDC at the rate of Rs.90/- per sq. ft. i.e. a sum of Rs.3,06,000/- to the account of the complainants. However, the said amount was never reversed to the account of the complainant rather the same has been wrongfully adjusted by the respondents towards some contingency deposit for VAT without the consent of the complainants. It is submitted that the respondents have also illegally levied service tax on the EDC/IDC deposited by the complainants. Therefore, the respondents are liable to pay to the complainants the excess amount deposited towards EDC/IDC and the service tax along with interest at the rate of 18% per annum.

20. The complainants submitted that the respondents all of sudden in the month of November 2015 raised an arbitrary demand of Rs.4,93,350/- towards VAT. The respondents vide



letter dated 10.11.2015 informed the complainants that Excise & Taxation, Govt of Haryana has raised a demand for the deposit of VAT from the respondents for the assessment year 2010-2011 and 2013-2014. The respondents therefore started forcing the complainants to deposit the VAT which was otherwise levied by the authorities on the Respondents itself. The respondents thereafter again sent a letter dated 07.01.2016 and threatened the complainants to deposit a sum of Rs.4,93,350/- towards the respondent's VAT liability otherwise, the respondents would charge the penal interest at the 24% per annum from the complainants. In response to the above said letters dated 10.11.2015 and 07.01.2016, the complainants wrote a detailed e-mail dated 04.02.2016 to the respondents and requested the respondents to provide them with the break-up of their tax liability and the relevant provisions of law under which the same has been calculated. The complainants further requested the respondents to also clarify as to how the liability has been computed at 2.75% per annum. The complainants further clarified to the respondents that in view of judgment passed by Hon'ble Supreme Court in '**Larsen and Toubro Ltd. Vs. State of Karnataka and Anr. (2014) 1 SCC 708**', VAT can only be charged on the transfer of the property. The complainants therefore requested the



respondents to withdraw their premature and unfair demand for VAT as the complainants have already paid 95% of the sale consideration. However, no explanation was received from the respondents to the queries raised by the complainants in their e-mail dated 04.02.16.

21. The complainants submitted that subsequently, in the month of August 2016 the complainants received an e-mail dated 09.08.2016 whereby the respondents informed the complainants that the EDC/IDC charges has been revised to Rs.225/- per sq. ft. from Rs.315/- per sq. ft and the excess amount has been adjusted against VAT liability. The complainants strongly objected to the act of the respondents in unilaterally adjusting the excess EDC/IDC amount towards VAT liability without the express consent of the complainants. The said objections were sent by the complainants vide e-mail dated 18.08.2016. In response to the e-mail sent by the complainants, the respondents sent a vague and frivolous reply on 22.08.2016 wherein no explanation was provided by the respondents about the adjustment of VAT before the delivery of possession. It is submitted that the VAT being an indirect tax has to paid at the time of transfer of the flat. Since the respondents have failed to deliver the possession of the flat as such the



complainants are not entitled to pay any amount towards VAT till the flat is actually transferred. This is an unfair trade practice on account of the respondents and should be directed to reverse the excess EDC/IDC charges from the contingency deposit for VAT. The respondents should further be restrained from demanding VAT till the actual transfer of flat in question. Further, the respondents have claimed to have deposited some amount towards EDC/IDC, VAT and service tax with the government authorities. However, despite the repeated requests of the complainants, the respondents have failed to produce any document in this regard. The respondents therefore, be directed to produce the proofs regarding the deposits of EDC/IDC, VAT and service tax with the government authorities.

22. The complainants submitted that thereafter also they sent a legal notice dated 19.08.2016 to the opposite party wherein the complainants demanded the delivery of the flat. Despite the service of the notice, the respondents neither reply to the legal notice nor delivered the possession of the flat. Therefore, having left with no other alternative the flat buyers of 'Enigma' filed a joint consumer complaint bearing no. 2132 of 2016 titled as '**Pranav Sood & Ors v. Athena Infrastructure Ltd & Anr**' before the National Consumer



Dispute Redressal Commission, New Delhi (NCDRC). In the said consumer complaint, the complainants were arrayed as a party in the capacity of complainants at serial no. 20 and 21 respectively.

23. It is submitted that in the above said consumer complaint, an IA/12242/2018 was filed by the flat buyers wherein they sought leave to withdraw the complaint before the NCDRC with the liberty to pursue their individual remedies as per law. The said IA was allowed by the NCDRC vide order dated 06.07.2018 and the flat buyers including the complainants were permitted to withdraw the consumer complaint and seek appropriate remedies as per law.

24. The complainants further submitted that the construction should have been completed by 12.09.2014 or latest by the end of March 2015. The complainants have almost paid the entire sale consideration of the flat and the last payment in respect to the flat in question has been made in September 2015. However, the respondents have failed to hand over the possession of the flat till date.

25. Issues raised by the complainants

- I. Whether the respondents have fulfilled their contractual and legal obligations towards the buyers by delaying the



construction and development of the project in question?

- II. Whether the respondents are liable to pay the delay interest @18% p.a. along-with compensation till the time possession is handed over to the complainants?
- III. Whether the respondents have over charged EDC, IDC?
- IV. Whether the respondents are entitled to claim VAT before the actual transfer of flat?
- V. Whether the respondents have wrongfully adjusted the excess EDC/IDC towards the VAT liability?
- VI. Whether the respondents have wrongfully collected the covered car parking charges from the complainants and has further wrongly adjusted the same in the basic selling price (BSP) of the flat?

26. Relief sought

- I. Direct the respondents to complete the project 'Indiabulls Enigma' as agreed in the flat buyer's agreement dated 12.09.2011.
- II. Direct the respondents to hand over the vacant physical possession of the flat in a habitable condition along with covered car parking and with all the necessary



specifications and approvals as agreed in the flat buyer's agreement.

- III. Direct the respondents to pay to the complainants interest from the date of booking till the date of handing over of possession of the flats on account of delay in handing over the possession of the flat on the amount already deposited with the respondents or in the alternative refund the money already deposited at the rate of 18 % per annum in case the possession is not handed over to the complainants.
- IV. Direct the respondents to refund the covered car parking charges paid by the complainants to the respondents.
- V. Direct the respondents to refund the excess amount received on account of EDC/IDC charges adjusted towards VAT liability.
- VI. Penalize the respondents for providing false information or contravening the provisions of section 4 of RERA Act, 2016.



Respondent no.1's reply

27. The respondent submitted that present complaint is not maintainable before the authority and also devoid of any

merits, which has been preferred with the sole motive to harass the respondent. The instant complaint filed by the complainant before the hon'ble authority is liable to be dismissed in view of section 71 (1) of RERA Act, 2016, which specifically states that any customer/ complainant who has already filed a complaint before the ld. consumer forum/ commission(s) and is pending, in such eventuality such customer(s)/complainant(s) will have to withdraw his complaint with permission from the ld. consumer forum(s)/commission(s) to file an application before the adjudicating officer for adjudication of his dispute, as per the Act.

28. The respondent submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact and law. The respondent 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; hence the same is liable to be dismissed *in limine*.

29. The respondent submitted that the complainants with malafide intention have not disclosed, rather concealed the material fact from this hon'ble authority that they were always aware about the construction status being carried out



at the project site, also the complainants have been a wilful defaulter since the beginning, not paying their instalments on time as per the payment plan opted by them. It is stated that the complainants have not come before this hon'ble authority with clean hands and wishes to take advantage of their own misdoings with the help of the provisions of the RERA Act, 2016, which have been propagated for the benefit of innocent customers and not defaulters, like the complainants in the present complaint.

30. The respondent further submitted that it has already completed 95% of the construction of the alleged tower, wherein the complainants have booked their unit. It is submitted that the delay in delivering the possession of the flat to the complainant was beyond the control of the respondent, since for completing a project number of permissions and sanctions are to be required from numerous government authorities which were delayed with no fault of the respondent. In addition to the delay in obtaining permissions/sanctions from the government authorities, national green tribunal imposed a ban on carrying out constructions in Delhi-NCR for several months. Further there were problems related to labour/ raw material. The respondent has specifically mentioned all the above



contingencies in the agreement and incorporated them in clause 39 of the agreement. Further, the other additional reasons of delay include:

- (i) Lack of the 150 meter wide external road to be provided by the government as per the sector plan/ master plan;
- (ii) Lack of 24 meter wide service road as proposed in the master plan;
- (iii) In fact till date the govt. has not acquired the green belt and the above mention 24 meter wide road giving access/ connectivity to the entry of the project.

31. The respondent submitted that it has made huge investments in obtaining requisite approvals and carrying on the construction and development of 'Indiabulls Enigma' project not limiting to the expenses made on the advertising and marketing of the said project. Such development is being carried on by respondent by investing all the monies that it has received from the buyers / customers and through loans that it has raised from financial institutions. In spite of the fact that the real estate market has gone down badly, the respondent has managed to carry on the work with certain delays caused due to various above mentioned reasons and



the fact that on an average more than 50% of the buyers of the project have defaulted in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the project has never been stopped or abandoned and has now reached its pinnacle in comparison to other real estate developers / promoters who have started the project around similar time period and have abandoned the project due to such reasons.

Respondent no. 2's reply

32. The respondent no.2 submitted that the present complaint is not maintainable before this authority and also devoid of any merits, which has been preferred with the sole motive to harass the respondent no. 2. That there is no privity of contract between the complainants and the said respondent, hence, the contentions taken in the instant complaint by the complainants against the respondent no. 2 are false, baseless and without any veracity. Hence, the instant complaint filed against respondent no. 2 is liable to be dismissed on this very sole ground.

33. The respondent no. 2 submitted that it is not a party to the agreement executed between the complainants and the



developer. There is no cause of action in favour of the complainants against the said respondent.

34. The respondent no. 2 denied the averments made by the complainants in the present complaint.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:

35. In respect of the **first and second issue** raised by the complainants, as per clause 21 of the flat buyer's agreement dated 12.09.2011, the construction was to be completed within a period of 3 years with a grace period of six months. The due date of possession comes out to be 12.03.2015 which has already lapsed but the possession has not been delivered till date. However, the respondents have failed in handing over possession of the unit in question, thereby failure in fulfilling the obligations towards the buyer. Therefore, the respondent no. 1 is liable to pay interest on the delayed possession. Thus, the complainants are entitled for interest on the delayed possession at the prescribed rate of 10.75%



p.a. under the Act. Delay charges will accrue from the due date of possession i.e. 12.03.2015 till the offer of possession.

36. In respect of the **third issue** raised in the complaint, the complainants were well aware about the lawful dues to be paid towards EDC/IDC. As per clause 6(vii) of the flat buyer's agreement, the respondent can charge revised EDC/IDC charges with retrospective effect as imposed by the central or state government or any other authority. Thus, EDC/IDC has been charged as per the terms of the agreement and thus, the issue is decided in negative.

37. With respect to **fourth issue** raised in the complaint, as per clause 6(vii) of the flat buyer's agreement, the respondent can charge levies, taxes, duties, cess or imposition as imposed by the central or state government or any other authority. Thus, VAT has been charged as per the terms of the agreement.

38. With respect to **fifth issue** raised in the complaint, the authority has no jurisdiction to deal with taxation matters. The complainants can approach the appropriate forum in this regard.

39. In respect of **sixth issue** raised by the complainants, the complainants have failed to furnish any iota of proof in order



to establish any wrongful collection of covered car parking charges from them. Moreover, as per the allotment letter dated 08.08.2011 and clause 3 of the flat buyer's agreement dated 12.09.2011, the unit includes 2 covered car parking spaces. Also, as per the statement of account in annexure-H of the complaint, it has been clearly shown that Rs. 0 has been charged as against the covered car parking.

40. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
41. The complainants requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
42. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.



Findings of the authority

43. **Jurisdiction of the authority-** The project "Indiabulls Enigma" is located in Sector-110, Village Pawala Khusrupur, District Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram,

therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

44. As per clause 21 of the flat buyer's agreement dated 12.09.2011, for unit no. C031, 3rd floor, tower-C, in project "Indiabulls Enigma", Sector-110, Gurugram, possession was to be handed over to the complainants within a period of three years months + 6 months grace period which comes out to be 12.03.2015. However, the respondent failed in handing over the unit in time. The complainants have already deposited Rs.1,87,19,660/- against total sale consideration amount of Rs.1,92,45,000/-. The project is registered with the authority and the revised date of possession undertaken by



the respondent expired on 31.08.2018. However, keeping in view the status of the project and the interest of other allottees, the authority is of the opinion that the complainants are entitled to delayed possession interest at the prescribed rate of 10.75% per annum from the due date of possession, i.e. 12.3.2015, as per the provisions of section 18 (1) of the Real Estate (Regulation and Development) Act, 2016 till the handing over the offer of possession failing which the complainants are entitled to seek refund of the amount with interest. Amount shall be paid by the respondent to the complainants within a period of 90 days from the issuance of this order.

Decision and directions of the authority

45. The authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent:

- (i) The respondent no.1 is directed to pay the interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainants from due date of possession till the actual handing over of possession.



(ii) The respondent no.1 is directed to pay interest accrued from 12.03.2015(due date of possession) to 16.01.2019(date of this order) on account of delay in handing over of possession to the complainants within 90 days from the date of this order.

(iii) Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid before 10th of every subsequent month.

46. The complaint is disposed of accordingly.

47. The order is pronounced.

48. Case file be consigned to the registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 16.01.2019

Judgement uploaded on 12.02.2019

