

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 14.02.2019
Complaint No.	978/2018 Case Titled As Varun Mittal V/S M/S Indiabulls Pvt .Ltd.
Complainant	Varun Mittal
Represented through	Complainant in person with Shri Mukul Sanwariya Advocate.
Respondent	M/S Indiabulls Pvt .Ltd.
Respondent Represented through	Shri Rahul Yadav Advocate for the respondent
Last date of hearing	7.2.2019
Proceeding Recorded by	Naresh Kumari & S. L. Chanana

**Proceedings****Project is registered with the authority.**

Occupation certificate has been received by the respondent on 17.9.2018 and possession of the unit was offered to the complainant on 28.12.2018.

Arguments heard.

As per clause 21 of the Builder Buyer Agreement dated 13.3.2015 for unit No.D024, 2<sup>nd</sup> floor, tower-D, in project "Indiabulls Enigma" Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of BBA + 6 months grace period which comes out to be 13.9.2018. The respondent has already offered possession of the unit to the complainant on 28.12.2018. Complainant has already paid Rs.78,34,556/- to the respondent against a total sale consideration of Rs.2,63,64,363/-.

In view of the facts and circumstances that the respondent has already received occupation certificate and possession has also been offered to the complainant, the complainant is directed to take over the possession of the unit booked within a period of one month. It is ordered accordingly.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar  
(Member)  
14.02.2019

Subhash Chander Kush  
(Member)

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

**Complaint no. : 978 of 2018**  
**First date of hearing: 21.12.2018**  
**Date of decision : 14.02.2019**

1.Mr. Varun Mittal  
2.Mr. Vipin Mittal  
H.no. 319, Civil Lines,  
Ludhiana, Punjab- 141010

**Complainants**

**Versus**

1.M/s Varali Properties Ltd.  
(through its director)  
2. M/s IndiaBulls Pvt. Ltd.  
(through its director)  
Plot no. 8, 2<sup>nd</sup> floor,  
Dwarka Deep Commercial Complex  
Sector 6 Dwarka, New Delhi -110075

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Mukul Sanwariya with Advocate for the complainant  
Complainant in person  
Shri Rahul Yadav Advocate for the respondent



**ORDER**

1. A complaint dated 18.09.2018 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 Mr. Varun Mittal and Mr. Vipin Mittal against the promoter, M/s Varali Properties and M/s India Bulls Pvt. Ltd. in respect of apartment described below in the project 'India Bulls Enigma', on account of violation clause 21 of the flat buyer's agreement dated 13.03.2015 in respect of unit no. D024, 2<sup>nd</sup> floor with respect to super area of 3400 sq. ft. for not handing over possession on due date i.e. 13.09.2018 which is an obligation under section 11(4)(a) of Act ibid.

2. Since the apartment buyer's agreement dated 13.03.2015 was executed prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of contractual obligation on the part of the respondent in terms of the provision of section 34(f) of the Act ibid.

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

1.	Name and location of the project	India Bulls Enigma
2.	Nature of the project	Residential complex
3.	RERA registered/ not registered.	<b>351 of 2017</b>
4.	Apartment/unit no.	D024, 2 <sup>nd</sup> floor, tower D
5.	Revised date of completion	30.08.2018
6.	Apartment measuring	3400 sq. ft.



7.	Payment plan	Possession linked payment plan
8.	Date of execution of flat buyer's agreement	13.03.2015
9.	Total consideration as alleged by the complainant as applicant ledger (Annx. C4)	Rs. 2,63,64,363/-
10.	Total amount paid by the complainant till date as per applicant ledger (Ann. C4)	Rs.78,34,556/-
11.	Date of delivery of possession Clause 21 – 3 years plus 6-months grace period from the execution of flat buyer's agreement.	13.09.2018
12.	Delay in handing over the possession	3 months approx
13.	Penalty clause (clause 22)	Rs. 5 per sq. ft. per month of the super area
14.	Occupation certificate revised on	17.09.2018

4. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainants and the respondents. A flat buyer's agreement dated 13.03.2015 for which the due of the date of possession is 13.09.2018 as per clause 21 of the said agreement which is the obligation of the promoter.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The case came up on hearing on 21.12.2018, 23.01.2019,



07.02.2019 and 14.02.2019. The reply filed on behalf of the respondent on 19.09.2018 has been perused.

### Facts of the case

6. The complainants submitted that they booked a residential flat in the project of the respondent namely "Indiabulls Enigma" at Sector 110, Gurgaon in Pawala Khusrupur Village, Gurgaon Tehsil, Gurgaon .
7. The complainants submitted that they were induced to sign apartment buyer agreement dated 13.03.2015 and vide aforesaid FBA the respondents allotted apartment bearing no. 024 on 2<sup>nd</sup> floor in tower no. D, admeasuring super area of 3400 sq. ft. to the complainants. The total consideration of the said apartment was Rs. 2,41,00,000/- including EDC, IDC, IFMS, PLC, CMC etc.
8. The complainants submitted that payment plan issued by respondent no. 1 was possession linked payment plan i.e. the complainant was supposed to pay 30% of the initial amount and rest 70% at the time of offer of possession of the allotted apartment.
9. The complainants have paid a total sum of Rs. 78,34,556/- till October, 2014 as per the payment plan. It is pertinent to state



that the respondent collected more than 30% of the sale consideration by October 2014.

10. The complainants submitted that respondents keeps on demanding the pending payments from the complainants and did not know the willingness to complete the construction on time. The complainants had visited the project site in the month of December 2017 and again in month of June 2018 but not found no construction work on the project site.
11. The complainants submitted that in view of clause 40 of FBA the respondents had charged Rs.2,00,000/- for club charges, which is against the settled principal of law and natural justice.
12. The complainants submitted that the respondents had promised to complete the project within a period of 36 months from the date of allotment i.e. 06.01.2015 with a further grace period of six months. The due date of possession is 06.06.2018.
13. The complainant submitted that as per timelines given in the allotment letter and FBA, the possession of the project was committed in the month of June,2018 and now in the month of August 2018, i.e. even after lapse of grace period , nearly



70% project is completed thus delaying in possession of apartment deliberately or for reason known best to them.

14. The complainant submitted that the respondent has failed to complete the project in time, resulting in extreme kind of mental distress, pain and agony to the complainants.

**Issues to be decided:**

1. Whether the respondents are liable to refund the total amount received by them in lieu of apartment?
2. Whether the respondent is liable to pay the penalty and interest on the total amount received by them, as per the provision of RERA, Act 2016?
3. Whether the respondents could have accepted more than 30% amount out of the total consideration even before issuance of allotment letter?
4. Whether the respondents have breached the express provision of RERA, Act, 2016 by accepting more than 30% money before execution of FBA?



**Relief sought:**

In view of the facts mentioned above, the complainants prays for the following relief;



- a) Direct the respondents to award refund the amount paid by the complainant and delay interest @ 18% p.a. for every month of delay, till the handing over of possession of the apartment complete in all respect, to the complainant;
- b) Direct the respondents to impose penalty upon the respondents as per the provision of section 60 of RERA Act for wilful default committed by them.
- c) Direct the respondents to impose penalty as per the provision of section 61 of RERA Act for contravention of Section 12, 15 and section 16 RERA Act.

### **Respondent's reply**

15. The respondents submitted that the instant complaint is not maintainable, on facts or on law, and is as such liable to be dismissed at the threshold being in wrong provisions of the law. It is also submitted that the present complaint is devoid of any merits and had been preferred with sole motive to harass the respondents. In fact, the present complaint is liable to be dismissed on the ground that the complainants have chosen to file the instant complaint for adjudication of its grievances before the adjudicating officer under section 31



of the RERA Act, 2016. Thus, this hon'ble authority does have any jurisdiction to entertain the same and the complaint is liable to be dismissed.

16. The respondents submitted that the allegations made in the instant complaint are wrong, incorrect and baseless in the fact and law. The respondents deny them in toto. Is it submitted that instant complaint is devoid of any merits and has been preferred with the sole motive to extract monies from the respondents, hence the same is liable to be dismissed.

17. The respondent submitted that after understanding the terms and condition of the agreement. The complainants had voluntarily executed flat buyer agreement with respondents on 13.03.2015 and it is specifically agreed that in the event of any dispute, the dispute shall be resolve through arbitration mechanism. Hence, this authority does not have the jurisdiction to entertain the same.

18. The respondents submitted that the FBA dated 13.03.2015, was executed prior to coming into force of the Real Estate (Regulation and Development) Act, 2016. The complainants are falsifying their claim from the very fact that there has been alleged delay in delivery of possession of the booked



unit however, the complainants with nullified intention have not disclosed, in fact concealed the material facts from this hon'ble authority. The complainants have been willful defaulters from the beginning and not paying the installments as per the payment plan.

19. The respondent submitted that according to clause 22 of the FBA filed by the complainants along with their complaint. The respondent carves leave of this hon'ble authority to refer which is reproduced hereunder for ready reference:

*Clause 22 in the eventuality of developer failing to offer the possession of the unit to buyer within the time as stipulated herein, except for the delay attributable to the buyer/force majeure/vis-majeure conditions, the developer shall pay to the buyer penalty of Rs.5/- per sq. ft. per month for the period of delay*

20. The respondents submitted that they have already completed the construction of tower D and also obtained OC for the concerned tower . It is also submitted that they are under the process of handing over of possession of the unit of the said tower including the unit of the complainant in question

21. The respondents submitted that as per the FBA dated 13.05.2015, executed prior to coming into force of the Real Estate (Regulation and Development) Act, 2016. Further, the adjudication of the instant complaint for the purpose of granting interest and compensation as provided under the



Act has to be in reference to the agreement for sale executed in terms of the said Act and rules and no other agreement, whereas, the FBA being referred to or looked into in this proceeding is an agreement executed much before the commencement of the Act.

22. The respondent submitted that the complainants have made baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in the FBA. In view of the same, it is submitted that there is no cause of action in favor of the complainants to institute the present complaint.

### Determination of issues

23. With respect to **first issue and second issue** raised by the complainant as per flat buyer's agreement dated 13.03.2015 and the due date of handing over the possession as per clause 21 i.e. 13.09.2018 and there is a delay of almost 3 years and the occupation certificate has been granted on 17.09.2018 which implies that the project is complete, thus refund and interest cannot be granted at this stage as to protect the interest of other allottees.
24. With respect to the **third and fourth issue** raised by the complainant, as per section 13 promoter shall not accept a



sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. However the in the present case the said agreement has been executed prior to the commencement of the Act ibid and therefore, this section does not apply to retrospective transaction.

### Findings of the authority

27. The authority has complete subject matter 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. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose 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.

28. Keeping in view the facts and circumstances of the complaint and submissions made by the parties during arguments, the authority has observed that occupation certificate has been received by the respondent on 17.9.2018 and possession of the unit was offered to the complainant on 28.12.2018.

29. As per clause 21 of the builder buyer agreement dated 13.03.2015 for unit no. D024, 2<sup>nd</sup> floor, tower-D, in project "Indiabulls Enigma" Gurugram, possession was to be handed over to the complainant within a period of 3 years from the date of execution of BBA + 6 months grace period which comes out to be 13.09.2018. The respondent has already offered possession of the unit to the complainant on 28.12.2018. Complainant has already paid Rs.78,34,556/- to the respondent against a total sale consideration of Rs.2,63,64,363/-.

30. In view of the facts and circumstances that the respondent has already received occupation certificate and possession has also been offered to the complainant, the complainant is directed to take over the possession of the unit booked within a period of one month.



### Decision and direction of authority

31. 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:

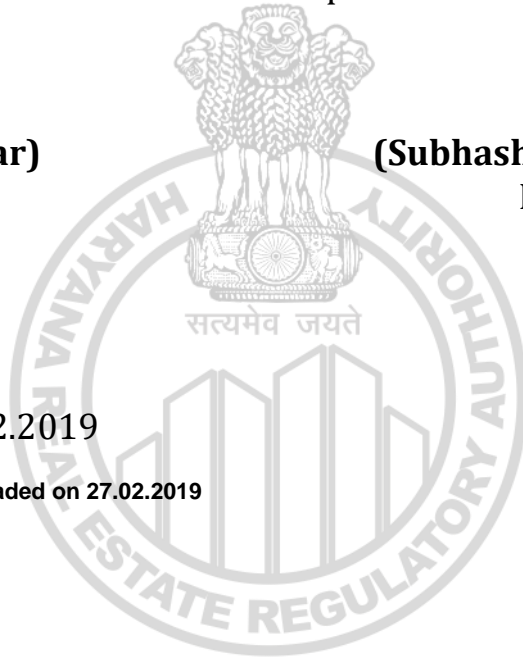
- i. The complainant is directed to take over the possession of the unit booked within a period of one month.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated:14.02.2019

Judgement uploaded on 27.02.2019



HARERA  
GURUGRAM

