

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

Complaint no. : 41 of 2019
First date of hearing : 07.03.2019
Date of decision : 07.03.2019

Kavita Singh
D-2/21, DLF -1, Gurugram: 122002.

..Complainant

Versus

M/s. Athena Infrastructure Ltd.
Indiabulls house. 448-451, Udyog Vihar,
Phase V, Gurugram.

...Respondent

CORAM:

Dr. K.K Khandelwal
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Mr. Rajesh Gulati
Mr. Abhay Jain
Mr. Rahul Yadav

Husband of complainant
Advocate for the complainant
Advocate for the respondent

ORDER

1. A complaint dated 17.01.2019 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 complainant Kavita Singh



against the promoter M/s Athena Infrastructure I.td. on account of violation of the clause 21 of the flat buyer's agreement executed on 30.08.2012 in respect of flat described below in the project 'Indiabulls Enigma' for not handing over possession by 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 30.08.2012, 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: -

i. Nature of the project- Residential

ii. DTCP license no: 213 of 2007 dated 05.09.2007, 10 of 2011 dated 29.01.2011 and 64 of 2012 dated 20.06.2012



1.	Name and location of the project	India bulls Enigma Sector 110, Gurugram
2.	Registered/Unregistered	Registered (346 of 2017)
3.	Revised date of completion as per RERA registration certificate	31.08.2018 Note: This has already expired.
4.	Payment plan	Construction linked
5.	Date of agreement	30.08.2012
6.	Unit no.	B143, 14 th floor, tower B
7.	Area of unit	3400 sq. ft.
8.	Total consideration as per applicant ledger dated 28.04.2018	Rs. 1,95,51,000/-
9.	Total amount paid by the complainant as per applicant ledger dated 28.04.2018	Rs. 1,93,92,034/-
10.	Possession Clause 21 - 3 years plus 6 months grace period from the execution of flat buyers agreement	28.02.2016
11.	Penalty As per clause 22	Rs. 5/- per sq. ft. per month of the super area
12.	Delay till date	Approx. 3 years 8 days (1061 days)

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondent. A flat buyer's agreement



is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 28.02.2016. Neither the respondent has delivered the possession of the said unit till date to the complainant nor they have paid any compensation @ Rs.5/- per sq. ft. per month for the period of delay as per clause 22 of flat buyer's agreement dated 30.08.2012. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent appeared on 07.03.2019. The case came up for hearing on 07.03.2019. The reply filed on behalf of the respondent on has been perused.

FACTS OF THE CASE:

6. Briefly stated, the complainant is a peace loving and law abiding citizen of India who nurtured an unrealised dream of having her own house in the upcoming society with all the facilities and standards.



7. The grievance of the complainant relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the apartment no B-143, measuring 3400 sq. ft. bought by the complainant paying her hard earned money, in the project called " Indiabulls Enigma" spread over the land measuring 15.6 acres situated in Pawala Khusrupur village, Tehsil and district Gurugram, Haryana.
8. On the basis of the license the company Athena Infrastructure Limited collected a huge amount almost all payable amount of the apartment from gullible and naïve buyers including the complainant from 2011 to 2017 and promised the complainant to hand over the possession of the apartment by 28.02.2016.
9. Even after a delay of more than 2 years the respondent is neither offering possession of the apartment to the complainant nor is paying any interest on his default to the complainant. Hence the present complaint is filed.



ISSUES RAISED BY THE COMPLAINANTS:

10. The following issues have been raised by the complainants:
- i. Whether the respondent has unjustifiably delayed the construction and development of the project in question?
 - ii. Whether the respondent is liable to pay the delay interest @18% p.a. along-with compensation till the time possession is handed over to the complainants?

RELIEF SOUGHT BY THE COMPLAINANTS:

11. In view of the facts mentioned the following reliefs have been sought by the complainants:
- a. Direct the respondent to refund with interest all such amounts to the complainant which the respondent has collected from the complainant as the respondent has failed to give the possession of the apartment as per the terms and conditions of the flat buyers agreement to the complainant till date. **OR**



Direct the respondent to pay interest for every month of delay in offering the possession of the apartment since 28.02.2016 to the complainant on the amount taken from the complainant for the sale consideration amount and additional charges for the aforesaid apartment with interest at the prescribed rate as per the Act till the respondent hands over the possession of the apartment.

- b. Direct the respondent to pay expenses of Rs 1,00,000 incurred by the complainant.
- c. Any other order that this hon'ble authority deem fit to meet the ends of justice.

REPLY BY THE RESPONDENT:



12. The respondent submitted the fact that the instant complaint is not maintainable, on facts or law, and is as such liable to be dismissed at the threshold being in wrong provisions of the law. The present complaint is devoid of any merits and had been preferred with sole motive to harass the respondent. 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

13. That the allegations made in the instant complaint are wrong, incorrect and baseless in the fact or law. The respondent denies them in toto. Nothing stated in the said complaint shall be deemed to be admitted by the respondent merely on account of non-transverse, unless the same is specifically admitted herein. 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.



14. 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, that the complainants have filed the instant claim on the alleged delay in delivery of possession of the provisional 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 instalments as per the payment plan.

15. The respondent submitted that it has already completed 95% of the construction of tower C and will be applying for grant of occupational certificate shortly and will hand over the possession of the unit in question to its respective buyers in short time of time. That the delay in delivering the possession of the flat to the complainants were 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.



16. The respondent submitted that as per the flat buyers agreement dated 30.08.2012, 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 flat buyers agreement being referred to or looked into in this proceeding is an agreement executed much before the commencement of the Act.

17. 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 favour of the complainants to institute the present complaint.

DETERMINATION OF ISSUES:

18. After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the issue wise

- i. With respect to the **first and second issue** raised by the complainant, the authority came across that as per clause



21 of the flat buyer's agreement; the possession of the said apartment was to be handed over within 3 years plus grace period of 6 months from the date of execution of apartment buyer's agreement. The agreement was executed on 30.08.2012. Therefore, the due date of possession shall be computed from 30.08.2012. The clause regarding the possession of the said unit is reproduced below:

"Clause 21: The developer shall endeavour to complete the construction of the said building within a period of three years, with a six months grace period from the date of execution of flat buyers agreement subject to timely payment.."

Accordingly, the due date of possession was 28.02.2016 and the possession has been delayed by approximately 3 years 8 days till date. Thus the complainant is entitled for interest on the delayed possession at the prescribed rate under the Act. Delay charges will accrue from the due date of possession i.e. 28.02.2016 till date as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016. The counsel for respondent



submitted that the tower in which the apartment of the complainant is situated is in advance stage of construction and is likely to be completed soon and that possession shall be given within 6 months after obtaining occupation certificate. In case the respondent does not fulfil the commitment they are liable to be proceeded against for penalty proceedings as well as the complainant may approach the authority for refund of amount.

FINDINGS OF THE AUTHORITY:

19. **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 complainant at a later stage.

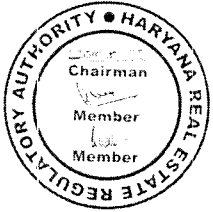
20. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.
21. The complainant requested that necessary directions be issued by the authority under section 37 of the Act *ibid* to the promoter to comply with the provisions and fulfil obligation.
22. The counsel for respondent submitted that the tower in which the apartment of the complainant is situated is in advance stage of construction and is likely to be completed soon and that possession shall be given within 6 months after obtaining occupation certificate. In case the respondent does



not fulfil the commitment they are liable to be proceeded against for penalty proceedings as well as the complainant is at liberty to approach the authority for refund of amount along with interest.

23. As per clause 21 of the builder buyer agreement dated 30.08.2012 for unit no B 143, 14th floor, tower B in project Indiabulls Enigma, Gurugram, possession was to be handed over to the complainant within a period of 36 months+6 months grace period which comes out to be 28.02.2016. However, the respondent has not delivered the unit in time. Complainant has already paid Rs 1,93,92,034/- to the respondent against a total sale consideration of Rs 1,95,51,000/-.

24. In view of the facts and circumstances of the matter the authority is of the considered view that as per section 18(1) of Real Estate (Regulation and Development) Act,2016, the complainant is entitled for interest at the prescribed rate i.e. 10.75% per annum for the period of delay in handing over the possession. The builder as well as buyer shall be



equitable in charging interest @10.75% i.e. default of buyer in making late payments and delayed possession charges to be given by the respondent

DECISION AND DIRECTIONS OF THE AUTHORITY:

25. After taking into consideration all the material facts adduced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions:

- a. The respondent 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 complainant.
- b. The respondent is directed to pay interest accrued from 28.02.2016 to 07.03.2019 i.e. Rs. 60,59,745/- on account of delay in handing over of possession to the complainant within 90 days from the date of order.



c. Thereafter monthly interest of Rs. 1,73,720/- on 10th of every month of delay till the handing over of possession.

26. The order is pronounced.

27. Case file be consigned to the registry.

(Dr K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Date: 07.03.2019

Judgement Uploaded on 25.03.2019

