

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

Complaint no. : 800 of 2018
First date of hearing : 20.12.2018
Date of decision : 20.12.2018

Mr Pranav Sood
Mr Dinesh Sood
Mrs Monika Sood
R/o House no-1557, Sector 38B, Chandigarh-
160036

Complainants

Versus

M/s Athena Infrastructure Ltd (Through its
Managing Director)
Regd. Office: M-62 & 63, first floor,
Connaught Place, New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Medhya Ahluwalia Advocate for complainant

Shri Rahul Yadav Advocate for the respondent

ORDER

1. A complaint dated 31.08.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr Pranav Sood, Mr Dinesh Sood and Mrs Monika Sood against the





promoter M/s Athena Infrastructure Ltd. in respect of flat no. J-121, 12th floor, Tower J with a super area of 3880 sq. ft in the project 'India Bulls Enigma' on account of violation of clause 21 of the flat buyer agreement dated 24.04.2014 for not handing over possession on due date of 24.10.2017 which is an obligation under section 11(4)(a) of act ibid.

2. Since, the flat buyer agreement was executed on 24.04.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 case are as under: -

1.	Name and location of the project	Indiabulls enigma at Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Current status of project	Occupation certificate dated 17.09.2018 for Tower J received
4.	Project area	15.6 acres





5.	DTCP license	213 of 2007 10 of 2011 64 of 2012
6.	RERA registered/ not registered.	Registered (Phase 1)
7.	RERA registration no	351 of 2017
8.	Completion date as per RERA certificate	31.08.2018 (expired but respondent has applied for extension on 18.09.2018)
9.	Apartment/unit no.	J-121, 12 th floor, Tower J
10.	Apartment measuring	3880 sq. ft super area
11.	Payment plan	Construction linked payment plan <i>Subvention Scheme</i>
12.	Date of execution of flat buyer agreement	24.04.2014
13.	Total consideration (As per statement of accounts dated 14.08.2018)	Rs 3,18,49,000/-
14.	Total amount paid by the complainant till date (As per statement of accounts dated 14.08.2018)	Rs 3,09,82,839/-
15.	Date of delivery of possession (As per clause 21 - 3 years plus 6 months grace period from the execution of flat buyer agreement)	24.10.2017
16.	Delay	1 year 1 month 26 days
17.	Penalty clause (As per clause 22 of flat buyer agreement)	Rs. 5 per sq. ft. per month of the super area



Corrected vide order dated 21/02/19



4. The details provided above have been checked on the basis of record available in the case file provided by the complainant and the respondent. A flat buyer agreement dated 24.04.2014 is available on record for the subject flat as per which possession of the flat was to be delivered on 24.10.2017. However the possession has not been delivered till date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 20.12.2018. The case came up for hearing on 20.12.2018. The reply filed on behalf of the respondent 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, Gurugram in Pawala Khusrupur Village, Gurgaon Tehsil, Gurugram.

7. The complainants submitted that the representatives of Indiabulls Real Estate Ltd. represented to the complainants that Indiabulls is developing the above project through its 100% subsidiary M/s. Athena Infrastructure Ltd. The complainants were induced to book the above flat by showing brochures and advertisements material depicting that the





project will be developed as a state-of-art project and shall be one of its kinds. It was stated that the Indiabulls enigma is a premium high-end multi-storey project being developed with the assistance of internationally renowned architects. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.

8. The complainants submitted that the complainants were further induced to sign a pre-printed flat buyer's agreement dated 24.04.2014 by virtue of which the respondent allotted unit bearing No. J - 121 on 12th Floor in Tower - J, having super area of 3,880 sq. ft. The said flat buyer agreement is totally one sided which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent.
9. The complainants have paid a total sum of Rs.3,09,82,839/- towards the aforesaid residential flat in the project from February 2013 to March 2017 as and when demanded by the respondent. It is pertinent to mention that 95% of the sale consideration was paid to the respondent by 03.03.2017 but





still the respondent has failed to deliver the possession within the agreed time frame and has miserably delayed the project

10. The respondent had promised to complete the project within a period of 36 months from the date of execution of the flat buyer agreement with a further grace period of six months. However in the present case the FBA executed by the respondent is undated and therefore date of first payment should be considered for the purposes of calculating three years.

11. The complainants submitted that the project Indiabulls Enigma comprises of Towers A to J. The tower D is to be developed by another subsidiary of Indiabulls namely M/s. Varali Properties Ltd. The other Towers i.e. A to C and E to J are being developed by Respondent herein. It was presented to the complainant that Towers A to D will have 17 floors. However, during the construction the Respondent and Varali changed the original plan and revised the same to the detriment of the complainants and unilaterally increased 4 floors in Towers A to D. The increase in floors/increase in FAR changed the entire theme of the project; it shall ultimately





disturb the density of the colony and its basic design attraction; it will create an extra burden on the common amenities and facilities.

12. The respondent increased the saleable area much more than was originally represented by them, which will lead to a strain on the common facilities like open areas, car parking space, club facilities, swimming pool usage, as with an increase in population density, the ease of the use of common facilities is seriously compromised against the interest of the Complainant. Moreover, the strength of the structure of Tower A to D has been compromised, the foundation designed and built for 17 floors would not withstand the additional load of 4 floors.

13. The respondent did not seek the consent of the complainants for increasing the floors and increased the floors in a secretive manner. It is stated that the enhancement of FAR is in total violation of representations made in the respondent's advertisement material displayed at site as well as on the internet.





14. The unlawful act of increasing the FAR, the respondent referred to an obscure notice released by the respondent in non-descript newspaper(s) advertising the said change in plan. This unconscionable act is clear violation of the legal mandate whereby the developer is required to invite objections from allottees before seeking any revision in the original building plans. In this regard. It is worthwhile to mention that the respondent has been sending various communications and demands, vide emails, but the respondent conveniently avoided obtaining approval of the complainants for the major changes in sanction plans, which has changed the fundamental nature of the project.
15. The complainants also submitted that the respondent has illegally charged car parking usage charges. The respondent has also over charged EDC and IDC and has misrepresented regarding claim of VAT. The Complainants after gaining fact about illegal collection of EDC/IDC on numerous occasions approached the Respondent at its premises and requested for the refund of excess amount, thereafter the Respondent/ promoter finally on 05.08.2016 adjusted the excess amount of



Rs. 3,49,200/-. The respondent did not pay any interest to the complainants on the amount of Rs. 3,49,200/- which the Respondent had illegally withheld for more than three years. The respondent further artificially inflated measurable super area and has also wrongfully charged service tax.

16. The complainants also submitted that The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed.

Issues raised by the Complainants

17. The issues raised by the complainants are as follows:-
- Whether the respondent has made false representations about the project in question in order to induce the complaint to make a booking?



- ii. Whether the respondent has unjustifiably delayed the construction and development of the project in question?
- iii. Whether the respondent is liable to pay the delay interest @18% per month till possession is handed over to the Complainants, complete in all aspects?
- iv. Whether the respondent has over charged EDC, IDC?
- v. Whether the respondent has wrongfully resorted to increase in floors/increase in FAR thereby changing the entire theme of the project?
- vi. Whether the respondent has artificially inflated measurable super area and has also wrongfully charged service tax and PLC?

Relief(s) sought:

18. The reliefs sought by the complainant are as follows :

- i. To direct the respondent to pay refund the entire paid Award 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;





- ii. To direct the respondent to provide the schedule of construction and also to rectify the breaches with regard to extra EDC /IDC charges, wrongfully charging of parking charges, VAT, service tax, PLC as well as for wrongfully inflating the super area.
- iii. To direct the respondents to pay a sum of Rs. 50,000/- to the complainants towards the cost of the litigation;

Respondent's Reply

19. 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. In fact the complainants are guilty of "Suppressio veri" and Suggestio Falsi" and has in fact concealed the true facts about their approaching the National Consumer Dispute Redressal Commission (NCDRC) for the baseless grievances against the Respondent and thus try to mislead the authority. That the instant complaint filed by the complainants before the 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.

20. 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*. 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 *in limini*.

21. The respondent submitted that the complainant has preferred to file their complaint before the authority for adjudication of their complaint, however the same is ought to be filled before adjudicating officer as per Section 71 (1) of The RERA Act,





2016. Hence it is respectfully submitted that, the instant complaint be referred to the Ld. Adjudicating Officer and this authority may dismiss the same forthwith.

22. The respondent submitted that the relationship between the complainants and the respondent is governed by the document executed between them i.e. FBA dated 24.04.2014 It is pertinent to mention herein that the instant complaint of the complainants is further falsifying their claim from the very fact that, the complainants have filed the instant claim on the alleged delay in delivery of possession of the provisionally booked unit however the complainants with malafide intention have not disclosed, in fact concealed the material fact from this authority that the complainants have been a wilful defaulter since the beginning, not paying their instalments on time as per the construction link plan opted by them. It is stated that the complainants have not come before this authority with clean hands and wishes to take advantage of their own misdoings with the help of the provisions of the RERA, which have been propagated for the benefit of innocent





customers who are end-users and not defaulters, like the complainants in the present complaint.

23. The respondent submitted that it is pertinent to mention here that from the very beginning it was in the knowledge of the complainants, that there is a mechanism detailed in the FBA which covers the exigencies of inordinate delay caused in completion and handing over of the booked Unit i.e. enumerated in the "clause 22" of duly executed FBA by the Complainants along with their complaint.
24. The respondent submitted that the complainant only after being satisfied with the project in totality that the complainant expressed his willingness to book a unit in the project looking into the financial viability of the project and its future monetary benefits got the said unit booked with the respondent.
25. The respondent also submitted that he has already completed the construction of the Tower J and has already obtained occupation certificate for the said tower and have already initiated the procedure of handing over the possession of the units of Tower J to its respective buyers.





26. The respondent submitted 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, in addition to the problems related to labour/ raw material and government restrictions including National Green Tribunal which imposed a ban on carrying out constructions in Delhi-NCR for several months, the respondent kept on the work moving steadily. That based upon the past experiences the respondent has specifically mentioned all the above contingencies in the FBA dated 24.04.2014 and incorporated them in "Clause 39" of FBA filled by the complainants.

27. In addition to the reasons as detailed above, there was a delay in sanctioning of the permissions and sanctions from the departments, in fact as of now no proper connectivity has been provided to the project of the respondent by the Haryana government. It will also not be out of place to mention that the respondent has been diligently pursuing the matter with





various authorities and hence no delay can be attributed on the part of the Respondent.

28. It is pertinent to mention herein that the agreement for the purpose of getting the adjudication of the instant complaint i.e. the flat buyer agreement dated 24.04.2014 was executed much prior to coming into force of the RERA Act, 2016 and the HA-RERA Rules, 2017. Further the adjudication of the instant complaint for the purpose of granting interest and compensation, as provided under RERA ACT, 2016 has to be in reference to the agreement for sale executed in terms of said Act and said Rules and no other agreement, whereas, the FBA being referred to or looked into in this proceedings is an agreement executed much before the commencement of RERA and such agreement as referred herein above. Thus, in view of the submissions made above, no relief can be granted to the complainants on the basis of the new agreement to sell as per RERA, Act 2016.

29. The respondent also submitted that he 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 developer 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 "Indiabulls enigma" has never been stopped or abandoned and has now reached its pinnacle.

Determination of issues

30. With respect to **issue no. 1 and issue 2**, As per clause 21 of the flat buyer agreement executed between complainants and respondent, the respondent was liable to deliver the booked unit within a period of 3 years plus 6 months grace period from the date of execution of flat buyer agreement. Accordingly the



respondent was liable to deliver the possession of the booked unit on the due date of 24.10.2017. The respondent has failed to offer the possession of the booked unit till date. The respondent has delayed the delivery of possession for a period of 1 year 1 month 26 days. Keeping in the view the same fact that the respondent has delayed the delivery of possession of the booked unit, therefore the respondent is liable under section 18 (1) (a) of the Act to pay delay interest at the prescribed rate of 10.75% per annum for the period of delay.

31. With respect to **issue 3, issue 4, issue 5, and issue 6** the authority is of the view that these issues cannot be decided as the complainants has failed to supply any evidence in support of their claim.

Findings of the authority

32. 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.





33. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.
34. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015*, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.
35. In the present case, the project in question was registered with the authority vide no.351 of 2017 which has expired on 31.8.2018. Counsel for the respondent stated that they have applied for extension of registration on 18.9.2018 which is pending with the authority. Occupation certificate in respect of Tower-J has been received on 17.9.2018. As per clause 21 of the flat buyer agreement dated 24.4.2014 for unit no. J121, 12th floor, Tower-J, in Indiabulls Enigma" Sector-110 Gurugram, possession was to be handed over to the complainant within a period of 3 years + 6 months grace period from the date of



execution of agreement which comes out to be **24.10.2017**. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.3,09,82,839/- to the respondent.

Decision and directions of the authority

36. After taking into consideration all the material facts as adduced and produced 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 to the respondent in the interest of justice and fair play :

- i. As per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 the respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f 24.10.2017 till the date of handing over the offer of possession of the booked unit failing which the complainant is entitled to refund the amount.
- ii. The arrears of interest accrued so far from the due date of delivery of possession i.e 24.10.2017 to the date of order

kaid by the respondent towards pre-EMI against disbursed loan may be adjusted.

Corrected vide order dated 08/04/19.



i.e 20.12.2018 which on calculation comes to Rs 38,50,784.91/- shall be paid to the complainant within 90 days from the date of this order.

iii. Thereafter the respondent is also directed to pay monthly interest of Rs 2,77,554.60/- till the handing over the possession of the booked unit on or before 10th of every subsequent month.

37. Complaint is disposed of accordingly.

38. File be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated : 20.12.2018

Corrected judgement uploaded on 17.04.2019



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ORDER

1. A complaint dated 31.08.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr Pranav Sood, Mr Dinesh Sood and Mrs Monika Sood against the





promoter M/s Athena Infrastructure Ltd. in respect of flat no. J-121, 12th floor, Tower J with a super area of 3880 sq. ft in the project 'India Bulls Enigma' on account of violation of clause 21 of the flat buyer agreement dated 24.04.2014 for not handing over possession on due date of 24.10.2017 which is an obligation under section 11(4)(a) of act ibid.

2. Since, the flat buyer agreement was executed on 24.04.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 case are as under: -

1.	Name and location of the project	Indiabulls enigma at Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Current status of project	Occupation certificate dated 17.09.2018 for Tower J received
4.	Project area	15.6 acres





5.	DTCP license	213 of 2007 10 of 2011 64 of 2012
6.	RERA registered/ not registered.	Registered (Phase 1)
7.	RERA registration no	351 of 2017
8.	Completion date as per RERA certificate	31.08.2018 (expired but respondent has applied for extension on 18.09.2018)
9.	Apartment/unit no.	J-121, 12 th floor, Tower J
10.	Apartment measuring	3880 sq. ft super area
11.	Payment plan	Construction linked payment plan <i>Subvention Scheme</i>
12.	Date of execution of flat buyer agreement	24.04.2014
13.	Total consideration (As per statement of accounts dated 14.08.2018)	Rs 3,18,49,000/-
14.	Total amount paid by the complainant till date (As per statement of accounts dated 14.08.2018)	Rs 3,09,82,839/-
15.	Date of delivery of possession (As per clause 21 - 3 years plus 6 months grace period from the execution of flat buyer agreement)	24.10.2017
16.	Delay	1 year 1 month 26 days
17.	Penalty clause (As per clause 22 of flat buyer agreement)	Rs. 5 per sq. ft. per month of the super area



Corrected vide order dated 21/02/19



4. The details provided above have been checked on the basis of record available in the case file provided by the complainant and the respondent. A flat buyer agreement dated 24.04.2014 is available on record for the subject flat as per which possession of the flat was to be delivered on 24.10.2017. However the possession has not been delivered till date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 20.12.2018. The case came up for hearing on 20.12.2018. The reply filed on behalf of the respondent 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, Gurugram in Pawala Khusrupur Village, Gurgaon Tehsil, Gurugram.
7. The complainants submitted that the representatives of Indiabulls Real Estate Ltd. represented to the complainants that Indiabulls is developing the above project through its 100% subsidiary M/s. Athena Infrastructure Ltd. The complainants were induced to book the above flat by showing brochures and advertisements material depicting that the





project will be developed as a state-of-art project and shall be one of its kinds. It was stated that the Indiabulls enigma is a premium high-end multi-storey project being developed with the assistance of internationally renowned architects. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.

8. The complainants submitted that the complainants were further induced to sign a pre-printed flat buyer's agreement dated 24.04.2014 by virtue of which the respondent allotted unit bearing No. J - 121 on 12th Floor in Tower - J, having super area of 3,880 sq. ft. The said flat buyer agreement is totally one sided which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent.
9. The complainants have paid a total sum of Rs.3,09,82,839/- towards the aforesaid residential flat in the project from February 2013 to March 2017 as and when demanded by the respondent. It is pertinent to mention that 95% of the sale consideration was paid to the respondent by 03.03.2017 but



- still the respondent has failed to deliver the possession within the agreed time frame and has miserably delayed the project
10. The respondent had promised to complete the project within a period of 36 months from the date of execution of the flat buyer agreement with a further grace period of six months. However in the present case the FBA executed by the respondent is undated and therefore date of first payment should be considered for the purposes of calculating three years.
11. The complainants submitted that the project Indiabulls Enigma comprises of Towers A to J. The tower D is to be developed by another subsidiary of Indiabulls namely M/s. Varali Properties Ltd. The other Towers i.e. A to C and E to J are being developed by Respondent herein. It was presented to the complainant that Towers A to D will have 17 floors. However, during the construction the Respondent and Varali changed the original plan and revised the same to the detriment of the complainants and unilaterally increased 4 floors in Towers A to D. The increase in floors/increase in FAR changed the entire theme of the project; it shall ultimately





disturb the density of the colony and its basic design attraction; it will create an extra burden on the common amenities and facilities.

12. The respondent increased the saleable area much more than was originally represented by them, which will lead to a strain on the common facilities like open areas, car parking space, club facilities, swimming pool usage, as with an increase in population density, the ease of the use of common facilities is seriously compromised against the interest of the Complainant. Moreover, the strength of the structure of Tower A to D has been compromised, the foundation designed and built for 17 floors would not withstand the additional load of 4 floors.

13. The respondent did not seek the consent of the complainants for increasing the floors and increased the floors in a secretive manner. It is stated that the enhancement of FAR is in total violation of representations made in the respondent's advertisement material displayed at site as well as on the internet.





14. The unlawful act of increasing the FAR, the respondent referred to an obscure notice released by the respondent in non-descript newspaper(s) advertising the said change in plan. This unconscionable act is clear violation of the legal mandate whereby the developer is required to invite objections from allottees before seeking any revision in the original building plans. In this regard. It is worthwhile to mention that the respondent has been sending various communications and demands, vide emails, but the respondent conveniently avoided obtaining approval of the complainants for the major changes in sanction plans, which has changed the fundamental nature of the project.

15. The complainants also submitted that the respondent has illegally charged car parking usage charges. The respondent has also over charged EDC and IDC and has misrepresented regarding claim of VAT. The Complainants after gaining fact about illegal collection of EDC/IDC on numerous occasions approached the Respondent at its premises and requested for the refund of excess amount, thereafter the Respondent/promoter finally on 05.08.2016 adjusted the excess amount of





Rs. 3,49,200/-. The respondent did not pay any interest to the complainants on the amount of Rs. 3,49,200/- which the Respondent had illegally withheld for more than three years. The respondent further artificially inflated measurable super area and has also wrongfully charged service tax.

16. The complainants also submitted that The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed.

Issues raised by the Complainants

17. The issues raised by the complainants are as follows:-
- Whether the respondent has made false representations about the project in question in order to induce the complaint to make a booking?**



- ii. Whether the respondent has unjustifiably delayed the construction and development of the project in question?
- iii. Whether the respondent is liable to pay the delay interest @18% per month till possession is handed over to the Complainants, complete in all aspects?
- iv. Whether the respondent has over charged EDC, IDC?
- v. Whether the respondent has wrongfully resorted to increase in floors/increase in FAR thereby changing the entire theme of the project?
- vi. Whether the respondent has artificially inflated measurable super area and has also wrongfully charged service tax and PLC?

Relief(s) sought:

18. The reliefs sought by the complainant are as follows :

- i. To direct the respondent to pay refund the entire paid Award 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;



- ii. To direct the respondent to provide the schedule of construction and also to rectify the breaches with regard to extra EDC /IDC charges, wrongfully charging of parking charges, VAT, service tax, PLC as well as for wrongfully inflating the super area.
- iii. To direct the respondents to pay a sum of Rs. 50,000/- to the complainants towards the cost of the litigation;

Respondent's Reply

19. 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. In fact the complainants are guilty of "**Suppressio veri**" and **Suggestio Falsi**" and has in fact concealed the true facts about their approaching the National Consumer Dispute Redressal Commission (NCDRC) for the baseless grievances against the Respondent and thus try to mislead the authority. That the instant complaint filed by the complainants before the 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





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20. 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*. 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 *in limini*.

21. The respondent submitted that the complainant has preferred to file their complaint before the authority for adjudication of their complaint, however the same is ought to be filled before adjudicating officer as per Section 71 (1) of The RERA Act,





2016. Hence it is respectfully submitted that, the instant complaint be referred to the Ld. Adjudicating Officer and this authority may dismiss the same forthwith.

22. The respondent submitted that the relationship between the complainants and the respondent is governed by the document executed between them i.e. FBA dated 24.04.2014 It is pertinent to mention herein that the instant complaint of the complainants is further falsifying their claim from the very fact that, the complainants have filed the instant claim on the alleged delay in delivery of possession of the provisionally booked unit however the complainants with malafide intention have not disclosed, in fact concealed the material fact from this authority that the complainants have been a wilful defaulter since the beginning, not paying their instalments on time as per the construction link plan opted by them. It is stated that the complainants have not come before this authority with clean hands and wishes to take advantage of their own misdoings with the help of the provisions of the RERA, which have been propagated for the benefit of innocent





customers who are end-users and not defaulters, like the complainants in the present complaint.

23. The respondent submitted that it is pertinent to mention here that from the very beginning it was in the knowledge of the complainants, that there is a mechanism detailed in the FBA which covers the exigencies of inordinate delay caused in completion and handing over of the booked Unit i.e. enumerated in the "clause 22" of duly executed FBA by the Complainants along with their complaint.
24. The respondent submitted that the complainant only after being satisfied with the project in totality that the complainant expressed his willingness to book a unit in the project looking into the financial viability of the project and its future monetary benefits got the said unit booked with the respondent.
25. The respondent also submitted that he has already completed the construction of the Tower J and has already obtained occupation certificate for the said tower and have already initiated the procedure of handing over the possession of the units of Tower J to its respective buyers.





26. The respondent submitted 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, in addition to the problems related to labour/ raw material and government restrictions including National Green Tribunal which imposed a ban on carrying out constructions in Delhi-NCR for several months, the respondent kept on the work moving steadily. That based upon the past experiences the respondent has specifically mentioned all the above contingencies in the FBA dated 24.04.2014 and incorporated them in "Clause 39" of FBA filled by the complainants.

27. In addition to the reasons as detailed above, there was a delay in sanctioning of the permissions and sanctions from the departments, in fact as of now no proper connectivity has been provided to the project of the respondent by the Haryana government. It will also not be out of place to mention that the respondent has been diligently pursuing the matter with



various authorities and hence no delay can be attributed on the part of the Respondent.

28. It is pertinent to mention herein that the agreement for the purpose of getting the adjudication of the instant complaint i.e. the flat buyer agreement dated 24.04.2014 was executed much prior to coming into force of the RERA Act, 2016 and the HA-RERA Rules, 2017. Further the adjudication of the instant complaint for the purpose of granting interest and compensation, as provided under RERA ACT, 2016 has to be in reference to the agreement for sale executed in terms of said Act and said Rules and no other agreement, whereas, the FBA being referred to or looked into in this proceedings is an agreement executed much before the commencement of RERA and such agreement as referred herein above. Thus, in view of the submissions made above, no relief can be granted to the complainants on the basis of the new agreement to sell as per RERA, Act 2016.

29. The respondent also submitted that he 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 developer 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 "Indiabulls enigma" has never been stopped or abandoned and has now reached its pinnacle.

Determination of issues

30. With respect to **issue no. 1 and issue 2**, As per clause 21 of the flat buyer agreement executed between complainants and respondent, the respondent was liable to deliver the booked unit within a period of 3 years plus 6 months grace period from the date of execution of flat buyer agreement. Accordingly the





respondent was liable to deliver the possession of the booked unit on the due date of 24.10.2017. The respondent has failed to offer the possession of the booked unit till date. The respondent has delayed the delivery of possession for a period of 1 year 1 month 26 days. Keeping in the view the same fact that the respondent has delayed the delivery of possession of the booked unit, therefore the respondent is liable under section 18 (1) (a) of the Act to pay delay interest at the prescribed rate of 10.75% per annum for the period of delay.

31. With respect to **issue 3, issue 4, issue 5, and issue 6** the authority is of the view that these issues cannot be decided as the complainants has failed to supply any evidence in support of their claim.

Findings of the authority

32. 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.





33. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.
34. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015*, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer.
35. In the present case, the project in question was registered with the authority vide no.351 of 2017 which has expired on 31.8.2018. Counsel for the respondent stated that they have applied for extension of registration on 18.9.2018 which is pending with the authority. Occupation certificate in respect of Tower-J has been received on 17.9.2018. As per clause 21 of the flat buyer agreement dated 24.4.2014 for unit no. J121, 12th floor, Tower-J, in "Indiabulls Enigma" Sector-110 Gurugram, possession was to be handed over to the complainant within a period of 3 years + 6 months grace period from the date of



execution of agreement which comes out to be **24.10.2017**. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.3,09,82,839/- to the respondent.

Decision and directions of the authority

36. After taking into consideration all the material facts as adduced and produced 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 to the respondent in the interest of justice and fair play :

- i. As per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 the respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f 24.10.2017 till the date of handing over the offer of possession of the booked unit failing which the complainant is entitled to refund the amount.
- ii. The arrears of interest accrued so far from the due date of delivery of possession i.e 24.10.2017 to the date of order



i.e 20.12.2018 which on calculation comes to Rs 38,50,784.91/- shall be paid to the complainant within 90 days from the date of this order.

iii. Thereafter the respondent is also directed to pay monthly interest of Rs 2,77,554.60/- till the handing over the possession of the booked unit on or before 10th of every subsequent month.

37. Complaint is disposed of accordingly.

38. File be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated : 20.12.2018

Corrected Judgement Uploaded on 01.03.2019



PROCEEDINGS OF THE DAY

Day and Date	Thursday and 20.12.2018
Complaint No.	800/2018 Case Titled As Pranav Sood & Ors. V/S M/S Athena Infrastructure Ltd.
Complainant	Pranav Sood & Ors.
Represented through	Shri Vaibhav Suri Advocate for the complainant.
Respondent	M/S Athena Infrastructure Ltd.
Respondent Represented through	Shri Rahul Yadav Advocate for the respondent.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

Proceedings

Project is registered with the authority.

Project was registered with the authority vide No.351 of 2017 which has expired on 31.8.2018. Counsel for the respondent stated that they have applied for extension of registration on 18.9.2018 which is pending with the authority.

Occupation certificate in respect of Tower-J has been received on 17.9.2018.

Arguments heard.

As per clause 21 of the Builder Buyer Agreement dated 24.4.2014 for unit No.J121, 12th floor, Tower-J, in Indiabulls Enigma" Sector-110 Gurugram, possession was to be handed over to the complainant within a

period of 3 years + 6 months grace period which comes out to be **24.10.2017**. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.3,09,82,839/- to the respondent. As such, complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f **24.10.2017** as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 till the handing over the possession failing which the complainant is entitled to refund the amount.

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)
20.12.2018

Subhash Chander Kush
(Member)
20.12.2018

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

Complaint no. : 800 of 2018
First date of hearing : 20.12.2018
Date of decision : 20.12.2018

Mr Pranav Sood
Mr Dinesh Sood
Mrs Monika Sood
R/o House no-1557, Sector 38B, Chandigarh-
160036

Complainants

Versus

M/s Athena Infrastructure Ltd (Through its
Managing Director)
Regd. Office: M-62 & 63, first floor,
Connaught Place, New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Medhya Ahluwalia Advocate for complainant

Shri Rahul Yadav Advocate for the respondent

ORDER

1. A complaint dated 31.08.2018 was filed under section 31 of the Real Estate (Regulation & Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants Mr Pranav Sood, Mr Dinesh Sood and Mrs Monika Sood against the



promoter M/s Athena Infrastructure Ltd. in respect of flat no. J-121, 12th floor, Tower J with a super area of 3880 sq. ft in the project 'India Bulls Enigma' on account of violation of clause 21 of the flat buyer agreement dated 24.04.2014 for not handing over possession on due date of 24.10.2017 which is an obligation under section 11(4)(a) of act ibid.

2. Since, the flat buyer agreement was executed on 24.04.2014 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, therefore, the penal proceedings cannot 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 case are as under: -

1.	Name and location of the project	Indiabulls enigma at Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Current status of project	Occupation certificate dated 17.09.2018 for Tower J received
4.	Project area	15.6 acres



5.	DTCP license	213 of 2007 10 of 2011 64 of 2012
6.	RERA registered/ not registered.	Registered (Phase 1)
7.	RERA registration no	351 of 2017
8.	Completion date as per RERA certificate	31.08.2018 (expired but respondent has applied for extension on 18.09.2018)
9.	Apartment/unit no.	J-121, 12 th floor, Tower J
10.	Apartment measuring	3880 sq. ft super area
11.	Payment plan	Construction linked payment plan
12.	Date of execution of flat buyer agreement	24.04.2014
13.	Total consideration (As per statement of accounts dated 14.08.2018)	Rs 3,18,49,000/-
14.	Total amount paid by the complainant till date (As per statement of accounts dated 14.08.2018)	Rs 3,09,82,839/-
15.	Date of delivery of possession (As per clause 21 – 3 years plus 6 months grace period from the execution of flat buyer agreement)	24.10.2017
16.	Delay	1 year 1 month 26 days
17.	Penalty clause (As per clause 22 of flat buyer agreement)	Rs. 5 per sq. ft. per month of the super area



4. The details provided above have been checked on the basis of record available in the case file provided by the complainant and the respondent. A flat buyer agreement dated 24.04.2014 is available on record for the subject flat as per which possession of the flat was to be delivered on 24.10.2017. However the possession has not been delivered till date.
5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent through his counsel appeared on 20.12.2018. The case came up for hearing on 20.12.2018. The reply filed on behalf of the respondent 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, Gurugram in Pawala Khusrupur Village, Gurgaon Tehsil, Gurugram.
7. The complainants submitted that the representatives of Indiabulls Real Estate Ltd. represented to the complainants that Indiabulls is developing the above project through its 100% subsidiary M/s. Athena Infrastructure Ltd. The complainants were induced to book the above flat by showing brochures and advertisements material depicting that the



project will be developed as a state-of-art project and shall be one of its kinds. It was stated that the Indiabulls enigma is a premium high-end multi-storey project being developed with the assistance of internationally renowned architects. It was also represented that all necessary sanctions and approvals had been obtained to complete the same within the promised time frame.

8. The complainants submitted that the complainants were further induced to sign a pre-printed flat buyer's agreement dated 24.04.2014 by virtue of which the respondent allotted unit bearing No. J - 121 on 12th Floor in Tower - J, having super area of 3,880 sq. ft. The said flat buyer agreement is totally one sided which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent.
9. The complainants have paid a total sum of Rs.3,09,82,839/- towards the aforesaid residential flat in the project from February 2013 to March 2017 as and when demanded by the respondent. It is pertinent to mention that 95% of the sale consideration was paid to the respondent by 03.03.2017 but



still the respondent has failed to deliver the possession within the agreed time frame and has miserably delayed the project

10. The respondent had promised to complete the project within a period of 36 months from the date of execution of the flat buyer agreement with a further grace period of six months.

However in the present case the FBA executed by the respondent is undated and therefore date of first payment should be considered for the purposes of calculating three years.

11. The complainants submitted that the project Indiabulls Enigma comprises of Towers A to J. The tower D is to be developed by another subsidiary of Indiabulls namely M/s. Varali Properties Ltd. The other Towers i.e. A to C and E to J are being developed by Respondent herein. It was presented to the complainant that Towers A to D will have 17 floors. However, during the construction the Respondent and Varali changed the original plan and revised the same to the detriment of the complainants and unilaterally increased 4 floors in Towers A to D. The increase in floors/increase in FAR changed the entire theme of the project; it shall ultimately



disturb the density of the colony and its basic design attraction; it will create an extra burden on the common amenities and facilities.

12. The respondent increased the saleable area much more than was originally represented by them, which will lead to a strain on the common facilities like open areas, car parking space, club facilities, swimming pool usage, as with an increase in population density, the ease of the use of common facilities is seriously compromised against the interest of the Complainant. Moreover, the strength of the structure of Tower A to D has been compromised, the foundation designed and built for 17 floors would not withstand the additional load of 4 floors.

13. The respondent did not seek the consent of the complainants for increasing the floors and increased the floors in a secretive manner. It is stated that the enhancement of FAR is in total violation of representations made in the respondent's advertisement material displayed at site as well as on the internet.



14. The unlawful act of increasing the FAR, the respondent referred to an obscure notice released by the respondent in non-descript newspaper(s) advertising the said change in plan. This unconscionable act is clear violation of the legal mandate whereby the developer is required to invite objections from allottees before seeking any revision in the original building plans. In this regard. It is worthwhile to mention that the respondent has been sending various communications and demands, vide emails, but the respondent conveniently avoided obtaining approval of the complainants for the major changes in sanction plans, which has changed the fundamental nature of the project.

15. The complainants also submitted that the respondent has illegally charged car parking usage charges. The respondent has also over charged EDC and IDC and has misrepresented regarding claim of VAT. The Complainants after gaining fact about illegal collection of EDC/IDC on numerous occasions approached the Respondent at its premises and requested for the refund of excess amount, thereafter the Respondent/promoter finally on 05.08.2016 adjusted the excess amount of



Rs. 3,49,200/-. The respondent did not pay any interest to the complainants on the amount of Rs. 3,49,200/- which the Respondent had illegally withheld for more than three years. The respondent further artificially inflated measurable super area and has also wrongfully charged service tax.

16. The complainants also submitted that The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed.

Issues raised by the Complainants

17. The issues raised by the complainants are as follows:-
- Whether the respondent has made false representations about the project in question in order to induce the complaint to make a booking?



- ii. **Whether the respondent has unjustifiably delayed the construction and development of the project in question?**
- iii. **Whether the respondent is liable to pay the delay interest @18% per month till possession is handed over to the Complainants, complete in all aspects?**
- iv. **Whether the respondent has over charged EDC, IDC?**
- v. **Whether the respondent has wrongfully resorted to increase in floors/increase in FAR thereby changing the entire theme of the project?**
- vi. **Whether the respondent has artificially inflated measurable super area and has also wrongfully charged service tax and PLC?**

Relief(s) sought:

18. The reliefs sought by the complainant are as follows :

- i. **To direct the respondent to pay refund the entire paid Award 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;**



- ii. To direct the respondent to provide the schedule of construction and also to rectify the breaches with regard to extra EDC /IDC charges, wrongfully charging of parking charges, VAT, service tax, PLC as well as for wrongfully inflating the super area.
- iii. To direct the respondents to pay a sum of Rs. 50,000/- to the complainants towards the cost of the litigation;

Respondent's Reply

19. 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. In fact the complainants are guilty of "**Suppressio veri**" and "**Suggestio Falsi**" and has in fact concealed the true facts about their approaching the National Consumer Dispute Redressal Commission (NCDRC) for the baseless grievances against the Respondent and thus try to mislead the authority. That the instant complaint filed by the complainants before the 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.

20. 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*. 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 *in limini*.

21. The respondent submitted that the complainant has preferred to file their complaint before the authority for adjudication of their complaint, however the same is ought to be filled before adjudicating officer as per Section 71 (1) of The RERA Act,



2016. Hence it is respectfully submitted that, the instant complaint be referred to the Ld. Adjudicating Officer and this authority may dismiss the same forthwith.

22. The respondent submitted that the relationship between the complainants and the respondent is governed by the document executed between them i.e. FBA dated 24.04.2014 It is pertinent to mention herein that the instant complaint of the complainants is further falsifying their claim from the very fact that, the complainants have filed the instant claim on the alleged delay in delivery of possession of the provisionally booked unit however the complainants with malafide intention have not disclosed, in fact concealed the material fact from this authority that the complainants have been a wilful defaulter since the beginning, not paying their instalments on time as per the construction link plan opted by them. It is stated that the complainants have not come before this authority with clean hands and wishes to take advantage of their own misdoings with the help of the provisions of the RERA, which have been propagated for the benefit of innocent



customers who are end-users and not defaulters, like the complainants in the present complaint.

23. The respondent submitted that it is pertinent to mention here that from the very beginning it was in the knowledge of the complainants, that there is a mechanism detailed in the FBA which covers the exigencies of inordinate delay caused in completion and handing over of the booked Unit i.e. enumerated in the “clause 22” of duly executed FBA by the Complainants along with their complaint.

24. The respondent submitted that the complainant only after being satisfied with the project in totality that the complainant expressed his willingness to book a unit in the project looking into the financial viability of the project and its future monetary benefits got the said unit booked with the respondent.

25. The respondent also submitted that he has already completed the construction of the Tower J and has already obtained occupation certificate for the said tower and have already initiated the procedure of handing over the possession of the units of Tower J to its respective buyers.



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various authorities and hence no delay can be attributed on the part of the Respondent.

28. It is pertinent to mention herein that the agreement for the purpose of getting the adjudication of the instant complaint i.e. the flat buyer agreement dated 24.04.2014 was executed much prior to coming into force of the RERA Act, 2016 and the HA-RERA Rules, 2017. Further the adjudication of the instant complaint for the purpose of granting interest and compensation, as provided under RERA ACT, 2016 has to be in reference to the agreement for sale executed in terms of said Act and said Rules and no other agreement, whereas, the FBA being referred to or looked into in this proceedings is an agreement executed much before the commencement of RERA and such agreement as referred herein above. Thus, in view of the submissions made above, no relief can be granted to the complainants on the basis of the new agreement to sell as per RERA, Act 2016.



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project not limiting to the expenses made on the advertising and marketing of the said project. Such development is being carried on by developer 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 “Indiabulls enigma” has never been stopped or abandoned and has now reached its pinnacle.

Determination of issues

30. With respect to **issue no. 1 and issue 2**, As per clause 21 of the flat buyer agreement executed between complainants and respondent, the respondent was liable to deliver the booked unit within a period of 3 years plus 6 months grace period from the date of execution of flat buyer agreement. Accordingly the



respondent was liable to deliver the possession of the booked unit on the due date of 24.10.2017. The respondent has failed to offer the possession of the booked unit till date. The respondent has delayed the delivery of possession for a period of 1 year 1 month 26 days. Keeping in the view the same fact that the respondent has delayed the delivery of possession of the booked unit, therefore the respondent is liable under section 18 (1) (a) of the Act to pay delay interest at the prescribed rate of 10.75% per annum for the period of delay.

31. With respect to **issue 3, issue 4, issue 5, and issue 6** the authority is of the view that these issues cannot be decided as the complainants has failed to supply any evidence in support of their claim.

Findings of the authority

32. 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.



33. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.
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35. In the present case, the project in question was registered with the authority vide no.351 of 2017 which has expired on 31.8.2018. Counsel for the respondent stated that they have applied for extension of registration on 18.9.2018 which is pending with the authority. Occupation certificate in respect of Tower-J has been received on 17.9.2018. As per clause 21 of the flat buyer agreement dated 24.4.2014 for unit no. J121, 12th floor, Tower-J, in Indiabulls Enigma” Sector-110 Gurugram, possession was to be handed over to the complainant within a period of 3 years + 6 months grace period from the date of



execution of agreement which comes out to be **24.10.2017**. It was a construction linked payment plan. However, the respondent has not delivered the unit in time. Complainant has already paid Rs.3,09,82,839/- to the respondent.

Decision and directions of the authority

36. After taking into consideration all the material facts as adduced and produced 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 to the respondent in the interest of justice and fair play :

- i. As per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016 the respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e. 10.75% per annum w.e.f 24.10.2017 till the date of handing over the offer of possession of the booked unit failing which the complainant is entitled to refund the amount.
- ii. The arrears of interest accrued so far from the due date of delivery of possession i.e 24.10.2017 to the date of order



i.e 20.12.2018 which on calculation comes to Rs 38,50,784.91/- shall be paid to the complainant within 90 days from the date of this order.

iii. Thereafter the respondent is also directed to pay monthly interest of Rs 2,77,554.60/- till the handing over the possession of the booked unit on or before 10th of every subsequent month.

37. Complaint is disposed of accordingly.

38. File be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Dated : 20.12.2018

Judgement Uploaded on 08.01.2019

