

PROCEEDINGS OF THE DAY
19

Day and Date	Wednesday and 04.09.2024
Complaint No.	CR/6467/2022 Case titled as Anish Mahaveer Prashad Goyal VS ATHENA INFRASTRUCTURE LTD
Complainant	Anish Mahaveer Prashad Goyal
Represented through	S/Shri Venket Rao and Gunjan Kumar Advocates
Respondent	ATHENA INFRASTRUCTURE LTD Indiabulls
Respondent Represented	Shri Rahul Yadav Advocate for R1 Ms. Poonam Poonia proxy counsel for R2
Last date of hearing	29.05.2024
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint was filed on 28.09.2022 and reply on behalf of respondent no. 2 has been filed on 10.05.2023.

Succinct facts of the case as are as under:

S. No.	Heads	Information
1.	Name and location of the project	"Indiabulls Enigma", Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Project area	15.6 acres
4.	DTCP License	213 of 2007 dated 05.09.2007 valid till 04.09.2024 10 of 2011 dated 29.01.2011 valid till 28.01.2023



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HARYANA REAL ESTATE REGULATORY AUTHORITY
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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस गुरुग्राम हरियाणा

	Name of the licensee	M/s Athena Infrastructure Private Limited
		64 of 2012 dated 20.06.2012 valid till 19.06.2023
	Name of the licensee	Varali properties
5.	HRERA registered/ not registered	Registered vide no. i. 351 of 2017 dated 20.11.2017 valid till 31.08.2018 ii. 354 of 2017 dated 17.11.2017 valid till 30.09.2018 iii. 353 of 2017 dated 20.11.2017 valid till 31.03.2018 iv. 346 of 2017 dated 08.11.2017 valid till 31.08.2018
6.	Date of execution of flat buyer's agreement	04.10.2013 (As per page no. 58 of complaint)
7.	Unit no.	1032, Floor-3 rd , Block-I (As on page no. 62 of complaint)
8.	Payment plan	Construction linked payment plan
9.	Tri-partite agreement	04.10.2013
10.	Loan sanction letter	30.08.2013 (As on page of reply on behalf of R-2)
11.	Basic sale consideration	Rs. 3,02,65,450/- (As per applicant ledger on page no. 88 of complaint)
12.	Total amount paid	Rs. 2,65,84,354/- [Rs.2,20,00,000/- by R-2 and Rs.45,84,354/- by own means]
13.	Possession clause	Clause 21 <i>(The Developer shall endeavor to complete the construction of the said building /Unit within <u>a period of three years, with a six months grace period thereon from the date of execution of the Flat</u></i>



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		<u>Buyers Agreement subject to timely payment</u> by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit.)
14.	Due date of possession	04.04.2017 (Calculated from the date of the agreement i.e.; 04.10.2013 + grace period of 6 months) Grace period is allowed
15.	Legal notice seeking refund from respondent	25.06.2018 (As on page no. 91 of complaint)
16.	Demand of pre-EMI by bank to complainant	20.02.2019 (As on page no. 104 of complaint)
17.	Notice for loan re-call	11.03.2019 (As on page no. 105 of complaint) 26.03.2019 (As on page no. 108 of complaint)
18.	Occupation Certificate	17.09.2018 (As on page no. 44 of reply)
19.	Offer of possession cum demand letter	10.12.2018 (As on page no. 46 of reply)
20.	Cancellation of unit	30.04.2019 (As stated by respondent)

The counsel for the complainant states that the complainant had requested for withdrawing from the project on 25.06.2018 after the due date for handing

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण

over of possession which was 04.04.2017 including grace period of 6 months before the offer of possession which was made on 10.12.2018. Therefore, the complainant should be refunded the entire amount deposited by the complainant with interest at the prescribed rate under the provision of Section 18 (1) of the Act, 2016. He further states that as the payment towards the unit was being made under tripartite agreement and the liability for paying the interest under the subvention plan was on the respondent No.1, any default towards payment of the interest or delayed payment charges would lie upon the respondent No.1 w.r.t foreclosure of the loan.

The counsel for the respondent No.1 states that the liability of payment of interest was upon the respondent No.1 only till the date of offer of possession in terms of tripartite agreement dated 04.10.2013, 2nd para of clause -3. The offer of possession was admittedly made on 10.12.2018. More-over refund should be granted after deduction of 10% of the sale consideration and Govt. dues.

The counsel for respondent No.2 states that the relief being sought against R2 does not lie before this authority.

Arguments heard.

Order reserved.

Matter to come up on **09.10.2024** for pronouncement of order.

Ashok Sangwan
Member
04.09.2024