

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

Order pronounced on: **20.07.2022**

Name of the Builder		Assotech Moonshine Urban Developers Private Limited	
Project Name		Assotech Blith	
S.n	Complaint No.	Complaint title	Attendance
1.	CR/1135/2018	Amit Raj Jain V/s Assotech Moonshine Urban Developers Private Limited	None Mr. Nitin Gupta
2.	CR/2534/2018	Neena Vasani V/s Assotech Moonshine Urban Developers Private Limited	Ms. Medhya Ahluwalia Mr. Nitin Gupta
3.	CR/6043/2019	Prakash Chander & Ors. V/s Assotech Moonshine Urban Developers Private Limited	Ms. Medhya Ahluwalia Mr. Nitin Gupta
4.	CR/6822/2019	Rohit Jain & Navita Jain V/s Assotech Moonshine Urban Developers Private Limited	None Mr. Nitin Gupta
5.	CR/158/2020	Sahil Goel V/s Assotech Moonshine Urban Developers Private Limited	Ms. Mayank Agarwal Mr. Nitin Gupta
6.	CR/1100/2020	Ajay Narain Gupta V/s Assotech Moonshine Urban Developers Private Limited	Ms. Aditi Mishra proxy counsel for Mr. Harshit Batra Mr. Nitin Gupta
7.	CR/1261/2020	Romila Ahuja V/s Assotech Moonshine Urban Developers Private Limited	Mr. Sushil Yadav Mr. Nitin Gupta
8.	CR/2865/2020	Pushkar Jain V/s Assotech Moonshine Urban Developers Private Limited	Ms. Medhya Ahluwalia Mr. Nitin Gupta

**CORAM:**

Dr. K.K. Khandelwal

Chairman

Shri Vijay Kumar Goyal

Member

**ORDER**

1. This order shall dispose of all the 8 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is



inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Assotech Blith (group housing project) being developed by the same respondent/promoter i.e., Assotech Moonshine Urban Developers Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges, possession and the execution of the conveyance deeds.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

<p><b>Project: Assotech Blith, Sector-99, Gurugram</b></p> <p><b>Possession clause: Clause 19(I)</b></p> <p>The possession of the apartment shall be delivered to the allottee(s) by the company within <b>42 months from the date of allotment</b> subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc.</p>
<p><b>Grace period clause: Clause 19(II)</b></p> <p>In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and <b>further within a grace period of six months</b>, the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession.</p>
<p><b>Note:</b></p> <ol style="list-style-type: none"> <li>1. Grace period of six months as per clause 19(II) of allotment is allowed and included calculating the due date of handing over of possession.</li> <li>2. No builder buyer agreement has been executed inter-se parties, but a similar document (allotment letter) containing rights and liabilities of both the parties has been placed on record.</li> <li>3. The respondent-builder made an application dated 15.04.2021 for obtaining occupation certificate from competent authority. No occupation certificate has been obtained till date.</li> </ol>





Sr. no	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasure- -eing	Date of execution of allotment letter	Due date of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/1135/2018 titled as Amit Raj Jain V/s Assotech Moonshine Urban Developers Private Limited  DOR-25.10.2018	Reply received on 13.12.2021	F-1002 on 10th floor, tower F admeasureing 1685 sq. ft.  (As per page no. 48 of complaint )	05.07.2012  (As per page no. 47 of complaint )	05.07.2016  (Calculated from date of allotment letter dated 05.07.2012 )	TSC: Rs.82,54,212/- AP: Rs.63,94,803/  (As per customer ledger dated 15.12.2018 on page no. 37 of reply)	1. Quash the demands raised vide their email letter dated 10th August 2018. 2. DPC 3. Conveyance deed 4. Possession with all facilities and amenities. 5. Compensation
2.	CR/2534/2018 titled as Neena Vasan V/s Assotech Moonshine Urban Developers Private Limited  DOR-28.12.2018	Reply received on 15.02.2019	A-601 on 6th floor, tower A admeasureing 1365 sq. ft.  (As per page no. 37 of complaint )	22.09.2012  (As per page no. 37 of complaint )	22.09.2016  (Calculated from date of allotment letter dated 22.09.2012 )	TSC: Rs.87,25,210/- AP: Rs.76,96,338/  (As per customer ledger dated 15.12.2018 on page no. 54 of complaint)	1. DPC 2. Compensation
3.	CR/6043/2019 titled as Prakash Chander & Deepak Mishra V/s Assotech Moonshine Urban Developers Private Limited  DOR-10.12.2019	Reply received on 15.09.2020	C-504 on 5th floor, tower C admeasureing 1365 sq. ft.  (As per page no. 19 of complaint )	11.07.2012  (As per page no. 19 of complaint )	11.07.2016  (Calculated from date of allotment dated 11.07.2012)	TSC: Rs.74,69,969/- AP: Rs.69,61,577/  (As per customer ledger dated 26.03.2019 on page no. 35 of complaint)	1. DPC 2. Compensation 3. Provide schedule of construction



4.	CR/6822/ 2019 titled as Rohit Jain & Navita Jain V/s Assotech Moonshine Urban Developers Private Limited  DOR- 23.01.2020	Reply received on 10.01.2022	E-1103 on 11th floor, tower E admeasurin g 1365 sq. ft.  (As per page no. 20 of reply )	11.07.2012  (As per page no. 19 of reply )	11.07.2016  (Calculated from date of allotment dated 11.07.2012)	TSC: Rs.71,43,742/- AP: Rs.67,39,106/  (As per customer ledger dated 01.06.2019 on page no. 28 of complaint)	1. DPC
5.	CR/158/ 2020 titled as Sahil Goel V/s Assotech Moonshine Urban Developers Private Limited  DOR- 17.01.2020	Reply received on 15.09.2020	E-104 on 1st floor, tower E admeasurin g 1685 sq. ft.  (As per page no. 22 of complaint )	04.07.2012  (As per page no. 22 of complaint )  SA- 26.05.2014 (Endorsement of unit)	04.07.2016  (Calculated from date of allotment dated 04.07.2012)	TSC: Rs.80,61,196/- AP: Rs.76,18,452/  (As per customer ledger dated 13.11.2019 on page no. 54 of complaint)	1. Offer possession of unit 2. DPC 3. Compensation
6.	CR/1100/ 2020 titled as Ajay Narain Gupta V/s Assotech Moonshine Urban Developers Private Limited  DOR- 11.03.2020	Reply received on 15.09.2020	G-1001 on 10th floor, tower G admeasurin g 1685 sq. ft.  (As per page no. 18 of complaint )	20.07.2012  (As per page no. 18 of complaint )	20.07.2016  (Calculated from date of allotment dated 20.07.2012)	TSC: Rs.91,28,300/- AP: Rs.82,84,946/  (As per customer ledger dated 13.11.2019 on page no. 14 of complaint)	1. Possession 2. DPC 3. Compensation
7.	CR/1261/ 2020 titled as Romila Ahuja V/s Assotech Moonshine Urban Developers Private Limited  DOR- 11.03.2020	Reply received on 12.10.2021	E-503 on 5th floor tower E admeasurin g 1365 sq. ft.  (As per page no. 14 of complaint )	20.06.2012  (As per page no. 14 of complaint )	20.06.2016  (Calculated from date of allotment dated 20.06.2012)	TSC: Rs72,37,375/- (As per page no. 33 of reply) AP: Rs.71,29,524/ (As alleged by the complainant on page no. 04 of complaint)	1. Possession 2. DPC





8.	CR/2865/2020 titled as Pushkar Jain & Pooja Jain V/s Assotech Moonshine Urban Developers Private Limited  DOR-07.10.2020	Reply received on 07.12.2020	E-1104 on 11th floor tower E admeasuring 1685 sq. ft.  (As per page no. 31 of complaint )	01.02.2013  (As per page no. 31 of complaint )	01.02.2017  (Calculated from date of allotment dated 01.02.2013)	TSC: Rs1,15,39,996/- AP: Rs1,09,03,742 / (As per customer ledger dated 23.06.2020 on page no. 70 of complaint)	1. DPC
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

**Abbreviations Full form**

- DOR- Date of receiving complaint  
SA- Subsequent allottee  
TSC- Total Sale consideration  
AP- Amount paid by the allottee(s)  
DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for not handing over the possession by the due date, seeking award of delayed possession charges, assured return and the execution of the conveyance deeds.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR 1135/2018 titled as Amit Raj Jain Vs. M/s Assotech Moonshine Urban developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges and execution of conveyance deeds.



**A. Project and unit related details**

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/1135/2018 titled as Amit Raj Jain Vs. M/s Assotech Moonshine Urban developers Private Limited**

S. No.	Heads	Information
1.	Name and location of the project	"Assotech Blith", Sector 99, Gurugram
2.	Nature of the project	Group housing project
3.	Area of the project	12.062 acres
4.	DTCP License	95 of 2011 dated 28.10.2011
	valid up to	27.10.2024
	Licensee name	M/s Moonshine Developers Private Limited & M/s Uppal Housing Private Limited
5.	RERA registered/ not registered	<b>Registered</b> vide registration No. 83 of 2017 dated 23.08.2017
	Valid up to	22.08.2023
6.	Allotment letter	05.07.2012 (As per page no. 47 of complaint ) (No builder buyer agreement has been executed inter-se parties, but a similar document containing rights and liabilities of both the parties has been placed on record)
7.	Unit no.	F-1002 on 10th floor, tower F (As per page no. 48 of complaint )
8.	Super area admeasuring	1685 sq. ft. (As per page no. 48 of complaint )
9.	Possession clause	<b>As per Clause 19(I),</b> <i>The possession of the apartment shall be delivered to the allottee(s) by the company <b>within 42 months from the date of allotment</b> subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc.</i> <b>(Emphasis supplied)</b>





10.	Grace period clause	<b>As per Clause 19(II),</b> <i>In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and <b>further within a grace period of six months</b>, the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession</i>
11.	Total consideration	Rs.82,54,212/- (As per customer ledger dated 15.12.2018 on page no. 37 of reply)
12.	Total amount paid by the complainants	Rs.63,94,803/- (As per customer ledger dated 15.12.2018 on page no. 37 of reply)
13.	Due date of delivery of possession	<b>05.07.2016</b> (Calculated from date of allotment letter dated 05.07.2012 with grace period of 6 months as per clause 19(II)) <b>(Grace-period is allowed)</b>
14.	Date of offer of possession to the complainants	Not obtained (Applied for OC on 15.04.2021)
15.	Occupation certificate	Not offered

**B. Facts of the complaint**

8. That the representative of the respondent approached the complainant that Assotech Moonshine Urban Developers Pvt. Ltd. has launched a group housing project in the name and style of "Assotech Blith" having expertise of a Mauritius based foreign direct investors, namely Mallika SA Investment LLC and SA Mallika Ventures Ltd suggesting that Assotech Limited works with the motto 'Next Generation Spaces' and aims to change the meaning of real estate development in the country by providing a wide range of products and concepts ranging from budget homes to luxury condominiums, serviced apartments to 5-star hotels, office complexes to IT/ITES buildings, shopping complexes to mall-cum-



multiplexes. The respondent further engaged the complainant in depositing his hard earned finances in the fictitious and hypothetically elevated project, strategically, to initiate good faith caused and explained that the said project initiated by it is exclusively structured to place him amongst the select few while the project is sprawling over 11.91 acres. The respondent further promised Assotech Blith home has most prominent access to the 150 mts. wide Dwarka expressway which further gets connected with NH for a comfortable access.

9. That the complainant believing fake and false promises and the concoction of the respondent applied for an allotment of flat on 07.03.2012. It was advertised and presented to the public at large and the allottee in particular that the said project developed by the respondent is a once in a life-time opportunity to own a residential flat with world class facilities and amenities. Besides that, it was also promised that the project has an extremely large view side and an extravagant gigantic reserve for lush green parks as well as a state of the art with fully equipped club house. The complainant made a reservation cum booking by paying Rs. 5,50,000/- on 07.03.2012 for allotment of flat no F-1002.
10. That the respondent has even absorbed a whopping sum of Rs. 2,50,000/- individually from each of the owner, for establishing the said club house apart from sports and leisure activities related infrastructure in addition to provision for shopping malls, education and health related setup. However, the irony of the complainant embossed when he got to know that the respondent has defrauded him as it has not even acquired the sanction plans to have built the said property project up till as late as 01.05.2012, leaving alone the point of having completed the project on time.
11. That vide its allotment letter dated 05.07.2012, the complainant was allotted 3 BHK type apartment bearing No. F 1002 on 10th floor having super area of 1685 sq. ft. (156.54 sq. mtr.) on the basis of BSP at the rate of 4339 per sq. ft. and



requesting him to deposit total sale consideration of Rs. 84,21,590/- as per the schedule of payment which was not only incorrect but also contrary to the quorum of natural justice. The complainant opted for construction linked payment plan.

12. That as per clause no 19(1) of allotment letter, it was promised that the project would be completed within 42 months/3.5 years i.e., by January 2016. However, it is on the face of the complainant that such irony has been slapped by the respondent, that the construction is still in the first phase of its life of completion.
13. That the complainant, being a middle class man in order to pay the whole amount, unable to gather finances for paying the exorbitantly overcharged asset home, resorted to arrange a home loan from the renowned financier namely Indiabulls to pay for the flat @10.75% p.a., which he is still paying as he has to abide by his requisite promises, due to the lapse on the part of the respondent.
14. That the complainant kept paying the installments regularly till July 2015 without a delay and has paid over and above Rs 63,94,803/- against total basic selling price of Rs 73,11,215/- which accounts to over 87% of the total payment. Further on 04.02.2016, it raised an illegal demand to the tune of Rs. 12,81,760/- due on casting of 15th floor slab. The complainant in bonafide approached Indiabulls for the disbursal of the installment but he was shocked when financier appointed and crafted by the respondent, refused to further fund the project, saying that the project was delayed beyond reasonability and the developer's reputation has devastatingly gone down in the market and is left with no credibility. Therefore, it would not further dispense the installment.
15. That the complainant in the state of shock and astonishment immediately approached the respondent. But it in continuance of its intent to usurp the hard-earned money of the complainant along with other home buyer simple said that its relationship with the financier has gone sour and so, the complainant must



immediately proceed to ICICI Bank for further installments. The complainant being naïve and falling placed on within the trap concocted by the respondent approached the ICICI bank in bonafide to allow and re continue the loan as he could not have arranged such a hefty amount at the extreme short notice. However, in regards to the fate of dismay and irony floored to the complainant as had invested in his dream home which was to be developed by the respondent, another shock was retrieved on to him when on the 5th of August, ICICI bank too refused to fund the project on account of the bad reputation of the respondent and several cases of fraud cropping up against it.

16. That on 27.04.2017, the complainant received a reminder to pay an amount of Rs. 12,81,760/- immediately. However, knowing the fate and accepting his trauma asked for a refund and demanded the respondent to return the payment accepted along-with interest as per the agreement since the project is suffering from an indefinite delay.
17. That the respondent being as high headed and ignorant to the concerns of its customers replied vide email dated 28.04.2017 & 01.05.2017 suggesting a construction update and stating that the concerned tower F would be delivered by 31.03.2018. However, it is way beyond the date as had been mentioned that the construction has not yet been completed and nowhere even likely to be completed in the near future, on seeking an expert opinion, from the current physical status of the construction, it shall take an indefinite infinite time to complete in accordance with the pace the construction is active.
18. That to utter dismay of events, the complainant received a letter dated 15.01.2018 stating that as per the allotment letter signed between him and the company, he was required to be pay the amounts under the payment plans as per the demand letter attached. Further, the respondent issued another demand letter dated 30.01.2018 wherein an outstanding of amount of Rs. 17,62,112 including an



exorbitant amount of Rs. 4,80,352/- allegedly incurred in lieu of interest calculated @ 18% in spite of the fact that the respondent has not walked even a single milestone in terms of completing the construction.

19. That the respondent has illegally called for an outstanding amount of Rs 25,88,104/- fraudulently, in terms of the scheduled payment plan. The respondent in the said email letter dated 10.08.2018 stated that an arrears of Rs 18,71,759/- along with Rs 7,16,345/- is pending towards the interest (calculated as at 18%). Further, in the same email the respondent in its own high headedness exclaimed that the it has planned to make an application for securing fire NOC and partial occupation certificate (POC) of Tower E & F of the project to the concerned authority in the month of October or early November 2018 with an intention to secure fire NOC and POC in and around December 2018. The possession of tower E & F units shall be given to the allottees of units in the said towers upon receipt of POC and subject to the timely payment of all due amounts. It is in view of the above mentioned submitted that the respondent has declared itself beyond law and has termed itself above the principle of natural justice whereby the respondent may and is calling for illegal and illicit demands in spite of having embezzled the hard earned savings of the complainant, which is not only contrary to law but to natural jurisprudence that in case the project is late hopelessly beyond the time framed for possession, the respondent remains in no legal sanctity to call in for payment delay or levy interest on payment delay, that too when the allottee has already paid an amount over 87% of the total basic price of the unit.

**C. Relief sought by the complainants:**

20. The complainant has sought following relief(s):



- i. Direct the respondent to immediately stay, and quash the demand made by the respondent vide their email letter dated 10th August 2018 in the eventuality of the petition.
- ii. Direct the respondent not to raise any demand from the complainants until and unless registry and conveyance deed of the allotted flat is being executed in accordance with the allotment letter and without raising any unsustainable and unjustifiable demand.
- iii. Direct the respondent to offer the complete in all respects possession of the allotted unit and thereafter, execute the conveyance deed of the allotted flat firstly by giving the delayed compensation from the date it was due in terms of the agreement and thereafter, claim the balance sale consideration and other permissible legal charges and to hand over the physical possession of the with all amenities and facilities as assured at the time of booking and thereafter or refund the entire payment made by the complainant along with interest calculated @18% since the inception of the allotment as and when the first payment was received i.e., the date of booking 07.03.2012 .
- iv. Direct the respondent to handover the possession of the allotted flat forthwith without any further delay and without raising any unjustifiable and unsustainable demand as the respondent was to hand over the physical possession of the allotted flat complete in all aspects as agreed within a maximum period of 42 months and which period comes to an end on 07.09.2015.
- v. Direct the respondent to get the conveyance deed of the allotted flat executed in accordance with the allotment letter and without raising any unsustainable and unjustifiable demand.





- vi. Direct the respondent to give the benefit of delayed possession @ Rs. 50 Per sq. ft. per month till the actual possession is given and taken thereafter, along with a monthly delayed possession and harassment allowance to be paid to the complainant @18 per annum for the period of delay further accruing as interim pende-lite.
  - vii. Direct the respondent to awarded interest of every month delay possession, till the actual handing over of the possession.
  - viii. Direction be made to the respondent i.e. demands raised and subjected to be raised, on and after 07.09.2015 i.e., the period when the respondent was supposed to deliver the possession free from all encumbrances in accordance with the allotment letter, be stayed as interim measure and be quashed in the eventuality of this complaint case.
  - ix. Direct the respondent to provide all facilities and amenities as assured and promised at the time of initiation of the said transaction.
  - x. Direct the respondent to compensate the complainant with a sum of Rs. 63,94,803.00 calculated at the rate of 18 % per annum from the original date of delivery of possession as an interim measure for the loss caused to the complainant on account of mental harassment, trauma and the follow up cost of life of the complainant.
  - xi. Direct the respondent to pay the monthly installment of Rs.50,000/- per month along with the interest accrued on account of the home loan up till the final decision and outcome of this complaint case.
21. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**



22. The respondent has contested the complaint on the following grounds.
- a. That the complainant booked the unit/flat bearing No. F-1002 in the project namely 'Assotech Blith' of the respondent after going through the terms and conditions of the allotment letter/builder buyer agreement and knowing all pros and cons of the project.
  - b. That as the terms and condition of the allotment letter dated 05.07.2012, the cost of the flat no. F-1002 was agreed to Rs. 87,22,297/- out of which the complainant paid an amount of Rs. 63,94,803/-. As per the terms and conditions of the allotment letter, the possession of the flat was estimated to be handed over by June 2016. However, this period was to be extended due to any unforeseen circumstances.
  - c. That the respondent has obtained all approvals and licenses which are necessary for the smooth functioning of the project and even these licenses and approvals have been kept valid and renewed.
  - d. That as per clause 19(II) of the allotment letter dated 05.07.2012, the parties agreed to the provisions stipulated for delayed possession penalty at Rs. 10/- per sq. ft. of the area of the flat per month subject to applicability of other terms and conditions of the allotment letter dated 05.07.2012. It was unambiguously clear that if delay in possession of the flat is occurred due to unforeseen circumstances beyond the control of the respondent, it will not be responsible to pay delay possession penalty to the allottee(s).
  - e. That, as per the registration of the project under HARERA, the completion date of the project is 22.08.2023. Thus, it is stated that the complaint filed by the complainant is pre-mature and the same is not maintainable at this stage hence liable to be dismissed on this ground only.
  - f. That the Act of 2016 came in force with all sections and rules w.e.f. 2017 and as per such the registration of every project is mandatory by the





- developers/promoters and at the time of registration, the time limit for completion of the project is to be mentioned. The RERA accepted the registration of the respondent for ongoing projects and upcoming projects as per aforesaid terms and it is a punishable Act. It is established law that any punishable act cannot be implemented from retrospective date meaning thereby that developer-promoter should not be punished for the past delay. At the time of registration, the respondent has given time limit of up to August 2023 and the respondent shall complete the project within the said time limit.
- g. That the authority considered the June 2016, mentioned in Clause 19(I) in the allotment letter dated 05.07.2012 as due and effective date of possession, then the authority should have considered the quantum of compensation to be paid by the appellant in case of delay in delivery of possession of the flat as mentioned in the same clause. As per principles of justice, terms of a contract cannot be applied partially, if the authority to decide the complaint of the respondent considers the June, 2016 as due date of possession, then the authority should have considered the delayed possession compensation, mentioned at the same place in same clause 19(I) of the allotment letter dated 05.07.2012.
- h. There is a provision for compensation on account of delay although in view of expressed factors of force majeure and there cannot be introduction of unjustified amount, however clause 19(II) of the terms of allotment provides for the penalty on account of delay and the same has been held in the case of ***"DLF Homes Panchkula Pvt. Ltd vs D.S Dhanda and Ors (10.05.2019-SC):II (2019) CP}117, MANU/SC/0744/20191.***

*"The forum under the act cannot award interest and/or compensation by applying rule of thumb. the order to grant interest at the maximum of rate of interest charged by nationalized bank for advancing home loan is arbitrary and no nexus with the default committed. The appellant has agreed to deliver constructed flats. For delay in handing over possession, the consumer is*





*entitled to the consequences agreed at the time of executing buyer's agreement. There cannot be multiples heads to grant of damages and interest when the parties have agreed for payments of damages at the rate of Rs. 10/- per sq. ft per month. Once the parties agreed for a particular consequence of delay in handing over of possession then, there has to be exceptional and strong reasons for the SCDRC/NCDRC to award compensation at more than the agreed rate"*

- i. That the project/flat is delayed due to unforeseen circumstances beyond the control of the respondent. It has not intentionally and deliberately delayed the possession of the flat booked by the complainant and the same is due to the reasons beyond the control of the respondent.
- j. That the respondent company is a group/subsidiary company of M/s. Assotech Limited. In year 2012, M/s. Assotech Ltd. created its subsidiary company i.e. the respondent company. M/s. Assotech Limited is a holding company of respondent having more than 50% shareholding and rest 49% shareholding of the respondent company was with M/s. SA Mallika Ventures Ltd. M/s. Assotech Ltd. being the holding and parent company of respondent having more than 50% shareholding has control over the affairs of the respondent company.
- k. That the respondent, M/s. Assotech Limited and two investors- M/s. S.A. Mallika Ventures Ltd. and M/s. Mallika SA Investments LLC, on 20.01.2012, had entered into an investment agreement and a project management agreement (PMA) dated 20.01.2012 for the development of residential group project in question. As per the investment agreement, the investment, made by the investors was to be utilized for construction and development of the project in question. In terms of PMA, the Assotech Limited was engaged as project manager who was to be responsible for execution, development, management, construction and supervision of the project inter-alia including day to day activities such as marketing, sales and financial management etc. The Assotech Ltd. was responsible for developing the project within





committed timelines and guaranteed costs. The respondent and M/s. Assotech Ltd. had also entered into a 'construction contract agreement' dated 03.04.2012 whereby the Assotech Ltd., who was a promoter shareholder of the respondent company and had invested INR 44.27 crore was also appointed by the respondent as a construction contractor responsible for the construction of the project.

- l. That somewhere between in year 2013 and 2015, Assotech Ltd. got into a bad financial crunch pursuant to which Mr. Manmohan Singh Bhalla preferred a company petition before Hon'ble Delhi High Court against the Assotech Ltd. (holding and contractor company) for initiation of liquidation proceedings u/s 433 of the Companies Act, subsequent to which vide order dated 08.02.2016, official liquidator was appointed as provisional liquidator by the Hon'ble High Court. The progress has been severely delayed as the respondent has not put in sufficient time, attention and resources for the continued construction and completion of the project within stipulated timelines.
- m. That in terms of the project management agreement, the employees of M/s. Assotech Ltd./contractor was managing the construction of the project and due to liquidation proceedings of Assotech Ltd., the salaries of employees as well as payment of petty contractors and their labours, working on the project, have not been paid by the it, and are in fact being paid by the respondent. Hence, due to the liquidation proceedings and lack of attention by the Assotech Ltd., the respondent has found it hard to adequately progress in construction of the project. On account of the above-mentioned liquidation proceedings of M/s. Assotech Ltd., who apart from the holding company was also a contractor of the project and also responsible for the development and day to day affairs of the project in question, the project got delayed beyond the predetermined time and its office along with the office of respondent company being the





subsidiary of the Assotech Ltd. was also seized and it faced several losses apart from the delay in construction of project.

- n. That apart from the above, the nominee director of the above investors company had filed a police complaint with the SHO, PS Sushant Lok, Gurugram (Haryana) inter alia requesting for registration of FIR against the Assotech Ltd. In the light of above events, the said investor companies vide their letter dated 13.05.2016 invoked the event of default clause in terms of the investment agreement against the Assotech Ltd. which affected the pace of construction of the project and delayed the delivery of possession of the flat. That the project is delayed due to the disputes arose between M/s. Assotech Ltd. and the investors. Subsequent to this dispute, the investors stopped making payments to the vendors, suppliers, contractor etc. which attributed delay in construction of the project in question.
- o. That apart from the above facts and circumstances, the construction of the project is delayed due to limitations or reasons and circumstances beyond the control of the respondent company such as Hon'ble National Green Tribunal Delhi, time to time passed various orders for stoppage of all construction activities in NCR area due to rising the air pollution in and around Delhi-NCR. In pursuance to order/directions passed by the Hon'ble NGT, Hon'ble Supreme Court, the Ministry of Environment and Forest and Pollution Control Board has issued further directives regarding stoppage of construction activities in Delhi and NCR to curb severe air pollution. Vide order dated 07.04.2015, the Hon'ble NGT in OA no. 95/2014, restricted construction activities in NCR due to rising air pollution. Apart from the above, the Hon'ble Supreme Court, Environment Pollution (Prevention & Control) Authority ("EPCA") for the National Capital Region and the Hon'ble National Green Tribunal ("NGT") had issued various orders/ directions/ guidelines from time to time since 2016 for complete ban



on construction activities in National Capital Region, which includes the entire District Gurugram for the control of air pollution.

- p. That further in year 2016, the Hon'ble National Green Tribunal passed an order in O.A. No.-21/2014 on 08 Nov' 2016 and banned all construction activities in NCR and same was lifted by passing the guidelines through the order dated 23 Nov' 2016 in the same case. So, the construction work was stopped for 16 days and in the year 2017, NGT passed an order in O.A. No.-21/2014 on 09 Nov 2017 and banned all construction activities in NCR and same was lifted by passing the guidelines through the order dated 17 Nov. 2017 in same case. So, the construction work was stopped again for 09 days.
- q. That further in year 2018, The Environment Pollution (Prevention & Control) Authority ("EPCA") released a press note on 31 Oct' 2018 and banned all the construction activities in NCR from 01 Nov' 2018 to 10 Nov' 2018. So, the construction work was stopped again for 10 days. In the year 2019, The Environment Pollution (Prevention & Control) Authority ("EPCA") issued guidelines on 01st Nov. 2019 and banned all construction activities in NCR up to 05th Nov. 2019. Same time, the Hon'ble Supreme Court of India, passed an order in *Writ Petition (Civil) NO.- 13029/1985, titled - M. C. Mehta Vs. Union of India & Ors.* on 04th Nov. 2019 and banned all construction activities in NCR and same was lifted by passing the order dated 09th Dec 2019 in same case. So, the construction work was again stopped for 39 days.
- r. The summary of total stoppage of construction work in NCR is as following: -

Year	Authority	Date of Ban on Construction Activities	Date of Lifting of Ban on Construction Activities	No. of Ban days
2016	NGT	08 Nov' 2016	23 Nov' 2016	16
2017	NGT	09 Nov' 2017	17 Nov' 2017	09
2018	EPCA	01 Nov' 2018	10 Nov' 2018	10





2019	EPCA/Hon'ble Supreme Court	01 Nov' 2019	09 Dec' 2019	39
<b>Total Days Ban on Construction Activities</b>				<b>74</b>

That due to sudden stoppage of the construction works, site staff, contractors, construction labour and machinery involved in construction work of the OP became idle and once the construction work at site is stopped, then it takes at least one to two months to start and gear up the work to achieve the stage on which, it was stopped.

- s. That due to nationwide lock down restrictions were imposed by the Government of India during year 2020 and 2021 to curb the inflation of Covid-19 pandemic which caused shortage of in supply of steel, cement, other building materials, labour force etc. which is beyond the control of respondent.
- t. That due to the COVID-19 pandemic, the nationwide lockdown was imposed by the Government of India from 23.03.2020. During the lockdown, a large number of labour moved to their native villages/ hometown from the NCR. In view of the situation, the Govt. of India suo moto extended the construction period of all projects by 9 months due to COVID 19 pandemic. After the unlock, time to time declared by the Govt., the opposite party started the construction activities at the project with sort/few labour and material under the guidelines of the Govt.
- u. That the delay is also due to shortage of water used for construction activities as per the Hon'ble Punjab and Haryana High Court in which it was directed to use only treated water from available sewerage treatment plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and water from STP was very limited in Gurgaon District, the construction activities in fact had to be suspended. The availability of treated water to be used at construction site was very limited.





- v. That despite being ready for possession of the flat/project, the process for handing over of physical possession of the flat/project is pending due to non-issuance of the completion certificate by the DTCP, Haryana for the reasons of Circular No. D14/2028, issued by the Dakshin Haryana Bijli Vitran Nagam (DHBVN) thereby it is decided to eliminate 220/66/11 KV system in new sectors of Gurugram (i.e. Sector 58 to Sector 115) & new sectors of Faridabad and to introduce transmission /distribution system of 220/33 KV level in these sectors. As per the circular; for single point connection has to create his own switching station/substation as the case may be on his land at his own cost. As the circular, the builder whose individual ultimate load is less than 15 MVA, would need to form a group in a manner that combined load of group equals 15 MVA or more up to 25 MVA and together they would hand over the land of size admeasuring approx. 500 sq. yard to DHBVN free of cost for creation of switching station. In a situation where a builder/developer has an ultimate load lesser than 15 MVA and he is also not able to form group, he will have to create 33 KV switching station, on his own his land of size measuring approx. 500 sq. yard. confirming to the regulation at his own cost.
- w. That after the order of the Hon'ble Delhi High Court, dated 11.02.2019, the Assotech Ltd. has again started the construction activities at the project with full pace as a result of which the major part of the project has been completed and is ready for possession and the respondent company, vide its letter/application dated 15.04.2021, had applied to the Directorate of Town and Country Planning, Chandigarh for grant of occupancy/completion certificate of the said project.
- x. That the complainant voluntarily and consciously executed an allotment Letter dated 05.07.2012 containing detailed terms and conditions of the allotment of the flat in question. It is the principles of nature justice that if, once the parties





of an agreement/contract agreed the terms and conditions of the agreement, then later on no court rewrite the same and the parties cannot rescind from the agreed terms & conditions and if any party does so then this will be a complete violation of the agreement.

y. That on the basis of accounting disclosure of the company certified by chartered accountant submitted in RERA, the company has spent an amount of approximately Rs. 350+ crores towards the acquisition and development of the project and all the external and internal development charges (EDC/IDC payable by the company to HUDA) have been fully paid as per schedule and license conditions. This means that the proportionate share pertaining to the complainant's booked unit has also been paid on schedule. In turn, the company received a total payment of Rs 244 crores by way of collection from customers who had booked units in the project and have paid as per their respective scheduled payment plans. This amount collected from customers includes the payments received by the complainant against the booked units. The balance cost incurred to date was funded by the shareholders/debenture holders of the company.

23. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

24. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**



As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

#### **E. II Subject-matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

25. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

#### **F. Findings on the objections raised by the respondent:**



**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act**

26. The respondent raised a contention that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017* which provides as under:

*119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any*





*doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

27. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

28. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**F.II Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of RERA Act**

29. The counsel for the respondent has stated that the respondent at the time of registration of the project gave revised date for completion of same and



also completed the same before expiry of that period, therefore, under such circumstances the respondent is not liable to be visited with penal consequences as laid down under RERA. Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.

30. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act. Section 4(2)(1)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(1)(C) of the Act and the same is reproduced as under: -

*Section 4: - Application for registration of real estate projects*

*(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —*

.....

*(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: — .....*

*(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."*

31. The time period for handing over the possession is committed by the builder as per the relevant clause of flat buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing



project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(I)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors. (supra)* and has observed as under:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."*

### **F.III Objection regarding delay due to force majeure circumstances**

32. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various



orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, institution of liquidation proceedings against the contractor-company i.e. Athena Limited and appointment of official liquidator, non-issuance of occupation certificate by the competent authority on account of 220/66/KV system by DHBVN, shortage of labour due to stoppage of work and lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 19 (I) & 19(II) of allotment. Though there has been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

33. The respondent alleged that due to litigation proceedings going on against the contractor company, "Assotech Limited" in the Delhi High Court vide Co. petition no. 357 of 2015 in the mid of year 2015, process of provisional liquidation has been initiated against Assotech Limited. Due to appointment of O.L., office of respondent company was sealed, and various restrictions were levied, due to which construction of the project was affected badly. "Assotech Moonshine Urban Developers Private Limited" is



a subsidiary of "Assotech Limited" and there was a contract inter-se respondent and "Assotech Limited" for development of project. But it is pertinent to note that neither the complainant is a party to such contract nor liquidation proceedings are binding on them. Hence, there was no privity of contract with complainant. Hence, the plea of the respondent on account of delay in completion due to initiation of liquidation proceedings is not tenable.

34. The respondent also took plea that the competent authority caused delay in issuance of occupation certificate due to elimination of 220/66/KV system by DHBVN. The authority is of the considered view that if there is lapse on the part of competent authority in granting the occupation certificate within reasonable time and that the respondent was not at fault in fulfilling the conditions of obtaining occupation certificate, then the respondent may approach the competent authority for getting this time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act of 2016.
35. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020* dated 29.05.2020 has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in*



*breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

The respondent was liable to complete the construction of the project and handover the possession of the said unit was much prior to year 2020 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

**G. Findings on the relief sought by the complainant:**

36. The common issues with regard to possession, delayed possession charges & compensation are involved in all these cases.

**G.I Direct the respondent to immediately stay, and quash the demand made by the respondent vide the email letter dated 10th August 2018 in the eventuality of the petition.**

**G.II Direct the respondent to raise any demand from the complainant until and unless registry and conveyance deed of the allotted flat is being executed in accordance with the allotment letter and without raising any unsustainable and unjustifiable demand.**

37. The complainant alleged that the respondent has charged an amount of Rs. 25,88,104/- fraudulently that includes interest @18% amounting to Rs. 7,16,345/-. The same is evident from page no. 41-42 of complaint. The respondent stated that the said amount is charged on account of



installment due on "on completion of internal plaster & flooring" and an amount of Rs. 7,16,345/- has been charged on account of interest levied on delay payments.

38. The authority is of considered view that the definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.80% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges

**G.III Direct the respondent to offer the complete in all respects possession of the allotted unit and thereafter execute the conveyance deed of the allotted flat firstly by giving the delayed compensation from the date it was due in terms of the agreement and thereafter claim the balance sale consideration and other permissible legal charges and to hand over the physical possession of the with all amenities and facilities as assured at the time of booking and thereafter or refund the entire payment made by the complainant along with interest calculated @18% since the inception of the allotment as and when the first payment was received i.e., the date of booking 07.03.2012 .**

**G.IV Direct the respondent to handover the possession of the allotted flat be given forthwith without any further delay and without raising any unjustifiable and unsustainable demand as the respondents were to hand over the physical possession of the allotted flat complete in all aspects as agreed within a maximum period of 42 months and which period comes to an end on 07.09.2015.**



39. There is nothing on record to show that the occupation certificate has been obtained from the concerned authority. A valid offer of possession must contain following pre-requisites:-

- a. The possession must be offered after obtaining occupation certificate;
- b. The subject unit should be in habitable condition;
- c. The possession should not be accompanied by unreasonable additional demands.

40. In the present case, no OC has been obtained. Hence, no offer of possession can be made. Therefore, the respondent is directed to offer the possession of the allotted unit within 30 days after obtaining OC from the concerned authority. The complainant with regard to obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

**G.V Direct the respondent to get the conveyance deed of the allotted flat executed in accordance with the allotment letter and without raising any unsustainable and unjustifiable demand**

41. No occupation certificate has yet been obtained. The respondent is directed to get the conveyance deed executed in favour of the complainant after obtaining occupation certificate to fulfil its obligation conferred upon him under section 11(4)(f) of Act of 2016 and on the other hand, the complainant shall also participate in execution of conveyance deed as per duty conferred upon him under section 19(11) of Act.

**G. VI Direct the respondent to give the benefit of delayed possession @ Rs. 50 Per sq. ft. per month till the actual possession is given and taken thereafter, along with a monthly delayed possession and harassment allowance to be paid to the**





complainant @18 per annum for the period of delay further accruing as interim pende lite.

G.VII Direct the respondent to awarded interest of every month delay possession, till the actual handing over of the possession.

42. In the present complaint, the complainant(s) intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

43. The allotment letter was executed between the parties. As per clause 19(I) of the allotment letter, the possession was to be handed over within 42 months from the date of allotment. The clause 19(I) of the allotment letter is reproduced below:

***19(I). Possession clause***

*The possession of the apartment shall be delivered to the allottee(s) by the company within 42 months from the date of allotment subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc. (Emphasis supplied)*

44. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant(s) not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter.



The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee(s) that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee(s) and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee(s) of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee(s) is left with no option but to sign on the dotted lines.

45. **Admissibility of grace period:** As per clause 19(I) of allotment letter, the respondent promoter has proposed to handover the possession the said unit within a period of 42 months. As per clause 19(II) of said allotment letter, the respondent-promoter shall be entitled for period of 6 months as grace period. The said clause of the allotment letter has been reproduced hereunder: -

***"Clause 19(II)***

*In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and **further within a grace period of six months**, the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession."*



46. The said clause is unconditional and provides that if the respondent is unable to complete the construction of the allotted unit within stipulated period of 42 months, then a grace period of 6 months shall be allowed to the respondent. Since there were situations beyond the control of respondent such as institution of liquidation proceedings against the contractor company, resulting in shortage of labour at project due to stoppage of work at the project site. Therefore, the authority is of view that the said grace period of 6 months shall be allowed to the respondent. Therefore, as per clause 19(I) & 19(II) of the allotment letter.

47. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

48. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.07.2022 is 7.80%.



Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.80%.

49. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

50. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 19(I) & 19(II) of the allotment letter executed between the parties, the possession of the subject apartment was to be delivered within a period of 42 months plus 6 months from date of execution of such allotment letter. The due date of possession is calculated from the date of allotment letter in respective cases as detailed in para no. 03 of order.

51. In complaint no. **CR/158/2020 titled as Sahil Goel V/s Assotech Moonshine Urban Developers Private Limited**, the subject unit was originally allotted to Mr. Kewal Krishan Gupta vide allotment letter dated 04.07.2012. The complainant is a subsequent allottee. The original allottee assigned all the rights and liabilities under the agreement in favour of complainant i.e.; Mr. Sahil Goel vide endorsement sheet dated 26.05.2014. The complainant is a subsequent allottee.



The said unit was transferred in the favour of the complainant on 26.05.2014 i.e., before the due date of handing over of the possession(04.07.2016) of the allotted unit. As decided in *complainant no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Limited*, the authority is of the considered view that in cases where the subsequent allottee has stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

52. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the allotment letter to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession till the date of actual handing over of possession or till offer of possession plus two months, whichever is earlier; at the prescribed rate i.e., 9.80 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G.VIII Direction be made to the respondent that demands raised and subjected to be raised, on and after 07.09.2015 i.e., the period when the respondent was supposed to deliver the possession free from all encumbrances in accordance with the allotment letter, be stayed as interim measure and be quashed in the eventuality of this complaint case.**

53. An agreement is an important document governing rights and duties of the parties. The unit was booked under construction linked payment plan and the same is evident from page no. 23 of the complaint. There is a contractual obligation conferred upon both the parties vide allotment letter dated 05.07.2012 and to raise the demands in consonance of payment plan only and on the other hand, the complainant is also under an obligation to make timely payments to the amount due. Since, it was a construction linked payment plan, the respondent shall charge due installments as per the stage of construction at project site.



**G.IX Direct the respondent to provide all facilities and amenities as assured and promised at the time of initiation of the said transaction.**

54. An agreement is an important document governing rights and duties of the parties. The respondent is directed to fulfil all its contractual obligations. Schedule D annexed with BBA on page no. 22 of the complaint provides specifications of the allotted unit. The respondent is directed to fulfil all the contractual obligations conferred upon him vide allotment letter dated 05.07.2012 and to handover the unit to the complainant complete in all aspects and as per the specifications agreed upon.

**G.X Direct the respondent to compensate the complainant with a sum of Rs. 63,94,803.00 calculated at the rate of 18 % per annum from the original date of delivery of possession as an interim measure for the loss caused to the complainant on account of mental harassment, trauma and the follow up cost of life of the complainant.**

**G.XI Direct the respondent to pay the monthly installment of Rs.50,000/- per month along with the interest accrued on account of the home loan up till the final decision and outcome of this complaint case.**

55. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.




#### **H. Directions of the authority**

56. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 9.80% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession till actual handing over of possession or till offer of possession plus 2 months after obtaining occupation certificate, whichever is earlier.
  - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10<sup>th</sup> of each succeeding month.
  - iii. The respondent is directed to get the conveyance deed executed in favour of the complainant after obtaining occupation certificate to fulfil its obligation conferred upon him under section 11(4)(f) of Act of 2016 and on the other hand, the complainant shall also participate in execution of conveyance deed as per duty conferred upon him under section 19(11) of Act.
  - iv. The respondent is directed to fulfil all the contractual obligations conferred upon him vide allotment letter and to handover the unit to the complainant complete in all aspects and as per the specifications agreed upon.
  - v. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
  - vi. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



- vii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
57. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
58. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter. There shall be separate decrees in individual cases.
59. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. K.K. Khandelwal)  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.07.2022

**HARERA**  
**GURUGRAM**