

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

Complaint no. :	1467 of 2018
Date of filing complaint:	22.10.2018
First date of hearing:	09.04.2019
Date of decision :	08.08.2022

1.	Sh. Parveen Kalia S/o Sh.	Complainants
2.	Smt. Sangeeta Kalia Both R/O: 3 rd Floor, #585, Double Storey, New Rajinder Nagar, Delhi - 110060	
Versus		
1.	M/s Assotech Moonshine Urban Developers Private Limited Regd. office: 148-F, Pocket-IV, Mayur Vihar, Phase-I, Delhi 110091	Respondents
2.	Sh. Sanjeev Srivastava (Director) R/O: Sector-99, NPR, Village- Dhankot, Tehsil & District- Gurugram, Haryana- 122001	
3.	Sh. Prakash Kalothia (Director) R/O: Sector-99, NPR, Village- Dhankot, Tehsil & District- Gurugram, Haryana- 122001	
4.	Sh. Mangesh Vamsi Gali (Director) R/O: Sector-99, NPR, Village- Dhankot, Tehsil & District- Gurugram, Haryana- 122001	
5.	Sh. Enakshi Priyam (Director) R/O: Sector-99, NPR, Village- Dhankot, Tehsil & District- Gurugram, Haryana- 122001	

CORAM:

Dr. KK Khandelwal

Chairman

Shri Vijay Kumar Goyal

Member

APPEARANCE:	
Sh. Varun Kalia (Advocate)	Complainants
Sh. Nitin Gupta (Advocate)	Respondents

ORDER

- The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

- The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. n.	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	Registered vide registration No. 83 of 2017 dated 23.08.2017
	Valid up to	22.08.2023
6.	Allotment letter	16.11.2013 (As per page no. 34 of CRA) (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.	B- 2001 on 20 th floor, tower B (As per page no. 35 of CRA)
8.	Super area admeasuring	2400 sq. ft. (As per page no. 35 of CRA)
9.	Payment plan	Possession linked payment plan (As alleged by the complainants on page no. 09 of CRA)
10.	Possession clause	As per Clause 19(I), <i>The possession of the apartment shall be delivered to the allottees(s) by the company within 32 months from the date of allotment subject to the force majeure, circumstances, regular and timely payments by the intending allottees(s), availability of building material, change of laws by governmental/ local authorities, etc.</i> (Emphasis supplied)
11.	Grace period clause	As per Clause 19(II), <i>In case the Company is unable to</i>

		<p><i>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 Allottees (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottees (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottees (s) at the time of handing over possession</i></p>
12.	Due date of delivery of possession	<p>16.01.2017 (Calculated from date of allotment letter dated 16.11.2013 with grace period of 6 months as per clause 19(II)) (Grace-period is allowed)</p>
13.	Total consideration	<p>Rs. 1,72,91,200/- (As per schedule E on page no. 26 of reply)</p>
14.	Total amount paid by the complainants	<p>Rs. 86,45,104/- (As per letter dated 04.07.2016 on page no. 57 of CRA)</p>
15.	Request for withdrawal by the complainants before filing present complaint	<p>25.07.2018 (As per page no. 83 of complaint)</p>
16.	Occupation certificate	Not obtained
17.	Date of offer of possession to the complainants	Not offered

B. Facts of the complaint:

3. That the complainants, amongst whom complainant no. 1 was a NRI at the relevant time, decided to invest their hard-earned money into the project of the respondent no. 1 i.e. 'Assotech Blith'. The said project was floated by two investors i.e. Assotech Ltd., and SUN Apollo, each holding 51% and 49% share respectively. The respondent no. 1 is a subsidiary of the holding company i.e. Assotech Ltd.
4. That on 16.11.2013, an agreement was executed between the complainants and the respondent no. 1, for apartment bearing no. B-2001, on the 20th floor of tower B having a super area of 2,400 sq. ft, for the consideration amount of Rs. 1,72,91,200/- and the said agreement has been referred to as an allotment letter. They opted for construction linked plan to render payment to the respondent, and the same plan finds itself in schedule F of the agreement.
5. That after issuance of the agreement, the complainants, on 16.09.2014, were apprised of a new payment plan that the respondent no. 1 was offering to its new customers. The said payment plan was a possession linked plan 25:75, meaning thereby, that only 25% of the total consideration was to be paid within 90 days from the date of booking and the remaining 75% was payable at the time of possession. Vide email dated 16.09.2014 requested the respondent no. 1 to convert their construction linked plan to the aforementioned possession linked plan but the said request, was denied by the respondent no. 1 vide email dated

23.09.2014 stating that the newer attractive offer existed only for fresh customers, and thus could not be availed by the old customers.

6. That the bona fide of the complainants is made evident from the fact that, despite the respondent no. 1's refusal to accommodate the complainants' aforementioned request, a further installment of Rs. 38,56,534/- on 21.10.2014 was made to the respondent no. 1. The complainant made payment of Rs. 15,96,191/- on 23.10.2013; Rs. 15,96,189/- on 21.12.2013; Rs. 15,96,190/- on 20.02.2014 & Rs. 38,56,534/- on 20.10.2014, which means that within a period of one year of entering into the agreement, they had already tendered payment to the tune of Rs. 86,45,104/-, amounting to 49% of the total sum payable.
7. That the complainants after making the payment of almost half of the total sum payable to the respondent no. 1, desired to get apprised of the status of the project and consequent to the same, vide e-mail dated 25.05.2016, the complainant no. 1 sought a visit to the respondent no. 1's office and to the construction site on 02.06.2016. No response to the said email was received and thus, vide email dated 26.05.2016, the same request was reiterated by the complainant no. 1, but to no avail.
8. That despite receiving no response from the respondent no. 1, the complainant no. 1 went ahead with the scheduled visit to the respondent's office at Gurugram on 02.06.2016 where a most cavalier treatment was meted out to him. The complainant no. 1 was gravely anguished due to the discourteous treatment meted out to him by the

officials of the respondent no. 1 company and materially restated that they have already paid a hefty sum of Rs. 86,45,104/- i.e. 49% of the total sum payable and being an NRI had travelled from a foreign country specifically for the purpose of site visit and therefore at the very least, a site visit to the project that he has invested in.

9. That the complainant no. 1 resolved to meet the higher management of the respondent no. 1 company, and consequently, on the same day i.e. 02.06.2016, the complainant no. 1 visited the office of the respondent no. 1 company but found the same closed down. However, a member of the security staff present there informed the complainant no. 1 that because the said office had been seized as per court order, the complainant no. 1 may visit the alternative office premises. Upon visiting the said office, the complainant no. 1 was informed by a certain Mr. Pratap Singh that the progress of the project had been stalled due to legal issues being faced by the holding company, Assotech Ltd.
10. That the complainants vide emails dated 16.06.2016; 20.06.2016, 22.06.2016, 23.06.2016, 27.06.2016 sought answers to multifarious questions concerning solvency and litigation status of the respondent no. 1 company and its majority investor, Assotech Ltd. However, it failed suitably answering the questions posed by them and alleviating their well-founded concerns.
11. That since the circumstances had anguished them, the complainant no. 1 decided to re-visit India on 08.07.2016 and meet the respondent no. 1

company's officials, i.e. the respondents no. 2-5, so as to be apprised of the ground reality by visiting the construction site for himself.

12. That as per agreement 16.11.2013, which assumes immense importance since as per clause 19(1) of the agreement between the complainant(s) and the respondent no. 1, the possession was to be handed over within 32 months from the date of agreement and the same comes out to be 16.07.2016.
13. That the respondent no. 1, even after missing the date of handing over possession, sent them demand notice, vide email dated 17.07.2017, seeking dues of amount to the tune of Rs. 46,90,335/- towards completion of the superstructure of tower B and further vide email dated 26.07.2017 stated that the expected date of delivery of possession/completion of tower B has been, unilaterally and without any supporting reasons, extended to 31.12.2018, which marks the delay period of more than 29 months. Aggrieved with the revised date of completion of tower B, they, in the said email, not only sought an amount towards interest for the delay in possession, but also refused to tender any further payments to the respondent no. 1 until such time as the situation was corrected.
14. That the respondent no. 1 sent another email dated 16.07.2018 vide which it sought not only the amount demanded previously but also interest @18% on the delay period. They intimated the respondent no. 1 that the complainant no. 1 visited the construction site of the project on

15.03.2018 and was apprised by an employee of respondent no. 1, Mr. Vipin, that the delivery date for the tower B of the project had been postponed to June 2019, which marked the delay at 35 months. In the same mail, the complainant(s) thereafter made a request to the respondent no. 1 to refund the entire amount already paid, which amounted to Rs. 86,45,104/- along with interest @18% p.a., which, inclusive of interest, amounts to Rs. 1,80,45,768/-.

C. Relief sought by the complainant:

15. The complainants have sought following relief(s):

- i. Direct the respondent to not to cancel the subject unit till pendency of present complaint.
- ii. Direct the respondent no.1 to refund the entire amount paid by the complainants to the respondent till date along with interest at the prescribed rate under Act of 2016.

D. Reply by respondent no. 1 :

The respondent by way of written reply made following submissions

16. That the respondent no. 1 denied the facts stated by the complainants and further submitted 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 said project and all the external and internal development charges were 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. The company received a total payment of Rs 244 crores by way of collections 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 their booked unit and the balance cost incurred to date was funded by the shareholders/debenture holders of the company.

17. That the complainants failed to make payments towards consideration of allotted unit and defaulted against clause 11, 12(a), 12(c) of allotment letter.
18. Copies of all the relevant documents have been filed and placed on 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:

19. The plea of the respondent no.1 regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and 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.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

Section 34-Functions of the Authority:

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

So, in view of the provisions of the Act 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. Entitlement of the complainants for refund:

F.I Direct the respondent to not to cancel the subject unit till pendency of present complaint.

20. There is nothing on record to show that the respondent-builder has cancelled the allotted unit of the complainants. Hence, no direction to this effect.

F.II Direct the respondent no. 1 to refund the entire amount paid by the complainants to the respondent till date along with interest at the prescribed rate under Act of 2016.

21. The project detailed above was launched by the respondent-company as group housing project and the complainants were allotted the subject unit in tower B on 16.11.2013 against total sale consideration of Rs. 1,72,91,200/-. As per clause 19(I) & 19(II) of the said allotment letter executed between the parties, the possession of the subject apartment was to be delivered within a period of 32 months plus 6 months from date of execution of such allotment and that period has admittedly expired on 16.01.2017. It has come on record that against the total sale consideration of Rs. 1,72,91,200/- the complainants have paid a sum of Rs. 86,45,104/- to the respondents.
22. Due to delay in handing over of possession by the respondent-promoter, the complainants-allottees wishes to withdraw from the project of the respondents. The complainants also wrote email dated 25.07.2018 seeking refund of the amount paid by the complainants. Thus, keeping in view the fact that the allottees- complainants wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on his failure to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale as mentioned in the table above is

16.01.2017 and there is delay of more than 1 years 09 months 06 days on the date of filing of the complaint i.e. 22.10.2018.

23. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by *Hon'ble Supreme Court of India in Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019*, decided on 11.01.2021

" The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

24. Further in the judgement of the Hon'ble Supreme Court of India in the cases of *Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022 observed as under:

25. The unqualified right of the allottees to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottees, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate

prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottees does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

25. This is without prejudice to any other remedy available to the allottees including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
26. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 86,45,104/- with interest at the rate of 9.80% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each

payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the Authority:

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondents/promoters is directed to refund the amount i.e. **Rs. 86,45,104/-** received by them from the complainants along with interest at the rate of 9.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
- ii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.08.2022