



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

Complaint no. :	332 of 2020
Date of filing complaint:	24.01.2020
First date of hearing:	26.02.2020
Date of decision :	08.08.2022

Ms. Vandana Chauhan D/o Sh. Shrivendra Singh Chauhan R/O: C-8 Madhuban Colony, Naka Madar, Ajmer, Rajasthan-305001	Complainant
Versus	
1. M/s Assotech Moonshine Urban Developers Private Limited Regd. office: 148-F, Pocket-IV, Mayur Vihar, Phase-I, Delhi 110091 2. M/s Housing Development Finance Corporation Limited Regd. office: Ramon House, 169, Backbay Reclamation, Mumbai	Respondents

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Deepanshu pawar (Advocate)	Complainant
Sh. Nitin Gupta (Advocate) for R1 Sh. Dharmender Sehrawat (Advocate) for R2	Respondents

ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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	02.10.2012 (As per page no. 11 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- 601 on 6 th floor, tower F (As per page no. 11 of complaint)
8.	Super area admeasuring	1685 sq. ft. (As per page no. 11 of complaint)
9.	Payment plan	Construction linked payment plan (As per page no. 25-27 of complaint)
10.	Possession clause	As per Clause 19(I), <i>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.</i> (Emphasis supplied)
11.	Grace period clause	As per Clause 19(II), <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 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</i>
12.	Due date of delivery of possession	02.10.2016 (Calculated from date of allotment letter

		dated 02.10.2012 with grace period of 6 months as per clause 19(II)) (Grace-period is allowed)
13.	Total consideration	Rs. 89,79,951/- (As per applicant ledger dated 19.12.2019 on page no. 25 of complaint)
14.	Total amount paid by the complainant	Rs. 79,54,788/- (As per applicant ledger dated 19.12.2019 on page no. 27 of complaint)
15.	Tri-partite agreement dated	03.10.2012 (As per page no. 47 of complaint)
16.	Occupation certificate	Not obtained
17.	Date of offer of possession to the complainant	Not offered

B. Facts of the complaint:

3. That on 14.03.2012, the complainant booked a 3BHK residential apartment unit no. 601, in tower- F, having super area of 1685 sq. ft. in the respondent no. 1's project "Assotech Blith", situated at Sector 99, NPR, Gurugram, Haryana, by paying Rs. 6,48,345/- as the booking amount. Subsequently, vide allotment letter dated 02.10.2012, she was allotted the said unit for a total consideration of Rs. 86,74,340/-.
4. That the allotment letter/agreement shared by the respondent no. 1, was unjust and was completely one sided. She made several requests to the respondent no. 1 to amend the allotment letter, However, it blatantly refused to do the same and threatened her that in case she refused to sign on the allotment letter, the money paid by her towards the unit

would be forfeited. That under duress and in fear of her money getting forfeited, she signed on the dotted lines of the allotment letter.

5. That on 03.10.2012, the complainant along with the respondent no. 1 executed a tripartite agreement with the respondent no. 2 for a loan of Rs. 69,39,000/- to purchase the said unit in its project.
6. That the complainant applied for a loan of Rs. 69,39,000/- with the respondent no. 2 in order to finance her purchase in the said unit and the same was sanctioned by the respondent no. 2 vide home loan agreement dated 30.11.2012. Till date the respondent no. 2 has disbursed an amount exceeding Rs. 64,11,426/- directly to the respondent no. 1.
7. Till date the respondent-builder has received an amount exceeding Rs. 79,54,787/- on behalf of the complainant for the said unit.
8. That as per the terms of clauses 19 (I), 19(II) and 57 of the allotment letter which was executed between the parties on 02.10.2012, the possession of the said apartment was to be delivered within 42 months with a grace period of 6 months from the date of issuance of the allotment letter, i.e., 02.10.2012. Therefore, the promised date of possession as per the allotment letter including grace period of 6 months was 02.10.2016. Till date, there has been a delay of more than 3 years from the date of possession i.e., 02.10.2016 and the respondent-builder has failed to handover the possession of the allotted unit.

C. Relief sought by the complainant:

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

- i. Direct the respondent-builder to refund the entire amount paid by the complainant till date along with interest at the 18% rate under Act of 2016.
- ii. Direct the respondent no. 2 to stay the accumulation of interest on the loan amount disbursed to respondent no. 1.
- iii. Direct respondent no. 2 to stay the amount of EMI with regard to loan account of the complainant.

D. Reply by respondent no. 1:

The respondent no. 1 by way of written reply made following submissions

10. That the possession of the apartment was to be delivered by the company within 42 months from the date of signing of allotment cum agreement dated 24.04.2013, subject to the force majeure, circumstances, regular and timely payments by the intending allottee. The delays were caused on account orders passed by Hon'ble National Green Tribunal and the State Pollution Control Board issued various directions to builders to take additional and step to curtail pollution. On account of the aforementioned reasons, the progress of the work was abruptly hampered.
11. That all these events led to suspension and stoppage of work on several occasions which also resulted in labourers and contractors abandoning work. As a result of various directions from the authorities at different occasions, regarding water shortage and pollution control etc., coupled

with labourers and contractors abounding the work, it had to run from pillar to post in order to find new contractors and labours, thus affecting progress of project. The pandemic Covid-19 was also the biggest reason for delay in handing over the possession of the flat/unit. Hence, respondent was not liable for the delay in handing over of possession of apartment of the complainant.

12. That the construction contract of project namely "Assotech Blith" at Sector 99, Gurugram was executed on 03.04.2012 between respondent and Assotech Limited. The complete construction work including civil, internal and external electrical, plumbing, firefighting and all external development along with internal development was awarded to Assotech Limited. Thereafter, the construction was started by Assotech Limited as per the contract's terms and condition and the work was going as per the completion schedule. Thereafter, the contractor company Assotech Limited in the mid of year 2015 faced litigation in the Hon'ble Delhi High Court and on 08.02.2016, the contractor company "Assotech Limited" was unfortunately put on provisional liquidation by Hon'ble Delhi High Court by Company petition no. 357 of 2015 and then the official liquidator was appointed in the contractor company. Thereafter, the appointed O.L. sealed the office of contractor company. The board of directors who looks forward to all the construction activity of this site was became ex-management and accordingly their all powers were taken over by O.L. Even the respondent approached the O.L., appointed by Hon'ble High

Court of Delhi to look into the integrity of that problem so that the construction activities could be carried on but the O.L. categorically asked the respondent to wait as the matter was already sub-judice before the Hon'ble Delhi High Court.

13. That the respondent tried to arrange other contractor so that the work can be carried on but no one came forward to take up the assignment of construction activities the work was the mid-way and huge acute recession was prevailing in the real estate market. As a result, nobody shown interest to take the assignment in project. The respondent became helpless to carry the construction work at site. Thus, in these circumstances, all the work of the construction sites got hampered badly due to this situation from 2016 to till 2019 Feb. It is pertinent to mention here that a legal contract was already executed between respondent and construction company "Assotech Limited" and work till 2016 was almost 70% to 80% completed at site.
14. That the construction of all the towers was almost completed and the finishing work was also in advanced stage. So, in this grave situation, it was very difficult to terminate the contract with "Assotech Limited". Further, the rates of construction material also enhanced/increased drastically and thus, the cost of construction increased if new contractor would come for construction. This is because as in this contract, there was no clause of enhancement of rates and then due to this contract

"Assotech Limited" was bound to do the work and complete the project. Even contractor has given their written consent to the respondent.

15. That even the real estate market was also deteriorated and there were recession in real estate market from 2015-16 onwards. Thus, due to these unforeseen circumstances, the construction was delayed. When the Hon'ble High Court of Delhi ordered for revival of contractor company, the Assotech Limited has immediately restarted the construction work at site with full force of manpower to recap the loss of the time.
16. 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. 354.98 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) was 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 265 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 from the complainant against the booked unit and the balance cost incurred to date was funded by the shareholders/debenture holders of the company.

17. That the construction of the project is in full swing and is as per the schedule and the respondent-company is committed to deliver the said project as per the RERA registration certificate. The complainant who was merely an investor and wanted to ride on the investment boom in the real estate sector and thereby kept on waiting for the property prices to rise. But since the real estate market did not rise, she filed the present complaint. It is further submitted that on 12.04.2021, the respondent applied for grant of occupation certificate for tower E, F, C and G and in which complainant tower is one of them. After the grant of part occupation certificate by DTCP, respondent would offer the possession to complainant and no question arises regarding refund to complainant.

E. Reply by respondent no. 2:

The respondent no. 2 by way of written reply made following submissions

18. That the answering respondent i.e. HDFC Ltd is no way concerned with the present complaint except that based on several representation made by the complainant and the same being acknowledged by the builder - the respondent no. 1, HDFC - respondent no. 2 has granted a home loan (Loan A/c No. 605936572) of Rs 69,39,000/- and till date has disbursed an amount of Rs 64,11,426/- as per the terms and conditions of home loan agreement dated 30.11.2012 and tripartite agreement dated 03.10.2012.

19. That the respondent no. 1 also issued a 'No Objection Certificate' permitting the complainant to mortgage the property bearing flat no. F-601 in the building called 'Assotech Blith' situated at Dwarka Expressway, Sector 99, Gurgaon (Haryana) in favour of HDFC as a security for repayment of home loan vide its letter dated 03.10.2012. The said transaction between the complainant and the answering respondent is governed by the terms and conditions of the loan agreement dated 30.11.2012.
20. That in order to obtain the said loan from the respondent no. 2, she represented to the answering respondent that she had selected a builder of her choice and that the property was of her choice and had satisfied herself with regard to such builder's integrity, capability, quality of construction and also made payments out of its own contribution to the respondent no. 1. The complainant, the builder (and the answering respondent also executed and entered into a tripartite agreement dated 03.10.2012, vide which she made several representations to the answering respondent in order to obtain the home loan.
21. That based on the above said representations, the interest shown in the property by the complainant and her repayment capacity, the above said loan was sanctioned and disbursed to her. The respondent strictly and specifically acted in limited capacity of lender to the complainant (borrower) and it has nothing to do with acts and conducts of the builder whatsoever. The act of impleading the answering respondent in the

purported complaint by the complainant holds water to the extent that in such circumstances if cancellation of allotment and refund is allowed, the answering respondent has the first charge/right to seek apportionment of its dues as per the clause 8 and 9 of the tripartite agreement reproduced above. However, such an impalement should not be allowed to be used malafidely in order to wriggle the complainant out of her liability under the loan agreement and to avoid payment of EMI.

22. The borrower is under absolute liability to repay the loan availed from the answering respondent and any order of cancellation/refund by this authority would not absolve her absolute liability to keep the loan account regular till the date of 'actual refund' of money after cancellation by the builder and adjustment of the same in her loan account. Hence, the Borrower shall be liable to follow the repayment schedule, repay all EMIs and regularize their loan account as agreed under the loan agreement and relevant clauses of the tripartite agreement and without prejudice to anything else till the date of such cancellation and 'actual refund' by the builder.
23. That as per clause 10.3 of the loan agreement entered between the borrower and the answering respondent (HDFC), any type of assignment of rights and obligations under the loan agreement is not possible. Also in light of the terms agreed under the tripartite agreement, any payment made by the builder to the answering respondent after cancellation of the property allotment should not absolve the borrower from her

liability to pay the residual amount (if any) to the answering respondent and it would have all its rights in place and order to recover the same from the complainant-borrower.

24. 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.

F. Jurisdiction of the authority:

25. The plea of the respondent 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.

F. I 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.

F. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee 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.

G. Findings on objections raised by the respondent no. 1

G.I Objection regarding handing over possession as per declaration given under section 4(2)(1)(C) of RERA Act

26. The counsel for the respondent no. 1 has stated that the respondent-company 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.

27. 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...."

28. 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)(1)(C) is now the new

timeline as indicated by him for the completion of the project. Although, penal proceedings would 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.* 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..."

G.II Objection regarding delay due to force majeure circumstances

29. 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, 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.

30. 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 than neither the complainant is a party to such contract nor liquidation proceedings are binding on her. Hence, there was no privity of contract with the complainant. Thus, the plea of

the respondent on account of delay in completion due to initiation of liquidation proceedings is not tenable.

31. 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 I.As 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 to be handed over within 42 months from date of execution of allotment along with grace period of 6 months which comes out to be 02.10.2016 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.

H. Entitlement of the complainant for refund:

- H.I Direct the respondent-builder to refund the entire amount paid by the complainant along with interest.
32. The project detailed above was launched by the respondent no. 1 as group housing project and the complainant was allotted the subject unit in tower F on 02.10.2012 against total sale consideration of Rs. 89,79,951/-. 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 42 months plus 6 months from date of execution of such allotment and that period has admittedly expired on 02.10.2016. It has come on record that against the total sale consideration of Rs. 89,79,951/- the complainant have paid a sum of Rs. 79,54,788/- to the respondent no. 1.
33. Out of total sanctioned loan amount of Rs. 69,39,000/-, an amount of Rs. 64,11,426/- has been disbursed by respondent No. 2 towards consideration of allotted unit. Due to delay in handing over of possession by the respondent-promoter, the complainant-allottee wishes to withdraw from the project of the respondent and filed the present complaint. Thus, keeping in view the fact that the allottee- complainant wish to withdraw from the project and is 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 02.10.2016 and there is delay of more than 3 years 03 months 22 days on the date of filing of the complaint i.e. 24.01.2020.



34. 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 allottee 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 allottee 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....."

35. 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 allottee 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 allottee, 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 allottee/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 allottee 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 allottee 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 allottee, as the allottee 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.

36. This is without prejudice to any other remedy available to the allottee including compensation for which she 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.
37. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 79,54,788/- 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*.

38. The respondent-builder is further directed that out of total amount so assessed, the amount paid by the bank/payee be refunded in the account of bank and the balance amount along with interest would be refunded to the complainant.

H.II Direct the respondent no. 2 to stay the accumulation of interest on the loan amount disbursed to respondent no. 1.

H.III Direct the respondent to stay the amount of EMI to be raised by respondent no. 2 with regard to loan account of the complainant.

39. Out of total sanctioned loan amount of Rs. 69,39,000/-, an amount of Rs. 64,11,426/- has been disbursed by respondent No. 2 towards consideration of allotted unit. An agreement is a vital document defining rights and liabilities of the parties thereof. The complainant cannot be excused from obligation conferred upon him vide tri-partite agreement dated 03.10.2012 and hence, the respondent No. 2 is right in raising demand of EMI on amount disbursed. The complainant and both the respondents are directed to fulfil the obligations conferred upon them vide tri-partite agreement dated 03.10.2012.


40. The complainant can seek 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.

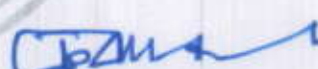
I. Directions of the Authority:

41. 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 respondent no. 1/promoter is directed to refund the amount i.e. **Rs. 79,54,788/-** received by him from the complainant 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) Both the parties are directed to fulfil the obligations conferred upon them vide tri-partite agreement dated 03.10.2012.
 - iii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
42. Complaint stands disposed of.
43. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.08.2022