

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

Complaint no. :	242 of 2020
Date of filing complaint:	16.01.2020
First date of hearing:	12.02.2020
Date of decision :	06.10.2022

1. Sh. Digvijay Singh Rathore S/o Sh. Kesri Singh 2. Smt. Leena Rathore W/o Sh. Digvijay Singh Rathore <b>Both R/O:</b> House no. 23, Block - C, First Floor, Vipul World, Sector - 48, Gurugram- 122001	<b>Complainants</b>
Versus	
M/s Assotech Moonshine Urban Developers Private Limited <b>Regd. office:</b> 148-F, Pocket-IV, Mayur Vihar, Phase-I, Delhi 110091	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Ashish Kumar (Advocate)	Complainants
None	Respondent

**ORDER**

1. The present complaint has been filed by the complainants/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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

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	25.07.2012  (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- 302 on 3 <sup>rd</sup> 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. 34 of complaint)
10.	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><u>within 42 months from the date of allotment</u></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>
11.	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><u>further within a grace period of six months,</u></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>
12.	Due date of delivery of possession	<b>25.07.2016</b>

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		(Calculated from date of allotment letter dated 25.07.2012 with grace period of 6 months as per clause 19(II)) <i>(Grace-period is allowed)</i>
13.	Total consideration	Rs. 98,73,913/- (As per schedule E on page no. 34 of complaint)
14.	Total amount paid by the complainants	Rs. 97,51,540/- (As per applicant ledger dated 19.12.2019 on page no. 46 of complaint)
15.	Occupation certificate	Not obtained
16.	Date of offer of possession to the complainants	Not offered

**B. Facts of the complaint:**

3. That on 18.07.2012, the complainants booked a 3BHK residential apartment unit bearing no. 302 in tower - F, having super area of 1685 square feet in the project "Assotech Blith" (HRERA registration no. 83 of 2017), situated at Sector 99, NPR, Gurugram, Haryana, and paid booking amount of Rs. 8,63,756/-.
4. That subsequently, vide allotment letter dated 25.07.2012, they were allotted the said unit for a total consideration of Rs. 1,02,67,192/-. The said allotment letter shared by the respondent, was unjust and was completely one sided. They made several requests to the respondent to amend the allotment letter, however, it blatantly refused to do the same and threatened the complainants that in case they refused to sign the

allotment letter, the money paid by them towards the allotted unit would be forfeited. That under duress and in fear of their money getting forfeited, they signed the dotted lines of the said allotment letter.

5. That till date the complainants have paid an amount of Rs. 97,51,539/- to the respondent against consideration of allotted unit.
6. That in terms of clause no. 57 of the allotment letter provides possession clause wherein the respondent was under obligation to provide the possession of the said apartment within a period of 42 months plus 6 months grace period from the date of issuance of allotment letter which was executed on 25.07.2012. Therefore, the promised date of possession as per the allotment letter was 25.07.2016 including grace period of 6 months. However, till date it has failed to handover the possession of the allotted unit and there is a delay in handing over of possession by more than 3 years.

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

7. The complainants have sought following relief(s):
  - i. Direct the respondent 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.
8. On 26.08.2021, the respondent failed to file any written reply leading to passing of the following order by the Adjudicating Officer. Relevant part of the order is ad verbatim:-

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*Respondent was proceeded ex-parte by this forum on 03.03.2021. This is an application for recalling of that order. It is submitted by learned counsel for applicant/respondent that none appeared on behalf of respondent on the dated fixed as no notice was served upon the same. On the other hand, counsel for complainants submits that notice has already been served upon the respondent till that date. Apart from hearing, I have gone through record and find that notice upon the respondent through speed post was served on 03.01.2021 and through e-mail on 30.12.2019. Considering all this, no reason to presume that notice was not served upon the respondent. The application is thus, dismissed. Another application filed on behalf of the respondent seeking settlement through mediation and the same is not acceptable to the complainants.*

*2. To come on 17.02.2022 for arguments.*

9. Feeling dissatisfied with the same, the respondent-builder filed an appeal bearing no. 530 of 2021 before the Hon'ble Appellate Tribunal and the said order dated 26.08.2021 was set aside on payment of Rs. 20,000/- and with a direction to the promoter to file reply within three weeks with an advance copy to other side. But in view of ***Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)***, the said complaint was transferred to Authority for further adjudication on 08.06.2022 and then on 08.08.2022 (subsequent hearing after 08.06.2022), where counsel for respondent put in appearance and filed power of attorney on 31.05.2022. Vide those proceedings dated 08.08.2022, the respondent was given last opportunity to file reply. However, on 06.10.2022 (i.e. the next date of hearing), despite specific direction of Hon'ble Appellate Tribunal and authority, the respondent neither put in appearance nor filed any reply. So, taking into consideration the number of opportunities given to the

respondent and lack of seriousness towards the proceedings, orders were passed to struck down its defence and decide the case on the basis of merit.

10. 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.

**D. Jurisdiction of the authority:**

11. 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.

**D. 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.

**D. 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:

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**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 complainants at a later stage.

12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022* wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome*



*of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

**E. Entitlement of the complainants for refund:**

**E.1 Direct the respondent-builder to refund the entire amount paid by the complainants along with interest.**

14. The project detailed above was launched by the respondent as group housing project and the complainants was allotted the subject unit in tower F on 25.07.2012 against total sale consideration of Rs. 98,73,913/-. 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 25.07.2016. It has come on record that against the total sale consideration of Rs. 98,73,913/- the complainants have paid a sum of Rs. 97,51,540/- to the respondent no. 1.
15. Due to delay in handing over of possession by the respondent-promoter, the complainants-allottee wishes to withdraw from the project of the

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respondent and filed the present complaint. Thus, keeping in view the fact that the allottee- complainants 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 **25.07.2016** and there is delay of more than 3 years 05 months 22 days on the date of filing of the complaint i.e., 16.01.2020.

16. 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....."*

17. 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.

18. This is without prejudice to any other remedy available to the allottee including compensation for which she may file an application for

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adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

19. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 97,51,540/- with interest at the rate of 10% (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*.
20. 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 complainants.

**F. Directions of the Authority:**

21. 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/promoter is directed to refund the amount i.e., **Rs. 97,51,540/-** received by him from the complainants along with interest at the rate of 10% 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.

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- ii) 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.
- iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
22. Complaint stands disposed of.
23. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2022

**HARERA**  
**GURUGRAM**