

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

<b>Complaint no. :</b>	<b>429 of 2021</b>
<b>Date of filing complaint:</b>	<b>21.01.2021</b>
<b>First date of hearing:</b>	<b>01.03.2021</b>
<b>Date of decision :</b>	<b>28.02.2023</b>

Sh. Abhishek Bhatia S/o Sh. Sohan Lal Bhatia <b>R/O:</b> B-4/259, Safdarjung Enclave, New Delhi-110029	<b>Complainant</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 Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Kuldeep Kohli (Advocate)	Complainant
Ms. Deepika Bahl (Proxy Counsel)	Respondent

**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.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	26.07.2012  (As per page no. 68 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.	G- 701 on 7 <sup>th</sup> floor, tower G  (As per page no. 68 of CRA )



8.	Super area admeasuring	1685 sq. ft. (As per page no. 68 of CRA )
9.	Payment plan	Construction linked payment plan (As per page no. 90-94 of CRA)
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>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>
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>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>
12.	Due date of delivery of possession	<b>26.07.2016</b> (Calculated from date of allotment letter dated 26.07.2012 with grace

		period of 6 months as per clause 19(II)) <b>(Grace-period is allowed)</b>
13.	Total consideration	Rs. 98,31,788/- (As per page no. 68 of CRA )
14.	Total amount paid by the complainant	Rs. 90,34,800/- (As alleged by the complainant on page no. 40 of CRA)
15.	Legal notice dated	11.12.2020 (As per page no. 107 of CRA)
16.	Occupation certificate	Not obtained
17.	Date of offer of possession to the complainant	Not offered

**B. Facts of the complaint:**

3. That the representatives of the respondent-company, approached the complainant in January 2012 and spoke very high on the reputation of the company and delivery of the project on time. They then handed over a brochure of the company regarding the "Assotech Blith" to him which looked to be a very well-designed brochure of international standards speaking high assurances and standards of the respondent.
4. That the complainant got caught in the web of false promises of the representatives of the respondent and vide application dated no 256 dated 31.05.2012, booked a flat in Tower G of the project "Assotech Blith, Sector 99, measuring 1685 sq. ft. having super area @ Rs.4972.50/- per sq. ft. (Basic Sale Price).
5. That the total cost of the flat was given as Rs. 98,31,788/- being the cost of 1685 sq. ft. super area @ Rs.4,972.50 per sq. ft. (Basic Sale Price)



exclusive of other charges such as IDC, EDC, PLC, car parking charges, stamp duty charges, registration fee, interest free maintenance security, monthly maintenance charges, power back up charges, service tax of any other government taxes/charges levied/leviable.

6. That the complainant was allotted unit no. G-701 admeasuring 1685 sq. ft. in tower-G of the respondent company's letter dated 26.07.2012. He was asked to pay 10% of the total consideration on booking of the unit dated 29.07.2012 and the same was paid by him vide cheque bearing no. 121000 and the same was acknowledged by the respondent vide receipt no. ABMR/00810/12-13.
7. That the complainant has paid total consideration of Rs. 9,034,800/- for the flat admeasuring 1685/- sq. ft. against basic sale consideration of Rs. as Rs. 98,31,788/-.
8. That the allotment letter dated 26.07.2012 contained one sided condition which stated the location so given is tentative and can be changed at the sole discretion of the builder, which means without specifying any reasons, which is clearly a one-sided condition. It further stated that this provisional allotment letter dated 26.07.2012 is subject to the complainant signing the commercial space buyer's agreement and agreeing to the terms and conditions mentioned therein, which shall be provided to the complainant in due course.
9. That the respondent raised another demand of 10% each of the total sale consideration, payable within 60 days & 120 days of booking of the unit,

as per the construction linked plan i.e., Rs. 863,756/- and Rs. 8,64,756/-. The same was paid by him and acknowledgment receipt was duly issued by the respondent w.r.t. said payments.

10. That the respondent raised another demand of Rs. 11,65,825/- and the same was also paid and acknowledged by the respondent. Though he made the above payments against the total consideration as per the flat buyer's agreement, but the actual work was not initiated as per the payment collected hence there was total reluctance on the part of the complainant to make any further payment. The respondent was failing to adhere to the schedule of completion attached with the allotment letter and hence asking for payment was amounting to illegally extraction of money from the complainant by making false demands, which were not consistent with the progress on the site. There was hardly any activity going on at the site the payment collected by the respondent was more than the activity undertaken on the site. The above said acts of the respondent clearly state that it with prejudice have been indulging in unfair trade practices and have also been providing gross deficient services all such acts and omissions on the part of the respondent caused an immeasurable mental stress and agony to the complainant.
11. That the delivery of subject unit was given as January 2016, but the respondent was nowhere nearing the completion of the project giving a clear indication that though the funds have been collected but not



utilized for the project hence have been diverted for some activity by the respondent.

12. That the respondent raised further demands from the complainant, which were duly paid by him and the same were acknowledged by the respondent vide various receipts. A total amount of Rs. 90,34,800/- was paid by the complainant till 28.01.2017 as per the statement of account of the respondent dated 01.05.2017.
13. That by having intentionally and knowingly induced and having falsely misrepresented the complainant on the construction activity at site and by giving false delivery schedules and thereby making the complainant to act in accordance to its misrepresentations, and owing to all the deliberate lapses/delays on the part of the respondent, it is liable as being requisitioned/claimed by the complainant to pay the entire amount collected by them with interest from the date of receipt of the individual payments.
14. The complainant after losing all the hope from the respondent company, having their dreams shattered of owning and losing considerable amount, are constrained to approach the Authority for redressal of their grievance. According to the Act of 2016, the buyer has rights to cancel the allotment and claim a refund in case the builder fails to deliver the flat within the stipulated time, as stated in Section 18.
15. That the complainant is the one who has invested their life savings in the said project and are dreaming of a home for themselves. It has not only

cheated and betrayed them but also used their hard-earned money for their enjoyment. Moreover, it is well established law that the contractual damages are usually awarded to compensate an injured party to a breach of contract for the loss of his bargain.

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

16. The complainant have sought following relief(s):

- i. Direct the respondent to refund the entire amount paid by the complainant to the respondent till date along with interest at the prescribed rate under Act of 2016.
- ii. Direct the respondent to refund the amount paid by the complainant towards rent on account of non-delivery of possession of the subject unit.
- iii. Direct the respondent to pay litigation cost.
- iv. Restrain the respondent from raising any fresh demand with respect to project.
- v. Direct the respondent not to cancel the allotment of the allotted unit till the time the entire amount with interest as requested is paid to the complainant.
- vi. Direct the respondent to not create any third-party rights on the unit till the matter is finally decided.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions

17. That the complainant approached the respondent after conducting thorough due diligence and investigation of the real estate market and applied for booking in the project "Assotech Blith" at Sector-99,



Gurugram, Haryana and thereafter after being fully satisfied, signed the allotment letter cum agreement.

18. That the complainant prior to approaching respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of respondent to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by respondent.
19. That the complainant wilfully, uninfluenced and after being fully satisfied signed the allotment letter/agreement dated 26.07.2012. All the demands were raised by the respondent as per the agreed payment plan and as per the construction milestones achieved by the respondent company.
20. That as per the said allotment cum agreement, the possession of the apartment shall be delivered to the complainant by the respondent within 42 months from the date of signing of allotment was subject to the force majeure, circumstances, regular and timely payments by the intending allottee. The delays were caused on account of orders passed by Hon'ble National Green Tribunal and the State Pollution Control Board which issued various directions to builders to take additional step to curtail pollution. On account of the aforementioned reasons the progress of the work of the respondent was abruptly hampered. It is further

submitted 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 abandoning the work, the respondent had to run from pillar to post in order to find new contractors and labourers, thus affecting progress of project. That further pandemic Covid-19 is also a biggest reason for delay in handing over the possession of the flat/unit. Hence, respondent is not liable for the delay in handing over of possession of apartment of the complainant.

21. That as per accounting disclosure of the company duly 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) have been fully paid as per schedule and license conditions. In turn the company received a total payment of Rs 265 crores by way of collections from the allottee who booked units in the project and paid as per their respective scheduled payment plans. This amount collected from customers includes the payments received by the complainant against their booked unit. The balance cost incurred to date was funded by the shareholders/debenture holders of the company.



22. It is submitted that construction of the project is in full swing and is as per the schedule and the respondent company is committed to delivery of the said project as per the RERA registration certificate. It is submitted that 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, the complainant proceeded with filing of the present complaint. Moreover, the structure work of all the towers in the project is completed, brick work along with internal plaster is completed and finishing work is going on. On the pace and status of construction, it would offer the possession of the unit within next few months.
23. All other averments made in the complaint were denied in toto.
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.

**E. 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.

**E. 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.

## **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 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.

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



**F.I Objection regarding delay due to force majeure circumstances**

26. 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, shortage of labour and stoppage of work due to 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 which comes out to be 26.07.2016. 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.
27. 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 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 26.07.2016 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.

**G. Entitlement of the complainant for refund:**

**G.I Direct the respondent to refund the entire amount paid by the complainant to the respondent till date along with interest at the prescribed rate under Act of 2016.**

28. The project detailed above was launched by the respondent as group housing project and the complainant were allotted the subject unit in tower G on 26.07.2012 against total sale consideration of Rs. 98,31,788/-. 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 26.07.2016. It has come on record that against the total sale consideration of Rs.



98,31,788/- the complainant has paid a sum of Rs. 90,34,800/- to the respondent.

29. The respondent during course of proceedings dated 17.01.2023 submitted that it has applied for occupation certificate and fire NOC has been granted. The Authority observes that the complainant booked the subject unit in 2012 and till date no occupation certificate has been received by the respondent-builder. Thus, keeping in view the fact that the allottee- complainant 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 26.07.2016 and there is delay of more than 4 years 05 months 26 days on the date of filing of the complaint i.e. 21.01.2021.
30. 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.....”*

31. 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.

This is without prejudice to any other remedy available to the allottee 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.

32. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 90,34,800/- with interest at the rate of 10.70 % (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.II Direct the respondent to refund the amount paid by the complainant towards rent on account of non-delivery of possession of the subject unit.**

**G.III Direct the respondent to pay litigation cost.**

33. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

**G.IV Restrain the respondent from raising any fresh demand with respect to project.**

**G.V Direct the respondent not to cancel the allotment of the allotted unit till the time the entire amount with interest as requested is paid to the complainant.**

34. In view of aforesaid relief no. 1 wherein complainant seeking withdrawal from the project of the respondent, the aforesaid reliefs no. 4 & 5 have become redundant.

**G.VI Direct the respondent to not to create any third-party rights on the unit till the matter is finally decided.**

35. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

**H. Directions of the Authority:**

36. 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. 90,34,800/-** received by him from the complainant along with interest at the rate of 10.70 % p.a. as prescribed under rule 15 of the





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- ii) A period of 90 days is given to the respondent 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 the paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

37. Complaint stands disposed of.

38. File be consigned to the registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Ashok Sangwan)

Member

Dated: 28.02.2023

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