

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

Complaint no. : 682 of 2019
First date of hearing : 26.08.2019
Date of decision : 30.08.2019

Mr. Rahul Rai Gupta S/o Shri Kasturi Lal
Gupta
323, Bahawalpur Apartments, Plot No.1,
Sector-4, Dwarka, New Delhi-110075

Complainant

Versus

M/s Assotech Moonshine Urban Developers P.
Ltd. (through its A.R.)
Reg office at: 148-F, Pocket IV, Phase I,
Mayur Vihar, Delhi - 110091

Respondent

CORAM:

N. K. Goel

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petitions)
(Haryana Real Estate Regulatory Authority, Gurugram)

(Authorised by resolution no.

HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July
2019) under section 81, Real Estate (Regulation and Development)
Act, 2016.

APPEARANCE:

Shri Vijender Parmar

Advocate for the complainant

Respondent is ex-parte

EX PARTE (ORDER)

1. The present complaint relates to an allotment letter dated
14.08.2012 executed between the complainant and the

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respondent-promoter in respect of apartment measuring 1685 sq. ft. super area bearing no. E-1504, 15th floor of the project, namely, "Assotech Blith" situated in Sector 99, Northern Peripheral Road (also known as Dwarka Expressway), Gurugram (in short the subject apartment) which is registered with this Authority with registration no. 83 of 2017 dated 23.08.2017 for a basic sale price of Rs.83,78,663/- (page 46) and other charges totalling to Rs.96,21,163/- and the complainant opted for construction linked plan, though according to him the booking was made on 24.07.2012.

2. The particulars of the complaint case are as under: -

1.	Name and location of the Project	"Assotech Blith" at Sector 99, Northern Peripheral Road (Dwarka Express Way), Gurugram.
2.	Nature of project	Residential complex
3.	RERA registered / not registered	Registered vide no. 83 of 2017
4.	Revised date of completion of project as per RERA certificate	22.08.2023
5.	Total area	12.062 acres
6.	Unit/ no.	E-1504, 15th floor
7.	Unit measuring	1685 sq. ft



8.	DTCP license no.	95 of 2011 dated 28.10.2011
9.	Date of allotment letter	14.08.2012 (Pg.35 of the complaint)
10.	Total consideration	Rs.96,21,162.50 [as per page 25]
11.	Amount paid by the complainant till date	Rs. 69,63,151/-[as per demand letter dated 13.02. 2016, page 48] and averments made in the complaint.
12.	Payment plan	Construction linked plan [Page 47 of complaint]
13.	Due date of delivery of possession. clause 19(I) and 19(II) of allotment letter - possession to be delivered within 42 months from the date of allotment plus 6 months' grace period.	14.08.2016
14.	Delay in delivering possession till date of decision	Continuing
15.	Date of offer of possession, if any	Not offered

3. The complainant till date has paid an amount of Rs.69,63,151/- to the respondent vide different cheques on different dates. Complainant has stated that upon asking the respondent to execute agreement, the respondent refused the same and confirmed that as per its company policy the allotment letter is like flat buyer agreement and only the name

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and title is different. As per clause 19(I) and (II) of the allotment letter, the respondent had agreed to handover the possession of the subject apartment to the complainant within 42 months from the date of execution of this agreement with the additional grace period of 6 months. However, according to the complainant by the time the allotment letter was executed between the parties on 14.08.2012, the respondent had already taken huge payment from the complainant and that various terms of the allotment letter were absolutely one sided, unfair, arbitrary and highly unreasonable and abuse of dominant position of the respondent. The complainant had been making timely payment of the instalments against the demands raised by the respondent from time to time, making a total payment of Rs. 69,63,151/-.

4. According to the complainant, he approached the respondent for delivery of possession but all went in vain as the construction work was not in progress. It is stated that the respondent issued cancellation notice dated 17.09.2018 threatening to cancel the allotment of the subject apartment in the name of complainant and demanded further amount of

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Rs.32,92,055/- from him as sale consideration and interest without completing the construction of the subject apartment.

5. An application for amendment of the complaint has been filed wherein the complainant has stated that he does not intend to withdraw from the project.

6. Issues raised by the complainant are as follows:

1. "Whether the respondent is guilty of unfair and fraudulent trade practice?"
2. Whether the respondent is guilty of deficiency in services?
3. Whether the document titled as "Allotment Letter" is one sided and unilateral?
4. Whether the document titled as "Allotment Letter" was signed by the complainant under duress and coercion?
5. Whether the complainant is entitled for interest @18% p.a. on amount of Rs.69,63,151/- paid by the complainant to the respondent from the date of allotment till the actual delivery of possession of the subject apartment due to delay caused by the respondent in completion and

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delivery of the possession of aforesaid flat to the complainant as agreed in the allotment letter?

6. Whether the respondent is liable to be prosecuted under section 12 of the Real Estate (Regulation and Development) Act, 2016?"

10. Reliefs sought:

1. Direct the respondent to pay interest @18% p.a. from the date of payment and till the delivery of possession of said flat paid by the complainant due to delay caused by the respondent in completion and delivery of the possession of aforesaid flat to the complainant as agreed in the allotment letter;

2. Direct the respondent to pay an amount of Rs.55,000/- to the respondent as cost of the present litigation;

3. Award the cost in favour of complainant.

Notice of the complaint has been issued to the respondent via speed post and on email address smile@assotechlimited.com provided to the Authority and the delivery reports have been placed in the file. Notice to the respondent has also been sent through speed post and at the given email address for

23.08.2019 which has been duly served both ways. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint. Accordingly, the Authority is left with no other option but to decide the complaint ex-parte against the respondent.

Issue wise findings of the authority: -

11. **All Issues:-** As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the allotment letter (copy annexed-C/2), there is every reason to believe that vide allotment letter dated 14.08.2012 the respondent had agreed to handover the possession of the subject unit to the complainant within a period of 42 months with a grace period of 6 months from the date of execution of allotment letter which, in other words, means that the respondent was bound to offer the physical possession of the subject unit to the complainant on or before 14.08.2016. On the date of filing of complaint, the project was still not complete. Hence, it must be held to be "on going project" and thus covered under the provisions of the

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Real Estate (Regulation and Development) Act, 2016 (in short, the Act). However, the respondent has failed to offer the possession till date even after a delay of more than 2 years approximately, for which delay the complainant is entitled to delay possession charges. Hence, it is held that there being a delay of about 2 years in offering the possession of the subject apartment to the complainant this is in violation of the terms and conditions of the allotment letter and also violation of section 11(4)(a) of the Act.

12. The terms of the allotment letter may be one sided, onerous, arbitrary and favourable to the respondent/promoter but, however, the same cannot be ignored to be considered only on the ground that the complainant has pleaded so for the first time in the present complaint. The date of allotment letter is 14.08.2012. There is no evidence on the record brought by the complainant that before filing the present complaint he had raised any such grievance with the respondent/promoter.

13. Clause 12 of the terms and conditions of the allotment letter inter alia provides that the payment of instalments as per payment schedule opted by the allottee shall be the essence of



this allotment and that it shall be obligatory on the part of the allottee to make payments on or before the due dates as per the schedule given thereto.

14. However, the complainant has filed the copy of schedule D (specifications) and schedule-E (cost sheet) at page 46 and 47 respectively. However, he has not filed the copy of the payment schedule for the payment for the reasons best known to him. It means that the complainant has also tried to suppress some material facts from this Authority. The copy of demand letter dated 13.02.2016 issued to the complainant by the respondent has been filed as annexure C-3 whereby the complainant was informed that he had deposited Rs.69,63,151/- till date and was required to deposit Rs.18,18,492/- more. However it is not the case of complainant that he has deposited the said amount or any part thereof with the respondent. Accordingly, it has to be assumed that he has deposited or paid Rs. 69,63,151/- till date and did not deposit any further amount with the respondent after 13.02.2016. In the absence of the copy of the payment schedule filed on record, how can we assume or presume that



the said demand of Rs.18,18,492/- raised by the respondent vide demand letter 13.02.2016 was not as per the payment schedule or it violated the terms and conditions of the allotment letter.

15. Copy of cancellation notice 17.09.2018 has been placed on record as annexure C-4. We are not made to know whether the respondent has in fact cancelled the allotment of the subject apartment in favour of the complainant. Therefore, in the special facts and circumstances of the present case, despite there being a delay in handing over of possession of the subject apartment to the complainant it cannot be said that the respondent is guilty of unfair and fraudulent trade practice or of deficiency in service. So far as delay in possession is concerned, the complainant can effectively be awarded the interest at the prevalent prescribed rate as provided under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

16. Hence, in the opinion of this Authority the complainant is entitled to interest on delayed offer of possession. Accordingly, it is held that the complainant is entitled for delayed

possession charges at the prevalent prescribed rate of interest of 10.45% per annum for every month of delay in terms of section 18(1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The respondent shall not cancel the allotment of the subject apartment in favour of the complainant.

Findings of the Authority: -

17. The Authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the Adjudicating Officer if pursued by the complainant at a later stage. 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 for promoter projects situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority

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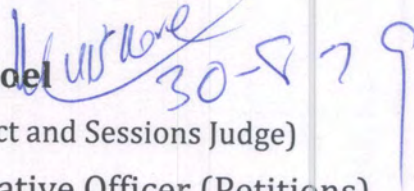
has complete territorial jurisdiction to deal with the present complaint.

Decision and directions of the Authority: -

18. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 14.08.2016 till the date of this order within a period of 90 days and to continue to pay the charges month by month by the 7th day of each succeeding English calendar month till the actual handing over of the possession of the subject apartment to complainant, subject to the complainant's depositing the due amount with the respondent along with the same rate of interest i.e. 10.45% p.a. on receipt of offer of possession. The respondent shall not cancel the allotment of the subject apartment i.e. E-1504 on 15th floor measuring 1685 sq. ft. in the project namely, "Assotech Blith", Sector 99, Northern Peripheral Road (Dwarka Expressway Way), Gurugram.

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19. The complaint stands disposed of accordingly.
20. The case file be consigned to the registry.


N. K. Goel

(Former Additional District and Sessions Judge)


Registrar –cum- Administrative Officer (Petitions)

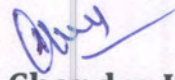
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(Authorised by resolution no. HARERA,GGM/Meeting/2019/Agenda
29.2/Proceedings/16th July 2019) under section 81, Real Estate
(Regulation and Development) Act, 2016.

Dated: 30.08.2019

Order ratified by the Authority as above.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.08.2019

Judgement uploaded on 05.09.2019