



**HARERA**  
**GURUGRAM**

Complaint No. 4246 of 2022, 6107 of  
2022, 6801 of 2022, 2773 of 2022, 6686  
of 2022

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

Date of decision:-

10.01.2024

NAME OF THE BUILDER		Assotech Moonshine Urban Developers Private Limited	
PROJECT NAME		"Assotech Blith", Sector-99, Gurgaon	
S. No.	Case No.	Case title	Appearance
1	CR/4246/2022	Anjani Portfolio LLP V/s Assotech Moonshine Urban Developers Private Limited	Shri Subhash Gupta AR on behalf of the complainant in person Shri Vaibhav Kataria Advocate
2	CR/6107/2022	Anuj Saxena and Usha Saxena V/s Assotech Moonshine Urban Developers Private Limited	Shri Nitin Yadav Advocate Shri Vaibhav Kataria Advocate
3	CR/6801/2022	Dinesh Chand Mohta V/s Assotech Moonshine Urban Developers Private Limited	Shri Siddharth Karnawat Advocate Shri Vaibhav Kataria Advocate
4	CR/2773/2022	Sumeet Vinayak and Manjusha Vinayak V/s Assotech Moonshine Urban Developers Private Limited	Shri Vinayak and Manjusha Vinayak Advocate Shri Vaibhav Kataria Advocate
5	CR/6686/2022	Sapna Sethi and Ajay Sethi V/s Assotech Moonshine Urban Developers Private Limited	Shri Munish Malik Advocate Shri Vaibhav Kataria Advocate

**CORAM:**

Shri Ashok Sangwan

**Member**

**ORDER**

1. This order shall dispose of all the five complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Assotech Blith", Sector-99, Gurugram, being developed by the same respondent/promoter i.e., Assotech Moonshine Urban Developers Pvt Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all the cases pertains to failure on the part of the promoter and seeking award of refund the entire amount along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>"Assotech Blith", Gurugram</b>
----------------------------------	-----------------------------------



**Possession clause:** - 19 (I) The possession of the apartment shall be delivered to the Allottee(s) by the Company within **Forty-two months from the date of allotment** subject to force majeure, circumstances, regular and timely payments of installments by the intending Allottee(s), availability of building material, change of laws by Governmental/local authorities etc. The construction shall be deemed to be complete on obtaining the occupation certificate by the Company from the DTCP. No claim by way of damage, compensation shall lie against the Company in case of delay in handing over of the possession on account of the aforesaid reasons or any other reasons beyond the control of the Company.

19(II) 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 instalments 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.

(Emphasis supplied)

**Possession clause in the matter 6686/2022 Case titled as Sapna Sethi and Ajay Sethi V/s Assotech Moonshine Urban Developers Pvt Ltd**

**Clause 10.**

The construction of the Apartment is likely to be completed by the end of **Forty-two months from the date of issuance of allotment letter** excluding a grace period of six months subject however, to force majeure, circumstances, regular and timely payments of instalments by the intending Allottee(s), availability of building material, change of laws by Governmental/local authorities etc. The construction shall be deemed to be complete on obtaining the occupation certificate by the Company from the DTCP. No claim by way of damage, compensation shall lie against the Company in case of delay in handing over of the possession on account of the aforesaid reasons or any other reasons beyond the control of the Company.

(Emphasis supplied)

S r. n o.	Complain t no/ title/date of filing	Date of executio n of agreeme nt/Date of allotmen t	Unit no. and area admea suring	Due date of possessi on	Sale consider ation and amount paid	Relief

✓



1	CR/4246 /2022 Anjani Portfolio LLP V/s Assotech Moonshi ne Urban Developers Private Limited DOF:- 17.06.20 22	31.12.2012	A- 1904, 19 <sup>th</sup> floor 1365 sq.ft. (super- area)	31.12.201 6	BSP:- Rs. 61,67,125/ - AP:- Rs. 60,27,483/ -	Refund along with interest
2	CR/6107 /2022 Anu Saxena and Usha Saxena V/s Assotech Moonshi ne Urban Develop ment Private Limited DOF:- 22.09.20	18.01.201 3	E- 1404, 14 <sup>th</sup> floor 1685 sq. ft. (super- area)	18.01.201 7	BSP:- Rs. 89,52,309/ - AP:- Rs. 67,35,000/ -	Refund along with interest

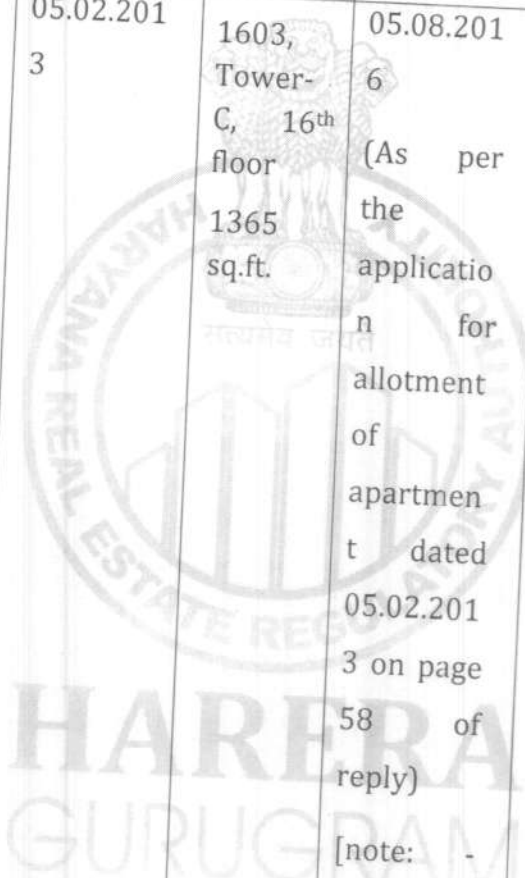


		22				
3	<b>CR/6801</b> <b>/2022</b> <b>Dinesh</b> <b>Chand</b> <b>Mohta</b> <b>V/s</b> <b>Assotech</b> <b>Moonshi</b> <b>ne Urban</b> <b>Develope</b> <b>rs Private</b> <b>Limited</b> <b>DOF:-</b> <b>13.10.20</b> <b>22</b>	13.07.201 2	C-203, Tower-c, 2 <sup>nd</sup> floor 1365 sq. ft.	13.07.201 6	<b>BSP:-</b> <b>Rs.</b> <b>74,59,738/</b> <b>-</b> <b>AP:-</b> <b>Rs.48,94,52</b> <b>8/-</b>	<b>Refund</b> <b>along</b> <b>with</b> <b>interest</b>
4	<b>CR/2773</b> <b>/2022</b> <b>Sumit</b> <b>Vinayak</b> <b>and</b> <b>Manjusha</b> <b>Vinayak</b> <b>V/s</b> <b>Assotech</b> <b>Moonshi</b> <b>ne Urban</b>	20.02.201 3	A- 1902,1 9 <sup>th</sup> floor 1365 sq. ft. (super- area)	20.02.201 7	<b>BSP:-</b> <b>Rs.</b> <b>91,36,000/</b> <b>-</b> <b>AP:-</b> <b>Rs.83,40,30</b> <b>8/-</b>	<b>Refund</b> <b>along</b> <b>with</b> <b>interest</b>



Complaint No. 4246 of 2022, 6107 of 2022, 6801 of 2022, 2773 of 2022, 6686 of 2022

	Developers Private Limited DOF:- 17.06.2022					
5	CR/6686/2022 Sapna Sethi and Ajay Sethi V/s Assotech Moonshine Urban Developers Private Limited DOF:- 12.10.2022	05.02.2013	1603, Tower-C, 16 <sup>th</sup> floor 1365 sq.ft.	05.08.2016 (As per the application for allotment of apartment dated 05.02.2013 on page 58 of reply) [note: - the due date has to be calculated 42 months from the date of	BSP:- Rs. 94,93,430/- (with tax) AP:- Rs. 84,19,571/-	Refund along with interest





				booking i.e.05.02.2 013]		
--	--	--	--	--------------------------------	--	--

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession as per the BBA, seeking award of refund the entire amount along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of complaint case bearing no. **CR/4246/2022 case titles as Anjani Portfolio LLP V/s Assotech Moonshine Urban Developers Private Limited** is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.
  - A. **Unit and project related details**
7. 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	31.12.2012 (As on page 27 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.	A-1904, 19 <sup>th</sup> floor
8.	Unit area admeasuring	1365 sq. ft. (super-area) (As on page 27 of complaint)
9.	Payment plan	Construction linked payment plan
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</i>





		<p>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.</p> <p><b>(Emphasis supplied)</b></p>
11.	Grace period clause	<p><b>As per Clause 19(II),</b></p> <p>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 instalments 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</p>
12.	Due date of delivery of possession	<p>31.12.2016</p> <p>(Calculated from date of allotment letter dated 31.12.2012 with grace period of 6 months as per clause 19(II))</p> <p><b>(Grace-period is allowed)</b></p>
13.	Total sale consideration	<p>Rs. 61,67,125/-</p> <p>(As per allotment letter dated 31.12.2012 on page 27 of the complaint)</p>



14.	Amount paid by the complainant	Rs.60,27,483/- (As per applicant ledger dated 19.09.2020 on page 13 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint:**

8. The complainant made the following submissions in the complaint:
- i. The Complainant approached the Respondent to explore the units in the Housing Project namely "Assotech Blith" (hereinafter referred to as the "Project") at Sector 99, Gurgaon, Haryana. That the Respondent painted an extremely rosy picture of the subject housing project, stating that the project shall be a state of art premier project and would be one of its kinds with multi-storeyed buildings, individual flats and facilities/ amenities. It was represented by the Respondent that all necessary sanctions and approvals had been obtained to complete the project and the said project will be developed and possession will be handed over within the promised time frame.
  - ii. The allotment letter issued in favour of the complainant on 31.12.2012 by the respondent. That the respondent has been allotted a flat Bearing No-1904 in Tower-A.
  - iii. That the Complainants had earlier opted for construction linked plan which is duly recorded in the Schedule E (Cost Sheet) of the said Flat Buyer's Agreement. That the Respondent made incorrect and false statement in its advertisement material in



- respect of the project "Assotech Blith" at Sector-99, Gurgaon, Haryana. The information given in the advertisement and website was false and incorrect. The respondent did not have proper permissions and the construction related information was also incorrect.
- iv. That the Respondent had promised to complete the project within a period of 42 months from the date of execution of the Allotment Letter/ Builder Buyer Agreement. The time period promised in the Flat Buyer's Agreement to handover the flat in question is 30.06.2016, but the Respondent has failed to complete the project in the said timeframe, resulting in extreme kind of mental distress, pain and agony to the Complainants.
- v. That the Complainants till date have paid a total sum of Rs. 60,27,483/- against the total sale consideration of Rs. 61,67,125/-. The Complainant till date has made a payment of more than 95% of the total sale consideration.
- vi. That the intention of the Respondent was dishonest right from the beginning and that is why, it drafted unilateral terms and conditions of the Allotment Letter/ Builder Buyer Agreement dated 31.12.2012. The said terms and conditions are entirely unfair, unjust, unconscionable, oppressive and one sided. Moreover, a perusal of the terms and conditions makes it abundantly clear that they are, in fact, a reflection of the wide disparity between the bargaining power and status of the parties involved. It is clearly evident that the Respondent has imposed completely biased terms and conditions upon the Complainant, thereby tilting the balance of power in its favour.



- vii. That the bare reading of the clauses in the Allotment Letter/ Builder Buyer Agreement dated 31.12.2012 show the unfairness and arbitrariness of the terms imposed upon the buyers. The respondent exercised arbitrary power and highhanded and unfair altitude is apparent on face of record, thereby imposing all liabilities on homebuyers/ Complainants and conveniently relieving itself from the obligations on its part.
- viii. The Respondent has sold the project stating that it will be next landmark in luxury housing and will redefine the meaning of luxury but the respondent has converted the project into a concrete jungle. There are no visible signs of alleged luxuries.
- ix. The Respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The Allotment Letter/ Builder Buyer Agreement dated 31.12.2012 and the project was to be completed in 42 months. The respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph. The project has been inordinately delayed for around 6 years. The respondent has resorted to misrepresentation. The complainants therefore seek refund of its entire investment along with interest @ 18% p.a. as well as compensation.

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

9. The complainant has 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.

**D. Reply by respondent:**

10. The respondent by way of written reply made following submissions.

- i. That the respondent is an Associate Company of M/s Assotech Limited, which is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it comprising of residential, commercial / IT Parks, retail, etc. The respondent was incorporated on 19.08.2006 and was initially promoted by Uppal Housing Private Limited and in the year 2012, was acquired by M/s Assotech Limited by execution of Share Purchase Agreement dated 19.01.2012 and the registered address and corporate address of the respondent was changed to that of the parent company, i.e., M/s Assotech Limited, thus the registered address and corporate address of the respondent and M/s Assotech Limited were same.
- ii. That in year 2010, the Government came up with the Master Plan of 2030 of Gurugram, known Gurgaon at the time and proposed an expressway on the Northern side of the city, known as Northern Peripheral Road (NPR), now commonly known as Dwarka Expressway, which got finalised by year 2012. Soon after the Master Plan 2030 became public, the demand of residential and commercial projects in the vicinity of



the expressway skyrocketed by multiple folds. In order to cater to such skyrocketed demand of the consumers for the residential units, the respondent on 20.01.2012 entered into an investment agreement with M/s Assotech Limited and FDI Investors, Mallika SA Investments LLC for the development of the residential project and launched the residential project known as 'Assotech Blith', Sector - 99, Gurugram (hereinafter referred to as "Said Project") which has been conceptualised and promoted by the respondent. It is pertinent to mention here that in terms of the investment agreement, the shareholding of the M/s Assotech Limited was 50.01% and the shareholding of M/s Mallika SA Investments LLC was 49.99%. It is also pertinent to mention here that for the construction and development of the said project, the respondent had raised money by issuing 18% Optionally Convertible Debentures.

- iii. That the development of the Said Project including Civil, Internal and External Electrical, Plumbing, Fire Fighting, Common services and all external development along with the internal development was awarded by the respondent to M/s Assotech Limited (hereinafter referred to as 'Contractor Company') vide 'Construction Contract Agreement' dated 03.04.2012. It is pertinent to mention here that after execution of the aforesaid Construction Contract Agreement, M/s Assotech Limited was operating in two roles, i.e., on one hand it was the majority share-holder of the respondent and on the other hand it was the contractor of the respondent.





- iv. That the complainants in order to buy a property in the upcoming part of Gurgaon, acting through their property dealer, had approached the respondent after making detailed and elaborate enquiries with regard to all aspects of the Said Project and after completely satisfying themselves with regard to the Said Project, competence and capability of the respondent and the Contractor Company to successfully undertake the construction, development and implementation of the Said Project, the complainants proceeded to book the apartment in the Said Project.
- v. That the Said Project was going at a very great pace and was right at schedule, if not at a pace faster than the schedule till the year 2015, however, in the mid of 2015, the Contractor Company faced a litigation in the Hon'ble High Court of Delhi and on 08.02.2016, the Hon'ble High Court of Delhi put the Contractor Company into Provisional Liquidation vide its order dated 08.02.2016 in Company Petition No. 357 of 2015. The Hon'ble High Court of Delhi vide the same order also appointed the Official Liquidator (hereinafter referred to as 'OL') attached to the court as the Provisional Liquidator and the rights and authority of the Board of Directors of the Contractor Company were taken by the OL. Now, the Directors became Ex-Directors and Ex-Management of the Contractor Company have to work under the supervision of the Provisional Liquidator / OL so appointed by the Hon'ble High Court of Delhi and thus the directors did not have any power to take any action. It is also pertinent to mention here that vide same order, the Hon'ble



High Court of Delhi directed the Official Liquidation so appointed by the Hon'ble Court to seal the premises of the Contractor Company and as the registered address and the corporate address of the respondent was same as that of the contractor company, due to this very reason the office of the respondent was also sealed by the Hon'ble High Court of Delhi. Hence, due to the Provisional Liquidation of the Contractor Company and order of the Hon'ble High Court of Delhi, the construction work of the Said Project got interrupted.

vi. That in terms of the order dated 08.02.2016 of the Hon'ble High Court of Delhi, the management of the Contractor Company was taken over by the Official Provisional Liquidator and thus the construction of the Said Project was also taken over by the Official Provisional Liquidator, however, the same also got interrupted on account of non-payment by the various allottees towards the demand raised by the respondent for the construction of the Said Project. It is pertinent to mention here that the complainants herein were one of the defaulters of the payment and every time a large sum of amount was due and payable by the complainants to the respondent. It is pertinent to mention here that since 17.09.2018, i.e., way before the date of filing of the present complaint, the complainants were in a default of more than Rs. 17,49,233/-.

vii. That as the development of the Said Project was already awarded to the Contractor Company, which was still a going concern in terms of the law of India, and was not liquidated by the Hon'ble High Court of Delhi, and also, in terms of Section



273 read with section 275 and section 290 of the Companies Act, 2013 and the settled law laid down by the Supreme Court of India which was reiterated in the case titled, 'Gujarat Urja Vikas Nigam Limited versus Amit Gupta & Ors. (Civil Appeal No. 9241 of 2019), the respondent neither could undertake the development of the said project itself nor to award the development of the Said Project to any other party.

viii.

That in order to know about the financial health of the contractor company, the Hon'ble High Court of Delhi passed an order for conducting the Forensic audit of the Contractor Company. In the report filed by the auditor, the financial statement of the contractor company transpired that an amount of Rs. 228.45 Crores has been recoverable by the contractor company to its Associate/Subsidiary Companies which has been paid to the Associates/Subsidiary Companies as loans and/or advances and thus the Hon'ble High Court vide order dated 21.01.2019, ordered for recovery of such loans and/or advances even though the same were not on that day. It is pertinent to mention here that as per the forensic audit report and in terms of the Hon'ble High Court of Delhi, the respondent was supposed to return a sum of Rs. 98.62 Crores to the contractor company which it had received as loan and/or advances. It is also not out of place to mention here that order of recovery of Rs. 98.62 Crores, which were not even due at that time as the same is in form of security (Equity and Debentures), by the Hon'ble High Court of Delhi pushed the respondent into



- severe financial stress, thereby leaving the respondent with no money and no contractor to develop the said project with.
- ix. That on 11.02.2019, in view of the revival plan submitted before the Hon'ble High Court of Delhi, the Hon'ble High Court appointed a Court Commissioner - Mr. Justice N.K. Mody (Retd.) to supervise the affairs of the Contractor Company as a whole and the same were kept on priority for the completion in terms of the order of Hon'ble High Court of Delhi of even date. In addition to the order of the Hon'ble High Court of Delhi keeping the aforesaid projects on priority, the allottees of the Said Project were not making the payment towards the demands already raised. Now, due to this very reason the development of the Said Project was again interrupted.
- x. In addition to the above-mentioned orders of the Hon'ble High Court of Delhi, the respondent and the Contractor Company had to also comply with various orders / directions / guidelines issued from time to time by the Hon'ble Supreme Court of India, Environment Pollution (Prevention and Control) Authority, Hon'ble National Green Tribunal, New Delhi vide which the aforesaid Courts and Authorities ordered / directed for a complete ban on the construction activities in the National Capital Region (NCR), which include the district of Gurugram for control of air pollution. On account of such complete ban on the construction, around 74 days were such days on which there was a complete ban. Also due to such ban by various Courts and Authorities, the labour used to leave the place of construction which again posed a great challenge as now the



- Contractor Company has to make arrangements for new labourers and then teach them how to proceed with the work.
- xi. That in addition to the aforesaid orders, the development of the Said Project took another massive hit on account of the COVID - 19 pandemic which resulted in a nation wide lockdown starting from 25<sup>th</sup> March, 2020. During this time the large number of workers moved to their native villages / home towns in Bihar, eastern parts of Uttar Pradesh, Jharkhand, West Bengal. In view of the situation, the Government of India considered and examined the view of the States of India and various other stakeholder and conclude that the situation of covid shall be considered as a situation of 'Force Majeure', s Suo Moto extended the construction period of all projects by 9 months. The respondent and the Contractor Company started the construction work of the Said Project in terms of the guidelines issued by the Government of India from time to time.
- xii. That upon revival of the project, the respondent started the construction in full swing and applied for the issuance of the Occupation Certificate on 12.04.2021, however, the same was disallowed on account of change in the policy of DHBVN on electricity connection. It is pertinent to mention here that in the year 2018, the electricity Department came up with a new policy related to planning for distribution of electricity in Sector 58 - 115 of Gurugram, the Electricity Department made the policy that the wherein the builder needs an electricity connection, the builder has to construct a sub-station in its own pool of land for such connection. Soon after becoming aware of





such change in policy, the respondent made tireless efforts to construct a sub-station in its own land which further led to delay in getting the Occupation Certificate. That the respondent has already received No Objection Certificate from Electricity Department and Fire Department. It is also pertinent to mention here that the respondent has already completed a major part of the Said Project and has applied for the issuance of Occupation Certificate to the concerned authority.

xiii. That after applying for the occupation certificate, the respondent sent multiple reminders to the complainant for the longtime outstanding dues of Rs. 17,49,233/- however the respondent paid no heed to any of the reminders sent by the respondent and thus having no other option, in view of the provisions of the Real Estate (Regulation and Development) Act, 2016, the respondent vide email dated 07.04.2022, cancelled the unit allotted to the complainants.

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.

**E. Jurisdiction of the authority:**

11. 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**





12. 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**

13. 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.*

14. 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**

15. 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 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 have 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.
16. The respondent further 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 a contract inter-se respondent and "Assotech Limited" for development of project. But it is pertinent to note that neither the complainant is party to such contract nor liquidation proceedings are binding on them. Hence, there was no privity of contract with the complainant. Moreover, for the same to be excluded while calculating delay in completing the construction of project, it may approach the competent Authority/Forum for getting this time period be declared 'zero time period'. However, there is no such order placed on record by the respondent-company, wherein such period is declared as zero-period. Hence, the plea of the respondent on account of delay in completion due to initiation of liquidation proceeding is not tenable.

17. 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 31.12.2016 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.**

18. The project detailed above was launched by the respondent as group housing project and the complainant were allotted the subject unit no. A-1904, 19<sup>th</sup> floor on 31.12.2012 against sale consideration of Rs. 61,67,125/-. As per clause 19(I) & 19(II) of the said allotment letter i.e., 31.12.2012 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 31.12.2016. It has come on record that against the sale consideration of Rs. 61,67,125/- the complainant has paid a sum of Rs. 60,27,483/- to the respondent.



19. 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 **31.12.2016** and there is delay of more than 6 years 05 months 17 days on the date of filing of the complaint i.e., 17.06.2022.
20. 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....."*
21. 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*
22. 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.

23. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 60,27,483/- with interest at the rate of 10.85 % (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*.

#### **H. Directions of the Authority:**

24. 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. 60,27,483/-** received by it from the complainant along with interest at the rate of 10.85 % p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.



- ii) A period of 90 days is given to the 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.
25. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
26. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
27. Files be consigned to the registry.

**(Ashok Sangwan)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 10.01.2024**