

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

Complaint no.:	2136 of 2023
Date of decision:-	28.02.2024

Mr. Siddharth Tiwari

**Address:-** 21, Shakti Nagar, JLN Marg,

Jaipur – 302017 Rajasthan, India

**Complainant**

**Versus**

Assotech Moonshine Urban Developers Pvt. Ltd.

**Address: -** 105, Pankaj Tower, First Floor,  
Opp. Supreme Enclave Society, Mayur Vihar, Phase I,  
East Delhi, Delhi - 110091

**Also at:**

Assotech House, A-12, Sector 24, Noida-201301 (U.P.)

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Ms. Medhya Ahluwalia

Advocate for the Complainant

Shri Vaibhav Kataria

Advocate for the Respondent

**ORDER**

1. The present complaint dated 16.05.2023 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 28 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 as provided 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:

Sr. No.	Particulars	Details
1	Name of the project	Assotech Blich, Sector-99
2	Acres	12.062 acres
3	DTCP License No.	95 of 2011 dated 28.10.2011 valid upto 27.10.2024
4	Name of licensee	1. Uppal Housing Pvt. Ltd. 2. Moonshine Urban Developers Pvt. Ltd.
5	RERA Registration No.	83 of 2017 dated 23.08.2017 valid upto 22.08.2023
6	Date of allotment letter	12.07.2012
7	Unit no.	C-804,8 <sup>th</sup> floor, T-C



8	Super area	1365 sq. ft.
9	Possession clause	<p>As per <b>Clause 19(I)</b>,</p> <p><i>The possession of the apartment shall be delivered to the allottee(s) by the company within <b>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></p>
10	Grace period	<p>As per <b>Clause 19(II)</b>,</p> <p><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 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.</i></p>
11	Due date of possession	<p>12.07.2016</p> <p>(Due date as per clause 19(I) i.e.; 12.07.2012 with grace period of 6</p>

		months) <b>Grace- period is allowed</b>
12	Sale consideration	Rs. 68,81,110/- Rs. 71,62,377/- [as per applicant ledger dated 18.04.2023, page 64 of the complaint]
13	Total amount paid by the complainant	Rs. 67,62,461/- [as per applicant ledger dated 18.04.2023, page 64 of the complaint]
14	Occupation certificate	Not received
15	Offer of possession	Not offered

**B. Facts of the complaint:**

**3. The complainant made the following submissions in the complaint:**

- I. That sometime in February-March 2012, the complainant was desirous of purchasing a two (2) Bedroom Hall Kitchen property along with parking spaces in a gated society in Gurugram and was heavily influenced by the brochure issued and circulated by the Respondent in the market. 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.
- II. 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 multistorey 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.

- III. That after various negotiations and believing upon the false representations made by the representatives of the Respondent, the Complainant shortlisted a 2BHK unit admeasuring super area 1365 sq. ft. (or 126.81 sq. mtr.) along with parking spaces. That on 07.03.2012, the Complainant after the negotiations for a flat suited to his taste and budget, applied for the flat and paid an amount of Rs. 5,00,000/- (Rupees Five Lakhs only) towards booking unit charges.
- IV. That the Complainant was regularly followed for the execution of the Allotment Letter/ Builder Buyer Agreement, but the Respondent for the reasons best known and attributable to him, failed to execute the Allotment Letter/Builder Buyer Agreement in a reasonable time. It is pertinent to mention here that the Respondent was well aware of the fact that he won't be able to obtain the necessary sanctions and approvals for the said project in time and with mala fide intentions delayed the execution of Allotment Letter/Builder Buyer Agreement.
- V. That after an inordinate delay of more than 4 (four) months, the Respondent agreed to execute the Allotment

Letter/Builder Buyer's Agreement with the Complainants. It is stated that based upon the representations of the Respondent, the complainants were induced to sign a pre-printed Allotment Letter/ Builder Buyer Agreement dated 12.07.2012 by virtue of which the Complainant was allotted flat bearing unit no. 804 on 8<sup>th</sup> Floor in Tower No. C, admeasuring super area of 1365 sq. ft. (or 126.81 sq. mtr.).

VI. That the Complainant had opted for construction linked plan which is duly recorded in the Schedule E (Cost Sheet) of the said Allotment Letter/ Builder Buyer Agreement. It is stated that the Complainant had applied for the loan in accordance with the "Construction Linked Plan" for the unit in question and accordingly the loan was sanctioned by the Union Bank of India nearing Home Loan Account No. 590206650000518 for the same purpose. It is pertinent to mention here that the Complainant paid huge interest to the financial institution and repaid the loan to the bank with a dream to own his home.

VII. The Complainant made timely payments to the Respondent, as and when demands were raised by the Respondent. The payments made by the Complainant have been unequivocally acknowledged, accepted, used and utilized by the Respondent. 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.

- VIII. 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 Allotment Letter/ Builder Buyer Agreement was executed on 12.07.2012. The time period promised in the Allotment Letter/ Builder Buyer Agreement to handover the flat in question is 11.01.2016, 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 Complainant.
- IX. That the Complainant has paid a total sum of Rs. 76,09,901/- against the total sale consideration of Rs. 71,62,377/-. It is pertinent to mention here that the Complainant till date has made more than the total sale consideration. That the Respondent is raising various illegal demands from the Complainant through the Statement of Account maintained by the Respondent. It is stated that vide email dated 07.09.2015 the Complainant was not available in India and was not able to pay the demand then raised on time, so he requested for the extension of time to pay the demand and it is pertinent to mention here the said request of the Complainant was duly acknowledged and accepted by the Respondent vide its reply dated 07.09.2015 @3:17p.m. on email.
- X. 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 12.07.2012. 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.

- XI. That the bare reading of the clauses in the Allotment Letter/ Builder Buyer Agreement dated 12.07.2012 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.
- XII. The Complainant has approached the Respondent several times and requested for timely possession of the unit, but the respondent company has failed to give any concrete schedule for the handing over of the actual physical possession of the unit. There has been no status update on the website of the project. The complainant learnt that the respondent company has cheated various other customers as well in different projects and its directors have also been jailed in



various serious criminal offences.

- XIII. That the Complainant has made various visits at the site and observed that there are serious quality issues with respect to the construction carried out by Respondent till now. The unit was sold by representing that the same will be luxurious apartment however, all such representations seem to have been made in order to lure Complainant to purchase the flats at extremely high prices. The Respondent has compromised with levels of quality and are guilty of mis-selling. There are various deviations from the initial representations. The Respondent marketed luxury high end apartments, but they have compromised even with the basic features, designs and quality to save costs. The structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard low grade defective and despicable construction quality. 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.
- XIV. 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 12.07.2012 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 more than 7 years. The respondent has resorted to misrepresentation. The complainant therefore is entitled for interest @ 18% p.a. for every month of delay till the actual physical possession of the unit is offered to the complainant.

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

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

- I. Direct the Respondent to pay the delay interest @ 18% per annum for every month of delay till the actual physical possession of the unit is offered to the complainant;
- II. Direct the Respondents to pay a sum of Rs. 5,00,000/- to the Complainant towards the cost of the litigation;

**D. Reply by respondent:**

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

- I. That the complainants do not have any locus standi or cause of action to file the present complaint. Even otherwise the present complaint cannot be decided in summary proceedings and required leading of extensive evidence. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
- II. That the complainant was provisionally allotted an apartment no. C - 804 located on the eighth floor of Tower - C of the Said Project admeasuring 1365 sq. ft. (126.81 sq. mtr.) vide allotment letter dated 12.07.2012. That the clause 19 sub-

clause (i) of the allotment letter is reproduced hereunder for ready reference:

*'The possession of the apartment shall be delivered to the allottee (s) by the Company within 42 (Forty-Two) months from the date of allotment subject to the Force Majeure, circumstances, regular and timely payments by the intending allottee (s), availability of building material, change of laws by Government / 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 delay in obtaining the occupation certificate or any other reasons beyond the control of the Company.'*

That subject to the conditions mentioned in the clause 19 of the allotment letter, the respondent was supposed to hand over the possession of the apartment to the complainants with in a period of 42 months starting from the date of the allotment letter. It is also pertinent to mention here that in terms of clause 19 sub-clause (ii), the respondent in addition to the aforesaid period of 42 months, also had a grace period of six months to complete the construction.

- III. 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.

- IV. 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 were a defaulter since June, 2014, the copy of ledger may kindly be read as part and parcel, who as on 15.05.2019 are liable to pay Rs. 23,34,402/-.

- V. 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), wherein the Hon'ble Supreme Court upheld the NCLT / NCLAT correctly stayed the termination of the agreement, the respondent could not undertake the development of the said project itself nor to award the development of the Said Project to any other party.
- VI. 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.

- VII. 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. 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.

- VIII. 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.
- IX. 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.

- X. 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, has applied for the issuance of Occupation Certificate to the concerned authority and has received the Occupation certificate for the part of the project.
- XI. That thus in view of the clause 19 of the allotment letter, aforesaid facts and circumstances and the law laid down by the legislation and the Supreme Court of India, the following period would constitute the zero period for the reason mentioned against it:
- (i) Period between 08.02.2016 to 11.02.2019 - on account of liquidation proceedings being initiated against M/s Assotech Limited

- (ii) Period between 11.02.2019 to 25.03.2020 – on account of order of Hon'ble High Court of Delhi
  - (iii) Period of 9 months starting from 25.03.2020 – on account of 'Force Majeure' declared by the Government of India
  - (iv) Various dates as mentioned in table in para 19 – on account of ban on construction activities by various authorities.
6. 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:**

7. 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**

8. 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**

9. 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.*

10. 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**

11. 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 12.07.2016. 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.

12. 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 than 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.

13. 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 12.07.2016 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. Findings on the relief sought by the complainant.**

G.I Direct the respondent to pay the delay interest @ 18% per annum for every month of delay till the actual physical possession of the unit is offered to the complainant;

G.II Direct the Respondents to pay a sum of Rs. 5,00,000/- to the Complainant towards the cost of the litigation;

14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges along with interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....  
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

15. Clause 19 of the allotment letter provides for handing over of possession and is reproduced below:

**Clause 19(1),**

*The possession of the apartment shall be delivered to the allottee(s) by the company within **42 months from the date of allotment** subject to the force majeure, circumstances, regular and timely payments by the*

*intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc.*

**Clause 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.*

16. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his

dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from date of execution of allotment along with grace period of 6 months which comes out to be 12.07.2016. Since in the present matter the allotment letter incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.
18. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***“Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”*

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is



reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **28.02.2024** is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by

the due date as per the agreement. By virtue of clause 19(I) of the allotment letter executed between the parties on 12.07.2012, the possession of the subject apartment was to be delivered within 42 months from the date of allotment. Due date of possession is calculated from the date of execution of allotment letter i.e., 12.07.2012. The period of 42 months expired on 12.01.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 12.07.2016. The respondent has not yet offered the possession of the subject apartment. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 12.07.2016 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.II** Direct the Respondents to pay a sum of Rs. 5,00,000/- to the Complainant towards the cost of the litigation;

24. The complainant is claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming





compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

#### **H. Directions of the authority**


25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 12.07.2016 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from 12.07.2016 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

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- iv. The rate of interest chargeable from the allottee/complainant by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
26. Complaint stands disposed of.
27. File be consigned to registry.



**Ashok Sangwan**  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.02.2024