

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

Complaint no.:	2017 of 2023
Date of decision:-	03.04.2024

1. Mr. Sanjay Kansal  
R/o:- 1102, Ol-2, Eldeco Utopia, Sector-93A  
Noida-201304.
2. Mr. Sanjay Kumar Agarwal  
R/o: - H.no-561-P, Sector-14,  
Gurugram-122001.

**Complainants**

Versus

M/s. Assotech Moonshine Urban Development  
Pvt. Ltd.  
Regd. office: 148-F, Pocket-IV, Mayor Vihar,  
Phase-I, Delhi-110091.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Rit Arora (Advocate)

Complainant

Vaibhav Kataria (Advocate)

Respondent

**ORDER**

1. The present complaint dated 09.05.2023 has been filed by the complainants/allottees 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 allottees 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 Blitch, Sector-99, Dhankot, Gurugram.
2.	Nature of the project	Group Housing project
3.	Acres	12.062 acres
4.	DTCP License No.	95 of 2011 dated 28.10.2011 valid upto 27.10.2024
5.	Name of licensee	1. Uppal Housing Pvt. Ltd. 2. Moonshine Urban Developers Pvt Ltd
6.	HARERA Registered	Registered
7.	RERA Registration No.	83 of 2017 dated 23.08.2017 valid upto 22.08.2023
8.	Date of allotment letter	20.06.2012 [As on page 33 of the complaint]
9.	Unit no.	C-402, 4 <sup>th</sup> floor, Tower-C [As on page no. 33 of complaint]
10.	Super area	1365 sq. ft. [As on page no. 33 of complaint]



11.	Possession clause	<p><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. The construction shall be deemed to be complete on obtaining the occupation certificate by the Company in case of delay in handing over of the possession or account of delay in obtaining the occupation certificate or any other reasons beyond the control of the Company.</i></p> <p>[Emphasis supplied] (As on page no. 38 of the complaint)</p>
12.	Grace period	<p><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 installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession</i></p> <p>[Emphasis supplied] (As on page no. 38 of complaint)</p>
13.	Due date of possession	<p>20.06.2016</p> <p>(Due date as per clause 19(I) i.e.; 20.06.2012 with grace period of 6 months)</p> <p><b>Grace- period is allowed</b></p>

14.	Payment plan	Construction linked
15.	Total sale consideration	Rs.73,62,734/- [As per applicant ledger dated 17.06.2021 on page no. 57-58 of the complaint]
16.	Total amount paid by the complainant	Rs.46,79,216/- [As per applicant ledger dated 17.06.2021 on page no. 57-58 of the complaint]
17.	Occupation certificate	Not received
18.	Offer of possession	Not offered
19.	Reminders	18.01.2022 23.02.2022 (As on page no. 155 - page no. 157 of reply)
20.	Email sent by the complaint to the respondent query regarding the status of the project dated	19.11.2021 (As on page no. 61 of complaint)
21.	Cancellation on	12.03.2022 (As on page no. 63 of the complaint)

**B. Facts of the complaint:**

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

- I. That the complainants are law-abiding citizens of India. The complainants are allottees of a residential apartment in the project "Assotech Blith" of the respondent company, at Sector-99, Gurugram. In 2010-2011, the respondent launched the



- group housing project. The respondent had promoted the said project with extensive and aggressive print and electronic media advertisements.
- II. They were looking for a residential apartment during such time, the representatives of respondent approached them and informed them about the project and boasted about the project and made various false and incorrect representations about the construction and delivery of possession. The representatives assured the complainants that respondent had obtained all the requisite sanctions and approvals from all competent authorities for starting constructions and the construction at the project site shall start soon and the possession will be delivered in promised time.
- III. Initially, the unit was allotted to Ms. Simpsy Teckchandani & Ms. Ranjana Teckchandani. The complainants on 15.04.2013 made the application for endorsement and transfer of the unit/allotment in their names. That the transfer/endorsement was duly acknowledged by the respondent and the allotment was thus issued to the complainants. The payment made by the erstwhile allottees stood transferred in the name of the present complainants.
- IV. The unit allotted to the complainants was unit no. 402, Type-2BHK having a super area of 1365 sq.ft. at the total sale consideration of Rs.71,19,985/- and the respondent had promised to deliver the possession of the unit within a period of 42 months from the date of allotment. That possession of the

unit was to be delivered by 20.12.2015 but the same is due till date.

- V. As per Clause 19 of the allotment letter dated 20.06.2012; the possession of the apartment was to be delivered within 42 months from the date of allotment. The allotment agreement was executed on 20.06.2012 and therefore, the respondent was supposed to hand over the possession by 20.12.2015 (i.e., 42 months from date of execution of allotment agreement). However, the respondent has miserably failed to complete the construction and development off the apartments/project till date. The relevant provision is reproduced below: -

“19. Possession: -

*(1) 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 Allottee(s)...*”

- VI. It is submitted that the agreement drawn by the respondent was unfair, arbitrary and one-sided agreement with all the provisions favouring the developer and provided nothing for the complainants in the eventuality of delay in the delivery of the unit. In the agreement, they were denied fair scope of compensation, in case of delay of possession, and were supposed to pay heavy penalty in case of delay in payment of instalments. The arbitrary and unfairness of the apartment buyer agreement can be derived from the clauses 19 & 12. As per the clause 12, the respondent had the right to terminate the agreement and forfeit the earnest money in case of delay in payment of instalments and had the right to accept the delay



payment with an interest @ 18% p.a. whereas as per the clause 19(ii), in the case of delay in completion of the project, the complainant was entitled to get a compensation @ Rs.10/- per sq. ft. every month of delay beyond 42 months.

- VII. That in order to extract money from the complainants, the respondent continued to raise illegal and arbitrary demands and never gave any answer regarding the completion of the project, after receipt of the occupancy certificate. In this regard, the email dated 19.11.2021 issued by the respondent to the complainants is relevant, wherein, the respondent is raising the demand for the payment of Rs.23,04,331/-.
- VIII. That instead of delivering the possession of the unit to the complainants, the respondent engaged itself in illegal and arbitrary practices, and malafidely cancelled the allotment of the complainants vide its cancellation letter dated 12.03.2022. The complainants have thus preferred the present complaint seeking quashing of the cancellation dated 12.03.2022, restoration of the unit, direction to the respondent company for the immediately delivery of the subject unit and delay penalty at prescribed rate of interest. The respondent has failed to share the probable date of possession and infact, the project has not received occupancy certificate till date.
- IX. The complainants sought explanation to the cancellation letter dated 12.03.2022 and as to how are they supposed to make further payments when the project was already running late. Further, they sought information regarding the delivery of the

possession and payment of delay penalty. But the respondent failed to give any explanation.

- X. The complainants have paid a total sum of Rs.46,79,216/- for the unit against the total consideration of Rs.71,19,986/-. Further, they had opted for a construction linked payment plan for payment of total consideration of the apartment and the respondent was supposed to demand instalments from the complainants upon start/completion of particular milestone as provided in the plan. The complainants kept their end of the bargain and paid the instalments as and when fallen due or demanded by the respondent. But the respondent has illegally demanded instalments without actually reaching the relevant milestones at the actual project site.
- XI. It is settled law that the developer cannot expect the buyers to wait endlessly for the possession and that the developers need to complete the contract within a reasonable time period. The delay of 7 years 3 months is no way reasonable. The Hon'ble Apex Court in **Fortune Infrastructure and Ors versus Trevor D'Lima and Ors** had held that a time period of 3 years is reasonable time to complete a contract.
- XII. That under section 18 Act, 2016 if the developer fails to complete the project and is unable to give possession to the buyers within the prescribed time period and the allottees/buyers wishes to continue with their allotment, then developer is liable to pay compensation for such delay in handing over the possession to the allottees.



XIII. The actual date for offering possession was 20.12.2015; however, there is a delay of more than 7 years 3 months in delivering the possession. That for these years, the respondent has not paid any delayed compensation to the complainants. Thus, in the present the circumstances, the complainants are left with no other option than to file the present complaint for directing the respondent to deliver immediate peaceful possession of the unit/flat, complete in all aspects to the complainant and with all the amenities and facilities as promised and charged for and also pay compensation for delay. Hence, the present complaint.

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

4. The complainants have sought following relief(s):
- I. Direct the respondent to set-aside the cancellation letter dated 12.03.2022 and restore the allotment of the complainants unit.
  - II. Direct the respondent to deliver immediate possession of the unit alongwith all the promised amenities and facilities as per the allotment letter and pay the delay interest for every month of delay till the actual physical possession of the unit is offered to the complainant.
  - III. Direct the respondent not to demand anyother charges from the complainants which are not part of the allotment letter. ;

**D. Reply by respondent:**

5. 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. 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 which has been conceptualised and promoted by the respondent. That the said project was spread over an area of 12.062 acres and consisted of 560 dwelling unit in 7 towers namely, A, B, C, D, E, F, G, 23 Villas and 10 shops.
- III. That Ms. Simpsy Teckchandani & Ms. Ranjana Teckchandani in order to buy a property in the upcoming project, acting, approached the respondent after making detailed and elaborate enquiries with regard to all aspects of the said project and after



completely satisfying themselves, the complainants proceeded to book an apartment. That Ms. Simpsy Teckchandani & Ms. Ranjana Teckchandani were provisionally allotted an apartment no. C - 402 located on the fourth floor of Tower - C of the Said Project admeasuring 1365 sq. ft. vide allotment letter dated 20.06.2012. It is pertinent to mention here that Ms. Simpsy Teckchandani & Ms. Ranjana Teckchandani sold the unit allotted to them to the complainants and thus the unit was transferred in the names of the complainants.

- IV. 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.'*

- V. 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.



- VI. That the project was going at a very great pace and was right at schedule, however in 2015, the contractor company faced a litigation in the Hon'ble High Court of Delhi. 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 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 OL 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.
- VII. 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 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/-.

- 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 them 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. That as the whole view point of the Companies Act, 1956 was to keep the companies as the going concern so as to keep the corporate afloat as a going concern, a





revival plan was filed before the Hon'ble High Court of Delhi so as to revive the contractor company.

- 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 project were not making the payment towards the demands already raised. Now, due to this very reason the development of the project was again interrupted.
- X. In addition to the above-mentioned orders of the Hon'ble High Court of Delhi, the respondent 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. The summary of total stoppage of construction work in NCR is as following:

Year	Authority	Date of Ban on construction activities	Date of lifting of ban on construction activities	No. of Ban days
2016	NGT	08.11.2016	23.11.2016	16
2017	NGT	09.11.2017	17.11.2017	09
2018	EPCA	01.11.2018	10.11.2018	10
2019	EPCA / Hon'ble Supreme Court of India	01.11.2019	09.12.2019	39
<b>Total days Ban on construction Activities</b>				<b>74</b>

XII. That in addition to the aforesaid orders, the development of the 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'.

XIII. 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.

- XIV. That the respondent has already received no objection certificate from the electricity department and fire department. It is also pertinent to mention here that the respondent has already completed a major part of the project and has applied for the issuance of occupation certificate to the concerned authority.
- XV. That upon revival of the project the respondent again sent multiple reminders, who were in default since June, 2014 to make the payment however, the complainants failed to make the payment even after receipt of such reminders. Thus, having no other option, the respondent cancelled the unit allotted to the complainants. It is also pertinent to mention here that the respondents has sold the unit allotted to the complainants to another person.

XVI. 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

XVII. Since the unit allotted to the complainants has already been cancelled on account of non-payment and the respondent has sold the unit to a third person, the complainants are only entitled to refund of the amount paid after the deduction of 10% of the sale consideration.

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;*

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 20.06.2016. 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

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company was sealed, and various restrictions were levied, due to which construction of the project got affected.

13. 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 between the contractor company and the complainants. Moreover, there is no order placed on record by the respondent-company, wherein the period of liquidation proceedings has been 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.
14. 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."*

15. 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 20.06.2016 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of

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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 set-aside the cancellation letter dated 12.03.2022 and restore the allotment of the complainants unit.**

16. The respondent was legally obligated as per the allotment letter for delivering possession of the unit on time and the complainants were legally obligated to make the payments on time. The complainants at the time of allotment opted for a construction linked payment plan. In lieu of the payment plan, the complainants were required to release payments on the accomplishment of certain milestones. The due date of delivery of possession was 20.06.2016, but the respondent failed to offer possession of the unit on time. The complainants from time to time have inquired the respondent about the construction status of the project but their queries remained unanswered. The respondent sent reminders dated 18.01.2022 and 23.02.2022 to the complainants seeking the payment of instalments and further vide cancellation letter dated 12.03.2022, cancelled the unit.
17. Vide order dated 28.02.2024, the respondent was directed to submit the status of construction of the tower in which the unit of the allottees/complainants is situated and on what account/stage of construction the last instalment was demanded. But, the



respondent failed to comply with the directions of the authority and refrained itself from submitting the required documents. Also, the respondent submitted that the unit is cancelled and third party rights have been created w.r.t the said unit. But, the respondent has not placed on record any documents/details about the creation of the third party rights.

17. The authority is of the view that the unit of the complainants was wrongly cancelled on account of non-payment. The complainants stopped making payments because of the construction pace being very slow and the demands made did not match the construction status and the payment plan. The complainants have sent an email under protest about the same. Instead of replying to the complainants on the status of the project, the respondent cancelled the unit on 12.03.2022 and forfeited the complete amount deposited by the complainants i.e., Rs.46,79,216/-. Further, the respondent failed to provide the required documents as per the order of the authority dated 28.02.2024, so an adverse inference is drawn against the cancellation of the unit and the cancellation is bad in law. The respondent is directed re-instate the unit of the complainants. In case third party rights have actually been created in the unit then the respondent is directed to allot a new unit to the complainants in the same project, of the same size and on the same total sale consideration.

**G.II Direct the respondent to pay delayed interest on the amount paid by the complainants from the due date of possession till actual possession.**

18. In the present complaint, the complainants intend to continue with the project and are seeking possession and 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.”

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

**Clause 19(I),**

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.

20. 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.

21. **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 20.06.2016. 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.

✓



22. **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.”***

23. 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.
24. 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., 03.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
25. The definition of term ‘interest’ as defined under section 2(z) 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;"*

26. Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.

27. 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 20.06.2012, 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., 20.06.2012. The period of 42 months expired on 20.12.2015. 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 20.06.2016. 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., 20.06.2016 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.

#### H. Directions of the authority

28. 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 cancellation of the unit of the allottees is set aside and the respondent is directed to issue a fresh Statement of Account as per the payment plan agreed at the time of Buyer's agreement.
- ii. 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 complainants from due date of possession i.e., 20.06.2016 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.
- iii. The arrears of such interest accrued from 20.06.2016 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.

- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - v. 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.
  - vi. The respondent shall not charge anything from the complainant which is not the part of the agreement.
29. Complaint stands disposed of.
30. File be consigned to registry.

**HARERA**  
**GURUGRAM**

**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 03.04.2024