

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

Date of decision:-

03.07.2024

Name of the builder		Assotech Moonshine Urban Developers Private Limited	
Project Name		Assotech Bilth	
S.No	Case No.	Case title	Appearance
1.	CR/76/2023	Jasraj Singh Chugh & Surpreet Kaur Chugh Vs. Assotech Moonshine Urban Developers Private Limited	Shri. Sanjeev Sharma Shri. Vaibhav Kataria
2.	CR/77/2023	Jasraj Singh Chugh & Surpreet Kaur Chugh Vs. Assotech Moonshine Urban Developers Private Limited	Shri. Sanjeev Sharma Shri. Vaibhav Kataria
3.	CR/78/2023	Jasraj Singh Chugh & Surpreet Kaur Chugh Vs. Assotech Moonshine Urban Developers Private Limited	Shri. Sanjeev Sharma Shri. Vaibhav Kataria

CORAM:

Shri Ashok Sangwan

Member**ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority in form CRA 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.

- 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 Bilth" being developed by the same respondent/promoter i.e. M/s Assotech Moonshine Urban Developers Private Limited.
- The details of the complaints, reply , 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:

Project Name and Location	"Assotech Bilth", Sector-99, Gurugram, Haryana.
Project Area	12.062 acres
Dtcp License no.	95 of 2011 Dated-28.10.2011
RERA Registered	Registered vide 83 of 2017 dated 23.08.2017 valid upto 22.08.2023.
Possession clause :	
As per Clause 19(II) , <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.</i>	
As per Clause 19(II) , <i>In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause 1, 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</i>	



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

Occupation certificate Not obtained

S.No	Complaint no, title, date of filing	Unit no	Unit admeasuring	Due date of possession	Sale consideration	Relief sought
1.	CR/76/2023 Jasraj Singh Chugh and Surpreet Kaur Chugh V/s Assotech Moonshine Urban Developers Pvt Ltd. D.O.F- 18.01.2023	C-1203, Tower-C, Floor-21	1365sq.ft.	11.01.2016	Rs.78,40,615/- [T.S.C] Rs.77,07,722/- [Amount paid]	D.P.C
2.	CR/77/2023 Jasraj Singh Chugh and Surpreet Kaur Chugh V/s Assotech Moonshine Urban Developers Pvt	G-702, Floor-7	1685sq.ft.	11.01.2016	Rs.95,05,740/- [T.C.S] Rs.88,94,149/- [Amount paid]	D.P.C



	ltd. D.O.F- 18.01.2023					
3.	CR/78/2023 Jasraj Singh Chugh and Surpreet Kaur Chugh V/s Assotech Moonshine Urban Developers Pvt ltd. D.O.F- 18.01.2023	G- 402, Floor- 4th	1685sq.ft.	11.01.2016	Rs.95,47,865/- [T.S.C] Rs.89,19,563/- [Amount paid]	D.P.C.

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 by the due date, seeking possession of the unit along with delayed possession charges.

5. Out of the above-mentioned case, the particulars of lead case *CR/77/2023 Jasraj Singh Chugh & Surpreet Kaur Chugh Vs. Assotech Moonshine Urban Developers Private Limited* are being taken into consideration for determining the rights of the parties

A. Unit and project related details

6. 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. N.	Particulars	Details
1.	Name of the project	Assotech Blith, Sector-99, Gurgaon
2.	Project type	Group housing project
3.	DTCP Licence	licence No.-95 of 2011 Dated-28.10.2011
4.	RERA registered	Registered vide 83 of 2017 Dated:-2308.2017
5.	Date of allotment letter	11.07.2012 (As per page no. 14 of complaint)
6.	Unit no.	G-702, floor-7 th on Tower-G (As per page no. 14 of complaint)
7.	Unit area admeasuring	1685 sq. ft. (As per page no. 37 of complaint)
8.	Possession clause	As per Clause 19(II) , <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.</i>
9.	Grace period	As per Clause 19(II) , <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 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 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>



10.	Due date of possession	11.07.2016 (Due date as per clause 19(II) i.e.; 11.07.2012 + 06 months with grace period of 6 months) Grace- period is allowed
11.	Total sale consideration	Rs.95,05,740/- (As per schedule E on page no. 32 of complaint)
12.	Amount paid by the complainants	Rs.88,94,149/- (As per applicant ledger on page no. 46 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint:

7. The complainants made the following submissions in the complaint:
- I. The complainants applied for allotment of flats and booked unit no G-702 in the project "Assotech Blith". The developer in the project was M/s Assotech Moonshine Urban Developers (Pvt) Ltd.
 - II. The allotment letter cum agreement of the unit no G-702 was issued on 11.07.2012 by the respondent for 1685 sq.ft. at sector 99, Gurugram for a total consideration amount of Rs.95,47,863/-
 - III. The said allotment letter cum agreement was signed on 11.07.2012 against the consideration of total sale price of Rs.95,05,740/- along with consideration of Rs.3,99,458/- towards additional charges on account of duties, statutory fees and other facilities as agreed upon between the parties.
 - IV. The complainants invested additional amount and booked 3 other apartments/units in the same project and for unit number G-402 paid Rs.89,19,563/-, for unit no C-2013 paid Rs.77,07,722/- and

for unit no **A-803** paid **Rs.50,21,484/-** respectively. As per the Builder Buyer's Agreement, the respondent was duty bound to offer possession of unit no G-702 on or before 10.12.2016.

V. Meanwhile out of the four units booked, as discussed above, the complainant vide letter dated 17.01.2017 surrendered one of the unit no. A-803 and adjust the paid amount Rs.50,21,484/- against the payment demanded for other three units namely G-402, G-702 and C-2103. The complainants want refund of the total amount paid against all the four units as schedule time for delivery of possession has already been lapsed since the committed delivery of possession way back in 2016 only. That with respect to unit no. G-702, possession as set out in Clause 19(i) of the Apartment Buyer's Agreement, was promised to be given within 42 months from the date of allotment with a provision as set out in Clause 19(ii)@ Rs.10/- per sq.ft per month in case of delay in delivery with a condition that the project shall be deemed to be complete on obtaining the occupation certificate by the respondent from DTCP. The delivery of possession fell due on 10.07.2016 i.e 42 months from 11.07.2012.

VI. The respondent secure cancellation of unit no A-803 [one apartment/unit out of the four apartments/units] pursuing the complainants with misrepresentation and gave wrong commitments and simultaneously put heavy undue and unwarranted pressure on the complainants for early payment and therefore under pressure the complainants had to accept the proposal of the respondent to surrender one apartment bearing unit no. A-803 vide complainant's letter dated 17.01.2017 and the complainants were left with no



other option but to adjust the already paid amount of Rs.50,21,484/- against the cost proceeds of the surrendered apartment and consented to adjust the same against the demand of the other three apartments/unit's cost namely G-402, G-702 and C-2013 respectively. The original documents of the said surrendered unit no A-803 has been taken by the respondent's representative Mr. Vipin Tomar under his signature and acknowledgement on 18.04.2018.

- VII. That till today against demand for unit no G-701, the complainants have paid a total amount of **Rs.88,94,148/-**.i.e 90% of the total consideration of Rs.95,05,740. That the total amount paid by the complainants against all the three units namely C-2103, G-402 & G-702 after surrendering unit no A-803 is given in the table as under:

Unit No	Area [Sq. ft]	Total Sale Consideration [Rs.]	Amount Paid till date [Rs.]
C-2013	1365	78,40,615.00	77,07,722.00
G-402	1685	95,47,865.00	89,19,563.00
G-702	1685	95,05,740.00	88,94,149.00
Total			2,55,21,434.00

- VIII. That the complainants seek a full refund of total Rs.1,54,01,783 i.e principal amount paid till date Rs.88,94,148/- along with interest Rs.65,07,635/- @ 10 % calculated from each date of payment to till 31.12.2022 along with further future interest from the date of payment till the realization of payment.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):

- i. Direct the respondent to handover possession of the unit to the complainants along with interest on delayed possession.

[The complainant filed an application dated 31.10.2023 seeking amendment in relief sought from refund to delayed possession charges and the same was allowed by the Authority on 10.01.2024.]

D. Reply by respondent:

9. 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 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 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 as project") which has been conceptualized 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 raised money by issuing 18% optionally convertible debentures. That the 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 the development of the 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 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 approached the respondent after making detailed and elaborate enquiries and after completely satisfying themselves with regard to the project, competence and capability of the respondent and the contractor company to successfully undertake the construction, development and implementation of the project, the complainants proceeded with the booking.

V. That the complainants were provisionally allotted an apartment no. G-702 located on the fourth floor of Tower - G admeasuring 1685 sq. ft. vide allotment letter dated 11.07.2012.

VI. That clause 19 (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.'

VII. 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 complainant 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.



- VIII. That the 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 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 O.L. Now, the directors became Ex-directors and Ex-management of the contractor company have to work under the supervision of the provisional liquidator / O.L 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 O.L so appointed 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. 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 project got interrupted.
- IX. That in terms of the order dated 08.02.2016, the management of the contractor company was taken over by the official provisional liquidator and thus the construction of the 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. It is pertinent to mention here that the complainants herein were also one of the defaulters. It is pertinent to mention here that since 31.07.2017, i.e., way before the date of filing of the present complaint, the complainants were in a default of more than Rs.36,10,985/-

- X. That as the development of the project was already awarded to the contractor company and it 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 Hon'ble 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 award the development of the project to any other party.
- XI. 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 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 cr. 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. 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 cr.



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 cr which were not even due at that time as the same is in the form of security (Equity and Debentures), pushed the respondent into severe financial stress, thereby leaving the respondent with no money and no contractor to develop the said project.

- XII. 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.
- XIII. That on 11.02.2019, in view of the revival plan submitted before, a court commissioner - Mr. Justice N.K. Mody (Retd.) was appointed 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. In addition to the order of the Hon'ble High Court of Delhi keeping the aforesaid projects on priority, the allottees were not making the payment towards the demands already raised. Now, due to this very reason the development of the project was again interrupted.
- XIV. 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 laborers and then teach them how to proceed with the work.

XV. 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
Total days Ban on construction Activities				74

XVI. 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 25.03.2020. During this time the large number of workers moved to their native villages. In view of the situation, the Government of India considered and concluded that the situation of Covid-19 shall be considered as a situation of 'Force Majeure', and suo moto extended the construction period of all projects by 9 months. The respondent and the contractor company started the construction work in terms of the guidelines issued by the Government of India from time to time. 16. 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. After becoming aware of such change, the respondent made tireless efforts to construct a sub-station in its own land which further led to delay in getting the Occupation Certificate.

- XVII. 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 project and has received Occupation Certificate for a part of the project from the concerned authority.

XVIII. 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 Hon'ble 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.

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;

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 complainants 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 11.07.2016. 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 got affected.
17. 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.

18. 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."

19. 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 11.07.2016 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 delayed interest on the amount paid by the complainants from the due date of possession till actual possession.

20. 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."*

21. 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 1, 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.

22. **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 11.07.2016. 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.
23. **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."

24. 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.
25. 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., 03.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
26. 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;"*
27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

28. 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 11.07.2012, 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., 11.07.2012. 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 11.07.2016. 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., 11.07.2016 till offer of possession plus two months or actual handing over of possession, 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

29. 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., 10.95% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 11.07.2016 till offer of possession plus two months or actual handing over of possession, 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 11.07.2016 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 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee/complainants 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 complainants which is not the part of the agreement.



30. This decision shall mutatis mutandis apply to cases mentioned in para no. 3 of this order.
31. Complaint stands disposed of.
32. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.07.2024



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