

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

Complaint no. : 3409 of 2023
Order reserved on : 26.09.2024
Order pronounced on: 21.11.2024

1. Isha Seth
2. Avnish Seth

Complainantss

Both R/o: House No.6, Sukhdev Vihar, New Delhi, Delhi - 110025.

3. Anjali Bahl

R/o: 923, Sector-91, Sohna, S.A.S. Nagar (Mohali)

Versus

M/s Assotech Moonshine Urban Developers Pvt. Ltd.

Regd. office: 105, Pankaj Tower, 1st Floor Opp. Supreme Enclave Society, Mayur Vihar Phase-1, East Delhi, Delhi- 110091

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Parmanshi (Advocate)
Shri Vaibhav Kataria (Advocate)

**Complainantss
Respondent**

ORDER

1. The present complaint has been filed by the complainantss/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 under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession and the date of proposed handing over of the possession, and the 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.	Date of allotment letter	31.01.2013 (As per page no. 28 of complaint)
4.	Unit no.	G-103 on 1 st floor (As per page no. 28 of complaint)
5.	Unit area admeasuring	1685 sq. ft. (As per page no. 28 of complaint)
6.	Possession clause	As per Clause 19(I) , <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>
7.	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 instalments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be</i>

		<i>adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession.</i>
8.	Due date of possession	31.01.2017 (Due date as per clause 19(I) i.e.; 31.01.2013 + 06 months with grace period of 6 months) Grace- period is allowed
9.	Sale consideration	Rs.1,15,74,450/- (As per payment schedule at page no. 42 of complaint)
10.	Amount paid by the complainants	Rs.1,10,52,918/- (As per customer ledger dated 19.01.2024 on page no. 91 of reply)
11.	Occupation certificate	Not obtained (Applied for 12.04.2021)
12.	Offer of possession	Not offered
13.	Legal notice sent by the complainants w.r.t. handover the legal possession	30.05.2022 (Page no. 69 of the complainants)

B. Facts of the complaint:

- On assurance and commitment of the respondent company, the complainants applied for Unit No. G-103 Tower G, in "Assotech Blith" measuring 1685 sq. ft. for the total consideration of Rs 1,12,00,850/- and the complainants has made a payment of Rs 10,00,550/- on 24th January 2013 at the time of booking. That subsequent to booking of the said unit, an allotment letter dated 31st January 2013 was duly issued by the respondent in which the terms and conditions were mentioned and the same was duly signed and executed between the parties.

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4. The complainants has opted for Construction Linked Plan as her payment plan for purchasing the property and on various occasions she has made several payments to the respondent i.e., on 24.01.2013, 22.03.2013, 17.05.2013, 24.02.2014, 18.10.2014, 20.10.2014, 27.05.2015, 15.10.2015, 10.12.2015, 14.03.2016, 16.03.2016, 21.07.2016, 04.08.2016, 21.02.2017, 22.02,2017, 08.05.2017, 19.02.2021 and 22.02.2021 amounting to a total of Rs.1,10,03,621/- against the respective demand letters from the respondent.
5. According to the aforementioned allotment letter, the respondent had promised to deliver the possession of the property in the subject matter on or before 31st December 2015 with an additional grace period provided to the respondent of 6 months to deliver the possession of the apartment i.e., by the 30th June 2016.
6. The complainants despite making all the payments timely and in compliance of her obligations, as set out in the allotment letter, had to make several visits to the respondent's office in order to follow-up regarding the delivery of possession of the already allotted unit which is G-103 at "Assotech Blith". However, the respondent failed to provide the complainants with any reasonable justification for the delay in delivery of the possession of the allotted unit. the respondent has failed to deliver the possession of the property till date, which make it a delay of nearly 84 months from the due date of possession.
7. The complainants, feeling helpless and neglected over a period of about 72 months, i.e., 6 years, had sent letter dated 23rd April, 2022 to various executives of the respondent, namely, Mr. Narendra Sharma, Mr. Praveen Srivastava and Mr. Amit Singh, requesting possession of the allotted unit along with delay penalty, as per the terms of the allotment letter in this instant matter.
8. Exhausted with the negligent and callous attitude of the respondent and after several months of tireless efforts of the complainants, the complainants was

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compelled to issue legal notice dated 30th May 2022 to the respondent demanding the possession of the property within 60 days from the date of receipt of the above-specified notice and to make payment, the amount equivalent to the penalty, as per the terms of the allotment letter as on date of payment, within 15 days from the date of the above- specified notice.

9. Instead of responding to the aforesaid legal notice and providing clarification to the complainants, the respondent issued a demand letter dated 03.04.2023 to the complainants for a payment of Rs. 6,21,521/- for the fit-out work of the allotted unit. Till date, the respondent has not reverted with respect to the payment of the delay penalty despite several follow-ups by the complainants. It is evident that the respondent does not intend on upholding its obligations as set out in the allotment letter.

10. The complainants is left with no alternative and has approached this Hon'ble Authority as a last hope, seeking delivery of the unit and registration of the same with legal registry, along with payment of the delay penalty interest to the complainants by the respondent, at the prevailing rate of the Haryana Real Estate Regulatory Authority.

C. Relief sought by the complainants:

11. The complainants have sought the following relief(s):

- i. Direct the respondent to handover the Legal Possession of the Unit to the Complainants with registration and execution of sale deed, along with completed project facilities within 30 days.
- ii. Direct the respondent to pay the delay interest @ (MCLR) plus 2%, p.a., i.e., the prevailing rate of Haryana Real Estate Regulatory Authority w.e.f. 30.06.2016 i.e., due date of delivery of possession till the actual date of handing over of possession.
- iii. Kindly expedite the proceedings, keeping in consideration the advance age of the Complainants herein, i.e., 72 years.

12. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

13. The present complaint is not maintainable in the law or on the facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act/RERA') have been misinterpreted and misconstrued by the complainants. 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.
14. That Mr. Vijay Seth was the first allottee, however, the complainants has filed the present complaint only in her name and thus the complaint is bad by non-joinder of parties and is thus liable to be dismissed on this very ground also the complaint is barred by law of limitation.
15. The complainants and her husband in order to buy a property in the upcoming part of Gurgaon, acting through their property dealer, had approached the respondent after making detailed and elaborate enquiries with regard to all aspects of the said project and after completely satisfying themselves with regard to the said project, competence and capability of the respondent and the contractor company to successfully undertake the construction, development and implementation of the said project, the complainants proceeded to book an apartment in the said project.
16. The complainants and her husband were provisionally allotted an apartment no. G- 103 located on the twelfth floor of Tower - G of the said project admeasuring 1685 sq. ft. (156.54 sq. mtr.) vide allotment letter dated 31.01.2013.

17. 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.
18. 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.

19. 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/-.
20. 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. 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

21. 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 25th 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', *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.
22. 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.
23. 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

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project, has also received the Occupation Certificate for the part of the project. 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 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.

24. 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 basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

25. The plea of the respondent regarding the rejection of the complaint on the grounds of jurisdiction stands rejected. 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

26. 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 the entire Gurugram District for all purposes 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

27. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

28. Hence, given 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 the objections raised by the respondent:

F.I Objection on account of liquidation proceedings being initiated against M/s Assotech Limited between 08.02.2016 to 11.02.2019 to be considered as zero period.

29. The respondent has raised an objection that the 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.

30. In rebuttal to the respondent's contention seeking exclusion of the period of provisional liquidation for calculating the due date of possession of the unit, it is asserted that notwithstanding the contractor company being placed under

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provisional liquidation by the Hon'ble High Court of Delhi on 08.02.2016, construction operations persisted uninterrupted from 08.02.2016 to 31.07.2017 and latest payment was received till 24.02.2021 pursuant to a construction-linked payment plan. Payments received by the respondent during this period were tied to specific construction milestones encompassing casting of floor slabs, super structural framework, internal plaster and flooring etc., thereby substantiating continuous advancement in the construction process. These payments serve to contradict the respondent's claim that the liquidation period absolves it of contractual obligations.

31. The oversight exercised by the Hon'ble High Court through the Official Liquidator and subsequent appointment of a Court Commissioner aimed to prioritize the project's completion, notwithstanding intermittent challenges such as non-payment by allottees. Therefore, the sustained construction activities during the liquidation period undermine the respondent's plea to exclude this timeframe from calculations pertaining to due date of possession, as they signify ongoing development and financial engagements directly associated with construction benchmarks. Therefore, the plea of the respondent is hereby dismissed.

F.II Objections regarding Force Majeure.

32. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Environmental Pollution Prevention & Control Authority, NGT, and orders of other courts/authorities to curb the pollution in NCR. It further requested that the said period be excluded while calculating due date for handing over of possession. Further, in the instant complaint, as per clause 19(I) of allotment dated 30.01.2013, the due date of handing over of possession was provided as 31.07.2017. Grace period of 6 months is allowed being unconditional. The respondent-builder in the instant matter has failed to obtain

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the occupation certificate of the complainants unit from the competent authority till date. Hence, the plea regarding admissibility of any further grace period on account of aforesaid circumstances is untenable and does not require any further explanation.

F.III Objection regarding the delay in payment.

33. Another objection raised by the respondent regarding delay in payment by many allottees is totally invalid because the allottee herein have already paid the amount of Rs. 1,10,52,918/- against the total sale consideration of Rs. 1,15,74,450/- to the respondent. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainants in the instant case. As per the payment plan 96% of the sale consideration has already been paid by the complainants till date. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainants in the instant case. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainants has paid all the instalments as per payment plan duly agreed upon by the complainants while signing the agreement. Moreover, the stake of all the allottees cannot put on stake on account of non-payment of due instalments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to pay handover the legal possession of the unit to the complainants with registration and execution of sale deed, along with completed project facilities

34. As per documents available on record, the respondent failed to offer the possession of the allotted unit till date and did not receive occupation certificate

from competent authority. The complainants took a plea that offer of possession was to be made in made in 2017, but the respondent has failed to handover the physical possession of the allotted unit.

35. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

"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."

36. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainants is continuing with the project and seeking delay possession charges. However, 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.

37. 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.

38. 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., 21.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
32. The respondent, in its reply, contended that the complainants has filed the present complaint in her name alone, and that the complaint is defective due to non-joinder of necessary parties. In response, the complainants filed an application dated 28.08.2024, seeking to add the legal representatives of the deceased co-allottee. Documents confirming the legal heirs were also placed on record. The Authority, through proceedings dated 26.09.2024, allowed the application, thereby affirming that the complainants is the rightful and proper party entitled to pursue the present complaint.
39. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 9(I) of the allotment letter dated 30.01.2013, and the due date comes out as 31.01.2017. Occupation certificate is not granted by the concerned authority till date. No documents have been placed on record regarding the status of the issuance of the occupation certificate from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the allotment letter dated 30.01.2013 to hand over the physical possession within the stipulated period.
40. In view of the above, the respondent/promoter is directed to complete the work of the subject unit in all aspect remaining, if any and handover physical

possession of the unit to the complainants within a period of two months from the date of obtaining the occupation certificate.

H. Directions issued by the Authority:


41. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The respondent is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of interest i.e. 11.10% p.a. for every month of a delay from the due date of possession i.e., 31.01.2017 till the date of offer of possession after obtaining occupation certificate i.e., plus two months or actual handing over of possession, whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- II. The respondent is also directed to execute the sale deed for the unit, inclusive of the amenities as stipulated in the buyer's agreement, upon obtaining the occupation certificate from the competent authority.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

42. Complaint stands disposed of.

43. File be consigned to the Registry.

Dated: 21.11.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram