

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

Complaint no.: 1890 of 2022  
Date of filing: 05.05.2022  
Date of decision: 22.10.2024

1. Baldev Kumar Puri  
2. Manisha Puri  
Both RR/o: D-79, Ground Floor, the Palladians, D  
Block, Mayfield Garden, Sector 50, Gurugram

**Complainants**

Versus

Assotech Moonshine Urban Developers Private  
Limited  
Regd. office: 148 F, Pocket IV, Mayor Vihar, Phase I,  
Delhi-110091

**Respondent**

**CORAM:**  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Member  
Member**

**APPEARANCE:**  
Shri Maninder Singh (Advocate)  
Shri Vaibhav Kataria (Advocate)

**Complainants  
Respondent**

**ORDER**

1. The present complaint 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 to the allottees 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, date of proposed handing over the possession, 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	13.08.2012 (As per page no. 21 of complaint)
4.	Unit no.	G-102 on 1 <sup>st</sup> floor (As per page no. 24 of complaint)
5.	Unit area admeasuring	1685 sq. ft. (As per page no. 24 of complaint)
6.	Possession clause	As per <b>Clause 19(I)</b> , <i>The possession of the apartment shall be delivered to the allottee(s) by the company within <b>42 months from the date of allotment</b> subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc.</i>
7.	Grace period	As per <b>Clause 19(II)</b> , <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</i>



		<i>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>
8.	Due date of possession	<b>13.08.2016</b> (Due date as per clause 19(I) i.e.; 13.08.2012 + 42 months with grace period of 6 months) <b>Grace- period is allowed</b>
9.	Total sale consideration	Rs.99,16,038/- (As per schedule E on page no. 38 of complaint)
10.	Amount paid by the complainants	Rs.84,49,303/- (As per customer ledger dated 28.03.2023 on page no. 95 of reply)
11.	Payment plan	Construction linked payment plan (As per schedule E on page no. 38 of complaint)
12.	Demand letters and reminders dated	11.02.2021, 20.05.2021, 21.07.2021, 19.11.2021 (As per page no. 159-164 of reply)
13.	Cancellation email dated	07.04.2022 (As per page no. 165 of reply)
14.	Occupation certificate	Not obtained (Applied for 12.01.2021)
15.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainants have made the following submissions: -
- a. That somewhere in 2012, the Respondent through its marketing executives and advertisement done through various medium and means approached the complainant with an offer to invest and buy a flat in the proposed project of Respondent, which the Respondent was going to launch the project namely "ASSOTECH BLITH" on Northern Peripheral Road also known as Dwarka Expressway, Sector-99, Gurugram (hereinafter referred to as "Said Project"). The Respondent had represented to the complainant that the Respondent is very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the project of Respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the Respondent. The Respondent had further assured to the complainant that the Respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the representations and warranties of the respondent and believing

them to be true had agreed to the proposal of the Respondent to book the residential flat in the project of Respondent.

- b. That the Respondent arranged the visit of its representatives to the complainant and they also assured the same as assured by the Respondent to the complainant, wherein it was categorically assured and promised by the Respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential flat in the name of complainant immediately upon the booking. Relying upon those assurances and believing them to be true, the complainant booked a residential flat bearing G-102 of 3 BHK on 1st Floor having super area of 1685 Sq. ft. at the rate of Rs.4,972.5/- per Sq. ft. and for total sale consideration of Rs.99,16,038/- at the proposed project to be developed by Respondent vide Application No.293 dated 24.07.2012. It was assured and represented to the complainant by the Respondent that they had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time as assured by the Respondent. Accordingly, the complainant had paid Rs.8,63,756/- on 24.07.2012 as booking amount.
- c. That the respondent assured the complainant that it would execute the flat buyer agreement at the earliest and maximum within one week. However, the Respondent did not fulfill its promise and have not executed the agreement as agreed by it. Thereafter, the complainant requested the respondent to allot the promised flat and to execute the required agreement for the

same, however, the respondent ignored the request of the complainant and did not execute the required agreement for next one month. Upon the regular follows up of the complainant, the respondent had executed an allotment letter dated 13.08.2012 allotting the aforesaid flat in favour of the complainant. When the complainant had asked the respondent to execute the Flat Buyer Agreement like other developers then the respondent refused the same and confirmed to the complainant that as per their company's Policy, they have titled the agreement as Allotment Letter and it is the Flat Buyer Agreement as per the Company Policy and only the title and name of the document is different as the Allotment Letter is a detailed document having all the terms and conditions in respect of the said allotment. The allotment letter like Builder Buyer Agreement is having terms and conditions in respect of the possession and delivery of the aforesaid flat. It is, therefore, confirmed by the respondent that no further requirement was there to execute any further agreement of whatsoever nature.

- d. That thereafter, the Respondent started raising the demand of money /installments from the complainant, which was duly paid by the complainant as per agreed timelines. That at the time of execution of the said agreement, the Respondent misusing its dominant position had coerced and pressurized the complainant to sign the arbitrary, illegal and unilateral terms of the said Allotment Letter and when the complainant had objected to those arbitrary terms and conditions of the said Allotment Letter and refused to sign the same, the respondent threatened to forfeit the amount already paid by the complainant as booking

amount in respect of the said flat and also to cancel the booking. The complainant having no other option and to found himself helpless and being cheated had under duress and coercion had signed the said Allotment Letter.

- e. That as per the Clause -19 (i) of the said Allotment Letter dated 13.08.2012, the Respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 42 months thereon from the date of the allotment. The relevant portion of Clause - 19 of the Allotment Letter is reproduced herein for the kind perusal of the Hon'ble Authority: -
- "The possession of the apartment shall be delivered to the allottee by the company within 42 months from the date of allotment."*
- f. However, the respondent has breached the terms of the said Allotment Letter and failed to fulfill its obligations and has not delivered possession of said flat even today as on the date of filing of this compliant. That from the date of booking and till today, the Respondent had raised various demands for the payment of installments on complainant towards the sale consideration of the said flat and the complainant has duly paid and satisfied all those demands as per the Allotment Letter without any default or delay on his part and has also fulfilled otherwise also his part of obligations as agreed in the Allotment Letter. The complainant was and has always been ready and willing to fulfill his part of agreement, if any pending.
- g. That the complainant had paid the sale consideration to the Respondent for the said flat. As per the records of complainant, the complainant had already paid Rs.84,06,498/- (Rupees Eighty

Four Lakh Six Thousand Four Hundred Ninety Eight) towards the sale consideration as on today to the Respondent as demanded by it, time to time and now nothing major is pending to be paid on the part of complainant.

- h. That on the date agreed for the delivery of possession of said flat as per date of allotment and later on according to the Allotment Letter, the complainant had approached the Respondent and its officers inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer or reply or response to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed as the construction of the said flat and said project was nowhere near to completion and still has not been completed.
- i. That the complainant thereafter had tried his level best to reach the representatives of the Respondent to seek a satisfactory reply in respect of the said flat but all in vain. The complainant had also informed the Respondent about his financial hardship as the complainant had taken home loan from bank to pay the sale consideration of the said flat to the respondent and the complainant was already paying the monthly installments to the bank, however, the respondent failed to deliver its promise and dream home of the complainant was nowhere near to complete. Apart from that, the complainant was also constrained to pay the monthly rent due to delay in getting possession of the said flat. The complainant had requested the Respondent to deliver his flat citing the extreme financial and mental pressure he was going through, but the Respondent never cared to listen to his



grievances and left him with the suffering and pain on account of its default and negligence.

- j. That the respondent instead of completing and handover the possession of the aforesaid flat raised an unreasonable demand to pay Rs.13,21,480/- without giving report for progress in the project and by ignoring the queries of the complainant and threatened the complainant to cancel the allotment of their flat cum dream home, old age shelter knowingly the fact that the complainant has already paid a hefty amount Rs.84,06,498/- (Rupees Eighty Four Lakh Six Thousand Four Hundred Ninety Eight) towards the sale consideration to the respondent.
- k. That despite the default in delivery of possession on the part of respondent, the respondent to further add up in the miseries of complainant had issued Cancellation Notice through email dated 07.04.2022 and cancelled the allotment of aforesaid flat in the name of complainant. The illegal acts on the part of respondent were further clear from this letter that despite clear default of the terms and conditions of allotment letter, the respondent kept demanding money from complainant without completing the construction of the said flat as promised by it.
- l. That the Respondent has not completed the construction of the said Real Estate Project till now and the complainant has not been provided with the possession of the said unit despite all promises done and representation made by the Respondent.
- m. As per Allotment dated 13.08.2012, the delivery of the possession of said Flat was promised to be delivered by the respondent within 42 months along-with the six months grace period i.e. by 13.08.2016. By committing delay in delivering the

possession of the aforesaid flat Respondent has violated the terms and conditions of the Allotment Letter and promises made at the time of booking of said flat.

- n. That the conduct on the part of Respondent regarding delay in delivery of possession of the said flat has clearly manifested that the Respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the dust on the fact that all the promises made by the Respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said flat basis its false and frivolous promises, which the Respondent never intended to fulfill. The Respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.
- o. That the Respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat, which amounts to unfair trade practice, which is immoral as well as illegal. The Respondent has also criminally misappropriated the money paid by the complainant as sale consideration of said flat by not delivering the unit by agreed timelines. The Respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said flat basis its false and frivolous promises and representations about the delivery timelines aforesaid housing project.

- p. That the complainant has undergone severe mental harassment due to the negligence on the part of the Respondent to deliver his home on time agreed. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of Respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of Respondent has made the life of the complainant miserable socially as well financially as all his personal financial plans and strategies were based on the date of delivery of possession as agreed by the Respondent. Therefore, the Respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no-fault on his part. The complainant being common person just made the mistake of relying on Respondent's false and fake promises, which lured his to buy a flat in the aforesaid residential project of the Respondent.
- q. That the cause of action accrued in favour of the complainant and against the Respondent on 13.08.2012, when the complainant had booked the said flat and it further arose when Respondent failed /neglected to deliver the said flat on the agreed date. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not handed over the possession of said flat to the complainant and also not paid the interest for making delay in delivery of possession of said flat as agreed.
- r. That the complainant further declare that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

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

4. The complainants have sought following relief:
- Direct the Respondent to pay interest at the applicable rate on account of delay in offering possession on Rs.84,06,498/- i.e., amount paid by the complainants from the date of payment till the date of delivery of possession.
  - Direct the respondent to withdraw the cancellation letter sent on 07.04.2022 or declare it as null and void.

**D. Reply filed by the respondent:**

5. The respondent has contested the complaint on the following grounds:
- 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.
  - That in year 2010, the Government came up with the Master Plan of 2030 of Gurugram, known Gurgaon at the time and proposed an expressway on the Northern side of the city, known as Northern Peripheral Road (NPR), now commonly known as Dwarka Expressway, which got finalised by year 2012. Soon after

the Master Plan 2030 became public, the demand of residential and commercial projects in the vicinity of the expressway skyrocketed by multiple folds. In order to cater to such skyrocketed demand of the consumers for the residential units, the respondent on 20.01.2012 entered into an investment agreement with M/s Assotech Limited and FDI Investors, Mallika SA Investments LLC for the development of the residential project and launched the residential project known as 'Assotech Blith', Sector - 99, Gurugram (hereinafter referred to as "Said Project") which has been conceptualised and promoted by the respondent. It is pertinent to mention here that in terms of the investment agreement, the shareholding of the M/s Assotech Limited was 50.01% and the shareholding of M/s Mallika SA Investments LLC was 49.99%. It is also pertinent to mention here that for the construction and development of the said project, the respondent had raised money by issuing 18% Optionally Convertible Debentures

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

- on one hand it was the majority share-holder of the respondent and on the other hand it was the contractor of the respondent.
- d. That the complainants in order to buy a property in the upcoming part of Gurgaon, acting through their property dealer, had approached the respondent after making detailed and elaborate enquiries with regard to all aspects of the Said Project and after completely satisfying themselves with regard to the Said Project, competence and capability of the respondent and the Contractor Company to successfully undertake the construction, development and implementation of the Said Project, the complainants proceeded to book an apartment in the Said Project.
- e. That the complainants were provisionally allotted an apartment no. G - 102 located on the first floor of Tower - G of the Said Project admeasuring 1685 sq. ft. (156.54 sq. mtr.) vide allotment letter dated 13.08.2012. That the clause 19 sub-clause (i) of the allotment letter is reproduced hereunder for ready reference:
- 'The possession of the apartment shall be delivered to the allottee (s) by the Company within 42 (Forty-Two) months from the date of allotment subject to the Force Majeure, circumstances, regular and timely payments by the intending allottee (s), availability of building material, change of laws by Government / Local Authorities, etc. The construction shall be deemed to be complete on obtaining the occupation certificate by the Company from the DTCP. No claim by way of damage, compensation shall lie against the company in case of delay in handing over of the possession on account of delay in obtaining the occupation certificate or any other reasons beyond the control of the Company.'*
- f. 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 within 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.

- g. That the Said Project was going at a very great pace and was right at schedule, if not at a pace faster than the schedule till the year 2015, however, in the mid of 2015, the Contractor Company faced a litigation in the Hon'ble High Court of Delhi and on 08.02.2016, the Hon'ble High Court of Delhi put the Contractor Company into Provisional Liquidation vide its order dated 08.02.2016 in Company Petition No. 357 of 2015. The Hon'ble High Court of Delhi vide the same order also appointed the Official Liquidator (hereinafter referred to as 'OL') attached to the court as the Provisional Liquidator and the rights and authority of the Board of Directors of the Contractor Company were taken by the OL. Now, the Directors became Ex-Directors and Ex-Management of the Contractor Company have to work under the supervision of the Provisional Liquidator / OL so appointed by the Hon'ble High Court of Delhi and thus the directors did not have any power to take any action. It is also pertinent to mention here that vide same order, the Hon'ble High Court of Delhi directed the Official Liquidation so appointed by the Hon'ble Court to seal the premises of the Contractor Company and as the registered address and the corporate address of the respondent was same as that of the contractor company, due to this very reason the office of the respondent was also sealed by the Hon'ble High Court of Delhi. Hence, due to

the Provisional Liquidation of the Contractor Company and order of the Hon'ble High Court of Delhi, the construction work of the Said Project got interrupted.

- h. That in terms of the order dated 08.02.2016 of the Hon'ble High Court of Delhi, the management of the Contractor Company was taken over by the Official Provisional Liquidator and thus the construction of the Said Project was also taken over by the Official Provisional Liquidator, however, the same also got interrupted on account of non-payment by the various allottees towards the demand raised by the respondent for the construction of the Said Project. It is pertinent to mention here that the complainant herein was one of the defaulters of the payment and made the last payment of Rs. 8,47,298/- (Rupees Eight Lakhs Forty-Seven Thousand Two Hundred Ninety-Eight Only) on 26.04.2016.
- i. That as the development of the Said Project was already awarded to the Contractor Company, which was still a going concern in terms of the law of India, and was not liquidated by the Hon'ble High Court of Delhi, and also, in terms of Section 273 read with section 275 and section 290 of the Companies Act, 2013 and the settled law laid down by the Supreme Court of India which was reiterated in the case titled, 'Gujarat Urja Vikas Nigam Limited versus Amit Gupta & Ors. (Civil Appeal No. 9241 of 2019)', wherein the Hon'ble Supreme Court upheld the NCLT / NCLAT correctly stayed the termination of the agreement, the respondent could not terminate the construction contract agreement to undertake the development of the said project



itself nor to award the development of the Said Project to any other party.

- j. 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 and thus the Hon'ble High Court vide order dated 21.01.2019 read order dated 11.02.2019 and with Official Liquidator report, ordered for recovery 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 not out of place to mention here that order of recovery of Rs. 98.62 Crores were not 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.
- k. 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.

- l. That on 11.02.2019, in view of the revival plan submitted before the Hon'ble High Court of Delhi, the Hon'ble High Court appointed a Court Commissioner – Mr. Justice N.K. Mody (Retd.) to supervise the affairs of the Contractor Company as a whole and the same were kept on priority for the completion in terms of the order of Hon'ble High Court of Delhi of even date. In addition to the order of the Hon'ble High Court of Delhi keeping the aforesaid projects on priority, the allottees of the Said Project were not making the payment towards the demands already raised. Now, due to this very reason the development of the Said Project was again interrupted.
- m. 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.

- n. That in addition to the aforesaid orders, the development of the Said Project took another massive hit on account of the COVID - 19 pandemic which resulted in a nation wide lockdown starting from 25<sup>th</sup> March, 2020. During this time the large number of workers moved to their native villages / home towns in Bihar, eastern parts of Uttar Pradesh, Jharkhand, West Bengal. In view of the situation, the Government of India considered and examined the view of the States of India and various other stakeholder and conclude that the situation of covid shall be considered as a situation of 'Force Majeure', s Suo Moto extended the construction period of all projects by 9 months. The respondent and the Contractor Company started the construction work of the Said Project in terms of the guidelines issued by the Government of India from time to time.
- o. That upon revival of the Said Project by the Contractor Company, the Contractor Company completed the internal plaster and flooring of the tower allotted the complainant and raised a demand of Rs. 6,84,886/- (Rupees Six Lakhs Eighty-Four Thousand Eight Hundred Eighty-Six Only) vide email dated 11.02.2021. That the complainant failed to make the payment of the demand raised within the stipulated time of 10 days and thus the respondent sent reminders for making the payment on 18.05.2021, 21.07.2021, 20.11.2021, 18.01.2022 and 23.02.2022.
- p. That as the complainant did not make the payment for 2 (two) consecutive demands made by the respondent as per the payment plan and miserably failed to make the payment of the demand raised, even after receiving repeated reminders from

the respondent company, the respondent vide email dated 07.04.2022 cancelled the unit allotted to the complainant. It is pertinent to mention here that as on 20.02.2021, the complainant was supposed to make a payment of Rs. 13,78,080/- (Rupees Thirteen Lakhs Seventy-Eight Thousand Eighty Only) towards the demand raised as per the payment plan and further was supposed to make a payment of Rs. 11,91,607/- (Rupees Eleven Lakhs Ninety-One Thousand Six Hundred Seven Only) towards the Late Payment Fee Outstanding and thus was a defaulter of a total of Rs. 25,69,687/- (Rupees Twenty-Five Lakhs Sixty-Nine Thousand Six Hundred Eighty-Seven Only). It is also pertinent to mention here that the complainant is well aware of the fact that the unit allotted to him has been cancelled vide email dated 07.04.2022 on account of non-payment as the said email has been annexed by the complainant as Annexure - 4 to the complaint filed.

- q. That till date the complainants have not hand-over the original allotment letter / other original documents as demanded by the respondent in the email dated 07.04.2022 and due to this very reason, the respondent is not able to refund the amount payable.
- r. That upon revival of the project, the respondent started the construction in full swing and applied for the issuance of the Occupation Certificate on 12.01.2021, 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 a 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.

- s. That the respondent has already received No Objection Certificate from Electricity Department and Fire Department. It is also pertinent to mention here that the respondent has already completed a major part of the Said Project and has applied for the issuance of Occupation Certificate to the concerned authority.
- t. That thus in view of the aforesaid facts and circumstances, the following period would constitute the zero period for the reason mentioned against it:
- Period between 08.02.2016 to 11.02.2019 - on account of liquidation proceedings being initiated against M/s Assotech Limited
  - Period between 11.02.2019 to 25.03.2020 - on account of order of Hon'ble High Court of Delhi
  - Period of 9 months starting from 25.03.2020 - on account of 'Force Majeure' declared by the Government of India
  - Various dates as mentioned in table in para 19 - on account of ban on construction activities by various authorities
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainants.

7. Written submissions filed by both the parties are taken on record and considered by the authority while deliberating upon the relief sought by the complainants.

**E. Jurisdiction of the authority**

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**E. I Territorial jurisdiction**

9. 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**

10. 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;*

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

11. So, in view of the provisions of the Act of 2016 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 regarding relief sought by the complainant.**

**F.I. Direct the respondent to withdraw the cancellation letter sent on 07.04.2022 or declare it as null and void.**

12. In the present matter the complainants were allotted the subject unit vide allotment letter dated 13.08.2012. The complainants have paid an amount of ₹ 88,49,303/- against the total sale consideration of ₹ 99,16,038/-. As per possession clause 19(I) the possession of the unit was to be delivered to the complainants by 13.08.2016 including grace period of 6 months on account of force majeure circumstances. The authority observes that the complainants have paid approximately 89.25% of the total sale consideration. As on date the OC has not yet been received from the competent authority and the project is not complete for occupation therefore, there is a delay of about 8 years and the complainants have been patiently waiting for the delivery of possession of their unit. Although, the demand issued by the respondent on 11.02.2021 is as per the payment plan agreed by the parties in the allotment letter but at the same time as per clause 19(II) of the allotment letter the respondent was obligated to compensate the allottee for delayed period @ ₹ 10/- per sq. ft. per month. Furthermore, the respondent undertook to adjust the same in the outstanding dues of the allottees. In view of the above the authority is of the opinion that the respondent neither adjusted the delay compensation as per clause 19(II) nor as per the RERA Act, 2016 while raising the demand upon accomplishment of the milestone therefore the demand letter issued by the respondent and the reminder letters subsequent to the same is invalid and

cancellation letter dated 07.04.2022 is hereby set aside by the authority being bad in eyes of law.

**F.II. Direct the respondent to pay delay possession charges from the due date of possession till actual handing over of possession.**

13. In the present complaint, the complainants intend 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.*

14. As per clause 19(i) of the allotment letter dated 13.08.2012, the possession of the subject unit was to be handed over within 42 months from the date of allotment. Clause 19(i) of the allotment is reproduced below:

*"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. 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 on 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"*

15. 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 promoters 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.

16. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within 42 months from the date of allotment i.e., 13.08.2012 as the date of construction is not held on record with a grace period of 6 months. Accordingly, the due date of possession comes out to be 13.08.2016.
17. 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. But it is pertinent to note that neither the complainants are 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. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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."*

19. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as

on date i.e., 22.10.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

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

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

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

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

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

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges

23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 19 of the allotment dated 13.08.2012, the possession of the subject apartment was to be delivered within 42 months from the date of allotment letter. The period of 42 months expired on 13.02.2016. As far as grace period of 6 months is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 13.08.2016. The respondent has not offered the possession of the


subject apartment till date. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 13.08.2016 till actual handing over of possession or valid offer of possession plus two months whichever is earlier, at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G. Directions of the Authority**

24. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 13.08.2016 till actual handing over of possession or valid offer of possession plus two months whichever is earlier. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
  - b. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the

allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.


- c. The respondent shall issue a revised account statement after adjusting the delay possession charges @ prescribed rate within 30 days from the date of this order thereafter the respondent shall handover the possession in 60 days after obtaining occupation certificate to the complainants/allottees after payment of the outstanding dues by the complainants, if any.
  - d. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
25. Complaint stands disposed of.
26. File be consigned to registry.

  
(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024

  
(Vijay Kumar Goyal)

Member