



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 19.12.2019
Complaint No.	CR/2533/2018 Case titled as Rajnish Varshney And Anr V/S Assotech Moonshine Urban Developers Private Limited
Complainant	Rajnish Varshney And Anr
Represented through	Complainant in person with Ms. Medhya Ahluwalia Advocate
Respondent	Assotech Moonshine Urban Developers Private Limited
Respondent Represented through	Shri Sanjeev Dhingra Advocate
Last date of hearing	26.9.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

By virtue of clause 19 (i) and (ii) of the allotment letter executed between the parties on 20.7.2012, possession of the booked unit was to be delivered within a period of 42 months plus 6 months grace period from the date of execution of allotment letter. . As such the due date of delivery of possession comes out to be 20.7.2016. As such the complainant is entitled for delayed possession charges @ 10.20 % p.a. w.e.f. 20.7.2016 till offer of possession as per provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016 Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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New PWD Rest House, Civil Lines, Gurugram, Haryana


नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा


thereafter monthly payment of interest till offer of possession shall be paid before 10th of subsequent month.

The Complainant is directed to pay outstanding dues, if any, after adjudgment of interest for the delayed period. The respondent shall not charge anything from the complainant which is not part of the BBA.

Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @ 10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.


Samir Kumar
(Member)
19.12.2019


Subhash Chander Kush
(Member)

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

Complaint no. : 2533 of 2018
First date of hearing : 18.07.2019
Date of decision : 19.12.2019

1. Mr. Rajnish Varshney
2. Mrs. Madhu Varshney
Both R/o C-12A, First Floor, Ardee City,
Sector-52, Gurugram, Haryana.

Complainants

Versus

M/s Assotech Moonshine Urban Developers
Pvt. Ltd.
(Through its Managing Director)
Regd. office: 148F, Pocket IV, Mayur Vihar,
Phase I, Delhi-110091.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Medhya Ahluwalia
Shri Sanjeev Dhingra

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 16.01.2019 has been filed by the complainants/allottees in Form CRA 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 allottee as per the agreement for sale executed inter se them.

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.No.	Heads	Information
1.	Project name and location	"Assotech Blith", Sector 99, Gurugram.
2.	Project area	12.062 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	95 of 2011 dated 28.10.2011 valid till 27.10.2019
5.	Name of licensee	Moonshine Urban Developers Pvt. Ltd. and Uppal Housing Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 83 of 2017 dated 23.08.2017
7.	HRERA registration valid up to	22.08.2023
8.	Unit no.	A-1204, 12 th floor [Page 38 of complaint]
9.	Unit measuring (super area)	1365 sq. ft.
10.	Date of execution of allotment letter with detailed terms and conditions	20.07.2012 [Page 38 of complaint]
11.	Payment plan	Construction linked payment plan [Page 54 of complaint]



12.	Total consideration as per applicant ledger dated 10.12.2018	Rs.85,13,138/-
13.	Total amount paid by the complainants as per applicant ledger dated 10.12.2018	Rs.74,59,985 /-
14.	Due date of delivery of possession as per clause 19(I) of the said allotment letter i.e. 42 months from the date of allotment letter (20.07.2012) plus grace period of 6 months.	20.07.2016
15.	Offer of possession to the complainants	Not offered
16.	Delay in handing over possession till <i>date of decision i.e. 19.12.2019</i>	3 years 4 months 30 days
17.	Status of the project	OC not received till date
18.	Specific reliefs sought	<p>i. Direct the respondent to award delay interest @18% p.a. for every month of delay till the handing over of possession of the apartment complete in all respects to the complainants.</p> <p>ii. Direct the respondent to provide the schedule of construction and likely time period to be taken by the respondent in completing the project in all respect.</p>

3. As per clause 19(I) of the allotment letter, the possession was to be handed over within a period of 42 months from the date of allotment letter (20.07.2012) plus grace period of 6 months which comes out to be 20.07.2016. Clause 19 of the allotment letter is reproduced below:

"14. Possession: The allottee.....

(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(a).....*

(II) *In case the company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and further within grace period of 6 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)...."*

4. The possession of the subject apartment has not been offered by the respondent to the complainants so far. The complainants seek delay interest as per section 18 of the Act. The complainants reserve their right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainants. Hence, this complaint for the reliefs as stated above.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

The respondent contests the complaint and relevant portion of para 8 of the reply is reproduced as hereunder:-

- i. It is wrong the respondent was under an obligation to complete the project and handover the physical possession of the booked unit by 25.11.2016, however, till date the project is only 50% complete and nothing excepts super structure has been constructed by the respondent despite collecting 90% of the sale consideration from complaints and other innocent homebuyer. It is further submitted that on the basis of accounting Disclosure of the Company certified by Chartered Accountant submitted in RERA, the company has spent an amount of approx.. **Rs. 350+ crores** towards the acquisition and development of the Project and all the External and Internal Development Charges (EDC/IDC payable by the company to HUDA) have been fully paid as per schedule and license conditions. This means that the proportionate share pertaining to the Complainant's Booked Unit has also been paid on schedule. In turn the Company received a total payment of **Rs. 244 crores** by way of collections from customers who had booked units in the Project and have paid as per their respective scheduled payment plans. This amount collected from customers includes the payments received by the Complainant against their Booked Unit. The balance cost incurred to date was funded by the shareholders/debenture holders of the Company.

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.
7. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainants and the respondent is of considered view that there is no need of further hearing in the complaint.
8. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
9. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 19(I) and 19(II) of the allotment letter executed between the parties on

20.07.2012, possession of the booked unit was to be delivered within a period of 42 months plus 6 months' grace period from the date of execution of allotment letter. As such the due date of delivery of possession comes out to be 20.07.2016. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the allotment letter dated 20.07.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainants are entitled for delayed possession charges @10.20% p.a. w.e.f. 20.07.2016 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

10. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 20.07.2016 till the offer of possession. The arrears of interest accrued till date of decision shall be paid to the complainants within a period of 90 days from the date of this order and thereafter

- monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iii. The respondent shall not charge anything from the complainants which is not part of the allotment letter.
 - iv. Interest on the due payments from the complainants shall be charged at the prescribed rate of interest @10.20% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
11. Complaint stands disposed of.
12. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.12.2019


(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

JUDGEMENT UPLOADED ON 09.01.2020