

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

**Complaint no.:**  
**Date of decision:**

**2624 of 2024**  
**16.07.2025**

Vineet Minocha  
**R/o:-** House no. 948, Sector-8,  
Panchkula-134109.

**Complainant**

**Versus**

M/s Assotech Moonshine Urban Developers Pvt Ltd.  
**Registered Office at:** 148 F, Pocket-4,  
Mayur Vihar, Phase-1, Delhi-1100091.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sanjeev kumar Sharma (Advocate)

**Complainant**

Dhruv Lamba (Advocate)

**Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.



**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Assotech Blith, Sector-99, Dhankot, Gurugram.
2.	Nature of the project	Group Housing project
3.	Acres	12.062 acres
4.	DTCP License No.	95 of 2011 dated 28.10.2011 valid upto 27.10.2024
5.	Name of licensee	1. Uppal Housing Pvt. Ltd. 2. Moonshine Urban Developers Pvt Ltd
6.	HARERA Registered	Registered
7.	RERA Registration No.	83 of 2017 dated 23.08.2017 valid upto 22.08.2023
8.	Date of allotment letter	22.09.2012 (As on page no. 16 of complaint)
9.	Unit no.	G-503, Tower-G, Floor-5 <sup>th</sup> , Type-3BHK (As on page no. 17 of complaint)
10.	Super area	1685 sq.ft. [Super area] (As on page no. 17 of complaint)
11.	Possession clause	<b>Clause 19(I),</b> <i>The possession of the apartment shall be</i>



		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.
12.	Grace period	<b>Clause 19(II),</b> In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and <b>further within a grace period of six months</b> , the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession [Emphasis supplied]
13.	Due date of possession	22.09.2016 [Calculated 42months from date of allotment plus 6 months]
14.	Sale consideration	Rs.1,00,46,625/- [As per cost sheet annexed with the allotment letter on page no. 40 of complaint]



15.	Total amount paid by the complainant	Rs.38,57,714/-
16.	Consent letter [No objection for sale of the unit]	29.07.2021 (As on page no. 51 of complaint)
17.	Occupation certificate	28.08.2023
18.	Offer of possession	Not offered

**B. Facts of the complaint:**

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

- I. That upon the representation by the respondent and advertisement done on behalf of the respondent regarding construction and development of the Residential Group Housing Colony namely "Assotech Blith" located/situated in the revenue estate Village Dhankot, Sector 99, Gurgaon, Haryana for which the respondent has obtained licence dated 28.10.2011 bearing licence no. 95 of 2011 having memo no. ZP-753/JD(BS)/2012/ 7413 dated 01.05.2012 from DTCP, the complainant applied for a unit in the project.
- II. The complainant is the original allottee/purchaser and the respondent allotted the unit on 22.09.2012 and the Buyer's Agreement was executed between the parties on the same day i.e. 22.09.2012 and the complainant was allotted unit no. G-503, admeasuring super area 1685 sq. ft. in the said project for a total sale consideration of Rs.1,00,46,625/-.
- III. That as per Clause 19 (i) of the Buyers Agreement, the physical possession of the unit was to be handed over within 42 months i.e.



by March 2016, however, at that time the construction of the project was far from completion.

- IV. That as per the statement of accounts dated 10.02.2021, the complainant has made a total payment of Rs.38,57,714/- as and when demanded by the respondent without any delay.
- V. That the complainant visited the office of the respondent with the request to refund paid up amount of Rs.38,57,714/-. The respondent asked the complainant to give a consent letter for refund of the paid up amount and sell the same unit to another customer. The respondent assured the complainant that an amount of Rs.38,57,714/- will be paid within two months. The complainant, trusting the respondent's words, gave the consent letter on 29.07.2021 for selling the incomplete above said unit to another customer.
- VI. It is prayed to the Authority that the respondent be directed to refund the paid up amount of Rs.38,57,714/- along with interest amounting to Rs.46,30,644/-. The total refundable amount is Rs.84,88,358/- ( $84,88,358 - 13,50,000 = 71,38,358$ ) while an interest amount has already been received of Rs.13,50,000/- from builder/defendant. Therefore pending refundable amount as on date is Rs.71,38,358/-.

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

4. The complainant has filed the present compliant for seeking following reliefs:
- Direct the respondent to refund the entire amount paid by the complainant amounting to Rs.38,57,714/- alongwith interest.



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.

**D. Reply by respondent:**

6. The respondent has contested the present complaint on the following grounds:
- I. That the respondent was to construct and develop a residential group housing colony by the name of the 'Assotech Blith' in Village Dhankot, Sector 99, Gurgaon, Haryana for which the respondent had the requisite license issued by DGTCP. That the complainant and respondent had entered into a Buyer's Agreement dated 22.09.2012 and as per Clause 19 (i) of the said Agreement, the possession of the unit had to be handed over to the complainant in 48 months, i.e. by March 2016.
  - II. That the complainant had paid a sum of Rs.38,57,714/- to the respondent as on 10.02.2021. The complainant had visited the office of the respondent with a request to refund the amount of Rs.38,57,714/- where upon the complainant was informed that the respondent would require a consent letter/NOC to permit the respondent to sell the flat to a third party.
  - III. That the complainant gave the consent letter on 29.07.2021 however, the amount of Rs.38,57,714 that was agreed to be paid to the complainant by the respondent vide letter dated 29.07.2021 was not paid. The complainant has invoked Section 18 of the Act, 2016 seeking payment of Rs.38,57,714/- along with interest of Rs.46,30,644/-.



- IV. That at the outset it is submitted that the above quoted Section 18 of The Real Estates (Regulation and Development) Act is not applicable in the present case as the said provision is applicable in the cases where a promoter fails to complete or is unable to give possession of an apartment or building in accordance with the provisions of the agreement or due to discontinuance of his business. However, in the present case, the complainant had sought a refund of the amount paid on his volition and never on account of the inability of the respondent to complete the project or give possession of the unit. There is no averment of the inability of the respondent to hand over the possession of the unit.
- V. That therefore the present complaint is liable to be dismissed on this ground alone. Additionally, under Clause 19 of the Agreement dated 22.09.2012 it was agreed between the parties that the allottees shall be entitled to possession of the apartment only after the execution and registration of the sale deed or such other documents as stipulated, whereas in the present case no sale deed has been executed between the parties.
- VI. That therefore, the complainant never became entitled to possession of the flat and consequently Clause 19 of the Agreement and Section 18 of the Act never became applicable in the present case as after issuance of the consent letter dated 29.07.2021 whereby the complainant had sought a refund, the Agreement dated 22.09.2012 between the complainant and the respondent came to an end and the complainant lost his status as an allottee and therefore is not entitled to invoke the jurisdiction of this Authority.



- VII. Without prejudice to the above submissions made about the maintainability of the present complaint, it is submitted that the respondent had appointed Assotech Ltd. (Hereinafter referred to as the Contractor Company) as the contractor for the completion of the project vide contract dated 03.04.2012. The land parcel on which the project was to be constructed had also been handed over to Assotech Ltd., which had started construction and for that purpose construction material and equipment had been stored at the site.
- VIII. That the work was progressing, however, on 08.02.2016 the Official Liquidator of the Hon'ble High Court of Delhi was appointed as the Provisional Liquidator of the contractor company and therefore no further work could be carried out by it. Neither could negotiations be held between the respondent and the contractor company nor was the respondent in a position to terminate and settle the liabilities since the management of the Contractor had been suspended and Liquidator been appointed.
- IX. That in terms of Section 537 of the Companies Act, 1956, any action initiated by the respondent against the Contractor Company would have been void. Therefore, the respondent was unable to get the site vacated and appoint a new contractor. Hence, the performance of the contract after 08.02.2016 became impossible and the contractual rights of the contractor company over the project site as well as easementary and license rights came to be vested in the Company Court. Due to the aforementioned reasons, the respondent could not take any action against the Contractor Company and the obligation under the present contract with the complainant became impossible to perform.



- X. That during the course of time the sub-contractors appointed by the contractor took away the equipment and machinery from the site and the contractor company was given permission to start work on some of its projects by the Hon'ble High Court vide Order dated 11.02.2019, that the respondent got back vacant possession of the project site and started construction.
- XI. However, soon thereafter, the construction had to be halted due to the National Lockdown on account of Covid-19, which came to be eased by way of successive notifications due to which work could not be carried out at sufficient pace so as to complete the work sooner. However, even thereafter on various occasions on account of orders passed by the NGT to curb pollution, the respondent had to halt construction.
- XII. That on account of the aforesaid reasons, the construction of the project could not be completed and therefore sales of the units could not start which led to insufficient liquidity for the respondent. Therefore, neither the complainant nor the contractor is entitled to claim any interest from the respondent and consequently no claims of interest is payable by the respondent if the contractor agrees to re-imburse the claim of the complainant.
7. 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:**



8. 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**

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**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;*

9. 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.
10. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the



judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the relief sought by the complainant:**

**F.I Direct the respondent to refund the entire amount paid by the complainant amounting to Rs.38,57,714/- alongwith interest.**

12. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect



of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"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.-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

*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."*

*(Emphasis supplied)*

13. The complainant had submitted an application for the provisional allotment of a unit in the project titled "Assotech Blith", located along the Northern Peripheral Road (NPR), also known as the Dwarka Expressway, in Sector-99, Gurugram, Haryana. Pursuant thereto, an Allotment Letter was issued by the respondent in favour of the complainant on 22.09.2012, whereby Unit No. G-503, Type 3BHK, situated on the 5th floor with a super area of 1685 sq. ft., was allotted for a total sale consideration of Rs. 1,00,46,625/-.
14. As per Clause 19 of the Allotment Letter dated 22.09.2012, the respondent undertook to deliver possession of the allotted unit within a period of 42 months from the date of allotment. Additionally, a grace period of six months was contractually agreed upon between the



parties. Accordingly, the stipulated date for handing over possession was 22.09.2016 (i.e., 42 months plus 6 months from the date of allotment).

15. It is on record that the complainant paid a sum of Rs. 38,57,714/- towards the agreed sale consideration. Subsequently, the complainant sought a refund of the amount paid. In response, the respondent asked the complainant to submit a Consent Letter/No Objection Certificate (NOC) permitting the respondent to sell the said unit to a third party. The complainant submitted the said consent letter on 29.07.2021, which, for all practical and legal purposes, may be treated as the date of surrender of the unit by the complainant. It is further noted that the respondent obtained the Occupation Certificate (OC) for the project only on 28.08.2023—reflecting a delay of nearly seven years from the agreed date of possession and approximately two years after the complainant's surrender request.
16. The complainant has made the request for surrender of the unit on 29.07.2021 , after 5 years from the due date of possession i.e., 22.09.2016. The respondent has refunded an amount of Rs.13,50,000/- to the complainant.
17. Upon consideration of the documents placed on record and the submissions advanced by both parties, the Authority observes that the complainant, owing to the inordinate delay in completion of the project by the respondent, opted to withdraw from the project. In this regard, the complainant requested a refund of the amount paid and issued a Consent Letter in favour of the respondent, thereby permitting the respondent to sell the allotted unit to a third party and refund the amount paid by the complainant.



18. The Authority is of the considered view that as per the consent letter dated 29.07.2021, the respondent had to pay back the entire amount paid by the complainant within 2 months. The same has not been done by the respondent till date and only an amount of Rs.13,50,000/- was paid by the respondent to the complainant.
19. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is liable to refund the entire paid-up amount of Rs.38,57,714/- along with an interest @11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of each payment till actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid after adjusting the amount already paid by the respondent.

**H. Directions of the Authority:**

20. Hence, the authority hereby passes this order and issues 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) of the Act.
- i. The respondent/promoter is directed to refund the entire paid-up amount of Rs.38,57,714/-, along with interest at the rate of 11.10% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of each payment till its actual realization after adjusting the amount already paid by the respondent.




- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to the registry.

Dated: 16.07.2025



**(Ashok Sangwan)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

