

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

**Complaint no. :** 3824 of 2024  
**Date of Order :** 07.08.2025

**Ajay Arora**

**R/o:** TU-16, Ground Floor, Near City Park Hotel, Pitampura, **Complainant**  
North-West Delhi- 110034

**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- **Respondent**  
110091

**CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Dr. Sham Taneja (Advocate)  
Shri Dhruv Lamba (Advocate)

**Complainant**  
**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 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. No.	Particulars	Details
1.	Name of the project	Assotech Blith, Sector-99, Gurgaon
2.	Project type	Group Housing Project
3.	DTCP license no	Registered vide registration no. 95 of 2011 dated 28.10.2011
4.	RERA registered/ not registered	83 of 2017 dated 23.08.2017 Valid up to 22.08.2023 <b>Note: Registration Lapsed</b>
5.	Date of allotment letter	27.07.2022 (As on page no. 30 of complaint)
6.	Unit no.	B-401 on 4 <sup>th</sup> Floor, Tower- B (As on page no. 34 of complaint)
7.	Unit area admeasuring	128.25 sq. mt. (Carpet area) (As on page no. 34 of complaint)
8.	Buyer's Agreement	14.09.2022 (Page no. 32 of complaint)
9.	Possession clause	Clause 7.1 xxxx...The promoter based on the approved plans and specifications assures to handover possession of the said Apartment on 22.08.2023 and unless there is delay or failure due to war, flood, drought, etc. (Page 43 of complaint)
10.	Due date of possession	22.08.2023 (As mentioned in clause 7.1 of buyer's agreement)
11.	Sale consideration	Rs.1,13,02,857/- (Page no. 37 of complaint)
12.	Payment Plan	Possession Linked
13.	Amount paid by the complainants	Rs.60,00,000/- (As per receipts & SOA at page no. 68-70 of complaint)



14.	Occupation certificate	Not obtained (Applied for 12.04.2021)
15.	Offer of possession	Not offered

### **B. Facts of the complaint:**

3. The complainant has made following submissions:

- i. Being persuaded by various advertisements in print and as well as in electronic media, the complainant has applied for allotment of a flat/unit in a Residential Group Housing Colony known as 'Assotech Blith' consisting of a car park at basement level and residential flats, staircases, lifts and passages with rights in the common areas, situated at village Dhankot, Sector 99, Dwarka Xpressway, Gurugram, Haryana, on the land measuring 12.062 acres. The aforesaid 'Residential Group Housing Colony' consisting of approximately 560 multi-storeyed apartments, 23 villas, 10 commercial shops, 'EWS' units, primary school, club house etc. was being developed by the respondent, Assotech Moonshine Urban Development Pvt Ltd having its Registered Office at 105, Pankaj Tower 1st Floor, Opp. Supreme Enclave Society, Mayur Vihar Phase 1, Delhi- 110091 and Regional Office at 'Assotech Blith' Village Dhankot, Sector 99, Dwarka Xpressway Gurugram-122505 (Haryana). A license for this 'Residential Group Housing Colony' has been received by the respondent vide license No. 95 of 2011 dated 28.10.2011 and renewal of this License has been granted by the competent authority i.e. DTCP Haryana vide Memo No. LC-1245-PA(SN)-2018/4356 dated 01.02.2018. Revalidation of the Building Plan of 'Assotech Blith' at Sector 99, Gurugram has also been granted by the DTCP Haryana vide Memo No. ZP- 783/SD(BS)/2017/9161 dated 09.05.2017.
- ii. The respondent planned to develop a residential group housing colony on the said land by constructing thereon multi-storied buildings

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comprising of 7 towers: A, B, C, D, E, F, G and EWS Block, 23 villas, commercial shops and a club house as per the building plan duly approved by the competent authority i.e. Director Town & Country Planning, Haryana in the year 2011. However, the 'Building Plans' were revalidated in the year 2017. The developer had assured the complainants that it had obtained all the necessary sanctions/approvals from the competent authorities to construct 560 units spread over in 7 towers and has got all clearances as required for the purpose of development of residential complex on a land parcel of 12.062 acres. The said Real Estate 'Assotech Blith' has also been registered with Haryana Real Estate Regulatory Authority (HRERA) bearing Registration No. 83 of 2017 dated 23.08.2017.

- iii. The representatives of respondent informed and assured the complainant that the development/construction at the project site has been in full swing and the possession of the said unit complete in all respect shall be handed over on or before 22.08.2023 unless delayed due to force majeure conditions. Thus, believing upon the representations and assurances of the respondent, the complainants booked a unit vide their registration no. 0245 dated 27.07.2022 and by paying a booking amount of Rs 5,00,000/- through Cheque No. 384995 dated 31.01.2022 drawn on Canara Bank, Shalimar Bagh Branch, Delhi-110088.
- iv. In pursuance to the aforesaid booking the respondent has allotted a 3 BHK + SQ flat/unit No. B-401 in Tower B on the 4th Floor at 'Assotech Blith' Sector 99, Gurugram measuring a super area of 178.2 sq mtr inclusive of balcony areas admeasuring 34.38 sq. mtrs. with one 'covered' car parking no. 647 for a total basic sale consideration of Rs. 1,13,02,857/-.



- v. The complainant at the time of booking asked the respondent to execute the 'buyer's agreement' but the respondent gave false excuses and delayed stating one or another reasons. Thereafter, the respondent created an undue pressure to give money as per its demands without executing 'buyer's agreement' and it is also to state that within that said time period the complainant had already paid an amount of Rs. 60,00,000/- before execution of 'agreement for sale'. Thus, after an intense persuasion, the 'agreement for sale' was executed on 14th September 2022, well about 7 months after the booking of the captioned unit.
- vi. The complainant has paid his hard-earned money and life savings in a hope to reside peacefully in his dream home and fulfilled each and every demand of the respondent that have arisen from time to time, thus till date 53% of sale consideration amounting to Rs. 60,00,000/- has been paid to the respondent for the said Unit No. B-401, Tower B, 4th Floor of 'Assotech Blith' Sector 99, Gurugram, Haryana. The complainant has made payments on the demands of the respondent and the same were duly accepted and receipts were provided against all the payments.
- vii. The possession time for handing over of the residential unit in Real Estate Project 'Assotech Blith' after obtaining the required 'OC' from the competent authority had been on or before 22.08.2023. The project had been running much behind schedule and there seems no possibility of handing over possession of the captioned unit in the near future. the respondent had failed to communicate about the status of 'occupation certificate' to the complainant till date. The fact remains that till date construction work at the site is still pending and the basic amenities like approach road, club premises etc are not available.

- viii. Since the promoter respondent has miserably failed to hand over the possession of captioned flat on its due date of possession, he is liable to pay the interest for every month of delay till handing over of the possession at the prescribed rate as envisaged under section 18(1) of the 'Real Estate (Registration & Development) Act 2016'. The delay period from the due possession date till date of filing of this complaint i.e. 05.08.2024 works out to be approximately one year and based the interest rate as prescribed under Rule 15 of the RERA Rules (i.e. SBI highest Marginal Cost of Lending + 2% 10.85% p.a. as on July, 2024) on the deposited amount (Rs 60,00,000/-), the simple interest amounts to Rs.6,51,000/-. In addition, the pendent-lite and future interest till handing over possession of the unit works out to be Rs 54,250/- per month.
- ix. The complainant had paid several visits at the Project site and noticed serious quality issues with respect to the construction carried out by the respondent till now. The flats were sold by representing that the same shall be luxurious apartment, however, all such representations, seem to have been made just to lure complainants to purchase the flats at extremely high prices. The respondent has compromised with levels of quality and are guilty of mis-selling. The respondent marketed this luxury high-end apartment, but have compromised even with basic features, designs and quality to save costs. The constructed structure is of extremely poor quality and is totally unplanned with sub-standard, low-grade and defective materials.
- x. Having failed in his efforts to get clear status of the handing-over possession of the captioned unit, the complainant was constrained to send a 'legal notice' dated 11th June 2024 through his counsel, which got delivered at the registered office of the respondent, however, the



respondent didn't even bother to reply the same. The respondent has breached the fundamental term of the contract by inordinate delaying the delivery of possession resulting in creating irreparable mental agony and harassment to the complainants besides monetary loss in investment with additional litigation cost.

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

4. The complainant has sought the following relief(s):
  - i. Direct the respondent to pay interest on the total amount of Rs.60,00,000/- paid by the complainant for the delayed period of 1 year (from due date of possession i.e., from 23.08.2023 till filling of this document i.e., 05.08.2024 at the prescribed rate of interest).
  - ii. Direct the respondent to pay monthly interest on the total amount of Rs 60,00,000/- paid by the complainant for the pendent-lite and future till handing over possession at the prescribed rate of interest.
  - iii. Direct the respondent not to charge holding charges till handing over physical possession and to pay Rs.1.0 lac as litigation cost.
5. 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:**

6. The respondent has made following submissions:
  - i. 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.

- II. In the year 2010, the Government came up with the master plan of 2030 of gurugram and proposed an expressway on the northern side of the city, known as Northern Peripheral Road (NPR), now commonly known as Dwarka Expressway. 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 launched the, residential project known as '**Assotech Blith**' situated at Sector - 99, Gurugram (hereinafter referred to as "said project") which has been conceptualized and promoted by the respondent in accordance with the license bearing no. 95 of 2011 dated 28.10.2011 from the Director, Town and Country Planning Department, Haryana (in short "DTCP, Haryana"). The building plans of the said project have been approved by the DTCP, Haryana on 01.05.2012. The project was spread over an area of 12.062 acres and consisted of 560 dwelling units in 7 towers namely, A, B, C, D, E, F, G, 23 Villas and 10 shops. Moreover, after coming into force of the Real Estate (Regulation and Development) Act, 2016, the respondent had got the subject project registered vide registration no. 83 of 2017 dated 23.08.2017. The development of the said project including civil, internal and external electrical, plumbing, firefighting, common services and all external development along with the internal development were delegated by the respondent to M/s Assotech Limited (hereinafter referred to as 'Contractor Company') vide 'Construction Contract Agreement' dated 03.04.2012.



- III. After making independent enquiries and only after being fully satisfied about the project, the complainant had approached the respondent expressing an interest in the purchase of an apartment in the said residential group housing project being developed by the respondent. It is imperative to note that the complainant had approached the respondent after making independent enquiries and duly satisfying themselves regarding the viability and suitability of the aforesaid project, as per their needs and requirements as well as the capability of the respondent to undertake the project. The complainant was keen on to booking a unit in the project of the respondent and thus, after making detailed and elaborate enquiries with regard to all aspects of the project and completely satisfying herself with every aspect of the project, the complainant proceeded to book an apartment in the said project vide application form dated 25.07.2022. In consideration of the booking amount paid by the complainant and his commitments to comply with the terms of the booking/allotment and make timely payments of demands, the respondent company allotted unit bearing no. B-401, 4<sup>th</sup> floor, Tower B having carpet area 1380.59 sq. ft. at the sale consideration of Rs. 1,18,20,000/- plus GST as applicable in the residential group housing project.
- IV. In pursuance thereof, the complainant and the respondent herein executed an allotment letter dated 27.07.2022 containing terms and conditions of the allotment which are binding on both the parties. The cost of the unit as per the allotment letter dated 27.07.2022 for super area admeasuring 2400 sq. ft. was Rs.1,18,20,000/-.
- V. Subsequently, the complainant and the respondent herein executed an agreement for sale dated 14.09.2022 containing detailed terms and conditions of the allotment which are binding on both the parties along

with the schedule of payment (payment plan) opted by the complainant under time linked payment plan. The cost of the unit as per the agreement for sale dated 14.09.2022 for Carpet area admeasuring 128.25 sq. mtrs [built-up area 178.2 sq. mtrs.] was Rs. 1,13,02,857/- plus GST, Cess or other charges/ taxes/ levies/fess, as stated in the clause 1 of the agreement for sale dated 14.09.2022.

- VI. As per clause 7.1 of the agreement for sale dated 14.09.2022, the possession was to be offered by 22.08.2023 however if the completion of the project is delayed due to the force majeure conditions then the allotted agrees that the promoter shall be entitled to the extension of time for delivery of possession of the apartment, provided that such force majeure condition are not of a nature which makes it impossible for the contract to be implemented. The complainant had made a total payment of Rs.60,00,000/- as is evident from the statement of account dated 11.02.2025.
- VII. Despite all the odds mentioned in the succeeding paragraphs of the present reply, the respondent company being a law-abiding organisation is working very hard to complete the construction of the subject project. it is pertinent to mention that the respondent promoter had completed the construction of Phase-1 of the project and had already obtained Occupation certificate in respect of the same from the Ld. DTCP, Haryana on 23.08.2023. Further, the respondent has completed the construction of the Phase-2 as well and had already applied for the occupancy certificate on 15.01.2024.
- VIII. 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. 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/-.

- IX. 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
<b>Total days Ban on construction Activities</b>				<b>74</b>

- X. 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', *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.

- XI. 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.
- XII. 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, 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.
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 basis of those undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of the Authority:**

8. 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**

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**

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:



9. 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.1 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.**

10. 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.
11. 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 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.
12. 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 Objection regarding Force Majeure.**

13. 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 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.**

14. Another objection raised by the respondent regarding delay in payment by many allottees is totally invalid because as per the payment plan (page no. 61 of the complaint) agreed between the parties 50% of the payment has to be made within 45 days of booking and rest 50% is to be paid by the allottee on offer of possession. The complainant has already paid an amount of Rs.60,00,000/- to the respondent which amounts to 53.08% of the total sale consideration of Rs.1,13,02,851/-. 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 complainant in the instant case. 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 complainant 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 complainant:**

- G.I Direct the respondent to pay interest on the total amount of Rs.60,00,000/- paid by the complainant for the delayed period of 1 year (from due date of possession i.e., from 23.08.2023 till filling of this document i.e., 05.08.2024 at the prescribed rate of interest).**
- G.II Direct the respondent to pay monthly interest on the total amount of Rs.60,00,000/- paid by the complainant for the pendent-lite and future till handing over possession at the prescribed rate of interest.**

15. The above sought relief by the complainants are taken together being inter-connected.
16. In the present complaint, the complainant 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."*



17. The flat buyer's agreement was executed between the parties. As per clause 7.1 of the agreement, the possession was to be handed over by 22.08.2023 as mentioned in the possession clause. The clause 7.1 of the buyer's agreement is reproduced below:

*Clause 7.1*

*xxxx...The promoter based on the approved plans and specifications assures to handover possession of the said Apartment on 22.08.2023 and unless there is delay or failure due to war, flood, drought, etc.*

***(Emphasis supplied)***

As mentioned in the possession clause itself, the due date for handing over of possession of the unit is 22.08.2023.

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant 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.*

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.,

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07.08.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

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. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondents are 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 7.1 of the buyer's agreement executed between the parties, the possession of the subject unit was to be delivered by 22.08.2023. The respondent has failed to handover possession of the subject unit till date. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 14.09.2022 executed between the parties. It is pertinent to mention over here that even after a passage of almost 3 years neither the construction is complete



nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that the respondent has applied for occupation certificate/part occupation certificate on 12.04.2021 but till date no occupation certificate of the tower in which the unit of the complainant is situated is obtained. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 22.08.2023 till the expiry of 2 months from the date of offer of possession plus two months after obtaining OC or handing over of possession whichever is earlier.

24. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat buyer's 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 respondents is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 22.08.2023 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.III Direct the respondent not to charge holding charges till handing over physical possession and to pay Rs.1.0 lac as litigation cost.**

- **Holding charges**

25. As per law settled by *Hon'ble Supreme Court* in *Civil Appeal Nos. 3864-3889/2020* decided on 14.12.2020, the respondent shall not charge anything from the complainant which is not the part of the buyer's





agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement.

- **Litigation cost**

26. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**H.Directions issued by the Authority:**

27. 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:

- The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e. 10.85% p.a. for every month of a delay from the due date of possession i.e., 22.08.2023 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.
- The arrears of such interest accrued from 22.08.2023 till the date of this order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order. Thereafter,

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interest for every month of delay shall also be paid by the promoter to the allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules till a valid offer of possession is made to the complainant/allottee after obtaining occupation certificate.

- iii. The complainant is directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondent shall handover the possession of the allotted unit on obtaining of occupation certificate.
- iv. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(zb) of the Act.
- v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by *Hon'ble Supreme Court* in *Civil Appeal Nos. 3864-3889/2020* decided on **14.12.2020**.

34. Complaint stands disposed of.

35. File be consigned to the Registry.

Dated: 07.08.2025

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