

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM**

Complaint No. 2859-2023

Date of Decision: 04.09.2025

Abhishek Bhatia, resident of B-4/259, Safdarjung Enclave, New Delhi-110029.

Complainant

Versus

M/s. Assotech Moonshine Urban Developers Pvt Ltd, Registered Office at 148-F, Pocket-IV, Mayur Vihar, Phase-1, Delhi-110091

Corporate office at:

House NoA-12, Sector-24, NOIDA-201301.

Respondent

APPEARANCE

For Complainant:

Mr. Kuldeep Kumar Kohli, Advocate

For Respondent:

Ms. Neha Yadav, Advocate

ORDER


1. This is a complaint filed by Mr. Abhishek Bhatia, (allottee) under section 18 (3) and 19 of the Real Estate (Regulation and Development), Act 2016 (referred to as "Act 2016"), against M/s. Assotech Moonshine Urban Developers Pvt Ltd being a promoter within the meaning of section 2 (zk) of the Act.

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2. According to complainant, he is a peace loving and law-abiding citizen of India and presently residing in Delhi, India. The representatives of the respondent-company approached him (the complainant) in January 2012 and spoke very high on the reputation of the company and delivery of the project on time. They, then handed over a brochure of the company regarding the "**Assotech Blith**" to him, which looked to be a very well-designed brochure of international standards, speaking high assurances and standards of the respondent.

3. The complainant, vide application No. 256 dated 31.05.2012, booked a flat in Tower G of the Project "**Assotech Blith**", Sector-99, measuring 1685 sq. ft, having super area @ Rs. 4972.50 per sq. ft (basic sale price) and is an allottee under section 2(d) of The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act").

4. He (complainant) was allotted unit No. G-701 admeasuring 1685 sq. ft in Tower G of the respondent company's letter dated 26.07.2012. The total sale consideration of the subject unit was Rs.98,31,788/-. The Builder's Buyer Agreement was executed between the parties on 26.07.2012. The due date of


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delivery of possession of subject unit was 26.07.2016. However, no date for offer of possession was given by the respondent-company.

5. That there occurred delay of more than 10 years on account of different reasons. The price of the unit at the time of booking was Rs. 98,31,788/- as per BBA and the price of the unit in the present time is Rs. 1,38,00,000/-. As such, there is increase in the price of the unit amounting to Rs. 39,68,212/-.

6. He (complainant) paid total amount of Rs. 90,34,800/- till the date, on which refund was claimed. He (the complainant) has invested his life savings in the said project and is dreaming of a home for himself. The company has cheated and betrayed him but also used his hard-earned money for his enjoyment. The respondent has miserably failed to live up to its obligations.

7. That due to such malafide conduct of the respondent, the complainant has suffered a huge loss by not getting the property that he had booked with the respondent. He invested his hard-earned money to buy a flat for the benefit of his family and children in time. Therefore, he is entitled to compensation for the loss incurred by him due to rate appreciation in the said property amounting to Rs.39,68,212/-.

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8. That the complainant has undergone huge harassment and mental agony and financial loss suffered by him for which he is entitled to Rs. 5,00,000/- from the respondent.
9. That the complainant is entitled to legal expenses worth Rs. 3,00,000/- incurred in pursuing the matter initially before the Hon'ble Authority and now before this Forum.
10. The respondent contested the claim of complainant by filing a written reply. It (respondent) denied all allegations made in the complaint filed by complainant. According to it, the complaint is not maintainable, and the provisions of the Act of 2016 have been misconstrued by the complainant. The complainant has no locus standi or cause of action to file present complaint.
11. It is further averred by the respondent that the complainant had previously filed a complaint No. 429 of 2021 before the Authority claiming to withdraw from the project and refund of the amount paid by him, which was allowed by the Hon'ble Authority vide its order dated 28.02.2023. The complainant failed to mention any obligation that the promoter failed to discharge in addition to the allegation that the promoter did not offer the possession of the unit within the prescribed time.

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12. That the complainant in terms of the order dated 28.02.2023 is entitled to refund of the total amount paid from the date of each payment and as such, as per the calculation sheet filed by the complainant in the execution petition, the complainant is entitled to Rs.35,42,913/- for the month of July, 2023, Rs.35,88,790/- for the month of August 2023 and Rs.36,30,228/- for the month of September 2023, there is no reason to pay compensation to the tune of Rs.36,68,212/- towards the difference in the price of the unit at the time of booking and the current price.

13. That the interest payable by the promoter already cover such increase in the price of the property. It (respondent) is not liable to pay the alleged differential amount.

14. That as per judgment of the Hon'ble Supreme Court of India in the case titled as *M/s. Newtech Promoters and Developers Private Limited vs State of Uttar Pradesh and Ors*, the allottee is entitled to compensation only u/s 18 (2) and 18(3) of the Act of 2016 but the complainant failed to mention any fault of the respondent under these sections.


15. On the basis of afore-said facts, the respondent claims that the complainant is not entitled to any compensation as prayed for, as he withdrew from the project.

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16. Both the parties filed affidavits in their evidence reaffirming their case.

17. I have heard learned counsels for both of parties and perused the record.

18. It is not in dispute that complainant by filing application dated 31.05.2012 booked a flat in Tower G of Project "Asso-tech Blith" being developed by the respondent. Latter allotted Unit No. G-701 admeasuring 1685 sq. ft. in Tower G on 26.07.2012. The total sale consideration as agreed between the parties was Rs.98,31,788/-. The respondent failed to complete the project/unit in agreed time which constrained the complainant to approach Haryana Real Estate Regulatory Authority, Gurugram (The Authority) by filing a complaint no. 429 of 2021. The Authority allowed said complaint vide order dated 28.02.2023 holding that as per agreement for sale the due date of possession was 26.07.2016 and respondent could not complete the project/unit. There has occurred delay of more than 4 years, 5 months and 26 days on the date of filing of complaint i.e. 21.01.2021. The Authority directed respondent to refund the amount paid by the complainant i.e. Rs.90,34,800/- along with


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interest at rate of 10.70% p.a. from the date of each payment till the actual date of refund of the amount.

19. Section 18 (1) of the Act of 2016 provides that 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, (b)-----, 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 or 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.

20. In this way, when promoter/respondent failed to complete project in agreed time and allottee/complainant demanded refund of the amount by exiting himself from the project, the promoter was obliged to refund the amount and also to pay compensation. The respondent in this case is thus liable to compensate the complainant.

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21. Section 72 of the Act of 2016 provides following factors, which are taken into consideration by the Adjudicating Officer while adjudging the quantum of compensation: -

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

22. Admittedly respondent received Rs.90,34,800/-, from the allottee/complainant, out of total sale consideration of Rs.98,31,788/-, same used said money but failed to deliver the subject unit causing unfair advantage to itself and consequential loss to the complainant.

23. It is contended by learned counsel for complainant that according to 'Magic bricks.com', prices of a housing unit measuring 1685 sq. ft. are about 2.15 crores i.e. at rate Rs.12759/- per sq. ft. The Housing.com mentions price of similar unit, Rs.1.85 Cr. while according to 99 acres.com, house measuring 1365 sq. ft. is valued between 1.55 Cr. to 1.91 Cr. If his client i.e. complainant, who paid

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most of sale consideration i.e. Rs.90,34,800/- out of total sale consideration of Rs.98,31,788/-, had been given possession in time, his unit would have appreciated rising its price to more than 2 Crs. Learned counsel requests to compensate his client accordingly.

24. Although these sites are not conclusive evidence about appreciation in prices in real estate sector Gurugram, a judicial notice can be taken of the fact that prices of immovable properties (may it be a plot or residential house or commercial unit), have been substantially increased from 2012 (when unit in question was allotted) till now. Even if taken at lower end, ^(on basis of several Real Estate sites) it can be presumed that prices of residential houses in Gurugram, have appreciated about 30% from date of allotment till now. 30% of amount paid by the complainant i.e. Rs.90,34,800/- comes to Rs.27,10,440/-. The complainant is thus allowed a sum of Rs.27,10,000/- (rounded up) as compensation in this regard, to be paid by the respondent.

25. Apart from same, complainant has claimed a sum of Rs.5,00,000/- as compensation for harassment, mental agony and financial loss suffered by same. Apparently when despite making payment of most of sale consideration, i.e. Rs.90,34,800/- out of total sale consideration of Rs.98,31,788/-, the respondent did not fulfil its promise to deliver the unit in time, all this caused mental

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harassment and agony to the complainant. The latter is allowed a sum of Rs.1,00,000/- on this count. Rs.5 lacs appears to be excessive.


26. The complainants further claimed legal expenses amounting Rs.3 lacs incurred by same in pursuing this matter before the Authority as well as before this Forum. This Forum cannot grant legal expenses, even if complainant paid to the counsel in pursuing his complaint before the Authority. However, it is apparent that complainant was represented by a lawyer during proceedings of this case, same is allowed a sum of Rs.50,000/- as legal expenses, to be paid by the respondent.

27. The respondent is directed to pay aforesaid amounts of compensation along with interest at rate of 10.50% per annum from the date of this order, till realization of this amount.

28. Complaint is thus disposed of.

29. File be consigned to the record room.

Announced in open court today i.e. on 04.09.2025.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.