

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

Complaint no. : 5302 of 2022
Complaint filed on : 27.07.2022
Date of decision : 08.07.2025

Radhe Shyam Aggarwal
Address: 25/139, Shakti Nagar,
Malka Ganj, Delhi-110007.

Complainant**Versus**

1. M/s Assotech Moonshine Urban Developers Pvt. Ltd. (R1)
 2. Assotech Ridge Greens Reality Pvt. Ltd. (R2)
 3. Sanjeev Srivastava (R3)
 4. Assotech Ltd. (R4)
- All addressed at:** 148 F, Pocket IV, Mayor Vihar,
Phase I, Delhi 110091.

Respondents**CORAM**

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:

Shri K.K. Kohli (Advocate)
Shri Dhruv Lamba (Advocate)

Complainant
Respondent No.1

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 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 thereunder or to the allottees as per the agreement for sale executed *inter se* parties.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, 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, Haryana
2.	Project type	Group housing project
3.	Date of allotment letter	10.12.2014 (Page no. 24 of complaint)
4.	Unit No.	C-304 on 3 rd floor (Page no. 24 of complaint)
5.	Unit area admeasuring	1365 sq. ft. (Page no. 24 of complaint)
6.	Possession clause	As per Clause 19(I) <i>The possession of the apartment shall be delivered to the allottee(s) by the company within 24 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/land authorities, etc.</i>
7.	Grace Period	As per Clause 19(II) <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 further within a grace period of six 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). 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	10.06.2017 (Due date as per clause 19(II) i.e., 10.12.2014)

		+ 06 months with grace period of 6b months) Grace period is allowed
9.	Total Sale consideration	Rs.82,71,722/- (As per schedule E on page no. 47 of complaint)
10.	Amount paid by the complainant	Rs.72,09,875/- (As per cost sheet dated 10.12.2014 on page no.47 of complaint)
11.	Occupation certificate	Not obtained (Applied for 12.04.2021)
12.	Offer of possession	Not offered

B. Facts of the complaint

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

- That the complainant initially purchased two flats admeasuring 1465 sq. ft for a total sales consideration of ₹30,00,000/- each in Group Housing Project namely "WINDSOR COURT" at Sector 78 NOIDA, UP, of Assotech Limited, a company duly incorporated under the companies Act having its Registered Office at 148 - F, Pocket 4, Mayur Vihar, Phase I, Delhi-110091.
- That an agreement for purchase of the said two flats was signed between the parties on 28.12.2010, which was signed by Shri Sanjeev Srivastava on behalf of Assotech Limited as its Managing Director. That the complainant had paid a sum of Rs. 30,00,000/- vide cheque dated 28.12.2009, 28.12.2009 and 28.12.2010 to M/s Assotech Ltd. M/s Assotech Ltd. gave an unconditional guarantee to buy back the same after 2 years at a pre-settled and predetermined amount of ₹63,50,000/- and issued the cheques for the aforementioned amount.
- That on 28.12.2012, the said amount of ₹30,00,000/- initially paid to M/s Assotech Ltd. was subsequently transferred to M/s Assotech Ridge Green Reality Pvt. Ltd. through a transfer letter dated 28.12.2012 signed by Shri Sanjeev Srivastava on behalf of Assotech Ltd. and acknowledged by M/s Assotech Ridge Greens Reality Pvt. Ltd. vide

letter dated 28.12.2012 which was again signed by Shri Sanjeev Srivastava.

- d. That on transfer of the said amount, M/s Assotech Ridge Greens Reality Private Ltd., a company's whose main promoter being Shri Sanjeev Srivastava, had initially allotted a plot of 194 sq. yds in the company's Faridabad project having agreed to have received a sum of ₹30,00,000/- vide agreement dated 28.12.2012 with an option to buy back the same after one year at a fixed rate of ₹68,09,400/- and issued a cheque dated 28.12.2013 for ₹68,09,400/- drawn on The Karur Vysya Bank Ltd.
- e. That subsequently, M/s Assotech Ridge Greens Reality Pvt. Ltd., a company's whose main promoter being Shri Sanjeev Srivastava, then allotted in lieu of the earlier plot, another plot measuring 250 sq. yds in company's same Faridabad project against the earlier payment having been received by them of a sum of Rs. 30,00,000/- on 28.02.2013 with an option to buy back the same after 16 months at a fixed rate of ₹78,30,810/- and issued a cheque dated 28.06.2014 for ₹78,30,810/- drawn on The Karur Vysya Bank Ltd. NOIDA-201301. This agreement dated 28.02.2013 was also signed by Shri Sanjeev Srivastava and so was the cheque. That on presentation of the above referred cheque to the bank, the same was dishonoured.
- f. That when M/s Assotech Ridge Greens Reality Pvt. Ltd. could not pay the amount, the complainant was called for a discussion to renegotiate the buyback amount of ₹78,30,810/- and the complainant had settled for an amount of ₹72,09,875/- in a meeting with Shri Sanjeev Srivastava.
- g. That the company then agreed to give a unit bearing no. C-304 on 3d floor in Tower C measuring 1365 sq. ft. in Sector 99, Gurugram for an

amount of ₹80,09,875/- basic cost in the project of another company namely Assotech Moonshine Urban Developers Pvt. Ltd., an Assotech Subsidiary, wherein again Mr. Sanjeev Srivastava was the main Director for which an allotment letter was signed on 10.12.2014. The amount of ₹72,09,875/- so negotiated was adjusted against this amount of ₹80,09,875/-. The balance amount payable was ₹8,00,000/- and a receipt for the same was acknowledged in the statement of account dated 10.12.2014. That a 30-page agreement was also signed by M/s Assotech Moonshine Urban Developers Private Ltd.

- h. That as per form A to H submitted on 20.02.2020 by Assotech Moonshine Urban Developers Pvt. Ltd. an Assotech Subsidiary on the RERA website Shri Sanjeev Srivastava was mentioned as the Managing Director/HOD/CEO. That the Board Resolution dated 06.05.2021 submitted before this Hon'ble Authority recently with an affidavit, has also been signed by Shri Sanjeev Srivastava on behalf of Assotech Moonshine urban Developers Pvt. Ltd. That therefore Shri Sanjeev Srivastava is the main person behind all the three companies mentioned above and when the corporate veil is lifted, it is Mr. Sanjeev Srivastava who would be found behind all the above companies. The doctrine of lifting the corporate veil allows courts to hold a company's shareholders or directors personally liable for the company's actions.
- i. That the respondent executed an allotment letter dated 10.12.2014, which was one-sided and arbitrary. The allotment letter was filled with arbitrary and one- sided clauses, all favouring the respondent and leaving the complainant at the peril of the respondent. For the delayed payment on part of the allottee interest @18% p.a. was charged under clauses 12(c) however, for the delay in possession on part of the developer, a compensation of Rs. 10/- per sq. ft. was noted to be given

as per clause 19(1) of the allotment letter. That the complainant was not kept at an equal bargaining position and was made to sign on the dotted lines of the pre-decided and pre-printed terms and conditions of the allotment letter. Such allotment/agreements have been condemned by the Hon'ble Bombay High Court in Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and Ors. SCC online Bom 9302.

- j. That under the said allotment letter, the respondent was obligated to deliver the possession of the subject unit within 24 months from the date of allotment i.e., 10.12.2014. That accordingly, calculating the due date as per Clause 19(1) of the allotment letter, the respondent was obligated to deliver the possession of the subject unit by 10.12.2016. However, the respondent has miserably failed in doing so. That even after more than 5.5 passing of the due date of possession, the construction at the project site has not been completed. That, as per the Rep-I (A-H) dated 20.02.2020 uploaded on the official website of this Authority, it can be clearly evidenced that the development of the project was only 20% done till February 2020. That no further updates have been provided by the respondent after February 2020. That it is a matter of fact that the application for getting the occupancy certificate has not been applied till date. It is pertinent to mention that the complainant has also send an email to the respondent on 20.07.2022 inquiring about the anticipated date of the issuance of OC and the delivery of possession.
- k. That as noted above, the construction of tower C is incomplete and the construction of the said tower is only 20% complete, whereas, on the other hand, the complainant has made a total payment of ₹72,09,875/- till date towards the subject unit, as is evident from the page 25 of the allotment letter showing the payment summary that out of the total

sale consideration of ₹82,71,922/-. It is submitted that the complainant has paid almost 90% of the total sale consideration (inclusive of Service tax) as and when demanded by the respondent.

- I. That additionally, it is pertinent to note that the respondent has also charged mandatory club membership charges amounting to ₹1,12,360/- as is evident from page 25 of the allotment showing the payment summary. As it is a matter of fact that the clubhouse has not been operational till date and accordingly, no amount can be demanded by the respondent under the head of club membership charges at this instance as has been held by Hon'ble NCDRC in the case of Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Limited and Ors. (03.01.2020-NCDRC) MANU/CF/0002/2020.
- m. That it is the failure of the promoter to fulfill his obligations, and responsibilities as per the allotment letter dated 10.12.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11 [4] (a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delayed possession at the prescribed rate of interest w.e.f. 10.12.2016 till the physical handover of possession as per provisions of section 18(1) of the Act read with Rule 15 of the Rules of 2017. Reliance is placed on G.V.S Sai Prasad and Ors. vs. Assotech Moonshine Urban Developers Pvt. Ltd. dt. 19.06.2018 (MANU/RR/0130/2018) with respect to the same project wherein the Authority ordered the respondent to give interest as prescribed from the date of possession as per the allotment letter till the actual date of handing over possession.
- n. That the respondent has utterly failed to fulfill its obligation to deliver the possession of the apartment in time and adhere to the contentions

of the allotment letter which has caused mental agony, harassment, and huge losses to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to provide the valid physical possession to the complainant after procuring the occupation certificate along with prescribed rate of interest on delay in handing over possession of the apartment on amount paid by the Complainant from the due date of possession of the apartment till the actual date of physical possession of the apartment.
 - b. Direct the respondent to provide a copy of occupation certificate for tower C of the project as and when made available.
 - c. Direct the respondent to refund the club membership charges as the club has not been made functional yet.
 - d. Direct the respondent not to raise demands of GST in the future demands as the due date of the offer of possession was before the incidence of GST.
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)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds by way of filing reply dated 11.08.2023 and written synopsis filed on 06.05.2025:
 - a. That 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') has been misinterpreted and misconstrued by the complainant. That the

complainant does not have any locus stand 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. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint. That this Hon'ble Authority does not have the jurisdiction to adjudicate the claim of an investor.

- b. That the complainant is an investor in M/s Assotech Limited and the complainant has never paid any money to the answering respondent and the answering respondent has never issued any allotment letter in the favour of the complainant. The alleged allotment letter, copy of which has been filed by the complainant along with his complaint has been falsely prepared by the complainant either himself or in connivance with other persons. The respondent reserves its right to take necessary criminal action against the complainant and/or his associates for preparing a false allotment letter upon receipt of the original copy of the alleged allotment letter.
- c. That after the global recession of year 2008 when the stock markets all over the world collapsed, the complainant along with his brother Mr. Vinod Aggarwal, and other family members including Mr. Sparsh Aggarwal, Ms. Ridhima Aggarwal, Ms. Anita Aggarwal, Mr. Madhur Aggarwal, started looking for investment opportunities in the real estate sector which seemed to be the safest option for investment at the time. It is pertinent to mention here that though the complainant and his family members were looking for investment opportunities in the real estate sector, however, they never wanted to become an occupier of any flat/ shop/villa, etc. and were just as looking for return on the investment.

- d. That in terms of the investment requirements of the complainant and his family members, the complainant invested a sum of Rs. 30,00,000/- between 30.12.2009 and 28.12.2010 in M/s Assotech Limited, i.e., the parent company of the respondent 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.
- e. That the respondent was incorporated on 19.08.2006 and was initially promoted by M/s 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.
- f. That in year 2010, the Government came up with the Master Plan of 2030 of Gurugram, known as 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 LL 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 share-holding of the M/s Assotech Limited was 50.01% and the share-holding 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. That the Said Project was spread over an area of 12.62 acres and consisted of 560 dwelling unit in 7 towers namely, A, B, C, D, E, F, G, 23 Villas and 10 shops.

- g. That 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 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. 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 with in a period of 42 months starting from the date of the allotment letter.
- h. 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. It is also pertinent to mention here that vide same order, the Hon'ble High Court of Delhi directed the Official Liquidator 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.

- i. 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 subject 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 subject project.
- j. That in terms of the clause 20.1 of the Construction Contract Agreement, the respondent made efforts to complete the said project by itself and by appointment of a new contractor, however, as the development of the 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, the respondent neither could undertake the development of the subject project itself nor could award the development of the subject project to any other party. 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 Vs 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, since allowing the termination of the agreement would result in the corporate death of the corporate debtor, the respondent could not terminate the construction contract agreement.

- k. 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 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 given by the contractor company to its associate/subsidiary companies and thus the Hon'ble High Court vide order dated 21.01.2019 ordered for recovery of such loan and advances even though the same were not on that day. It is pertinent to mention here that as per the audit report and in terms of the Hon'ble High Court of Delhi, the respondent was supposed to return a sum of Rs. 90 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. 90 Crores, which was to get due in the year 2032, 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.

- l. That as the whole view point of the Companies Act, 2013 and the new legislated Insolvency and Bankruptcy Code, 2016 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 maximise the cash flow of the contractor company which in turn would revive the same. 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 namely Mr. Justice N.K. Mody (Retd.) to supervise the three projects namely, Celesta Tower, Sector - 44, Noida, Windsor Court, Sector - 78 and The Nest, Crossing Republic, Ghaziabad developed by the contractor company 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 subject project was again interrupted.
- m. That 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. That in addition to the aforesaid orders, the development of the subject project took another massive hit on account of the COVID - 19 pandemic which resulted in a nation wide lockdown starting from 25.03.2020. 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 various States of country and various other stakeholder and concluded that the situation of covid shall be considered as a situation of 'Force Majeure', and suo moto extended the construction period of all projects by 9 months. The respondent and the contractor company started the construction work of the subject project in terms of the guidelines issued by the Government of India from time to time.

- n. That upon development of the above-mentioned three projects in terms of the orders of the Hon'ble High Court of Delhi, the contractor company again started the development of the subject project in full swing by investing fresh capital of its own, and again started raising demands as per the allotment letter. That upon revival of the project, the respondent started the construction in full swing and applied for the issuance of the Occupation Certificate on 12.04.2021, 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 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 OC.

- o. 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 subject project and has applied for the issuance of Occupation Certificate before the concerned authority. 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.

COMPLAINANT IS NOT AN ALLOTTEE & DOES NOT FALL WITHIN THE AMBIT OF SECTION 2(D) OF THE ACT OF 2016

- p. That the respondent herein had launched a real estate project in 2012, the development contract of which was awarded to M/s Assotech Ltd. In consonance with the development contract, M/s Assotech Ltd. had started the construction work in the project. During this time, the company M/s Assotech Ltd. was entering into agreements with

investors/financers for investing in the company i.e., M/s Assotech Ltd. One such investor was the complainant herein. As per information with the respondent, the complainant had invested some monies with the company, M/s Assotech Ltd. It is stated that all monies were paid by the complainant into the account of the said M/s Assotech Ltd. and the complainant was not a purchaser of units in the subject project. It is emphatically stated that no monies were paid to the respondent towards purchase of the units. Moreover, neither had M/s Assotech Limited paid any money to the respondent nor has it asked the Respondent to allot/transfer the unit to the complainant. It is further submitted that the allotment letters are unilateral communications and are not an agreement with consideration. In short, the said allotment letter and agreement for sale under the Act of 2016 cannot be treated at parity. Thus, no right accrues in favour of the complainant herein.

- q. That the complainant is not a home buyer/ allottee and does not come within the ambit of section 2(d) of the Act of 2016 since the complainant had invested their monies with M/s Assotech Ltd for the sole purpose of financial gains. It is necessary to mention here that vide order dated 08.02.2016 passed by Hon'ble Delhi High Court, M/s Assotech Limited went into provisional liquidation. In pursuance of order passed by the Hon'ble Delhi High Court, a forensic audit was carried out by one Rajput Jain & Associates (Chartered Accountants) and as per the said report, the complainant herein was reflected as an unsecured creditor with respect to the amount claimed to have been paid by the complainant in the present complaint. Hence, in the event the present complaint is allowed, the complainant/investor would be permitted to skip the queue of the creditors of M/s Assotech Limited which is against the principles of natural justice. Further, same is

evident from the "Scope of Work" of the said report (Page 5 of the Report) wherein it is emphatically made clear under 'Part A'- 'Verification of Amount Payable' stating Due Amount towards unsecured creditors, and Advances from investors payable by the Company (Assotech Ltd.) in Prov. Liquidation. The scope of the Forensic Audit is reproduced below for the ready reference:

"Scope of Work

The scope of Scrutiny & Verification Report of in the case of M/s Assotech Limited was as per initial appointment letter and subsequently extended by Official Liquidator during the meeting of stakeholder along with secured creditors. The following areas have been agreed to be covered in the Scope of work:

Part A

Ø Verification of Amount receivables

- Verification of amount receivables from the individual home buyers of company in Prov. liquidation.
- Verification of Amount pertaining to Loan & Advances and other receivables of Company in Prov. liquidation.

Ø Verification of Amount Payable

- Due Amount towards Secured creditors and statutory dues Payable by Company in Prov. liquidation.
- Due Amount towards Unsecured creditors, and Advances from investors Payable by Company in Prov. liquidation.

Review of usage of funds by the Company in Prov. liquidation on the basis of the Audited Financials Statement."

- r. That further as per clause 2.6 "Advance received from Investors" at page 14 of the said report, it is explicitly stated Assotech Ltd. had received an amount of ₹ 79.53 crores from numerous investors during years 2010-2015 as the investment towards three projects situated in Noida namely, Windsor Court, The Nest and Celeste Tower. Further as per page A-22 of the report, a total 112 investors are stated to be unsettled investors with whom no settlement agreements have been entered with as on 30.09.2018 and under Exhibit A(9) broadly categorises the amount invested by them and outstanding balance payable to them by M/s Assotech Limited. It is of grave importance to mention here that complainant's name is mentioned at S.no. 79 of

Exhibit A(9) stating that an amount of ₹30,00,000/- was invested by the complainant and ₹ 30,00,000/- is stated to be outstanding balance payable by M/s Assotech Ltd. In view of the above, it is abundantly clear that the complainant has invested money with the M/s Assotech Ltd. and the respondent herein has not received a single penny from the complainant, thus the present complaint deserves to be dismissed outrightly.

COMPLAINANT IS NOT A HOME-BUYER

- s. That it is submitted that the complainant herein is engaged in the business of real estate. That the complainant is not genuine consumer and has invested his monies in M/s Assotech Ltd. purely to make profits and gains and the said amount was to be paid back to him which is immensely clear from the forensic audit report of M/s Assotech Ltd. It is necessary to mention here that neither allotment was the intention of the present complainant nor the agreements were done for the purpose of allotment rather the agreements were acting as mere collaterals for the financial transactions done inter se M/s Assotech Ltd. and the present complainant. Also, the said transaction between M/s Assotech Ltd. and the present complainant is not a transaction between a developer/ promoter and the allottee and rather it is a transaction of financial nature. Hence, the complainant cannot be treated as genuine allottee and therefore the captioned complaint is liable to be dismissed at threshold since this Hon'ble Authority does not have jurisdiction to adjudicate upon the matters of this nature wherein the money has been invested in one company for the purpose of financial gains. It is necessary to mention here that this Hon'ble Authority on similar grounds had dismissed bunch matters titled as *Dalmia Family Office Trust Vs Almonds Infrabuild Pvt. Ltd.*

The relevant part of the order of the lead matter bearing no. **CR/4589/2021** is reproduced below for the ready reference:

"15. The authority observes that the term "allottee" has been defined under section 2(d) of the Act and the same is reproduced as under:

"2. In this Act, unless the context otherwise requires- (d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".

*16. The Authority is of the considered view that the above definition shall be read keeping in view the intention of the legislature behind the enactment of the Act of 2016. **The present matter prima facie does not seem to be a dispute between an allottee or a promoter or between a consumer or a developer but on the contrary, it arises out of a loan/financing transaction wherein the complainant has advanced certain amount of money to the respondent as a loan and in order to secure the said advance monies, has been allotted certain units as guarantee.** The above facts are already admitted by both the parties. The Authority is of the considered view that the object behind the enactment of the Act of 2016 was to ensure that the sale of real estate project is carried in an efficient and transparent manner along with protecting the interest of the consumers in the real estate sector. The intent of the legislature in bringing the Act of 2016 into existence has been enshrined in the preamble of the Act itself which states as under: -*

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

17. Hence, the definition of the term allottee as defined under the Act of 2016 has to be interpreted in terms of a conjoint reading of Section 2(d) and the preamble/objects as stated above. In the present case, the complainant is admittedly an entity which has acted in the capacity of a financier for the real estate project where the primary intention was never to purchase any apartment. The allotment of the apartments was only to ensure the repayment of loan as a guarantee and is purely incidental in nature. Therefore, the Authority is of the

view that the complainant is not entitled to relief under the ambit of the Act of 2016. It is further observed that if the Authority engages itself in resolving such financial disputes, then it would be encumbered with a plethora of similar complaints and the true objective of carrying out the purposes of the Act, 2016 would be defeated."

- t. That it is pertinent to mention here that the Hon'ble Appellate Tribunal in Appeal bearing no. **373 of 2022** titled as **EMAAR India Ltd. Vs. Initia Solutions Pvt. Ltd.** decided on 21.02.2025 has observed that the Hon'ble Authority is meant only to deal with the disputes between the allottee/consumers and the promoters who fall strictly within the purview of the enactment and has no jurisdiction over the disputes where there is lack of transparency and are not out of the realm of suspicion (transaction without justifiable consideration). The relevant paras of the order dated 21.02.2025 are reproduced as under for ready reference:

*"18. A perusal of the above shows that enactment was made to ensure sale of plots, apartments and buildings in an efficient and transparent manner and to protect the interests of consumers in the real estate sector and to establish an adjudicatory mechanism for the purpose. **The record as well as the facts of the instant case show that for allotments in question neither any brochure was issued nor any competitive process was followed.** It is not a case where general public was made aware of the proposed allotments and was allowed to participate in it. **The transactions appear to be selective contracts between MGF and the complainant. The transactions were also without any justifiable consideration.** Serious doubts would thus arise about the legality of such contracts which were either bereft of any consideration or much below the prevailing price. If the veil is lifted, it transpires that such allotments were made when the parent company was on the verge of split which actually happened in 2018. **A question would thus arise whether such transactions were transparent and protected the interest of the consumers, the answer necessarily has to be in the negative.***

19. There is nothing on record to show that any transparent process was followed and that the allottee-companies fall within the term 'consumer'. Each transaction was inter-se between the contracting parties without any outside participation. The regulatory mechanism envisaged by the Act would not be attracted as the transfers are based primarily on an agreement entered between the parties in the year 2013, stated to have been

superseded by nomination/transfer letter dated 30.12.2015 in favour of respondent entities.

20. As regards MOU, same incorporates an arbitration clause therein. It appears that parties to MOU were aware that in case of dispute, they needed to have an efficacious remedy. It is not clear whether the parties ever explored the possibility of invoking arbitration clause. Two allotments were made in favour of Padampur Nirman Pvt. Ltd. at Rs.1/- consideration, even payment of which is doubtful. There is nothing on record to show that any price was charged for these transfers rendering the transactions without any consideration. There can be no hesitation in holding that possibility of such transactions being dubious cannot be ruled out. It is inexplicable how transfers of such valuable units was made practically without any consideration. **In case, it was a commercial transaction between two parties, it is expected that the same would be for some justifiable consideration. In the absence of same, it has to be held that such deals lack transparency and are not out of the realm of suspicion. Besides, entire dispute appears to be between promoters who after split started this proxy litigation. They embroiled the regulatory mechanism ('the Authority') in a dispute over which it had no jurisdiction.**

....
22. Though there is nothing to show that transactions were carried out in a transparent manner, this Tribunal does not intend to express any final opinion on their validity as they do not fall within the ambit of the Act. **The complainant, being entity of MGFD, cannot be treated as 'allottee'. Co-promoters invoked jurisdiction of the Authority through its entities after de-merger took place in the year 2018. Thereafter, two companies came into being Emaar India Limited and MGFD. It is inexplicable as to how such a dispute can be said to be a dispute between consumer and promoter.** 23. Besides, there appears to be substance in the plea of the appellant that the contract, which is not on 'arm's-length basis' and not on normal commercial terms is not sustainable. However, this Tribunal refrains from expressing any final opinion on this issue as well, as it is not directly seized thereof. **This apart, regulatory mechanism enacted by the Act is meant only to deal with the disputes between the allottee/consumers and the promoters who fall strictly within the purview of the enactment; which is not the situation in the instant case."**

- u. That the Hon'ble Appellate Tribunal in the aforesaid order had observed that the real estate transactions in question were neither transparent nor followed any competitive or public process. Allotments were made selectively, without brochures, and without

proper consideration—raising serious doubts about their legality and transparency. These were internal dealings between related parties (within MGFD) rather than genuine consumer transactions. After the 2018 corporate split into Emaar India Ltd. and MGFD, proxy litigation was initiated by co-promoters, attempting to misuse the regulatory mechanism under the real estate law, which is designed to protect actual consumers. Since these transactions do not involve "allottees" or fall under the consumer-promoter framework envisaged by the Act, the Hon'ble Appellate Tribunal concluded that the matter lies outside its jurisdiction and refrains from ruling on the validity of the contracts. Further, this Hon'ble Authority has dismissed the complaint bearing no. 532 of 2022 titled as **Golden Chariot Recreation Pvt. Ltd. V/s M/s Assotech Moonshine Urban Developers Pvt. Ltd.** in open court on 20.05.2025 on similar grounds.

NO AMOUNT HAS BEEN PAID TO THE RESPONDENT COMPANY TILL DATE

- v. That it is a matter of fact and record that the complainant has not paid even a single penny to the respondent company's account (i.e., M/s Assotech Moonshine Urban Developers Pvt. Ltd.) as sale consideration of the subject unit and the same is evident from the present written submissions. It is necessary to mention here that the complainant in its own complaint has admitted that he has paid amount to the tune of Rs.30,00,000/- to one M/s Assotech Ltd. which went into provisional liquidation vide orders of Hon'ble Delhi High Court dated 18.02.2016. Since, no money has been paid by the Complainant to the present Respondent namely, M/s Assotech Moonshine Urban Developers Pvt. Ltd. and therefore, no right accrues in favour of the complainant as against the respondent in view of section 18 of the Act.

w. That the respondent prays before the Hon'ble Authority that the present complaint may be dismissed with costs in accordance with Rule 28(2)(i)(ii) of the Rules of 2017 as the same is not maintainable before this Hon'ble Authority in the light of the facts, circumstances and citations mentioned above. In the alternative, and without prejudice to the foregoing submissions, it is respectfully submitted that, in the event this Hon'ble Authority is inclined to grant any relief towards interest for delayed possession, such relief, if any, may kindly be confined and restricted solely to the extent of the amount actually paid by the complainant, i.e., Rs. 30,00,000/- (Rupees Thirty Lakhs only), which amount stands duly admitted by the complainant in its own complaint filed before this Hon'ble Authority.

E. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

9. 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) The promoter shall-

(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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

10. 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 complainant at a later stage.
11. The counsel for the complainant on 21.01.2025 had filed an application for impleadment of M/s Assotech Ridge Greens Reality Pvt. Ltd., Mr. Sanjeev Srivastava and M/s Assotech Ltd. as the necessary party to the present complaint. The counsel for the respondent objected the same and argued that the matter has been pending since 2022 and the complainant is just trying to stretch the matter by not filing the complaint against the necessary parties. However, this Authority keeping in view the principles of natural justice allowed the impleadment of M/s Assotech Ridge Greens Reality Pvt. Ltd., Mr. Sanjeev Srivastava and M/s Assotech Ltd. being the necessary parties to the present complaint.

F. Findings of the authority:

12. Briefly stated the facts of the complaint are that the complainant initially booked two flats in the project "Windsor Court", project of Assotech Ltd. and paid Rs.30,00,000/-, with a buy back assurance. The said amount was subsequently transferred to M/s Assotech Ridge Greens Reality Pvt. Ltd.

and ultimately was transferred to M/s Assotech Moonshine Urban Developers Pvt. Ltd. leading to the allotment of Unit No.C-304 in Assotech Blith, Sector 99, Gurugram, Haryana against the adjusted amount of Rs.72,09,875/-. It is further stated that despite paying such a huge amount, the possession was not delivered within the stipulated time and the construction of the project has not been completed till dated. Thus, the respondent has failed to deliver possession as per the agreed terms of the allotment letter amounting to violation of section 11(4)(a) of the Act. Hence, the complainant is entitled to delayed possession charges as per section 18(1) of the Act.

13. On the contrary, the respondent is contending that the present complaint is not maintainable as the complainant is not an "allottee" under Section 2(d) of the Act, but merely an investor who had invested Rs. 30,00,000/- in M/s Assotech Ltd. purely for financial returns and not for the purpose of acquiring a residential unit. It is emphasized that no money was paid by the complainant to the respondent company. Further, a forensic audit conducted pursuant to the Delhi High Court's liquidation proceedings of M/s Assotech Ltd. classifies the complainant as an unsecured creditor. It is further submitted that the matter appears to be a financial arrangement lacking transparency, giving rise to serious suspicion as no amount was ever paid to the respondent company, thus the present matter is outside the jurisdiction of this Authority, which is meant to adjudicate disputes between genuine consumers and promoters. Relying on precedents including *Dalmia Family Office Trust Vs. Almonds Infrabuild Pvt. Ltd.*, *Emaar India Ltd. Vs. Initia Solutions Pvt. Ltd.*, and *Golden Chariot Recreation Pvt. Ltd. Vs. Assotech Moonshine Urban Developers Pvt. Ltd.*, the respondent prays for dismissal of the complaint with costs, asserting that no rights under the Act can arise in the complainant's favour.

14. In view of the factual matrix of the present case, the question posed before the authority is whether the present complaint is maintainable before this Authority?
15. The complainant continued with allotments/transactions with the three different entities without any protest or demur. The initial transaction took place in the year 2010 and final transaction took place in the year 2014. Complainant has approached this authority after eight years of allotment of the present unit. The complainant had the option to proceed against the respondent at the appropriate time but chose to continue with the above transactions. The authority also observes that the trail of transactions between the different entities of the respondents is suspicious in nature and needs to be adjudicated in a more elaborate manner in a court of competent jurisdiction. This authority not being a court of evidence or a civil court is not competent to handle such matters. In view of the above the complaint is dismissed with liberty to the complainant to approach the Court of competent jurisdiction in this regard.
16. In view of the foregoing reasons, the Authority finds no merit in the present complaint and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.
17. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2025