

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

Complaint no.: 4495 of 2024
Date of decision:- 06.08.2025

1. Bindu Shukla
2. S.N Shukla

Both R/o: - E-15, Sector-1, HEC Colony,
Dhurwa, Ranchi, Jharkhand-834004..

Complainants

Versus

M/s. Assotech Moonshine Urban Development
Pvt. Ltd.

Regd. office: 148-F, Pocket-IV, Mayor Vihar,
Phase-I, Delhi-110091.

Respondent**CORAM:**

Ashok Sangwan

Member**APPEARANCE:**

Birender Singh Chauhan(Advocate)

Complainants

Dhruv Lamba

(Advocate)

Respondent

ORDER

1. The present complaint dated 25.09.2024 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Assotech Blith, Sector-99, Dhankot, Gurugram.
2.	Nature of the project	Commercial shop
3.	Acres	12.062 acres
4.	DTCP License No.	95 of 2011 dated 28.10.2011 valid upto 27.10.2024
5.	Name of licensee	1. Uppal Housing Pvt. Ltd. 2. Moonshine Urban Developers Pvt Ltd
6.	HARERA Registered	Registered
7.	RERA Registration No.	83 of 2017 dated 23.08.2017 valid upto 22.08.2023
8.	Allotment cum	10.02.2018

	Builder Agreement	Buyer (As on page no. 13 of complaint)
9.	Shop no.	S-5 (As on page no. 14 of complaint)
10.	Saleable area	265 sq.ft. (As on page no. 15 of complaint)
11.	Possession clause	<p>Clause 7.</p> <p>POSSESSION OF THE COMMERCIAL SHOP</p> <p>7.1 Schedule for possession of the said Commercial Shop:</p> <p><i>The Promoter assures to handover possession of the Commercial Shop in a period of One Year with further Six month grace period ("Commitment Period") from the date of execution of this Agreement subject to receipt of timely payment of installments by the Allottee and unless there is delay due to "force majeure".</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 23 of complaint)</i></p>
12.	Due date of possession	<p>10.08.2019</p> <p>[Calculated one year from the date of execution of the agreement + 6 months grace period]</p>
13.	Sale consideration	<p>Rs.38,80,000/-</p> <p>(As on page no. 17 of complaint)</p>

14.	Total amount paid by the complainant	Rs. 43,00,870/-
15.	Occupation certificate	28.08.2023
16.	Offer of possession	05.12.2023 (As on page no. 42 of complaint)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:
 - I. That the complainants were approached by the representatives of the builder for buying a commercial space in the project situated at Gurugram. During offer of the sale, the representatives also assured about the ROI as lease rent from the fixed period onward till possession as per a specified payment Plan.
 - II. Having bonafide trust on the representation and assurances of the sale representatives of the builder, the complainant agreed to buy the said shop no.5 at @12% Assured Return Payment Plan as per Schedule C vide Allotment Cum Builder Buyer Agreement (dated 10.02.2018).
 - III. The assured ROI was to be paid by the builder/associate company wef. 01/04/2018, till possession of the Shop No. S-5. The builder issued five cheques for six month advance Assured Return @12% as per the payment plan and later stopped issuing cheque for further assured return from 01.10.2018.
 - IV. That the complainant trusting on the bonafide information shown in the documents was explained by the representatives of the builder.



The complainant has also seen the site and verified about the land details of project etc., at her own level. Based on facts and information supplied by the representatives of the builders very diligently and trusted on the offer of the builder.

- V. The complainant paid the full amount of the SHOP S-5 as per the payment plan of Assured return, along with necessary govt taxes. Now as the builder has failed to deliver the possession of the said unit as per the terms and conditions of the agreement and also did not pay any amount towards the assured ROI as lease rent as was promised and was the contingent condition of selling the said unit since 01.10.2018.
- VI. The builder has neither given offer of possession of the unit i.e., S-5, and nor paying the assured ROI @38,500/-pm from 01.10.2018. The complainant has paid the full and entire amount and nothing is left to be paid by the complainant, the same has been acknowledged by the builder in BBA under clause 7.1.
- VII. That the complainant having received an offer of possession letter dated 05.12.2023 approached the builder. To the utter dismay the possession of shop was not ready and further the builder demanded another money before processing offer of possession and never came to the conclusion of Assured return for last more than 05 year and delay in possession charges.
- VIII. That the complainant tried all way out by her personal visit and meeting the ARs of the builder many times. However, it yielded no results except empty promises that all issues will be resolved soon.
- IX. That the complainant sent a legal notice dated 10.09.2024 by the lawyers but got no reply from the builder till date and of no avail

and hence, the complainant has no other option left but to approach the Authority in the interest of the justice.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Direct the respondent to handover immediate possession of the unit alongwith promised ROI@Rs.38,500/- p.m from 01.10.2018 as per Assured Return Schedule C , Payment Plan as per BBA dated 10.02.2018, till the date of possession as was agreed and promised.
- ii. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions.

- I. That the complainants are not "Allottees" but are Investors who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.
- II. That this Authority has no jurisdiction to deal with the cases pertaining to assured return. That had the legislature intended the jurisdiction of the Act to extend to assured return arrangements, the same would have been incorporated. It is a settled principle that what cannot be attained directly, cannot be attained indirectly and thus, the present complaint need to be dismissed at the outset.
- III. That the implications of enactment of BUDS Act read with the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014, resulted in making the assured return/committed return and similar schemes as unregulated schemes as being within the definition of "Deposit". Section 2 (4) defines the term "Deposit" and

the *Explanation* to the Section 2(4) further expands the definition of the "*Deposit*" in respect of Company, to have same meaning as defined within the Companies Act, 2013. Section 2 (31) of the Companies Act, 2013 further expands the definition of the term "*deposit*" and Legislature while defining the term "*deposit*" intentionally used the term *prescribed* so as to further clarify and connect the same to be read with Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014.

- IV. That further the Section 2(17) of the Banning of Unregulated Deposit Schemes Act, 2019 defines the "Unregulated Deposit Scheme" and thus the 'Assured Return Scheme proposed and floated by the respondents has become infructuous due to operation of law, thus the relief prayed for in the present complaint cannot survive due to operation of law.
- V. That as per Section 3 of the BUDS Act all Unregulated Deposit Scheme have been strictly banned and deposit takers such as builders, cannot, directly or indirectly promote, operate, issue any advertisements soliciting participation or enrolment in; or accept deposit. Thus the section 3 of the BUDS Act, makes the Assured Return Schemes, of the builders and promoter, illegal and punishable under law. Further as per the Securities Exchange Board of India Act, 1992 (hereinafter referred as SEBI Act) Collective Investment Schemes as defined under Section 11 AA can only be run and operated by a registered person/Company. Hence, the assured return scheme of the Respondent Company has become illegal by the operation of law and the Respondent Company cannot be made to run a scheme which has become infructuous by law. Thus, the

present complaint deserves to be dismissed at the very outset, without wasting precious time of this Authority.

- VI. That there is no clause with regard to the payment of assured return neither in the booking application form nor in the allotment/BBA executed inter se parties. Hence, the complainants have mercilessly failed to show as to vide which clause/agreement, the respondent was obligated to pay assured return to the complainants. The onus to prove the same lies on the complainants and thus the Authority cannot move forward to grant relief of Assured Return to the complainants since there was no agreement inter se parties vide which the respondent has agreed to pay assured return to the complainants.
- VII. The objective of the Act of 2016 is to regulate the real estate sector in terms of the development of the project in accordance with the law and to provide relief of interest, compensation or refund to the allottee in case of violation of the provisions of the Act of 2016. The objective of the Act of 2016 is very clear to regulate the Real Estate Sector and form balance amongst the promoter, allottee and agent. However, the entire Act of 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the builder and the buyer.
- VIII. That the Act 2016 provides for three kinds of remedies available to the complainant in the case of any dispute arisen between a builder and buyer with respect to development of the project. Such remedy is provided under Section 18 of the RERA Act, 2016 for violation of any provision of the Act. The said remedies are of "Refund" in case the allottee wants to withdraw from the project and the other being

"interest for delay of every month" in case the allottee wants to continue in the project and the last one is for "compensation" for the loss occurred to the allottee, if any, However, nowhere in the said provision the Authority has been empowered with the jurisdiction to grant Assured Returns or any other arrangement between the parties with respect to investment and returns. The relief of payment of assured returns as claimed in the present complaint is beyond the jurisdiction of the Authority.

- IX. That in the year 2010, the respondent launched the, residential project known as 'Assotech Blith' situated at Sector - 99, Gurugram which has been conceptualized and promoted by the respondent. That the development of the said Project including Civil, Internal and External Electrical, Plumbing, Fire Fighting, Common services and all external development along with the internal development were delegated by the respondent to M/s Assotech Limited vide 'Construction Contract Agreement' dated 03.04.2012.
- X. That the complainants approached the respondent expressing an interest in the purchase of a commercial unit in the residential group housing project being developed by the respondent known as "Assotech Blith" situated in Sector -99, Gurugram. The complainants 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.
- XI. That as per clause 7.1 of the allotment letter, the possession was to be offered within period of one year with further six month grace

period from the date of execution of the agreement subject to 'Force Majeure'.

- XII. That the said project was going at a very great pace and was right at schedule, however, on 08.02.2016 in **Co. PET. 357/2015 and CA 1550/2015 (for appointment of PL)** titled as **Manmohan Singh Bhalla Vs Assotech Limited**, the Hon'ble Delhi High Court appointed the Official Liquidator (OL) attached to this court as Provisional Liquidator and further enjoined the respondent company and its Directors, agents and servants from transferring, selling or creating any third party interest in its assets. Furthermore, the OL was directed to seal the premises in which the assets, book of accounts, documents and other records of the respondent company are stored after preparing an inventory on that behalf. It is pertinent to mention here that the present respondent namely M/s Assotech Moonshine Urban Developers Pvt. Ltd. is a subsidiary of M/s Assotech Limited which went into liquidation and wherein PL was appointed by the above-mentioned order of Hon'ble Delhi High Court. It is imperative to note that after the above-mentioned order of the Hon'ble Delhi High Court, the respondent's offices were sealed and they couldn't continue with the construction of the subject project namely "Assotech Blith" since the affairs of the parent company who was also the construction company of the subject project went into the hands of the PL. In simple words, the Respondent couldn't keep the pace of construction in the subject project as due to initiation of Liquidation proceedings, the affairs of the company went into the hands of the PL and the respondent lost control over the affairs of the company along with its assets and

hence, were in no position to complete the subject project in a time bound manner.

- XIII. That after a passage of 3 years, it was on the basis of the status report filed by OL wherein it was stated that *"..Keeping in mind the fact that the Company (in liqn.) is a real estate company, revival is a better option as compared to the option of Liquidation"* and the action plan submitted by the ex-management that the Hon'ble Delhi High Court vide its order dated 21.01.2019 approved the revival plan and subsequently appointed a retired judge of High Court as the Court Commissioner to supervise the completion of the pending projects. In view of the aforementioned, it was at this time i.e., after 3 long years that the affairs of the company along with its assets came into the hands of the Ex-Management and it is after that only, the construction of the subject project had been started by the respondent since in the intervening period of 3 years no construction work was carried out by the PL at the site of the subject project. Thus, the time period from 08.02.2016 till 11.02.2019 shall be excluded while calculating the due date of handing over of possession since this period falls under the definition of Force Majeure and is squarely covered under clause 7.1 of the allotment letter/ buyer's agreement.
- XIV. 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	08.11.2019	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
Total days Ban on construction Activities				74

- XV. That 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 25.03.2020. 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 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.

- XVI. That the respondent had applied for the electricity connection vide Application no. 025188385774, application type (new connection permanent) in the DHBVNL and thereafter, on 14.08.2017 an agreement was executed between the applicant company AMUDPL and HVPNL.
- XVII. That thereafter, on 15.09.2017, as per the demand for the aforesaid electricity connection an amount of Rs.27,54,500/- was deposited by the respondent in DHBVNL for the aforesaid purpose. Though the respondent has undertaken all the actions that the respondent was supposed to take, however, the said NOC never came to be issued by DHBVNL as the 33KVA sub-station from which the project of the respondent was to be supplied with the electricity connection was yet to be developed by DHBVNL and in order to do so the DHBVNL department kept the NOC pending till the time the said sub-station was yet to be constructed and become operational. In view of the same the respondent could not obtain the NOC and consequently, could not apply for the Occupation Certificate with DTCP. Upon construction of the Sub-station, on 11.02.2022, the letter for approval of drawing from the office of Chief Electrical Inspector Govt. of Haryana was received vide memo number 1166. The required work was completed as per the direction at site by the respondent immediately thereof.

- XVIII. That after completing the necessary changes as per the direction officers of DBVHNL, the respondent applied for grant of Occupation Certificate to DTCP Haryana, Chandigarh on 23.08.2022. That thereafter, the electricity supply was finally given by DHBVNL on 30.12.2022 i.e., 5 years delay timeline in spite of completing all the formality the reason behind that for not given the electricity connection due to non-construction of the sub-station by DVHNL. That the above failure to obtain the Occupation Certificate was beyond the control of the appellant and is squarely covered under clause 7.1 of the allotment letter.
- XIX. That the construction of the tower in which the unit in question is situated is complete and the respondent had applied for Occupation Certificate in respect of the same on 23.08.2022. However, the same was granted by the competent authority on 23.08.2023 i.e., after a lapse of one year. However, the grant of occupation certificate is the prerogative of the concerned statutory authority, and the respondent does not exercise any control or influence over the same.
- XX. That subsequently, the complainants were offered possession of the unit through letter of offer of possession dated 05.12.2023. The complainants were called upon to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. However, the complainants approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the Allotment letter/ Buyer's Agreement.

XXI. That there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. 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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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 complainants at a later stage.

F. Findings on objections raised by the respondent

F.I Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, institution of liquidation proceedings against the contractor company i.e. M/s. Athena Limited and appointment of official liquidator, shortage of labour and stoppage of work due to lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking

into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 7 of the Allotment cum Builder Buyer Agreement dated 10.02.2018, which comes out to be 10.08.2019. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

12. The respondent further alleged that due to litigation proceedings going on against the contractor company, 'Assotech Limited" in the Delhi High Court vide Co. petition no. 357 of 2015 in the mid of year 2015, process of provisional liquidation has been initiated against Assotech Limited. Due to appointment of O.L., office of respondent company was sealed, and various restrictions were levied, due to which construction of the project got affected.
13. But it is pertinent to note here that neither the complainants are party to such contract nor the liquidation proceedings are binding on them. Hence, there was no privity of contract between the contractor company and the complainants. Moreover, there is no order placed on record by the respondent-company, wherein the period of liquidation proceedings has been declared as zero- period. Hence, the plea of the

respondent on account of delay in completion due to initiation of liquidation proceeding is not tenable.

14. As far as the delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020*** dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

15. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over within one year from date of execution of allotment along with grace period of 6 months which comes out to be 10.08.2019 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding complainants being "Investors" and not "Allottees".

16. The respondent submitted that the complainants are investors and not allottees, thus are not entitled to the protection of the Act and hence the present complaint is not maintainable.
17. The Authority observes that the Act is enacted to protect the interest of the consumers of the real estate sector. It is a settled principle of interpretation that the preamble is an introduction of a statute and it states the main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under Section 31 of the Act, any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are allottees/buyers and they have paid total price of **Rs.43,00,870/-** towards the purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of the term allottee under the Act, the same is reproduced below for ready reference:
- " 2(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 includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but doesnot include a person to whom such plot, apartment or building, as the case may be, is given on rent."*
18. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter cum Buyer's Agreement

executed between the respondent and the complainants, it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts And anr.* Has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of the promoter that the complainants-allottees being investor is not entitled to protection of this Act stands rejected.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover immediate possession of the unit alongwith promised ROI@Rs.38,500/- p.m from 01.10.2018 as per Assured Return Schedule C , Payment Plan as per BBA dated 10.02.2018, till the date of possession as was agreed and promised.

G.II Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.

19. The complainants are seeking monthly assured return on investment at the rate of Rs.38,500/- per month with effect from 01.10.2018 till the date of possession alongwith delayed payment interest on the same @24% till the date of payment and possession. The complainant is also seeking possession of the unit alongwith interest for every month of delay at the prescribed rate of interest.

20. The respondent has submitted that there is no clause with regard to the payment of assured return neither in the booking application form nor

in the Allotment cum Buyer's Agreement and the complainants have failed to show as to vide which clause/agreement, the respondent was obligated to pay assured return to the complainants.

21. The Authority is of the view that the Allotment Letter-cum-Buyer's Agreement dated 10.02.2018 does not contain any clause pertaining to a Fixed Assured Return. Furthermore, there is no other document on record evidencing any such promise made by the respondent to the complainants. The complainants' claim for Assured Return appears to be based solely on the Payment Plan annexed to the aforesaid Allotment Letter-cum-Buyer's Agreement. As per the said Payment plan, the complainants were to make payment in the following stages:

- a. On Booking-Rs.3,75,725/-*
- b. Within 45 days of booking-Rs.34,74,275/-*
- c. At the time of Possession-Rs.30,000/-*

22. Upon perusal of the aforesaid Payment Plan, it is evident that there is no mention of any Assured Return to be provided to the complainants, nor are there any terms and conditions indicating such an assurance. Accordingly, the Authority is of the view that no promise of Assured Returns was made by the respondent to the complainants. Hence, the relief sought on this ground is hereby declined.

23. In the present complaint, the complainants intend to continue with the project and are seeking possession and delay possession charges along with interest on the amount paid. 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.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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."

24. Clause 7 of the allotment cum Buyer's Agreement provides for handing over of possession and is reproduced below:

Clause 7

POSSESSION OF THE COMMERCIAL SHOP

7.1 Schedule for possession of the said Commercial Shop

The Promoter assures to handover possession of the Commercial Shop in a period of One Year with further Six month grace period ("Commitment Period") from the date of execution of this Agreement subject to receipt of timely payment of installments by the Allottee and unless there is delay due to "force majeure".

25. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of one year from the date of execution of the said agreement along with grace period of 6 months. Since in the present matter the allotment letter incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage. The due date of possession comes out to be 10.08.2019.

26. **Admissibility of delay possession charges at prescribed rate of interest:** 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."

27. 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.
28. 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., 06.08.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
29. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

30. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

31. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is 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 of the allotment cum Buyer's Agreement executed between the parties on 10.02.2018, the possession of the subject apartment was to be delivered within one year from the date of execution of the letter dated 10.02.2018. Due date of possession is calculated from the date of execution of allotment letter i.e., 10.02.2018. The period of one year expired on 10.02.2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 10.08.2019. The respondent has offered the possession of the subject apartment to the complainants on 05.12.2023 after receiving the occupation certificate from the concerned authorities on 28.08.2023, which is much delayed than the due date of possession of the unit. Accordingly, it is the failure of the respondent/promoter to fulfil its

obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

32. The complainants have requested that delayed possession charges be granted till the unit is officially handed over, as it is not yet ready for occupancy. The Authority after taking into consideration the documents and the submissions made by the complainants, is of the view that the Occupation Certificate in respect of the subject unit has been granted to the respondent by the competent authorities on 28.08.2023, which construes that the unit is fit for occupation.
33. 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 was granted by the competent authority on 28.08.2023. The respondent offered the possession of the unit in question to the complainants only on 05.12.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.
34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 13(1) of the Act on the part of the

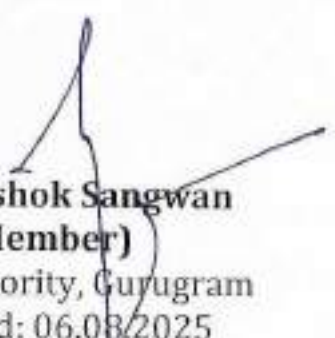
respondent is established. As such the complainants is entitled to delayed possession at prescribed rate of interest i.e., 11.10% p.a. from the due date of possession 10.08.2019 till the offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, whichever is earlier, as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act. The respondent is directed to handover physical possession of the unit to the complainants within a period of 30 days from the date of this order, if not already handed over.

H. Directions of the authority

35. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 10.08.2019 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent is directed to handover possession of the unit within 30 days of this order, if not already handed over.

- iv. The rate of interest chargeable from the allottees/complainants by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - v. The respondent is directed to execute the conveyance deed in favor of the complainants within a period of sixty days from the date of this order.
 - vi. The respondent shall not charge anything from the complainants which is not the part of the agreement.
36. Complaint stands disposed of.
37. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 06.08/2025