

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

**Complaint No. 3789-2023
Date of Decision: 30.07.2025**

**Nirmal Gupta, H. No. 19, Bahubali Enclave, Karkardooma,
Delhi.**

Complainant

Versus

**Assotech Moonshine Urban Developers Pvt. Ltd., 148F, Pocket
IV, Mayapuri Vihar, Phase-I, Delhi-110091.**

Respondent

APPEARANCE

**For Complainant:
For Respondent**

**Mr. Harshit Batra, Advocate.
Mr. Vaibhav Kataria, Advocate.
(Defence of respondent was struck
off vide order dated 11.09.24).**

ORDER

1. This is a complaint filed by Ms. Nirmal Gupta, (allottee) under section 31 and 71 of the Real Estate (Regulation and Development), Act 2016 (referred to as "Act 2016"), against Assotech Moonshine Urban Developers Pvt. Ltd. (promoter).
2. According to complainant, she is a peace loving and law-abiding citizen of India and presently residing in Delhi, India.

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He, in the utmost bonafide and believing the respondent, purchased an Apartment and is an allottee under section 2(d) of the Real Estate Regulatory Act, 2016 (hereinafter referred to as the "Act").

3. That the respondent is a Company incorporated under the Companies Act, 1956, having its office at H-127, Sector-63, Gautam Budh Nagar, Noida, Uttar Pradesh-201301 and claims to be one of the leading Real Estate Companies. It (respondent) is engaged in the construction and development of the real estate project under the name and style of "**Assotech-Blith**" (hereinafter referred to as the "Project") and is a promoter within the meaning of section 2 (zk) of the Act.

4. That in the year 2012, the respondent gave advertisements and raised tall claims in respect of the said project. Relying on the assurances, representations and warranties by the respondent and its shrewd marketing gimmick, she (complainant) was lured by the respondent and invested in the Project. She (complainant) booked a unit in the project of the respondent on 02.04.2012. A flat No.703 at 7th Floor in Tower F admeasuring 1685 sq. ft super area (unit) in the said project ("**Assotech-Blith**") was allotted to her vide allotment letter dated 20.07.2012.

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5. That she (complainant) relying on false commitments and assurances of the respondent, paid a sum of Rs.80,05,114/- which was about 92% of the total sales consideration of the unit of Rs. 87,17,118/-. The conduct of the respondent has been utterly malafide since the very beginning. The respondent has miserably failed to live up to its obligations.
6. That as per clauses 19.1 and 57 of the agreement, she (complainant) was entitled to get possession of the Unit within 42 months from the date of allotment. The due date for offer of possession of the unit was 20.01.2016. However, no possession has been offered to the complainant when she has already fulfilled all her obligations under the agreement. A delay of more than 7 years in handing over of possession of the unit has occurred.
7. That due to such malafide conduct of the respondent, she (complainant) is unable to put her unit on rent and hence had suffered the rental loss for almost 7 years.
8. That the complainant has undergone huge harassment and mental agony and financial loss due to the deficiency in services by the respondent.

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9. That as per the prevailing rates in and around the project "**Assotech Blith**", the monthly rent of the unit admeasuring 1685 sq. ft is Rs.40,000/- per month. Consequently, the complainant suffered a loss of Rs.40,000/- per month from last 7 years, which is still continuous. BBA was executed between the complainant and respondent, and it was under obligation to hand over the possession of said unit till 20.07.2016 but failed. Due to delivery having not been made in time, she (complainant) lost profit and same suffered mental and physical harassment.
10. That the respondent had illegally added an exorbitant amount of Rs.60,000/- in the name of Club Membership charges in the total sales price of the unit. It is submitted that the club membership charges were taken from the complainant when the complainant has no knowledge about the existence of club.
11. That aggrieved by the conduct of the respondent, she (complainant) approached Ld. Authority by filing complaint No. 1136/2020, which has been decided in her favour on 20.07.2022. The respondent has been directed to pay interest at the prescribed rate i.e. 9.80% per annum for every month of delay on the amount paid by the complainant from due date of possession till the date of

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actual handing over of possession or till offer of possession plus 2 months after obtaining occupation certificate, whichever is earlier.

The respondent failed to comply with the order dated 20.07.2022 of Ld. Authority.

12. Due to non-compliance of the order dated 20.07.2022 of the Hon'ble Authority, the complainant was forced to file an execution application no. 7941 of 2022, pending adjudication in the Court of Adjudicating Officer, against the respondent.

13. Citing all this, the complainant has prayed for compensation, as follows: -

- i) To direct the respondent to Rs.33,60,000/- (Rs.40,000 for 7 years) to complainant on account of loss of rentals due to deficiency in service of the respondent by not offering timely possession of the unit to the complainant.
- ii) To direct the respondent to pay Rs.5,00,000/- to complainant for mental harassment and agony faced by the complainant on account of illegally cancelling the unit while the adjudication against the unit was pending.
- iii) To direct the respondent to compensate the complainant Rs. 60,000/- which was illegally charged by the respondent on account of club membership.
- iv) To direct the respondent to compensate the complainant with Rs.2,00,000/- for depriving physical possession of the unit to the complainant.
- v) To direct the respondent to pay compensation to the complainant of Rs.37,62,816/- for financial loss suffered by the complainant in paying EMI to the bank without possession of the unit.
- vi) To direct the respondent to award the legal expenses for the present complaint Rs. 2,00,000/- to the complainant.

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- vii) To direct the respondent to award the legal expenses Rs.2,00,000/- to the complainant for complaint filed in the HRERA Authority for Delay Possession Charges in complaint No. 1100 of 2020.
- viii) To direct the respondent to award the legal expenses Rs. 2,00,000/- to the complainant for complaint filed in the HRERA Authority for delay possession charges in complaint No. 1100 of 2020.
- ix) To direct the respondent to pay Rs.2,00,000/- as compensation for financial and mental harassment faced by the complainant in going through hardship of litigation.
- x) To pass any other order as the Hon 'Adjudicating Officer may deem fit.

14. The respondent contested the claim of complainant by filing a written reply. It is submitted that the respondent denies all allegations and averments made and contentions raised by the complainant in the complaint. The present complaint is not maintainable in the law or on the facts. It is further submitted that since the complainant has only taken the permission for the relief of litigation charges to the tune of Rs.1,00,000/- from the authority, the complainant herein cannot increase its compensation amount sought from the Hon'ble Officer any further than the amount for which permission was sought from the Hon'ble Authority.

15. That the respondent never asked the complainant to take any loan and thus just because the complainant was paying loan EMIs is no ground for entitlement of compensation.

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15. Contending all this, the respondent has prayed to dismiss the complaint.
16. No affidavit was filed by respondent, despite direction and defence of respondent was struck off vide order dated 11.09.2024.
17. Complainant filed affidavit in his evidence reaffirming her case.
18. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.
19. Admittedly, complaint No. 1136/2020 filed by present complainant seeking delay possession compensation has already been allowed by the Authority vide order dated 20.07.2022. Complainant has been granted interest at rate 9.80% per annum for every month of delay on the amount paid by her from due date of possession i.e. 20.07.2016 till handing over the actual physical possession. I find weight in the plea of respondent claiming that award of interest was in the form of compensation.
20. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building, -

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(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (b)-----, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation, in the manner as provided under this Act.**

21. It is worth mentioning here that complainant did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of 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 handing over of possession, at such rate as may be prescribed. Rule 15 (1) of The Haryana Real Estate (Regulation and Development) Rules 2017 makes it clear that for the purpose of proviso to section 12, section 18 and sub section 4 and sub section 7 of section 19 "interest at the rate prescribed" shall be the State Bank of India higher than marginal cost of landing rate plus 2%. Thus, the provision of


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interest is in the form of compensation to the buyer when the promoter fails to complete the project in agreed time. The parliament did not intend to provide compensation separately as in case of refund of the amount described above.

22. In upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra"** Appeal No. 70 of 2023 decided on 20.04.2023-----;

"13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

23. When complainant has already been allowed delayed possession compensation by the Authority for same cause of action, there is no reason to allow separate compensation for the delay in

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completion of construction by the promoter. Complaint in hands is thus dismissed.

24. File be consigned to the record room.

Announced in open court today i.e. on 30.07.2025.

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