

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

Complaint no. : 4991 of 2024  
Date of filing : 14.10.2024  
Date of decision : 04.07.2025

M/s Assotech Moonshine Urban Developers Pvt. Ltd.  
**Address:** 105, Pankaj Tower, 1<sup>st</sup> Floor, LSC-VI,  
Mayur Vihar Phase – 1, New Delhi- 110091.

**Complainant/  
Promoter**

Versus

1. Parminder Kaur
2. Jaswinder Kaur

**Both R/o:** BB 12E, Janakpuri, New Delhi- 110058.

**Respondents/  
Allottees**

**CORAM:**

Shri Arun Kumar

**Chairman**

**APPEARANCE**

Shri Dhruv Lamba (Advocate)

On behalf of complainant

Shri Devender Kejriwal (Advocate)

On behalf of respondents

**ORDER**

1. The present complaint has been filed by the complainant/promoter 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 sections 19(6) of the Act whereby the allottee is obligated to make necessary payments in the manner and within time as specified in the agreement for sale.

**A. Project and unit related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the respondents, date of proposed handing over the

possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Assotech Blith", Sector 99, Gurugram
2.	Nature of the project	Group housing colony
3.	Project area	12.062 acres
4.	DTCP License	95 of 2011 dated 28.10.2011
5.	HRERA registered/ not registered	<b>Registered</b> Vide no. 83 of 2017 dated 23.08.2017 valid upto 22.08.2023
6.	Date of Allotment letter	11.09.2012 (page no. 30 of the complaint)
7.	Unit no.	F-902, 9 <sup>th</sup> floor (page no. 44 of the complaint)
8.	Super Area	1685 sq. ft. (page no. 44 of the complaint)
9.	Possession clause	19. i. The possession of the apartment shall be delivered to the Allottee(s) by the Company, within <b>42 months from the date of allotment</b> subject to force Majeure, circumstances, regular and timely payments, by the intending Allottee(s), availability of building material, change of laws by Government/Local Authorities etc.
10.	Due date of delivery of possession	11.03.2016 [Calculated from the date of allotment i.e. 11.09.2012]
11.	Basic Sale Consideration	Rs. 73,11,215/- (As per payment plan on page no. 44 of complaint)
12.	Total consideration	Rs. 85,90,090/- (As per payment plan on page no. 44 of complaint)

13.	Total amount paid by the complainant	Rs. 31,96,927/- (as per ledger at page no. 47 of complaint)
14.	Occupation Certificate	28.08.2023 (page no. 45 of complaint)
15.	Reminder for payment	24.05.2024, 17.08.2024
16.	Cancellation of flat	04.09.2024 (Page no. 53 of complaint)
17.	Offer of possession	Not on records

### B. Facts of the complaint

3. The complainant/promoter has made following submissions in the complaint:
  - i. That the complainant launched the residential project known as 'Assotech Blith', Sector - 99, Gurugram. The respondents in order to buy a property in the upcoming part of Gurgaon, had approached the complainant after making detailed and elaborate enquiries with regard to all aspects of the said project.
  - ii. That the respondents were provisionally allotted an apartment no. F - 902 located on the 9<sup>th</sup> floor of Tower - F of the said project admeasuring 1685 sq. ft. vide allotment letter dated 11.09.2012 for the total sale consideration of Rs. 85,90,090/-. The basic selling price is Rs. 73,11,215/-.
  - iii. That in terms of clause 11 of the allotment letter reproduced above and sub-section 6 of section 19 of The Real Estate (Regulation and Development) Act, 2016, the respondents were liable to make the necessary payments in the manner and within the time as specified in the agreement.
  - iv. That the respondents chose construction linked plan and were supposed to make the payment as per schedule F of the allotment letter.

The demands were raised in terms of the payment plan provided in the allotment letter, however the respondents failed to make the payment as per the payment plan and till date, the respondents have only made the payment of Rs. 31,96,927/-. The occupation certificate of the unit of the allottees has been received and the respondents are liable to pay a sum of Rs. 85,90,090/ - which was due and payable.

- v. That the respondents on various occasions failed in making the payment to the complainant in terms of the allotment letter and were a defaulter since the very beginning of the allotment. The complainant sent various reminder letters to the respondents, thereby asking the respondents to make the payment towards the sales consideration in terms of the allotment letter, however, even upon receiving the same, the respondents failed to make the payments.
- vi. That when the respondents failed to make the payment in terms of the allotment letter even after receiving the reminder notices the complainant having no other option, in terms of the function and duty conferred upon the complainant by sub-section 5 of section 11 of The Real Estate (Regulation and Development) Act, 2016 read with clause 12(a) of the allotment letter, were compelled to cancel the unit of the respondents vide letter dated 04.09.2024.
- vii. That in addition to the cancellation of the unit, vide letter dated 04.09.2024, the complainant has sought the copy of all the original documents currently in the possession of the respondents so that the complainant can refund the amount paid by the respondents to the complainant.
- viii. That the letter dated 04.09.2024 was delivered to the respondents on 09.09.2024, however, the respondents have failed to handover the original documents till date.

- ix. That the respondents have miserably failed to comply with its contractual obligations qua the Project. Also, miserably failed to adhere with the Real Estate (Regulation and Development) Act, 2016 and rules & regulations made thereunder.

**C. Relief sought by the complainant/promoter**

4. The complainant has filed the present complaint for seeking following reliefs:
- Direct the respondents to furnish their bank account details so as to enable the complainant to refund the amount received.
  - Direct the respondents to return the original allotment letter, payment receipts, etc., to the complainant.
5. On the date of hearing, the authority explained to the respondents-allottees about the contravention as alleged to have been committed in relation to section 19(6), (7) & (10) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondents**

6. The respondents have contested the complaint on the following grounds:
- That the present complaint has been preferred by the complainant by concealing material & relevant facts, circumstances and documents which are apparent from the bare perusal of the complaint itself and contrary to the actual & true facts of the case.
  - That the complaint under reply is liable to be dismissed on the sole ground that the alleged letters dated 14.05.2022, 24.05.2022 and 17.08.2024 on the basis of which the captioned complaint is based in question is itself is surrounded by suspicious circumstances and view



of fact that the said letters were never ever received by the respondents named herein above.

- iii. The delivery of the said letters is evidently manipulated, as there are no such persons available there who are shown to have taken delivery of the said postal articles and these were not delivered at either the address or to the addressee/s.
- iv. That the respondents have invested their life long savings for the purchase of a dream home but the said dreams of the respondents were completely shattered when the respondents after getting the allotment of the said flat on 11.09.2012 learned that the complainant had not received the occupancy certificate for the said tower in which the flat of the respondents was situated.
- v. The complainant finally received the occupancy certificate for the said tower in which the respondents were allotted the flat only on 28.08.2023 i.e. almost after the lapse of more than 10 years. Despite the non-receipt of the said occupancy certificate, the respondents continued to make payments keeping their hopes alive to own a residential apartment but all the efforts of the respondents have went in vain and if the present complaint of the complainant is allowed it shall cause an irreparable loss and injury to the respondents and it would cause a wrongful gain to the complainant herein and hence the complaint under reply is liable to be dismissed on this sole ground leave apart other grounds.
- vi. That the complainant has not approached the Hon'ble Authority with clean hands and has concealed and suppressed the true material facts from this Hon'ble Authority.
- vii. That in the present complaint the complainant has in a very clever manner concealed the fact that complainant had received the

occupancy certificate with respect to the tower in which the residential apartment of the respondents is located only on 28.03.2023 whereas in accordance to the clause no. 57 of the said allotment letter dated 11.09.2012 the said residential apartment was to be delivered to the allottee i.e. the respondents herein within a period of 42 months from the execution of the aforesaid allotment letter dated 11.09.2012 i.e. in and around the months of March - April 2016 which clearly reflects the fact that it is the complainant which has acted in a devious manner and it is the complainant who has failed to abide by the terms and conditions of its own allotment letter thereby rendering the said allotment letter in admissible under the law.

- viii. That the complainant has in their captioned complaint before this Hon'ble Authority for the reasons best known to them have concealed the consent letter dated 10.11.2021 arrived at between the complainant & the respondents and the subsequent acceptance of the same by the complainant as demonstrated by the conduct of the complainant.
- ix. The complainant has in their captioned complaint before this Hon'ble Authority for the reasons best known to them have concealed the various reminder letters dated 19.01.2023, 18.04.2023, 17.05.2023, 05.06.2023, 17.10.2023, 12.07.2024 and 13.08.2024 issued by the respondent no. 1 to the complainant and in fact has not even bothered to reply to the same. From the bare perusal of the aforesaid letters, it would be crystal clear that the respondents have time and again reiterated that the respondents were ready and willing to pay the balance amount upon delivery of the said residential apartment to the respondent's alongwith the occupancy certificate of the project. However the complainant despite the receipt of the aforesaid communications driven by its ulterior motive to cheat and defraud the

innocent home buyer like the respondents have failed to act upon the same.

- x. That the complaint of the complainant is based on documentary evidence such as the ledger account of the respondents which is neither admissible nor tenable in the eyes of law as from the bare perusal of the same the said ledger is for the period 01.04.2012 to 31.03.2017 whereas the captioned complaint was filed by the complainant in the year 2024 which makes the fact crystal clear that the complainant has concealed relevant and material particulars from this Hon'ble Authority and hence the captioned complaint of the complainant is liable to be dismissed on account of concealment of facts in the interest of justice.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. 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 completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**



10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of the allottee as per section 19 of the Act leaving aside compensation which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

**F. Finding on the relief sought by the complainant/promoter**

**F.I Direct the respondents to furnish their bank account details so as to enable the complainant to refund the amount received.**

**F.II Direct the respondents to return the original allotment letter, payment receipts, etc., to the complainant.**

11. The above mentioned reliefs are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
12. In the present complaint, the respondents/allottees booked a unit in the project of complainant/promoter namely, Assotech Blith, situated at sector 99, Gurugram. The respondents/allottees were allotted a unit bearing no. F-902, 9<sup>th</sup> floor in Tower F admeasuring 1685 sq. ft. vide allotment letter dated 11.09.2012. The total sale consideration was Rs. 85,90,090/- and the respondents/allottees has made a payment of Rs. 31,96,927/- against the same in all.
13. The complainant/promoter has filed the present complaint and stated that the respondents/allottees have failed to make payments. Due to non-payment it sent various reminders but the respondents/allottees does not fulfil their obligation to pay and therefore, the unit of the respondents/allottees is cancelled vide letter dated 04.09.2024. Now hereby seeking the relief to issue direction to the respondents/allottees to furnish their bank account details for refund of the paid up amount and to return the copy of original allotment letter, payment receipts etc. to the complainant/promoter.

14. The plea of the respondents/allottees is otherwise and stated that the demand/reminder letters which the complainant/promoter has issued was never ever received by them. Moreover, the consent letter dated 10.11.2021 was executed between the parties due to which they did not make payments. The respondents/allottees further stated that payments were also not made as the complainant/ promoter has not received the occupation certificate.

Now the question before the authority is whether the cancellation issued vide letter dated 04.09.2024 is valid or not.

15. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the allotment letter was executed between the complainant and respondents on 11.09.2012. The sale consideration of the unit was Rs. 85,90,090/- and the respondents/allottees have made a payment of Rs. 31,96,927/- against the same in all. As per the payment plan annexed as Schedule E in the allotment letter dated 11.09.2012 at page 44 of the complaint, the respondents/allottees was required to make final payment on the possession. The respondents/allottees has taken the plea that they withheld payment on the ground that construction was not fully completed. However, this contention is not sustainable in light of the material available on record. The complainant/promoter has obtained the Occupation Certificate (OC) from the competent authority on 28.08.2023, which conclusively establishes that construction of the project has been duly completed.
16. Accordingly, in terms of the payment schedule agreed upon by the parties and the fact of completion evidenced by the OC, it was incumbent upon the respondents/allottees to honour the demand and make payment as

per the agreed terms. The failure to do so amounts to a breach of contractual obligations.

17. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee's are under obligation to make payments towards consideration of allotted unit as per allotment letter dated 11.09.2012. The complainant/promoter issued reminders dated 24.05.2024, 17.08.2024 for making payment for outstanding dues as per payment plan. Despite issuance of aforesaid reminders, the respondents/allottees has failed to take possession and clearing the outstanding dues. Therefore, the complainant/promoter finally cancelled the unit vide letter dated 04.09.2024.
18. With respect to the contention raised by the respondents/allottees regarding the consent letter, the Authority is of the considered view that the said document does not constitute a valid and binding agreement between the parties as the same has not been duly executed and lacks the signature of the respondents. Furthermore, the plea taken by the respondents/allottees that no reminders were served upon them is devoid of merit, in view of the fact that the complainant/promoter has placed on record documentary evidence in the form of postal receipts and delivery acknowledgments thereby substantiating that requisite notices/reminders were duly dispatched and delivered.
19. Thus, the cancellation in respect of the subject unit is valid as the respondents/allottees have violated the provision of section 19(6) & (7) of Act of 2016 by defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the respondents/allottees after certain deductions as prescribed under law.

20. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Ors. VS. Sarah C. Urs., (2015) 4 SCC 136*, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 *Ramesh Malhotra VS. Emaar MGF Land Limited* (decided on 29.06.2020) and *Mr. Saurav Sanyal VS. M/s IREO Private Limited* (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as *Jayant Singhal and Anr. VS. M3M India Limited* decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

**"5. AMOUNT OF EARNEST MONEY**

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money **shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be** in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

21. Also, Hon'ble Apex Court in *Civil Appeal no.3334 of 2023* titled as *Godrej Projects Development Limited Versus Anil Karlekar* decided on



03.02.2025 has held that 10% of BSP is reasonable amount which is liable to be forfeited as earnest money.

22. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the complainant/promoter can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the complainant/promoter is directed to refund the amount received from the respondents/allottees after deducting 10% of the basic sale consideration and return the remaining amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of termination/cancellation 04.09.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
23. The respondents/allottees are directed to furnish their bank account details to the complainant/promoter so as to enable the complainant/promoter to process the refund of the amount paid by the respondents/allottees within a period of 30 days of this order. Further the respondents/allottees are also directed to return all the original documents pertaining to the subject unit to the complainant/promoter within a period of 30 days after realization of the refundable amount.


**G. Directions of the authority:**

24. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:

- i. The respondents/allottees are directed to furnish their bank account details to the complainant/promoter so as to enable the complainant/promoter to process the refund of the amount paid by the respondents/allottees within a period of 30 days of this order. Thereafter the complainant-promoter is directed to refund the amount deposited by the respondents/allottees amounting to Rs.31,96,927/- after deducting 10% of the basic sale consideration i.e., Rs.73,11,215/- being earnest money along with an interest @11.10% on the refundable amount, from the date of termination/cancellation 04.09.2024 till the actual date of refund of the amount.
- ii. A period of 90 days is given to the complainant-promoter to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondents/allottees are further directed to return all the original documents pertaining to the subject unit to the complainant/promoter within a period of 30 days after realization of the refundable amount.

25. Complaint stands disposed of.

26. File be consigned to registry.



**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.07.2025