

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

**Complaint no.:** 3752 of 2024  
**Date of decision:-** 20.01.2026

1. Ajay Kumar Gupta  
2. Vishal Gupta  
**Both R/o:** - E-415, SFS Flats, Sector-18,  
Rohini, Delhi .

**Complainants**

Versus

M/s. Assotech Moonshine Urban Development  
Pvt. Ltd.  
**Regd. office:** 148-F, Pocket-IV, Mayor Vihar,  
Phase-I, Delhi-110091.

**Respondent**

**CORAM:**

Shri. Arun Kumar  
Shri. Phool Singh Saini

**Chairman  
Member**

**APPEARANCE:**

Harshit Batra (Advocate)  
Dhruv Lamba (Advocate)

**Complainants  
Respondent**

**ORDER**

1. The present complaint dated 07.08.2024 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:

S. No.	Particulars	Details
1.	Name of the project	Assotech Blith, Sector-99, Gurgaon
2.	Project type	Group housing project
3.	RERA registered/ not registered	Registered vide registration no. 83 of 2017 dated 23.08.2017 <b>Note: Registration Lapsed</b>
4.	Application form dated	07.08.2012 (As on page no. 26 of complaint)
5.	Date of allotment letter	13.10.2012 (As on page no. 35 of complaint)
6.	Unit no.	G-403, Type-3Bhk on 4 <sup>th</sup> floor (As on page no. 35 of complaint)
7.	Unit area admeasuring	1685 sq. ft. [Super Area] (As on page no. 35 of complaint)

8.	Buyer's Agreement	Not executed
9.	Possession clause	<p>As per <b>Clause 19(I)</b>,</p> <p><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 the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc.</i></p> <p>(As on page no. 40 of complaint)</p>
10.	Grace period	<p>As per <b>Clause 19(II)</b>,</p> <p><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 <b>further within a grace period of six months</b>, 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 installments 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></p> <p>(As on page no. 40 of complaint)</p>
11.	Due date of possession	<p><b>13.10.2016</b></p> <p>(Due date as per clause 19(I) i.e.; 13.04.2016 + grace period of 6 months)</p> <p>Grace- period is allowed</p>
12.	Total Sale consideration	<p>Rs.98,31,788/-</p> <p>(As per payment schedule at page</p>

		no. 55 of complaint)
13.	Amount paid by the complainant	Rs.37,57,097/- (As per customer ledger dated 30.04.2024 on page no. 89 of complaint)
14.	Occupation certificate	Not obtained [Note: Status checked from the website of TCP]
15.	Offer of possession	Not offered
16.	Consent letter given by complainant to sell the unit	21.07.2021 (As on page no. 88 of complaint)
17.	Withdrawal of consent letter by the complainant vide email dated	31.01.2022 (As on page no. 91 of complaint)
18.	Amount refunded by the respondent	Rs.5,00,000/- (Alleged by the complaint in the complaint. However, no documents annexed)

**B. Facts of the complaint:**

3. The complainants made the following submissions in the complaint:
  - I. That the complainants relying on the assurances, representations and warranties of the respondent, booked an Apartment no. G-403, 4<sup>th</sup> Floor, admeasuring 1685 sq. fts. of Super area in the project vide application dated 07.08.2012. Thereafter, the complainants and respondent executed Allotment Letter on 13.10.2012 elaborately defining the terms of allotment.

- II. That Clause 10 of the Application form and Clause 19 (II) of the Allotment Letter clearly stipulates that the possession of the plot is to be delivered within 48 months from the date of allotment i.e., 15.09.2012 with grace period of 6 months. Thus, the due date possession including the grace period comes out to be 13.10.2016.

The relevant clauses are reiterated as under:

**Clause 10 of the Application form**

*The construction of the Apartment is likely to be completed by the end of Forty -two months from the date of issuance of allotment letter excluding a grace period of six months subject however, to force majeure, circumstances, regular and timely payments of installments by the intending Allottee(s), availability of building material, change of laws by Governmental/ local authorities etc. No claim by way of damage, compensation shall lie against the Company in case of delay in handing over of the possession on account of the aforesaid reasons or any other reasons beyond the control of the Company.*

**Clause 19(II) of the Allotment Letter**

*The possession of the apartment shall be delivered to the Allottee (s) by the Company within 42 (Forty two) 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/Local Authorities etc. The construction shall be deemed to be complete on obtaining the occupation certificate by the Company from the DTCP. I No claim by way of damage, compensation shall lie against the Company in case of delay in handing over of the possession on account of delay in obtaining the occupation certificate or any other reasons beyond the control of the Company.*

- III. That a pre-printed draft of a completely unilateral and arbitrary allotment agreement containing one-sided terms were shared by the respondent. The complainants were not permitted to any alteration/ addition/amendment in the agreement and was threatened with the forfeiture of amount and cancellation of the unit. The complainants had no option but to sign the dotted line of the allotment letter.
- IV. That the unfair conduct of the respondent companies can be gauged from the absolute obligation on the allottee to pay and in failure to

do so threatened with cancellation of the unit and forfeiture of the paid amount.

- V. That the arbitrariness and unfairness of the Allotment t can be derived from Clauses 12(a), 12(c) and 19(II) wherein the respondent is not obligated to raise send demands/reminders and in case of any non-payment the unit can be cancelled along with forfeiture of amount. That further in case respondent does not cancel the unit, then will charge interest @18% compounded quarterly. Whereas as per the Clause 19(II), in the case of delay in completion of the project, the complainant was entitled to get a compensation of meagre amount of @ Rs. 10/- per sq. ft. every month of delay beyond 48 (42+6) months.
- VI. That the present agreement and other documents, etc., completely falls under the above definition of "unfair contracts" and the conduct of the respondents causing the complainant to execute such unfair agreement falls within the definition of "Unfair Practices" as defined under Section 7 of the RERA Act, 2016 and Section 2(47) of the Consumer Protection Act, 2019.
- VII. That the complainants chose a "Construction linked plan" as per the Schedule F of the allotment letter. The complainant was bound to complete the construction by 25.07.2016 as evident from the REP - I A to H form of the project having registration no. 83 Of 2017.
- VIII. That the registration of the project has lapsed but till date the respondent has failed to complete the construction. That the respondent has raised demands without reaching respective milestones and despite numerous requests by the complainants failed to give any update on the status of the project.

- IX. That since the construction of the project was not as per schedule of payment, the complainants were left with no option but to stop the payment which was being illegally demanded by the respondent.
- X. That in view of the above, the complainants cannot be expected to keep on making the payments against the unit. That the complainant has made a total payment of Rs.37,57,097/-.
- XI. That the project construction is not yet completed even after almost 12 years of booking of the unit and the Occupation Certificate has not yet been received for the said project. That no Occupation Certificate has been attained or application has been made even after more than 7 years of the passing of the projected date of completion/date of obtaining the CC.
- XII. That the delay in the construction of the project is intentional and solely due to the deliberate negligence and deficiency on the part of the respondents. The delay of 9 years is no way reasonable and no reason can be attributed to such delay except the wilful and deliberate negligence and ignorance of the respondent.
- XIII. That the respondent shall not be allowed to take benefit of his own wrong and the illegal cancellation of the complainant's unit shall be set aside.
- XIV. That owing to these circumstances the complainant made a visit to the respondent and requested for the status of the project. The respondent misguided the complainant and informed that the Company is in extremely poor financial situation and at the verge of bankruptcy. The respondent further informed that there will no more construction at the project and in case the complainant wants

- their money back they shall authorise the respondent to sell off their unit through which the respondent will try to return their money.
- XV. That the respondent is not in the process of Bankruptcy, however, the sister concern company of the respondent namely Assotech Ltd is in the process of winding up. That believing the false information of the respondent agreed to their suggestion. The respondent arbitrarily taking the advantage of the complainant tricked them into signing the consent letter dated 11.07.2021 containing ambiguous terms. That on the face of it is evident that the one sided and vague terms of consent letter states that the complainant will have to return the original BBA to the respondent, however, the money of the complainant will be returned only in 6 months from the date the respondent finds a buyer of the unit. That the respondent assured the complainant that they will soon find a buyer and return the money.
- XVI. That it came to the knowledge of the complainants that the respondent had misrepresented in order to misappropriate the property of the complainant. Thereafter, the complainant withdrew the Consent Letter vide email dated 31.01.2022. However, much to the shock of the complainant, the respondent returned a basic amount of Rs.5,00,000/- in the account of the complainant and started harassing the complainants for the BBA. Respondent to illegally misuse the consent of the complainants sent money in the account of the complainant without having due approval.
- XVII. That the complainant personally went to the offices of the respondent and requested the respondent that the consent to sell the unit is withdrawn and the complainant is willing to return

Rs.7,50,000/- as paid by the respondent. The representatives of the respondent assured the complainant that the complainants need not return the credited amount and the same can be adjusted at the demand raised at offer of possession.

XVIII. That without prejudice to the rights of the complainant, the complainant is ready and willing to pay the balance amount towards the unit after adjustment of the Delayed possession charges (DPC) by the respondent.

**C. Relief sought by the complainants:**

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

- i. Direct the respondent to provide the valid physical possession with complete specifications as per the Buyer's Agreement.
- ii. Direct the respondent to give delay possession charges @ MCLR +2% from the due date of offer of possession till the actual handing over of physical possession.
- iii. Direct the respondent to take on record the consent withdrawn letter.
- iv. Direct the respondents not to raise any illegal demands which are not agreed to between the parties in the Allotment Letter dated 15.09.2012.
- v. Adjust the remaining amount payable by the complainants against the Delayed possession charges.
- vi. Direct the respondents to execute the Conveyance Deed.

**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 the respondent allotted unit bearing no.G-403, 4th floor, Tower G having super area 1685 sq. ft. at the rate of Rs.4972.50/- per sq. ft. of Super Area in the residential group housing project. In pursuance thereof, the complainants and the respondent executed an Allotment Letter dated 13.10.2012 containing detailed terms and conditions of the allotment which are binding on both the parties along with the schedule of payment (payment plan) opted by the complainants under Construction Linked payment Plan.
- III. That the cost of the unit was Rs.98,31,788/- plus other charges, as stated in the schedule of payment. As per clause 19(i) & 19(ii) of the allotment letter, the possession was to be offered within period of 42 months from the date of allotment with further six months grace period subject to Force Majeure' and subject to timely payments by the allottees of the project.
- IV. That as per clause 19 of the Allotment Letter, the respondent proposed to handover possession of the subject apartment within 42 months plus grace period of 6 month from the date of allotment letter dated 13.10.2012 subject to certain conditions. Thus, the due date of handing over possession comes out to be 13.10.2016 and the same has also been admitted by the complainants in the complaint.
- V. That the complainants had made payments against the demand raised till March 2014 and paid a total payment of Rs.37,57,0971- as is evident from the Statement of Account dated 30.04.2024. However,

- the complainants did not pay even a single penny post 04.03.2014 even after repeated reminders from the side of the respondent.
- VI. That when the complainants did not make any payment for a period of 7 years, the respondent sent a Reminder Letter dated 05.07.2021 to the complainants thereby asking the complainants to make payment of Rs.58,83,482/-. However, the complainants chose to remain silent and did not come forward to make the payment.
- VII. That on 11.07.2021, the complainant wrote a letter to the respondent wherein it has been specifically stated that the complainants gave their consent to the respondent to sell the subject unit. Therefore, the complainants withdrew from the subject project at their own free will.
- VIII. That the respondent has completed the construction and applied for the Occupation Certificate on 15.01.2024. In pursuance of the letter dated 11.07.2021 of the complainants, the respondent proceeded and cancelled the allotment of the complainants. It is a matter of fact that the complainants were asked to submit their original documents to the respondents but the complainants demanded that a token shall be refunded to them at first place. In pursuance of the request of the complainants-allottees, the respondent refunded an amount of Rs.5,00,000/- to the complainants on 17.11.2021. Further, an amount of Rs.2,50,000/- was refunded on 17.01.2023. But the complainants being wilful defaulters didn't fulfil their obligations of returning the original documents till date.
- IX. That there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. The said project was going at a very great pace and was right at schedule, however, on

08.02.2016, the Hon'ble Delhi High Court appointed the Official Liquidator (OL) attached to this court as Provisional Liquidator and further injuncted the respondent 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.

- X. That the respondent 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. 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 project 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.
- XI. That 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.

- XII. 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 25th March, 2020. During this time 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.
- XIII. 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 15.01.2024. However, the same has not been granted by the competent authority till date. 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. Therefore, time period utilized by the concerned statutory authority in granting the occupation certificate to the respondent is necessarily required to be excluded from the computation of time period utilized for implementation of the project.
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 19(I) of the Allotment Letter dated 13.10.2012, which comes out to be 13.10.2016. 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 13.10.2016 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 an 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.37,57,097/-** 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 provide the valid physical possession with complete specifications as per the Buyer's Agreement.**

**G.II Direct the respondent to give delay possession charges @ MCLR +2% from the due date of offer of possession till the actual handing over of physical possession.**

**G.III Direct the respondent to take on record the consent withdrawn letter.**

**G.IV Direct the respondents not to raise any illegal demands which are not agreed to between the parties in the Allotment Letter dated 15.09.2012.**

**G.V Adjust the remaining amount payable by the complainants against the Delayed possession charges.**

**G.VI Direct the respondents to execute the Conveyance Deed.**

19. 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, the 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."*

20. Clause 19(I) of the Allotment Letter provides for handing over of possession and is reproduced below:

**Clause 19(I)**

*The possession of the apartment shall be delivered to the allottee(s) by the company within **42 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/ local authorities, etc.*

**Clause 19(II),**

*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 installments 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.*

- 21. Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of allotment 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 13.10.2016.
- 22. 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."*
- 23. 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.

24. 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., 20.01.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

25. The definition of term 'interest' as defined under section 2(za) 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:

*"(za) "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;"*

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

27. 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 19(I) and 19(II) of the Allotment Letter executed between the parties on 13.10.2012, 42 months year from the date of allotment. Due date of possession is calculated from the date of execution of allotment letter i.e., 13.10.2012. 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 13.10.2016.

28. The complainants have contended that, despite the lapse of nearly twelve years from the date of booking of the subject unit, construction of the project remains incomplete and no Occupation Certificate has been obtained from the competent authority. It is further submitted that even after more than seven years from the stipulated date of completion and the proposed date for obtaining the Occupation Certificate, the respondent neither secured the said certificate nor made any valid application in that regard. The complainants aver that the respondent informed them that no further construction would be undertaken in the project and advised that, should the complainants desire a refund, they must authorise the respondent to sell the allotted unit, whereupon the sale proceeds would be utilised to refund their monies. It is also submitted that although the respondent itself is not undergoing bankruptcy proceedings, its sister concern, namely Assotech Ltd, is stated to be in the process of winding up. The complainants allege that, acting upon the representations and assurances of the respondent, they agreed to the said proposal. However, the respondent, taking undue advantage of the complainants, induced them to execute a Consent Letter dated 11.07.2021 containing ambiguous terms, upon an

assurance that a purchaser would shortly be identified and the invested amount refunded. The complainants submit that they subsequently discovered that such representations were false and made with an intent to misappropriate their property. Consequently, the complainants withdrew the said Consent Letter vide email dated 31.01.2022. Thereafter, to the surprise of the complainants, the respondent unilaterally credited a sum of Rs. 5,00,000/- to their account without prior approval and allegedly commenced coercive communications in relation to the Builder Buyer Agreement. The complainants assert that the respondent sought to misuse the earlier consent by remitting the said amount. The complainants personally approached the respondent's office, reiterated the withdrawal of consent to sell the unit, and expressed their willingness to return a total sum of Rs.7,50,000/- received from the respondent. However, the representatives of the respondent allegedly assured the complainants that the credited amount need not be returned and would instead be adjusted against any future demand raised at the time of offer of possession.

29. Per contra, the respondent has submitted that, by letter dated 11.07.2021, the complainants unequivocally conveyed their consent authorising the respondent to sell the subject unit and thereby voluntarily withdrew from the project. It is contended that construction of the project has since been completed and that an application for the Occupation Certificate was duly submitted on 15.01.2024. Acting upon the complainants' letter dated 11.07.2021, the respondent proceeded to cancel the allotment of the unit. The respondent further submits that the complainants were requested to furnish the original documents;

however, they insisted that a token amount be refunded in advance. In pursuance of such request, a sum of Rs.5,00,000/- was refunded on 17.11.2021 and a further sum of Rs.2,50,000/- on 17.01.2023. It is alleged that the complainants, being wilful defaulters, have failed to return the original documents to date. The respondent denies any default or deficiency on its part and asserts that no equity lies in favour of the complainants.

30. Upon consideration of the documents on record, the Authority observes that the complainants were allotted Unit No. G-403, Type-3BHK, on the 4th Floor, admeasuring 1685 sq. ft. (super area), in the project "Assotech Blith" situated at Sector-99, Gurugram. An Allotment Letter dated 13.10.2012 was issued in favour of the complainants. In terms of Clauses 19(I) and 19(II) thereof, the respondent undertook to complete construction and hand over possession of the unit on or before 13.10.2016. The total sale consideration was fixed at Rs. 98,31,788/-, out of which the complainants have paid Rs. 37,57,097/- to date. It is an admitted position that the complainants issued a Consent Letter dated 21.07.2021 authorising sale of the unit, which was subsequent to the contractual due date of possession. The said Consent Letter was withdrawn by the complainants vide communication dated 31.01.2022. Notwithstanding the foregoing, the respondent has failed to obtain the Occupation Certificate from the competent authority till date, despite the expiry of approximately nine years from the promised date of possession.
31. The Authority is of the view that no Cancellation Letter has been brought on record on the basis of which it could be concluded that the

allotment of the subject unit stood terminated at the instance of the complainants. Furthermore, there is no document placed on record to demonstrate that any third-party rights have been created in respect of the said unit.

32. In the present case, although the respondent relies upon the Consent Letter dated 21.07.2021, it is evident that no conclusive action was taken pursuant thereto. The said Consent Letter was subsequently withdrawn by the complainants vide communication dated 31.01.2022. In the absence of any formal Cancellation Letter or cogent evidence of termination of allotment, the Authority holds that the allotment in favour of the complainants continues to subsist and remains legally valid.
33. 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 not been granted to the respondent by the competent authorities.
34. 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 has been obtained by the respondent till date. 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.

35. 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 complainants is entitled to delayed possession at prescribed rate of interest i.e., 10.80% p.a. from the due date of possession 13.10.2016 till the valid 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 offer of possession, after obtaining the Occupation Certificate.

#### **H. Directions of the authority**

36. 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., 10.80% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 13.10.2016 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and also any amount if refunded by the respondent to the complainants.
- iii. The respondent is directed to handover possession of the unit within 30 days of from the date of offer of possession, after obtaining the Occupation Certificate.
- 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., 10.80% 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 arrears of such interest accrued from 13.10.2016 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.

- 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 obtaining the Occupation certificate.
- vi. The respondent shall not charge anything from the complainants which is not the part of the agreement.
37. Complaint stands disposed of.
38. File be consigned to registry.



**Phool Singh Saini**  
(Member)



**Arun Kumar**  
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 20.01.2026

**HARERA**  
GURUGRAM