

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

Complaint no. : 2127 of 2019
First date of hearing : 04.09.2019
Date of decision : 19.02.2020

Mr. Sunil Kumar Taparia
R/o: B-134, Kendriya Vihar,
Sector-51, Noida-201307(U.P.)

Complainant

Versus

M/s Assotech Moonshine Urban Developers
Pvt. Ltd.
(Through its Managing Director)
Regd. office: 148F, Pocket IV, Mayur Vihar,
Phase I, Delhi-110091.

Respondent

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Shri Sunil Kumar Taparia
Shri Sanjeev Dhingra

Advocate for the complainant
Advocate for the respondent

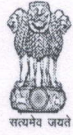
ORDER

1. The present complaint dated 21.05.2019 has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

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

S.No.	Heads	Information
1.	Project name and location	"Assotech Blith", Sector 99, Gurugram.
2.	Project area	12.062 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	95 of 2011 dated 28.10.2011 valid till 27.10.2019
5.	Name of licensee	Moonshine Urban Developers Pvt. Ltd. and Uppal Housing Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide no. 83 of 2017 dated 23.08.2017
7.	HRERA registration valid up to	22.08.2023
8.	Unit no.	E-804, 8 th floor [Page 32 of complaint]
9.	Unit measuring (super area)	1685 sq. ft.
10.	Date of execution of allotment letter with detailed terms and conditions	23.06.2012 [Page 32 of complaint]
11.	Payment plan	Construction linked payment plan [Page 55 of complaint]



12.	Total consideration as per Schedule at page 55 of complaint	Rs.86,32,215/-
13.	Total amount paid by the complainant as stated in the complainant	Rs.84,68,842/-
14.	Due date of delivery of possession as per clause 19(I) of the said allotment letter i.e. 42 months from the date of allotment letter (23.06.2012) plus grace period of 6 months.	23.06.2016
15.	Date of offer of possession to the complainant	Not offered
16.	Delay in handing over possession till <i>date of decision i.e. 19.02.2020</i>	3 years 4 months 30 days
17.	Status of the project	OC not received till date
18.	Specific reliefs sought	<p>i. Direct the respondent to award delay interest for every month of delay till the handing over of possession of the apartment complete in all respects to the complainant.</p> <p>ii. Direct the respondent to provide the schedule of construction and likely time period to be taken by the respondent in completing the project in all respects.</p>

3. As per clause 19(I) of the allotment letter, the possession was to be handed over within a period of 42 months from the date



of allotment letter (23.06.2012) plus grace period of 6 months which comes out to be 23.06.2016. Relevant Portion of clause 19 of the allotment letter is reproduced below:

"19. Possession:

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(a).....

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 grace period of 6 months, the company shall compensate the intending allottee(s) for delayed period @ Rs.10/- per sq. ft. per month subject to regular and timely payments of all instalments by the allottee(s)...."

4. The complainant submitted that the project is nowhere near completion even after 7 years of signing the BBA. A huge delay of 3.5 years has been recorded since the due date of possession is over, on 23.12.2015 and even the provisioned grace period also got over on 23.06.2016. The possession of the subject apartment has not been offered by the respondent to the complainant so far. Hence, this complaint for the reliefs as stated above.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
6. The respondent has contested the complaint and filed a reply.



- i. It is denied that the project is nowhere near completion, even after 7 years of signing the BBA. It is submitted that the company has all necessary approvals and licenses which are necessary for the smooth functioning of the project. It is further submitted that on the basis of accounting Disclosure of the Company certified by Chartered Accountant submitted in RERA, the company has spent an amount of approx.. **Rs. 350+ crores** towards the acquisition and development of the Project and all the External and Internal Development Charges (EDC/IDC payable by the company to HUDA) have been fully paid as per schedule and license conditions. This means that the proportionate share pertaining to the Complainant's Booked Unit has also been paid on schedule. In turn the Company received a total payment of **Rs. 244 crores** by way of collections from customers who had booked units in the Project and have paid as per their respective scheduled payment plans. This amount collected from customers includes the payments received by the Complainant against their Booked Unit. The balance cost incurred to date was funded by the shareholders/debenture holders of the Company.
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.



8. The Authority on the basis of information and explanation and other submissions made and the documents filed by the complainant and the respondent is of considered view that there is no need of further hearing in the complaint.

Arguments are heard:

9. The Act is to protect the rights of the stake-holders i.e. the promoter, allottee and the real estate agent as provided under the Act and also to balance their interest as per its provisions. The Authority is empowered to not only monitor the projects but also to ensure their timely compliance and in case where the projects are held up or stopped to take steps so that these are completed in time and interests of allottees are protected.
10. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 19(I) and 19(II) of the allotment letter executed between the parties on 23.06.2012, possession of the booked unit was to be delivered within a period of 42 months plus 6 months' grace period from the date of execution of allotment letter. As such the due date



of delivery of possession comes out to be 23.06.2016. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the allotment letter dated 23.06.2012 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @10.20% p.a. w.e.f. 23.06.2016 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

11. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 23.06.2016 till the offer of possession.
- ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month.



- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The respondent shall not charge anything from the complainant which is not part of the allotment letter.
 - v. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.
12. Complaint stands disposed of.
13. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Subhash Chander Kush)

Member

Dated: 19.02.2020