

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

Date of filing complaint: 12.05.2025
Date of decision 12.02.2026

Ajit Singh Gill

R/o: 1503, Tower-14, Close-South, South
City-II, Gurugram, Haryana

Complainant

Versus

**M/s Assotech Moonshine Urban
Developers Private Limited**

Regd. Office: 148 F, Pocket IV, Mayur Vihar,
Phase- I, Delhi- 110091

Respondent

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Sh. Vijender Parmar (Advocate)

Complainant

Ms. Neha Yadav (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 allottees as per the agreement for sale executed *inter se* them.

A. Project and unit 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, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Assotech Blith, Sector-99, Gurgaon
2.	Project type	Group Housing Project
3.	DTCP license no	Registered vide registration no. 95 of 2011 dated 28.10.2011
4.	RERA registered/ not registered	83 of 2017 dated 23.08.2017 Valid up to 22.08.2023 <i>Note: Registration Lapsed</i>
5.	Booking application dated	09.03.2013 (As mentioned in allotment letter at page 24 of complaint)
6.	Date of allotment letter	02.08.2012 (As on page no. 24 of complaint)
7.	Buyer's agreement dated	29.01.2013 (As on page 19 of complaint)
8.	Unit no.	A-902 on 9 th Floor, Tower- A (As on page no. 19 of complaint)
9.	Unit area admeasuring	1365 sq. ft. (Super area) (As on page no. 36 of complaint)
10.	Possession clause	As per Clause 19.1 <i>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,</i>





		<p><i>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. 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.</i></p> <p>(Page 29 of complaint)</p>
11.	Due date of possession	<p>02.02.2016</p> <p>(As mentioned in clause 19.1 of buyer's agreement; calculated 42 (Forty-two) months from the date of allotment i.e., 02.08.2012)</p> <p><i>Note: Inadvertently mentioned as 02.08.2015 vide proceedings dated 12.02.2026.</i></p>
12.	Payment Plan	<p>Construction Linked</p> <p>(Page 42 of complaint)</p>
13.	Sale consideration	<p>Rs.70,51,735/-</p> <p>(Page no. 41 of complaint)</p>
14.	Amount paid by the complainants	<p>Rs.78,45,339/-</p> <p>(As per SOA at page no. 45 of complaint)</p>
15.	Occupation certificate	<p>Not obtained</p>
16.	Offer of possession	<p>Not Offered</p>

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B. Facts of the complaint

3. The complainant has made the following submissions in their complaint:
- a. Somewhere in 2012, the respondent through its marketing executives and advertisement done through various medium and means approached the complainant, a senior citizen with an offer to invest and buy a flat, in a reallocation scheme in the proposed project of the respondent, which the respondent was going to launch with the name "Assotech Blith" proposed to be developed on Northern Peripheral Road also known as Dwarka Expressway, Sector-99, Gurugram (hereinafter referred to as "said project"). The respondent had represented to the complainant that the respondent is very ethical business house in the field of construction of residential and commercial project and in case, the complainant would invest in the project of the respondent then, they would deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the



representations and warranties of the respondent and believing them to be true, the complainant agreed to purchase the residential flat bearing no. A-902 of 2 BHK Type on 9th Floor having super area of 1365 Sq. ft. at the rate of Rs. 4339/- per sq. ft. proposed to be developed by the respondent for the total sale consideration of Rs. 70,51,735/- under the re-allotment scheme of the respondent and accordingly, stepped in the shoes of the original allottee namely Mr. Ramesh Chand Bagla son of Shri H.C. Bagla a resident of A-3/410, Milan Vihar Apartments, I.B. Extension, Patparganj Delhi-110092 through executing an agreement to sell dated 29th January 2013 in its favor.

- b. The transfer of the said unit was mutually agreed at a sale consideration of Rs. 29,62,230/- paid by the complainant to the original allottee in respect of the said unit. It was further agreed that the complainant shall further pay the balance sale consideration of the said unit to the respondent in terms of the original payment plan proposed by the builder at the time of sale of the said unit to the original allottee.
- c. Pursuant to the successful execution and acceptance of the agreement to sell amongst the complainant and the original allottee Mr. Ramesh Chand Bagla, the respondent executed an endorsement letter dated 05.03.2013, assigning all the rights and liabilities of the original allotment letter executed with the earlier allottee, in favour of the complainant, thereby, duly accepting the transfer of the said rights qua the title, ownership as well as the possession of the said unit in favor of the complainant.
- d. Thereafter, the respondent started raising the demand of money /installments from the complainant, which was duly satisfied by



the complainant as per the agreed timelines. As on this date, the Complainant have already paid a total sum of Rs. 64,72,686/- which forms more than 85% of the total sales consideration demanded by the respondent as the total sales consideration against the said unit time to time and nothing major is pending to be paid on part of the complainant.

- e. As per the clause -19 (i) of the said allotment letter dated 13.08.2012, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 42 months thereon from the date of the allotment. However, the respondent has breached the terms of the said allotment Letter and failed to fulfill its obligations and has not delivered possession of said flat even today as on the date of filing of this compliant.
- f. From the date of booking and till today, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of the said flat and the complainant has duly paid and satisfied all those demands as per the allotment letter without any default or delay on his part and has also fulfilled otherwise also his part of obligations as agreed in the allotment letter. The complainant was and has always been ready and willing to fulfill his part of agreement, if any pending.
- g. On the date agreed for the delivery of possession of said flat as per date of allotment and later on according to the allotment letter, the complainant had approached the respondent and its officers inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer or reply or

response to the complainant about the completion and delivery said flat. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed as the construction of the said flat and said project was nowhere near to completion and still has not been completed.

- h. The complainant thereafter had tried his level best to reach the representatives of the respondent to seek a satisfactory reply in respect of the said flat but all in vain. The respondent has not completed the construction of the said real estate project till date and the complainant has not been provided with the possession of the said unit despite all promises done and representation made by the respondent.
- i. As per the allotment dated 02.08.2012, the delivery of the possession of said flat was promised to be delivered by the respondent within a time-span of 42 months starting from the date of the allotment with a further grace of six months i.e. by or before 02.02.2017. By committing delay in delivering the possession of the aforesaid flat respondent has violated the terms and conditions of the allotment letter dated 02.08.2012 and promises made to the complainant at the time of booking of said flat.
- j. The conduct on the part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that the Respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the dust on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce



the complainant to buy the said flat basis its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.

- k. The cause of action accrued in favor of the complainant and against the respondent on 02.08.2012, when the complainant had purchased the said unit in allotment and it further arose when Respondent failed /neglected to deliver the said flat on the agreed date. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not handed over the possession of said flat to the complainant and also not paid the interest for causing delay in delivery of possession of said flat as agreed.
- l. The complainant further declares that the matter regarding which the present complaint has been made is not pending before any court of law and/or any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainant:

4. The complainants are seeking the following relief:
 - a. Direct the respondent to pay interest for every month of delay at prescribed rate of interest.
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.

D. Reply by the respondent:



6. The respondent contested the complaint on the following grounds: -
- a. The complainant does not have any locus standi or cause of action to file the present complaint. Even otherwise the present complaint cannot be decided in summary proceedings and required leading of extensive evidence. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court and the Hon'ble Authority does not have the power to adjudicate the subject matter of the complaint. The present complaint deserves to be dismissed on this ground alone.
 - b. The complainant is not an "allottees" but is investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale.
 - c. In the year 2010, the Government came up with the master plan of 2030 of Gurugram and proposed an expressway on the Northern side of the city, known as Northern Peripheral Road (NPR), now commonly known as Dwarka Expressway. Soon after the Master Plan 2030 became public, the demand of residential and commercial projects in the vicinity of the expressway skyrocketed by multiple folds. In order to cater to such skyrocketed demand of the consumers for the residential units, the Respondent launched the residential project known as 'Assotech Blith' situated at Sector - 99, Gurugram (hereinafter referred to as "said project") which has been conceptualized and promoted by the respondent in accordance with the License bearing no. 95 of 2011 dated 28.10.2011 from the

Director, Town and Country Planning Department, Haryana (in short "DTCP, Haryana"). The building plans of the said project have been approved by the DTCP, Haryana on 01.05.2012. The project was spread over an area of 12.062 acres and consisted of 560 dwelling units in 7 towers namely, A, B, C, D, E, F, G, 23 Villas and 10 shops. Moreover, after coming into force of the Real Estate (Regulation and Development) Act, 2016 (hereinafter in short referred as "the Act"), the respondent had got the subject project registered vide registration no. 83 of 2017 dated 23.08.2017.

- d. After making independent enquiries and only after being fully satisfied about the project, the complainant entered into the shoes of the original allottee on 29.01.2013 vide agreement to sell dated 29.01.2013. The same was endorsed by the respondent via an endorsement letter dated 05.03.2013. Therefore, the complainant had approached the respondent after purchasing the subject unit of an apartment in the said residential group housing project being developed by the respondent. The complainant had purchased the subject unit from the original allottee 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. Thereby, in consideration of the endorsement letter and his commitments to comply with the terms of the original booking allotment and make timely payments of demands, the respondent company allotted unit bearing no. A-902, 9th floor, Tower A having carpet area 1365 sq. ft. at the sale consideration of Rs. 70,72,692/- plus Tax i.e. Rs. 73,69,133/- (with Tax) as applicable in the residential group housing project.

- e. Subsequently, since the complainant is a subsequent allottee, the complainant is bound by the same terms and conditions as that of the original allottee via agreement to Sell dated 29.01.2013 containing detailed terms and conditions of the allotment which are binding on both the parties of the suit, along with the schedule of payment (payment plan) opted by the complainant under construction linked payment.
- f. As per clause 19.1 of the BBA dated 02.08.2012, the possession was to be offered by 02.02.2016, however if the completion of the project is delayed due to the force majeure conditions, then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the apartment, provided that such force majeure condition are not of a nature which makes it impossible for the contract to be implemented. Therefore, the due date of possession with a grace period of 6 months comes to 02.08.2016.
- g. The complainant has been a habitual defaulter from the start since he had entered into the shoes of the first allottee in 2013. The complainant has paid a total amount of rs.64,72,686/- to the respondent till date; however, these payments were never made on time evident from a cheque of 76,85,031/-, bearing no. 492325, issued by the complainant, which was dishonoured, against which the respondent did not initiate proceedings under Section 138 of the Negotiable Instruments Act, in good faith.
- h. As of 24.09.2025, the total late payment fees accrued and payable by the complainant to the respondent amounts to Rs. 1,01,003/-. This amount has been calculated at the rate of 10% simple interest per annum and shall continue to accrue interest on a daily basis until the full realization of the outstanding amount.



- i. In this regard the complainant is in violation of clauses 19(3) of the builder buyer agreement (BBA), which specifically outline the responsibilities of the allottee upon the offer of possession, including the timely payment of dues and completion of formalities.
- j. Furthermore, despite all the odds mentioned in the succeeding paragraphs of the present reply, the respondent company being a law-abiding organisation is working very hard to complete the construction of the subject project. The respondent-promoter has duly applied for issuance of the occupation certificate (OC) on 15.01.2024 for Towers C and G, which fall under Phase-I of the project. The subject unit, however, is situated in tower-A, which forms part of Phase-III. That the grant of the occupation certificate for phase-ii has been held up on account of the fact that the state government has not yet constituted the environmental committee, which is the statutory authority empowered to grant the requisite environmental clearance. In the absence of such clearance, the competent authority, namely the Directorate of Town and Country Planning (DTCP), is unable to issue the occupation certificate for Phase-II. Consequently, unless and until the occupation certificate for phase-II is obtained, the respondent company is precluded from applying for the occupation certificate in respect of phase-III, which includes the subject unit.
- k. After submission of the application for issuance of the occupation certificate, respondent cannot be held liable in any manner for the time taken by the competent authority to process the application and issue the occupation certificate. Thus, the said period taken by the competent authority in issuing the occupation certificate as well as time taken by Government/Statutory Authorities with respect of



approvals, permissions etc., necessarily have to be excluded while computing the time period for delivery of possession.

- i. The said project was going at a very great pace and was right at schedule, if not at a pace faster than the 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 injuncted 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. 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. 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.



- m. 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.
- n. 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	08.11.2016	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



- o. 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 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.
- p. That several allottees have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible.
- q. The complainant is habitual defaulters in making the timely payment and therefore have not performed their contractual obligation. There is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the Complainant are totally



baseless. Therefore, in view of the facts enumerated above, the complainants are not entitled to any of the reliefs as sought in the corresponding para and the present complaint is liable to be outrightly dismissed.

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 and submissions made by the complainants-allottees.

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 complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. 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)

.....
(4) The promoter shall-
(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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the



apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

11. 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 complainant at a later stage.

F. Finding on objections raised by the respondent

F.I Objections regarding Force Majeure

12. The respondent-promoter has contended that the progress of construction of the project was adversely affected on account of force majeure circumstances, inter alia, various directions/orders issued by the authorities for Environment Pollution (Prevention and Control), restrictions imposed by the Commission for Air Quality Management in NCT, as well as the nationwide lockdown and consequential disruptions arising out of the outbreak of the COVID-19 pandemic, which further resulted in acute shortage of labour.
13. It is observed that the buyer's agreement in the present matter was executed on 29.01.2013. As per clause 19(i) of the buyer's agreement the respondent-developer had proposed to hand over possession of the allotted unit within a period of 42 months from the date of allotment. In the present case, the date of allotment is 02.08.2012. Accordingly, the due date for handing over possession of the subject unit is computed as 02.08.2015.
14. The Authority has considered the submissions advanced by the respondent and perused the material available on record. The objection raised is found to be devoid of merit. The restrictions imposed by governmental authorities and courts in the NCR region were for limited

durations and cannot, by themselves, justify the inordinate delay in completion of the project. Such regulatory contingencies are inherent in the real estate sector and ought to have been duly factored in by the promoter at the inception of the project. The respondent cannot be permitted to attribute prolonged delay to short-term prohibitory orders so as to evade its contractual and statutory obligations. It is a settled principle of law that no party can be allowed to take advantage of its own wrong. Accordingly, the promoter-respondent is not entitled to any indulgence on the basis of the aforesaid grounds.

15. Insofar as 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 I.A. 3696-3697/2020*** dated 29.05.2020 which 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."

16. In the present case, the respondent was under an obligation to complete construction and hand over possession of the subject unit on or before 02.08.2015. The nationwide lockdown was imposed only on 23.03.2020, which is substantially subsequent to the stipulated date of possession. The respondent was already in default prior to the onset of the pandemic. Therefore, the outbreak of COVID-19 cannot be invoked as a justification for non-performance of contractual obligations where the deadline had expired much earlier. Consequently, the period of



lockdown is not liable to be excluded for the purpose of computing delay in handing over possession.

G. Findings of the Authority on relief sought by the complainant:

G.I Direct the respondent to pay respondent to pay interest for every month of delay at prescribed rate of interest.

16. The complainant booked a unit A-902 on 9th Floor, Tower-A in the project of the respondent namely, "Assotech Blith" admeasuring super area of 1365 sq. ft. for an agreed sale consideration of Rs. 70,51,735/- against which complainant paid an amount of Rs. 78,45,339/- and the respondent has failed to hand over the physical possession till date. That the complainant intends to continue with the project and is seeking delayed possession charges against the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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, —

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand of 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, 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:

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."

(Emphasis supplied)

17. As per clause 19.1 of the agreement provides for handing over of possession and is reproduced below:

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. 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.

(Emphasis supplied)

18. On consideration of the abovementioned clause, 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 draft agreement. By virtue of clause 19.1 of the agreement dated 29.01.2012, the possession of the subject unit was to be delivered within a period of 42 months from the date of issuance of allotment letter. The due date is calculated 42 months from date of allotment (02.08.2012) of unit which comes out to 02.02.2016.
19. The occupation certificate of the buildings/towers where allotted unit of the complainant is situated has not been received till date by the promoter. The complainant, for delay by the promoter and failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the draft buyer's agreement, wished to seek delay possession charges.
17. **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.

(Emphasis supplied)

18. The legislature in its wisdom in the subordinate legislation under 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.
19. 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., 12.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 10.80%.
20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottees, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default;

(ii) the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

(Emphasis supplied)

21. On consideration of the circumstances and record and submissions made by the parties, the authority is satisfied that the respondent is in





contravention of the provisions of the Act. By virtue of clause 19.1 of the buyer's agreement, the possession of the said unit was to be delivered on 02.02.2016 (due date of possession). The OC has not been obtained by the respondent till date. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the draft buyer's agreement.

22. 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 not been granted by the competent authority 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 complainants keeping in mind that even after intimation of possession practically they have 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. It is further clarified that the delay possession charges shall be payable on the total amount paid by the complainant from due date of possession till the date of offer of possession plus 2 months, after obtaining the occupation certificate or actual handing over of possession, whichever is earlier.
26. Accordingly, the non-compliance of the mandate contained in in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at prescribed rate of the interest @10.80 % p.a. w.e.f. 02.02.2016 till the date of offer of possession plus 2 months after

obtaining the occupation certificate or actual handing over of possession, whichever is earlier as per provisions of Section 18(1) of the Act read with rule 15 of the rules.

H. 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):

- a. The respondent is directed to pay interest to the complainants against the paid-up amount of Rs.78,45,339/- at the prescribed rate of 10.80% p.a. for every month of delay from the due date of possession i.e., 02.02.2016 till the date of offer of possession plus two months after obtaining the occupation certificate or actual handing over possession whichever is earlier, as per section 18(1) of the Act 2016 read with Rule 15 of the Rules.
- b. The respondent is directed to offer the valid offer of possession of the allotted unit within 2 months after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- c. The respondent is directed to hand over possession of the subject unit to the complainant/allottees, after obtaining the occupancy certificate.
- d. The arrears of such interest accrued from 02.02.2016 till the date of order by the authority shall be paid by the respondent/promoter to the complainant 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules.

- e. The respondent/promoter is directed not to charge anything which is not a part of the payment plan as agreed in buyer's agreement dated 29.01.2013 executed between the parties.
- f. The respondent/promoter is directed to execute the conveyance deed in favor of the complainant/allottee within 3 months as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.
- g. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

25. Complaint stands disposed of.

26. File be consigned to registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.02.2026