

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

Complaint no.: 3756 of 2024
Date of decision:- 07.04.2026

1. Suresh Sethia
2. Neelam Sethia
Through GPA Holder Mahesh Garg
Both R/o: - 12, New Nandwani Nagar, Sonipat,
Haryana-131001.

Complainants

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 Note: Registration Lapsed
4.	Application form dated	07.08.2012 (As on page no. 28 of complaint)
5.	Date of allotment letter	15.09.2012 (As on page no. 37 of complaint)
6.	Unit no.	G-404 , Type-3BHK, Tower-G on 4 th floor

		(As on page no. 37 of complaint)
7.	Unit area admeasuring	1685 sq. ft. [Super Area] (As on page no. 37 of complaint)
8.	Buyer's Agreement	Not executed
9.	Possession clause	<p>As per Clause 19(I),</p> <p><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.</i></p> <p>(As on page no. 42 of complaint)</p>
10.	Grace period	<p>As per Clause 19(II),</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 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.</i></p> <p>(As on page no. 42 of complaint)</p>
11.	Due date of possession	<p>15.09.2016</p> <p>(Due date as per clause 19(I) i.e.; 15.03.2016 + grace period of 6</p>

		months) Grace- period is allowed
12.	Sale consideration	Rs.99,16,880/- (As per payment schedule at page no. 52 of complaint)
13.	Amount paid by the complainants	Rs.47,71,437/- (As per customer ledger dated 30.04.2024 on page no. 93 of complaint)
14.	Occupation certificate	Not obtained [Note: Status checked from the website of TCP]
15.	Offer of possession	Not offered
16.	Cancellation letter	23.08.2022 (As on page no. 87 of complaint)
17.	Protest against cancellation	02.09.2022 (As on page no. 91 of complaint)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:
- I. That the complainants are filing the present complaint through their GPA Holder Mr. Mahesh Garg. The respondent is constructing the Project known under the name and style of "Assotech Blith" located at sector 99, Gurugram (the "Project").
 - II. That the project came to the knowledge of the complainants through aggressive marketing tricks of the respondent. Relying on the assurances, representations and warranties of the respondent, the complainants booked an apartment no. G-404, 4th Floor, admeasuring

- 1685 sq. ft. of Super area in the project vide application dated 07.08.2012.
- III. That thereafter, the complainants and the respondent executed Allotment Letter on 15.09.2012 elaborately defining the terms of allotment. After the booking was made by the complainants, the *malafide* activities of the respondents began to unturn and the false promises, assurances and warranties saw the light.
- IV. 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 comes out to be 15.09.2016.
- V. It is a settled principle that an allottee cannot be made to wait indefinitely for the delivery of possession of the unit. The respondent undertook to offer possession by 2016, however, till date has failed to even complete the construction and apply for occupation certificate. The respondent has failed to offer any delay possession compensation to the complainants.
- VI. 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 agreement.
- VII. 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 the cancellation of the unit and forfeiture of the

paid amount but on equivalent obligation on the promoter to complete the construction. It is submitted that such execution of one-sided arbitrary agreements is illegal in nature.

- VIII. That the arbitrariness and unfairness of the Allotment agreement can be derived from the 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.
- IX. That the present agreement and other documents, etc., completely fall 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. The complainant was misled into believing at the time of booking that the respondents had any intention of completing the project within reasonable time.
- X. That the complainants chose a "Construction linked plan" as per the "Schedule F" of the Allotment Agreement. 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. That it is pertinent to note that the project registration of the has lapsed but till date the respondent has failed to complete the construction.
- XI. That the respondent to hide their own misdeeds illegally cancelled the unit on 25.08.2022. Upon receipt of this information, the complainant immediately protested to the wrongful cancellation vide letter dated 02.09.2022.

- XII. 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. That the complainant has made a total payment of Rs.47,71,437/-.
- XIII. That the project construction is not yet completed even after almost 12 years of booking of the unit and the OC has not yet been received for the said project. There has been an indefinite delay on part of the respondent, in completing the construction of the unit.
- XIV. 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. Thus, due to the continuous relationship between the parties, non-delivery of possession, non-execution of the conveyance deed till date, the provisions of the Act shall be applicable in the present case. That being aggrieved by the unlawful, and arbitrary conduct of the respondent, the complainants have filed the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to provide valid physical possession to the complainants with complete specifications as per the Buyer's Agreement.
 - ii. Direct the respondent to give delay possession charges from the due date of offer of possession till the actual handing over of physical possession.
 - iii. Direct the respondent to cancel the illegal cancellation dated 25.08.2022.

- iv. Direct the respondent not to raise any illegal demands which are not agreed to between the parties in the Allotment Agreement dated 15.09.2012.
- v. Adjust the remaining amount payable by the complainant against the delayed possession charges.
- vi. Direct the respondent to execute the Conveyance Deed.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions.
 - I. That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it comprising of residential, commercial / IT Parks, retail, etc.
 - II. That the respondent launched a residential project known as "Assotech Blith", situated at Sector - 99, Gurugram 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, E, G, 23 villas and 10 shops.
 - III. That after making independent enquiries and only after being fully satisfied about the project, the complainants approached the respondent expressing an interest in the purchase of an apartment in the said residential group housing project being developed by the

respondent. The complainants had approached the respondent 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.

- IV. That the complainants proceeded to book an apartment in the said project vide Application Form dated 07.08.2012. In consideration of the booking amount paid by the complainants and their commitments to comply with the terms of the booking/allotment and make timely payments of demands, the respondent allotted unit bearing no. G-404, 4th floor, tower G having super area 1685 sq. ft. at the rate of Rs.4998/- per sq. ft. of Super Area in the project. In pursuance thereof, the complainants and the respondent executed an Allotment Letter dated 15.09.2012 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.

- V. That the cost of the unit as per the allotment letter dated 15.09.2012 for an area admeasuring 1685 sq. ft. was Rs.99,16,880/-excluding 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 month grace period subject to Force Majeure and subject to timely payments by the allottees of the project. Force Majeure events include (but not limited to) court orders, government

guidelines / policy, delay in government clearances, approvals, licenses, renewals, NOCs, etc.

- VI. That as per clause 19 of the Allotment Letter, the respondent has proposed to handover possession of the subject apartment within 42 months plus grace period of 6 month from the date of allotment letter dated 15.09.2012 subject to certain conditions. Thus, the due date of handing over possession comes out to be 15.09.2016. From the aforesaid clauses of the Allotment Letter, it is apparent that the timely delivery of possession was subject to force majeure and also subject to timely payments by the Allottee(s) of the Project. However, it is matter of record that various allottees including the present complainants had defaulted in making timely payments which resulted in delay in handing over the possession.
- VII. That the complainants had made payments against the demand raised till November 2014 and has made a total payment of Rs.47,71,437/- as is evident from the Statement of Account dated 30.04.2024. However, the complainants did not pay even a single penny, post 17.11.2014, even after repeated reminders from the side of the respondent.
- VIII. That the respondent kept on raising demands as per the payment plan opted by the complainants. It is pertinent to state that the complainants for the reasons best known to them did not perform their contractual obligation and did not make timely payments.
- IX. That when the complainants did not make any payment for a period of 7 years, the respondent sent a Reminder Letter dated 04.07.2022 to the complainants thereby asking the complainants to make payment of Rs.50,07,289/- excluding interest of default amount.

However, the complainants choose to remain silent and did not come forward to make the payment.

- X. That after waiting for sufficient time, the respondent again sent a "Reminder Letter" dated 21.07.2022 to the complainants thereby asking for the payments. Thereafter, the respondent sent a 3rd reminder dated 05.08.2022. The complainants still failed to make the payment till date despite the aforesaid.
- XI. That despite repeated follow ups and communications by the respondent to the complainants, they never came forward and complied further with their obligations therefore the Respondent was constrained to issue a pre-cancellation notice dated 13.08.2022. However, the complainant failed to clear the outstanding dues despite repeated requests.
- XII. That despite aforesaid reminders dated 19.05.2021, 23.07.2022, 05.08.2022 and a Pre-cancellation letter, cancellation Letter dated 13.08.2022, the complainants failed to make the timely payment of the said demands despite the complainant's commitment to strictly adhere to the payment plan.
- XIII. That the complainants failed to fulfil the contractual obligation of making timely payment which was the essence of the allotment pursuant to the application form even after the issuance of the various reminders.. That despite the non-fulfilment of the obligation of making timely payment, the respondent fulfilled its promise and had constructed the said unit by investing its own funds.
- XIV. That the respondent has completed the construction and applied for the Occupation Certificate on 15.01.2024. On account of the wilful breach of the terms of the Allotment Letter pursuant to the



Application Form by failing to clear the outstanding dues despite repeated requests, the respondent was constrained to terminate the allotment of the unit vide Cancellation Letter dated 23.08.2022 on account of non-payment of the demands as raised by the respondent.

- XV. That in reply to the Cancellation Letter 23.08.2022, vide letter dated 02.09.2022, the complainants requested for a time period of 15 days to travel to the office of the respondent and settle the issue.
- XVI. That the complainants instead of visiting the office of the respondent and settling the issue as requested vide letter dated 02.09.2022, sent another letter dated 05.11.2022 as an attachment to an email and requested the respondent to adjust the payment made by the complainants in the ledger of Ajay Gupta and further discharged the respondent from any liability. It is pertinent to mention here that the complainant will get their money from Sh. Ajay Gupta.
- XVII. That as the payment made by the complainants have been requested to be adjusted against the dues of another person and the complainants have discharged the respondent of any claim, the complainants are not entitled to any relief from this Authority and thus, the present complaint is liable to be dismissed.
- XVIII. It is pertinent to mention here that upon the request of the Complainants to adjust the dues, the Cancellation Letter issued by the respondent remained unchallenged and thus, the present complaint is an afterthought and is abuse of process of law. Further, the respondent has sold the unit to other allottee.

XIX. That 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 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. It is pertinent to mention here that 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. It is imperative to note that 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 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.

- XX. That a 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. In addition to the above-mentioned orders of the Hon'ble High Court of Delhi, 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.
- XXI. 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 25.03.2020. 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. 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.

XXII. 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. 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.

XXIII. 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 default of the complainants in making timely payment and complying with other obligations is duly covered under the Application Form & Allotment Letter, and the cancellation and forfeiture of the Earnest money, statutory dues brokerage and interest on delayed payments has been in accordance with the same.

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 for delivery of possession of the unit as per clause 19(I) and 19(II) of the Allotment Letter dated 15.09.2012, comes out to be 15.09.2016. 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 16.09.2016 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.

G. Findings on the relief sought by the complainants.

G.I. Direct the respondent to provide valid physical possession to the complainants with complete specifications as per the Buyer's Agreement.

G.II. Direct the respondent to give delay possession charges from the due date of offer of possession till the actual handing over of physical possession.

G.III. Direct the respondent to cancel the illegal cancellation dated 25.08.2022.

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

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

G.VI. Direct the respondent to execute the Conveyance Deed.

16. The complainants are seeking possession of the unit alongwith interest for every month of delay at the prescribed rate of interest and setting aside the cancellation dated 25.08.2022.

17. The Authority is of the view that as per the Payment plan (as on page no. 53 of complaint), the complainants were to make payment in the following stages:

- a. *On Booking-10% of BSP*
- b. *Within 60 days of booking-10% of BSP*
- c. *Within 120 Days of Booking/Start of Excavation (whichever is earlier)-10% of BSP*
- d. *On casting of basement slab-10% of BSP + 50% of car parking charges +25% of EDC/IDC.*

- e. On casting of 3rd floor slab-8% of BSP + 50% of car parking charges +25% of EDC/IDC.
- f. On casting of 6th floor slab-8% of BSP + 25% of PLC (if any) +25% of EDC/IDC.
- g. On casting of 9th floor slab-8% of BSP + 25% of PLC (if any) +25% of EDC/IDC.
- h. On casting of 12th floor slab-8% of BSP + 25% of PLC (if any) +25% of club membership.
- i. On casting of 15th floor slab-8% of BSP + 25% of PLC (if any) +25% of club membership.
- j. On completion of super structure frame work-8% of BSP + 25% of club membership.
- k. On completion of internal plaster & flooring-7% of BSP + 25% of club membership.
- l. At the time of possession-5% of BSP +IFMS+ Stamp Duty/Registration Charges.

[Emphasis supplied]

18. Upon perusal of the aforesaid Payment Plan, it is evident that the Payment Plan opted by the complainants for making the payments was Construction Linked Payment Plan. As per the payment plan, the complainants had to make the payments as per the respective stage of construction. The total sale consideration of the unit was Rs.99,16,880/- and the complainants had paid an amount of Rs.47,71,437/- till date. As per the Customer Ledger dated 10.02.2021 annexed on page no. 27 of reply, the last payment made by the complainants was on 12.11.2014, against the demand of "On Casting of the 3rd Floor Slab". Thereafter, the respondent raised demand however, no payment was made by the complainants. The respondent has sent reminder dated 04.07.2022, 21.07.2022 to the complainants to come forward and make the payment of the outstanding dues. Thereafter, the respondent issued a "Pre-Cancellation cum Demand Letter" dated 13.08.2022 and subsequently, the Cancellation letter dated 23.08.2022. Pursuant thereto, the

complainants sent a letter dated 02.09.2022 to the respondent, thereby requesting the respondent to withdraw the cancellation letter stating that the possession of the unit is delayed by more than 6 years and further requested the respondent to give a period of 15 days to visit the respondent's office in order to discuss the matter. Thereafter, on 05.11.2022, the complainant wrote a letter dated 05.11.2022 addressed to the respondent as follows:-

" Dear Sir,

Sub: G-404 Sector-99 Gurgaon

I am the allottee of the subject flat. Due to unavoidable circumstances, I may not be able to make the pending payment of the subject flat. In this connection I authorise you as under:

Please appropriate the entire payment made by me in connection with the subject flat in the account of allottee of G-403 Sh. Ajay Gupta. I will not claim payment from you. You will be fully discharged in this regard. I will collect the payment from Sh. Ajay Gupta.

If you do so I shall be thankful to you.

Yours Sincerely

Suresh Kumar Sethi

[Emphasis supplied]

19. The Authority observes that vide letter dated 05.11.2022, the complainants requested the respondent to withdraw the cancellation and appropriate the entire paid up amount by the complainants to a third party. The Authority is of the view that the above said request was made by the complainants after the cancellation of the unit and the respondent is nowhere bound to act according to the complainant's request in this regard. However, the main question before the Authority is whether the Cancellation is valid or not?

20. Firstly, the Authority would like to emphasize on the “Payment Plan” as was agreed between the complainants and the respondent. The same is reproduced below:

“ PLAN-C (CONSTRUCTION LINKED PLAN)

<i>On Booking</i>	<i>10% of BSP</i>
<i>Within 60 Days of Booking</i>	<i>10% of BSP</i>
<i>Within 120 Days of Booking/Start of Excavation (whichever is earlier)</i>	<i>10% of BSP</i>
<i>On casting of basement slab</i>	<i>10% of BSP + 50% of car parking charges + 25% of EDC/IDC</i>

TOWER D, E, F & G	
<i>On casting of 3rd floor slab</i>	<i>8% of BSP + 50% of car parking charges + 25% of EDC/IDC</i>
<i>On casting of 6th floor slab</i>	<i>8% of BSP + 25% of PLC (if ANY) + 25% of EDC/IDC</i>
<i>On casting of 9th floor slab</i>	<i>8% of BSP + 25% of PLC (if ANY) + 25% of EDC/IDC</i>
<i>On casting of 12th floor slab</i>	<i>8% of BSP + 25% of PLC (if ANY) + 25% of club membership</i>
<i>On casting of 15th floor slab</i>	<i>8% of BSP + 25% of PLC (if ANY) + 25% of club membership</i>
<i>On completion of super structure frame work</i>	<i>8% of BSP + 25% of club membership</i>
<i>On completion of internal plaster & flooring</i>	<i>7% of BSP + 25% of club membership</i>
<i>At the time of possession</i>	<i>5% of BSP + IFMS + Stamp Duty/Registration Charges + Govt. Levies and charges (if any)</i>

[Emphasis supplied]

21. It is evidenced from the above said Payment Plan that the demands were to be raised as per the stage of construction. The demand for “Internal Plaster Work” was raised by the respondent on 10.02.2021, however as per the Architect Certificate filed for March 2021, with the

QPR on the portal of the Authority's website, the status of completion of work for Tower-G, the internal plaster was completed till 44.74%. However, the demand has been raised for completion of internal plaster, which is not the rightful stage. Similarly, the demands was raised prior to the achieving of the relevant construction milestone and the demand was raised by the respondent without completing the work on the project site. The allotment of the complainants was cancelled due to the non-payment of the said demand and the demand itself was invalid and thus, the cancellation is hereby set aside.

22. 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, 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.

"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."*

23. Clause 19(I) and 19(II) 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 24 instalments 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.*

[Emphasis supplied]

24. **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 15.09.2016.
25. **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."

26. 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.
27. 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., 07.04.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
28. 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;"*

29. 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.
30. 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) of the Allotment Letter, the possession of the subject apartment was to be delivered within 42 months from the date of allotment. Due date of possession is calculated from the date of execution of allotment letter i.e., 15.09.2012. The period of 42 months expired on 15.03.2016. 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 15.09.2016. The respondent has not obtained Occupation Certificate for the subject unit till date. The due date of possession has lapsed long before and despite a delay of almost 9 years the Occupation Certificate for the unit has not been obtained by the respondent. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
31. 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 15.09.2016 till the 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.

H. Directions of the authority

32. 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 Cancellation dated 23.08.2022 is hereby set aside, being invalid.
- ii. 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., 15.09.2016 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.
- iii. The arrears of such interest accrued from due date of possession till the date of this order 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 respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- v. The respondent is directed to handover possession of the unit within a period of 60 days after the grant of Occupation Certificate.
- vi. 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.
- vii. The respondent is directed to execute the conveyance deed in favor of the complainants within a period of sixty days from the date of offer of possession, after obtaining the Occupation Certificate.
- viii. The respondent shall not charge anything from the complainants which is not the part of the agreement.
33. Complaint stands disposed of.
34. File be consigned to registry.



Phool Singh Saini
(Member)



Arun Kumar
(Chairman)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.04.2026