

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

Date of order: 19.05.2026

NAME OF THE PROMOTER		M/s Assotech Moonshine Urban Development Pvt. Ltd. – Respondent no.1 M/s Assotech Limited - Respondent no.2
PROJECT NAME		“Assotech Blith”, Sector – 99,Gurugram
Sr. No.	Case No.	Case title
1.	CR/4083/2025	Vinod Kumar Khanna Vs. M/s Assotech Moonshine Urban Development Pvt. Ltd. – R1 M/s Assotech Limited – R2
2.	CR/4126/2025	Vinod Kumar Khanna Vs. M/s Assotech Moonshine Urban Development Pvt. Ltd. – R1 M/s Assotech Limited – R2

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Tanishq Sirohi (Advocate)

Complainant

Ms. Neha Yadav (Advocate)

Respondent no.1

None

Respondent no.2

ORDER

1. This order shall dispose of both the complaints titled above filed before this Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as “the Act”) read with Rule 28 of the Haryana Real Estate (Regulation and Development)

- Rules, 2017 (hereinafter referred as “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 its obligations, responsibilities and functions to the allottee(s) as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottee(s) of the project, namely, “Assotech Blith”, Sector-99, Gurugram being developed by the respondents/promoter i.e., M/s Assotech Moonshine Urban Development Pvt. Ltd. – **R1** and M/s Assotech Limited – **R2**. The terms and conditions of the allotment letter, buyer’s agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of possession and delayed possession charges and execute the conveyance deed and others.
 3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	“Assotech Blith”, Sector-99, Gurugram.
Project area	12.062 Acres
Nature of the project	Group housing project
DTCP license no. and other details	95 of 2011 dated 28.10.20 11 valid up to 27.10.2029
Name of licensee	M/s Assotech Moonshine Urban Developers Pvt. Ltd. (Formerly known as M/s Moonshine Urban Developers pvt. Ltd.)
RERA Registered/ not registered	Registered Vide registration no. 83 of 2017 dated 23.08.2017 Valid up to 22.08.2023

Extension No. 06 of 2024 dated 20.05.2024	EXTENSION NO.06 OF 2024 RC/REP/HARERA/GGM/2017/83 dated 20.05.2024 valid up to 22.08.2023 + 6 months Covid = (21.02.2024) Extension granted up to 20.02.2025
PROJECT CONTINUATION- RC/REP/HARERA/GGM/83 of 2017/7(3)/94/2025/36 DATED 10.12.2025	Extension further granted up to 20.02.2027.
Possession clause as per buyer's agreement	<u>CLAUSE 7: Possession Of The Unit/ Apartment For Residential/ Commercial Or Any Other Usage (As The Case May Be):</u> 7.1 Schedule for possession of the Unit/ Apartment for Residential/ Commercial or any other usage (as the case may be): <i>... The Promoter based on the approved plans and specifications, assures to hand over possession of the said Apartment on 22.05.2024 (which include an Extension/Zero period/grace period as provided by Haryana-RERA through Extract of the resolution passed by the Haryana Real Estate Regulatory Authority, Panchkula in its meeting held on 02.08.2021 (Item no. SPL-1) or such other date of possession as may be mutually agreed between the parties to this agreement and unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake, epidemic or any other calamity caused by nature affecting the regular development of the real estate project ("Force majeure")...</i> [Emphasis supplied]
Due date of possession	22.05.2024
Occupation certificate	Not obtained
Offer of possession	Not offered

Sr. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And Agreement for Sale	Total sale consideration and Total amount paid by the complainant in Rs.
1.	CR/4083/2025 Vinod Kumar Khanna Vs. M/s Assotech Moonshine Urban Development Pvt. Ltd. - R1 M/s Assotech Limited - R2 DOF: 05.08.2025 RR: 01.12.2025 (By Respondent no.1 only)	B-2002, Type-3BHK + Servent, Floor-20 th , Tower No.-B 128.25 sq. mtrs [Carpet Area] 178.2 sq. mtrs [Built up Area] 34.38 sq. mtrs [Balcony Area] [As on page no. 54 of complaint]	AL: Not Provided AFS: 31.07.2023 [As on page no. 52 of complaint]	TSC: Rs.1,73,02,857/- [As on page no. 57 of complaint] AP: Rs.1,81,20,000/- [As on page no. 60 of complaint]
2.	CR/4126/2025 Vinod Kumar Khanna Vs. M/s Assotech Moonshine Urban Development Pvt. Ltd. - R1 M/s Assotech Limited - R2 DOF: 05.08.2025 RR: 01.12.2025 (By Respondent no.1 only)	A-1104, Type-2BHK, Floor-11 th , Tower No.-A 73.86 sq. mtrs [Carpet Area] 112.02 sq. mtrs [Built up Area] 28.53 sq. mtrs [Balcony Area] [As on page no. 54 of complaint]	AL: Not Provided AFS: 31.07.2023 [As on page no. 52 of complaint]	TSC: Rs.98,41,000/- [As on page no. 57 of complaint] AP: Rs.1,03,05,750/- [As on page no. 60 of complaint]

Relief sought:

- Direct the respondent no.1 to complete the construction of the unit along with all facilities and amenities as promised in the Agreement.
- Direct the respondent no.1 to handover the legal and rightful possession of the flat to the complainant, including obtaining the CC, OC and all other required statutory approvals from the competent authorities.
- Direct the respondent no.1 to pay interest at the rate 18% per annum to the complainant for each month of delay in handing over possession of the unit, calculated from the agreed date of delivery till the actual date of possession.
- Direct the respondent no.1 not to demand or recover any amount beyond what is stipulated in the Agreement and the Memorandum of Understanding executed between the parties.
- Direct the respondents to pay an amount of Rs.10,00,000/- to the complainant towards mental agony and harassment caused due to their negligent and misleading conduct.
- Direct the respondents to pay a sum of Rs.1,00,000/- towards litigation expenses incurred by the complainant in pursuing the present complaint.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
AL	Allotment Letter
AFS	Agreement for Sale
TSC	Total sale consideration
AP	Amount paid by the allottee(s)

- The aforesaid complaints were filed against the promoter on account of violation of the apartment buyer's agreement and allotment letter against the allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of Section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the

promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/4126/2025** titled as ***Vinod Kumar Khanna Vs. M/s Assotech Moonshine Urban Development Pvt. Ltd. & M/s Assotech Limited*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details:

7. 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:

CR/4126/2025 titled as ***Vinod Kumar Khanna Vs. M/s Assotech Moonshine Urban Development Pvt. Ltd. & M/s Assotech Limited***

S. No.	Particulars	Details
1.	Name of the project	Assotech Blith, Sector-99, Gurgaon
2.	Project area	12.062 Acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and other details	95 of 2011 dated 28.10.20 11 valid up to 27.10.2029
5.	Name of licensee	M/s Assotech Moonshine Urban Developers Pvt. Ltd. (Formerly known as M/s Moonshine Urban Developers pvt. Ltd.)
6.	RERA Registered/ not registered	Registered Vide registration no. 83 of 2017 dated 23.08.2017 Valid up to 22.08.2023

7.	Extension No. 06 of 2024 dated 20.05.2024	EXTENSION NO.06 OF 2024 RC/REP/HARERA/GGM/2017/83 dated 20.05.2024 valid up to 22.08.2023 + 6 months Covid = (21.02.2024) Extension granted up to 20.02.2025
8.	PROJECT CONTINUATION- RC/ REP/ HARERA/ GGM/ 83 of 2017/ 7(3)/ 94/ 2025/ 36 DATED 10.12.2025	Extension further granted up to 20.02.2027.
9.	Allotment letter	Not on record
10.	Unit no.	A-1104, Type-2BHK, Floor-11 th , Tower No.-A (As on page no. 54 of complaint)
11.	Unit area admeasuring	73.86 sq. mtrs [Carpet Area] 112.02 sq. mtrs [Built up Area] 28.53 sq. mtrs [Balcony Area] (As on page no. 54 of complaint)
12.	Agreement For Sale	31.07.2023 (As on page no. 52 of complaint)
13.	Possession clause	<u>CLAUSE 7 POSSESSION OF THE UNIT/APARTMENT FOR RESIDENTIAL/COMMERCIAL OR ANY OTHER USAGE (AS THE CASE MAY BE):</u> 7.1 Schedule for possession of the Unit/Apartment for Residential/Commercial or any other usage (as the case may be): The Promoter agrees and understands that timely delivery of possession of the Unit/Apartment for Residential/Commercial or any other usage (as the case may be) flood, drought, fire, cyclone, earthquake, epidemic or any other calamity cause by force majeure along with parking

		<p><i>(if applicable) to the Allottee(s) and the common areas to the Apartment Owners Association ("AOA") or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement. The Promoter based on the approved plans and specifications, assures to hand over possession of the said Apartment on 22.05.2024 (which include an Extension/Zero period/grace period as provided by Haryana-RERA through Extract of the resolution passed by the Haryana Real Estate Regulatory Authority, Panchkula in its meeting held on 02.08.2021 (Item no. SPL-I) or such other date of possession as may be mutually agreed between the parties to this agreement and unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake, epidemic or any other calamity caused by nature affecting the regular development of the real estate project ("Force majeure"). If, however, 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 conditions are not of a nature which makes it impossible for the contract to be implemented.</i></p> <p style="text-align: right;">[Emphasis supplied]</p> <p>(As on page no. 63 of complaint)</p>
14.	Due date of possession	22.05.2024 [As mentioned in clause 7 of AFS]

15.	Sale consideration	Rs.98,41,000/- (As on page no. 57 of complaint)
16.	Amount paid by the complainant	Rs.1,03,05,750/- (As on page no. 60 of complaint)
17.	Occupation certificate	Not obtained [Note: Status checked from the website of TCP]
18.	Offer of possession	Not offered

B. Facts of the complaint:

8. The complainant made the following submissions in the complaint:

- I. That in or around the month of May 2013, the complainant was actively exploring investment opportunities in the residential real estate sector with the twin objectives of securing a peaceful retirement home for himself and simultaneously creating a long-term immovable asset for the benefit of his family and future generations. During this period, the complainant came across several advertisements, brochures and promotional materials circulated by respondent no. 2 in relation to its residential project titled "The Nest" situated at Plot 18 no. GH-06, Crossing Republik, Ghaziabad - 201316 ("erstwhile Project).
- II. That one of the key features was presented as a risk-free investment opportunity offering assured returns within a specific time frame. As per the representations made by the respondent no.2, the complainant was offered the option to purchase seven residential units in the said project at competitive prices, and within one year from the date of agreement, respondent no.2 would buy back these units at a pre-determined higher value, thereby providing the complainant with a fixed and assured return. The offer was accompanied by further assurances that the investment was

completely secure, the units were duly sanctioned, all requisite approvals for the project were already in place, and the buy-back arrangement would be duly implemented through the issuance of post-dated cheques.

- III. That acting upon these repeated oral and written representations and assurances, and relying upon the good faith and credibility of the respondent no.2, the complainant entered into a formal Buy Back Agreement with respondent no.2 on 14.06.2013. The said agreement was executed for the purchase of seven clearly identified residential units bearing unit nos. B-202, B-164, C-174, F-018, P-186, F-155 and F-184. These units had varying super areas and were collectively sold for a total consideration amount of Rs.2,00,00,000/-. The complainant made the complete payment for the same through a single cheque on the same date, which was duly acknowledged by the respondent no.2 through the issuance of an official payment receipt. An allotment letter was also issued subsequently confirming the allocation of the respective units in favour of the complainant.
- IV. Despite the complainant fulfilling all his obligations in a timely manner, including the full payment and adherence to the terms of the agreement, the respondent no.2 failed to honour their commitment. The post-dated cheques were either dishonoured or never processed, and upon seeking clarification, the respondent no.2 continued to offer vague and unsubstantiated justifications, citing temporary cash flow challenges, issues with financial institutions, and pending governmental approvals. These explanations were made over an extended period and were always accompanied by fresh assurances that the matter would be resolved shortly.

- V. That eventually, with the intention of settling the matter amicably, both parties executed a formal Settlement Agreement dated 17.09.2022 wherein respondent no.2 formally acknowledged a total outstanding liability of Rs.3,44,00,000/- included the principal amount and accrued interest calculated at the rate of 36% per annum. As per the terms of the Settlement Agreement, respondent no.2 undertook to repay an amount of Rs.2,90,00,000/- through a fresh set of post-dated cheques, payable across quarterly instalments. However, despite executing this agreement, none of the payments were honoured. The cheques either expired without being presented or were dishonoured upon presentation, further demonstrating respondent no.2's intent to delay, statutory obligations.
- VI. That in the month of July 2023, nearly ten years after the initial transaction and in the face of continued non-compliance with both the Buy-Back Agreement and the Settlement Agreement, the complainant was approached once again by representatives of respondent no.2.
- VII. In a purported attempt to finally resolve the matter, the respondents offered possession of two fully constructed residential flats bearing nos. A-1104 and B-2002 in a newly launched project titled "Assotech Blith", situated at Sector 99, Dwarka Expressway, Gurugram, Haryana ("Project"), being developed by respondent no.1. This offer was formalised through the execution of a Memorandum of Understanding dated 31.07.2023 ("MoU") between the complainant and the respondent followed by an Agreement for Sale 31.07.2023 ("Agreement") executed between the complainant and respondent no.1.

- VIII. That Clause 10 of the MoU categorically declared that the units being offered, particularly Flat No. A-1104, is free from any form of encumbrance, lien, mortgage, or third-party rights. This was a critical assurance forming the basis of the complainants acceptance of the settlement.
- IX. However, despite repeated requests, the respondents failed to produce any documentary evidence to substantiate this claim, such as a valid and updated encumbrance certificate, a no-dues declaration, or title clearance from competent authorities. That respondent no.1, being the developer and promoter of the new project is legally obligated to comply with the requirements of Sections 11, 12, and 18 of the Act. These provisions cast a duty upon the promoter to deliver possession on time and ensure the title of the apartment is marketable and free from defects.
- X. Clause 11 of the MoU specifically records that possession of the flats, duly completed in all respects, would be handed over to the complainant on or before 30 September 2024. It also stipulates that any failure to deliver possession by the said date would result in the respondents being liable to pay a compensation amount of Rs.1,00,000/- per month for each unit.
- XI. That the Agreement for Sale dated 31.07.2023, which was executed between the complainant and respondent no.1 for Flat No. A-1104, sets a different and earlier date for delivery of possession. As per Clause 7.1 of the said Agreement, the respondents were to hand over possession of the apartment complete in all respects by 22.05.2024. This date has already passed, and neither possession has been granted nor any explanation provided in writing. Furthermore,

despite the lapse of the timeline, the respondent no.1 has failed to honour the agreed compensation clause or issue any communication addressing the breach.

XII. That upon being approached by the complainant after the failure to meet the possession deadline, respondent no.1 shifted the blame entirely onto respondent no.2. It was stated verbally that respondent no.2 had not fulfilled their internal financial obligations for the said flat, which had in turn stalled the formal handover. This explanation was not only devoid of any documentary proofs but also contradicts the express terms of the MoU and Agreement for Sale, which placed no such conditionality on the complainant.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
- i. Direct the respondent no.1 to complete the construction of the unit along with all facilities and amenities as promised in the Agreement;
 - ii. Direct the respondent no.1 to handover the legal and rightful possession of the flat no. A-1104 to the complainant, including obtaining the CC, OC and all other required statutory approvals from the competent authorities;
 - iii. Direct the respondent no.1 to pay interest at the rate 18% per annum to the complainant for each month of delay in handing over possession of the unit, calculated from the agreed date of delivery till the actual date of possession;
 - iv. Direct the respondent no.1 not to demand or recover any amount beyond what is stipulated in the Agreement and the Memorandum of Understanding executed between the parties;

- v. Direct the respondents to pay an amount of Rs.10,00,000/- to the complainant towards mental agony and harassment caused due to their negligent and misleading conduct;
 - vi. Direct the respondents to pay a sum of Rs.1,00,000/- towards litigation expenses incurred by the complainant in pursuing the present complaint.
10. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions 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 respondent no.1:

11. The respondent no.1 by way of written reply made following submissions.
- I. That the complainant is not an "Allottee" but is an Investor who has invested its monies with the respondent no.2 as a speculative investment in order to earn rental income/profit from its resale.
 - II. That in the year 2010, the Government came up with the Master Plan of 2030 of Gurugram, known Gurgaon at the time and proposed an expressway on the Northern side of the city, known as Northern Peripheral Road (NPR.), now commonly known as Dwarka Expressway, which got finalised by year 2012. 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. To cater to such skyrocketed demand of the consumers for the residential units; the respondent no. 1 launched the residential project known as 'Assotech Blith', Sector - 99, Gurugram which has

been conceptualised and promoted by the respondent no.1 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 were 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 Act, 2016, the respondent had got the subject project registered vide Registration No. 83 of 2017 dated 23.08.2017.

- III. That the development of the said project including civil, Internal and External Electrical, Plumbing, Fire Fighting, Common services and all external development along with the internal development were delegated by the respondent no.1 to the respondent no.2 i.e., M/s Assotech Ltd. vide 'Construction Contract Agreement' dated 03.04.2012.
- IV. That in consonance with the development contract, respondent no.2 i.e., M/s Assotech Ltd. had started the construction work in the project. During this time, the respondent no.2 i.e., M/s Assotech Ltd. was entering into agreements with investors/financers for investing in the company i.e., M/s Assotech Ltd. One such investor was the complainant herein. As per information with the respondent no.1, the complainant had invested some monies with M/s Assotech Ltd.
- V. In terms of the investment requirements, the complainant invested a sum of Rs. 2,00,00,000/- by way of entering into a Buy-Back Agreement with the respondent no. 2 on 14.06.2013

for the purchase of seven clearly identified residential units bearing nos. B-202, B-164, C-174, F-018, F-186, F-155 and F-184 in its residential project titled "The Nest" situated at Plot No. GH-06, Crossing Republik, Ghaziabad - 201316, which has been admitted by the complainant in his complaint.

- VI. That in the middle of 2015, the respondent no. 2 i.e., Assotech Ltd. faced a litigation in the Hon'ble High Court of Delhi and on 08.02.2016, the Hon'ble High Court of Delhi put the respondent no. 2 into provisional liquidation vide its order dated 08.02.2016 in Company Petition no. 357 of 2015.
- VII. That for reasons best known to the respondent no.2, i.e., M/s Assotech Ltd., the terms and conditions of the aforesaid Buy-Back Agreement dated 14.06.2013 were not duly adhered to or complied with by the respondent no.2. Consequently, the complainant initiated proceedings against respondent no.2 for non-fulfilment of its contractual obligations under the said Buy-Back Agreement. The Memorandum of Understanding dated 31.07.2023 was purportedly executed between the complainant and respondent no.2, as is evident from the recitals of the said MoU.
- VIII. As per Clause 2 of the MoU, it was allegedly agreed that respondent no.2 would compensate the complainant by way of allotment of two residential flats bearing nos. A-1104 admeasuring 1365 sq. ft. and B-2002 admeasuring 2400 sq. ft. in the project titled "Assotech Blith", Sector 99, Dwarka Expressway, Gurugram, Haryana.

- IX. That the said MoU dated 31.07.2023 was signed by Sanjeev Srivastva, and the capacity is written as 'Erstwhile Managing Director of Assotech Limited'. Moreover, the said MOU does not bear any seal of the respondent no. 2 i.e., Assotech Ltd. and the same is also not a registered document.
- X. Furthermore, the said MoU does not contain the names of any witnesses nor bears the signatures of any witnesses, thereby rendering its execution further doubtful and lacking in authenticity. The said MoU purportedly executed by the erstwhile Managing Director of the company holds no legal sanctity in the absence of any subsisting authority conferred upon him by the Board of Directors. Upon cessation of office, the erstwhile Managing Director ceased to have any inherent power to represent or bind the company in contractual or legal matters.
- XI. That any agreement or document purportedly executed in pursuance of or in continuation of the aforesaid MoU also does not carry any legal sanctity or binding effect upon the company. Since the very foundation, i.e., the said MoU, was executed without proper authority and lacks validity, any subsequent agreement emanating therefrom stands vitiated in law. Accordingly, no rights, obligations, or liabilities can be said to arise against respondent no.1 on the basis of such an agreement dated 31.07.2023.
- XII. That all monies were paid by the complainant into the account of the respondent no.2 i.e., M/s Assotech Ltd. and the complainant was not a purchaser of units in the project.

XIII. That the complainant is not a home buyer/ allottee and does not come within the ambit of section 2(d) of the Act of 2016 since the complainant had invested his monies with the respondent no.2 i.e., M/s Assotech Ltd. for the sole purpose of financial gains. Vide order dated 08.02.2016 passed by Hon'ble Delhi High Court, M/s Assotech Limited went into provisional liquidation. In pursuance of order passed by the Hon'ble Delhi High Court, a forensic audit was carried out by Rajput Jain & Associates (Chartered Accountants) and as per the said report, the complainant herein was reflected as an unsecured creditor with respect to the amount claimed to have been paid by the complainant in the present complaint. Hence, in the event the present complaint is allowed, the complainant/investor would be permitted to skip the queue of the creditors of M/s Assotech Limited which is against the principles of natural justice. Further, same is evident from the "Scope of Work" of the said report (Page 5 of the Report) wherein it is emphatically made clear under 'Part A'- 'Verification of Amount Payable' stating Due Amount towards unsecured creditors, and Advances from investors payable by the Company (Assotech Ltd.) in Prov. Liquidation. The scope of the Forensic Audit is reproduced below for the ready reference:

"Scope of Work

The scope of Scrutiny & Verification Report of in the case of M/s Assotech Limited was as per initial appointment letter and subsequently extended by Official Liquidator during the meeting of stakeholder along with secured creditors. The following areas have been agreed to be covered in the Scope of work:

Part A

Ø Verification of Amount receivables

- *Verification of amount receivables from the individual home buyers of company in Prov. liquidation.*
- *Verification of Amount pertaining to Loan & Advances and other receivables of Company in Prov. liquidation.*

Ø Verification of Amount Payable

- *Due Amount towards Secured creditors and statutory dues Payable by Company in Prov. liquidation.*
- ***Due Amount towards Unsecured creditors, and Advances from investors Payable by Company in Prov. liquidation.***
- *Review of usage of funds by the Company in Prov. liquidation on the basis of the Audited Financials Statement..."*

XIV. Further as per clause 2.6 "Advance received from Investors" at page 14 of the said report, it is explicitly stated Assotech Ltd. had received an amount of Rs.79.53 crores from numerous investors during years 2010-2015 as the investment towards three projects situated in Noida namely, Windsor Court, The Nest and Celeste Tower. Further as per page A-22 of the report, a total 112 investors are stated to be unsettled investors with whom no settlement agreements have been entered with as on 30.09.2018 and under Exhibit A(9) broadly categorises the amount invested by them and outstanding balance payable to them by Assotech Limited. It is of grave importance to mention here that complainant's name is mentioned at S.no. 21 of Exhibit A(9) stating that an amount of Rs.1,85,00,000 /- was invested by the complainant and Rs.1,85,00,000 /- is stated to be outstanding balance payable by Assotech Ltd. In view of the above, it is abundantly clear that the complainant has invested money with the Assotech Ltd. and the respondent herein has not received a single penny from the complainant, thus the present complaint derives to be dismissed outrightly.

- XV. That neither allotment was the intention of the complainant nor the agreements were done for the purpose of allotment rather the agreements were acting as mere collaterals for the financial transactions done inter se M/s Assotech Ltd. and the present complainant. Also, the said transaction is not a transaction between a promoter and the allottees and rather it is a transaction of financial nature.
- XVI. That the complainant has not paid even a single penny to the answering respondent's account (i.e., M/s Assotech Moonshine Urban Developers Pvt. Ltd.) as sale consideration of the subject unit. The complainant has admitted that he has paid amount to the tune of Rs.2,00,00,000/- to the respondent no.2 i.e., M/s Assotech Ltd. which went into provisional liquidation vide orders of Hon'ble Delhi High Court dated 18.02.2016. Since, no money has been paid by the complainant to M/s Assotech Moonshine Urban Developers Pvt. Ltd. and therefore, no right accrues in favour of the complainant as against the respondent in view of section 18 of the Act.
12. Despite several opportunities, respondent no.2 i.e., M/s. Assotech Limited neither put in appearance nor filed reply. Thus, the matter is proceeded ex-parte against the respondent no.2.
13. 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:

14. 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

15. 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

16. 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;

17. 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 no.1:

F.I Complainant being an "Investor" and not an "Allottee"

18. The respondent no.1 has taken a stand that the complainant is an investor and not consumer he had invested his monies with the respondent no.2, therefore, is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The Authority observes that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

19. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the respondent no.1 and the Agreement For Sale was executed in respect of the subject unit in the project of respondent no.1. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee"

and there cannot be a party having a status of "investor". Thus, the contention of respondent no.1 that the allottee being an investor is not entitled to protection of this Act also stands rejected.

F.II Objection regarding no amount being paid to the respondent no.1.

20. The respondent no.1 has raised a contention that the complainant has not paid even a single penny to respondent no.1 as sale consideration. Since, no money has been paid by the complainant to respondent no.1, therefore, no right accrues in favour of the complainant as against the respondent no.1.
21. The Authority observes that there are two transactions involving the respondents and the complainant, which are as follows:
 - i. Firstly, the complainant invested an amount of Rs.2,00,00,000/- by way of entering into a Buy-back Agreement with the respondent no.2 i.e., M/s. Assotech limited on 14.06.2013 for the purchase of seven residential units in the project "the Nest" situated at Plot no. GH-06, Crossing Republik, Ghaziabad-201316. The Terms and Conditions of the aforesaid Buy-back agreement dated 14.06.2013 were not complied with by the respondent no.2. Thereafter, a Memorandum of Understanding was executed between the complainant and respondent no.2 As per clause 2 of the MOU, respondent no.2 undertook to compensate the complainant by way of allotment of two residential flats in the project "Assotech Blith", Sector-99, Gurugram, Haryana.
 - ii. Secondly, an Agreement for Sale was executed between the complainant and respondent no.1 in respect to the subject unit in the project namely "Assotech Blith".

22. The Authority is of the view that an Agreement for Sale has been executed between respondent no.1 and the complainant on 31.07.2023 and the same is a registered Agreement For Sale. The Agreement is also executed and annexed with the complaint. As per clause G of the said Agreement, the respondent no.1 allotted an apartment bearing no. - 1104, Type-2BHK in Tower no - A, admeasuring carpet area of 73.86 sq. mtrs, Built up Area of 112.02sq. mtrs and Balcony Area of 28.53sq. mtrs in the project namely, "Assotech Blith" situated at Sector-99, Gurugram. It has been clearly mentioned in Clause 1.12 of the said Agreement that the allottee has paid an amount of Rs.1,03,05,750/- , being full payment towards the sale consideration of the subject unit. The same is reproduced herein below:

" 1.12 The Allottee has paid a sum of Rs.1,03,05,750/- (Rupees One Crore Three Lakh Five Thousand Seven Hundred Fifty Only) as total flat cost excluding possession charges & stamp duty charges, being full payment towards the Total Price of the Unit/Apartment for Residential/Commercial or any other usage (as the case may be) alongwith parking (if applicable), which is inclusive of the registration fee paid at the time of submitting application for registration for allotment of an apartment, the receipt of which the promoter hereby acknowledges, and the Allottee hereby agrees to pay the remaining price of the Unit/Apartment for Residential/Commercial or anyother usage (as the case may be) alongwith parking (if applicable) as prescribed in the Payment Plan (Schedule 'C') as may be demanded by the promoter within the time and in the manner specified therein;

Provided that if the allottee delays in payment towards any amount for which is payable, he/she shall be liable to pay interest at the rate specified in the Rule 15 of HRERA Rules, 2017"

[Emphasis supplied]

23. Thus, the objection of the respondent no.1 regarding non-payment of any monies by the complainant to the respondent no.1 stands rejected as the Agreement For Sale dated 31.07.2023 clearly mentions that an amount of Rs.1,03,05,750/- has been paid by the complainant as the total flat cost.

G. Findings on the relief sought by the complainant:

- G.I. Direct the respondent no.1 to complete the construction of the unit along with all facilities and amenities as promised in the Agreement;**
- G.II. Direct the respondent no.1 to handover the legal and rightful possession of the flat no. A-1104 to the complainant, including obtaining the CC, OC and all other required statutory approvals from the competent authorities;**
- G.III. Direct the respondent no.1 to pay interest at the rate 18% per annum to the complainant for each month of delay in handing over possession of the unit, calculated from the agreed date of delivery till the actual date of possession;**
- G.IV. Direct the respondent no.1 not to demand or recover any amount beyond what is stipulated in the Agreement and the Memorandum of Understanding executed between the parties.**
24. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
25. In the present complaint, the complainant intend to continue with the project and is seeking possession and delay possession charges along with interest on the amount paid. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, the shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the rules.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

26. Clause 7.1 of the Agreement For Sale dated 31.07.2023 provides for handing over of possession and is reproduced below:

CLAUSE 7 POSSESSION OF THE UNIT/APARTMENT FOR RESIDENTIAL/COMMERCIAL OR ANY OTHER USAGE (AS THE CASE MAY BE):
7.1 Schedule for possession of the Unit/Apartment for Residential/Commercial or any other usage (as the case may be):

The Promoter agrees and understands that timely delivery of possession of the Unit/Apartment for Residential/Commercial or any other usage (as the case may be) flood, drought, fire, cyclone, earthquake, epidemic or any other calamity cause by force majeure alongwith parking (if applicable) to the Allottee(s) and the common areas to the Apartment Owners Association ("AOA") or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement. The Promoter based on the approved plans and specifications, assures to hand over possession of the said Apartment on 22.05.2024 (which include an Extension/Zero period/grace period as provided by Haryana-RERA through Extract of the resolution passed by the Haryana Real Estate Regulatory Authority, Panchkula in its meeting held on 02.08.2021 (Item no. SPL-I) or such other date of possession as may be mutually agreed between the parties to this agreement and unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake, epidemic or any other calamity caused by nature affecting the regular development of the real estate project ("Force majeure"). If, however, 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 conditions are not of a nature which makes it impossible for the contract to be implemented.

[Emphasis supplied]

27. **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."

28. 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.
29. 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., 19.05.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.
30. 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;"*

31. Therefore, interest on the delay payments from the complainant 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.

32. 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 7.1 of the Agreement For Sale dated 31.07.2023 executed between the complainant and the respondent no.1, the respondent undertook to handover possession of the unit to the complainants on 22.05.2024. Therefore, the due date of handing over possession was 22.05.2024. Despite the lapse of the due date, the respondent neither secured the Occupation Certificate nor made any valid application in that regard.
33. Upon consideration of the documents on record, the Authority observes that the complainant was allotted a unit bearing no. S-1104, Type-2BHK, on the 11th Floor in Tower-N, admeasuring 23.86sq.mtrs (carpet area), built-up area of 112.02sq.mtrs and Balcony area of 28.53sq.mtrs in the project "Assotech Blith" situated at Sector-99, Gurugram. An Agreement for Sale was executed between the complainant and respondent no.1 on 31.07.2023. In terms of Clause 7.1 of the Agreement dated 31.07.2023, the respondent no. 1 undertook to complete construction and hand over possession of the unit on or before 22.05.2024. The sale consideration was fixed at Rs.98,41,000/-, out of which the complainant has paid Rs.1,03,05,750/- to date. The respondent no.1 has failed to obtain the Occupation Certificate from the competent authority till date, despite the expiry of approximately two years from the promised date of possession.

34. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained by the respondent till date. Therefore, in the interest of natural justice, the complainant should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition.
35. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainants is entitled to delayed possession at prescribed rate of interest i.e., 10.80% p.a. from the due date of possession 22.05.2024 till the valid offer of possession plus 2 months after obtaining the occupation certificate from the competent authorities or actual handover, whichever is earlier, as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act. The respondent is directed to handover physical possession of the unit to the complainant within a period of 30 days from the date of offer of possession, after obtaining the Occupation Certificate.

G.V. Direct the respondents to pay an amount of Rs.10,00,000/- to the complainant towards mental agony and harassment caused due to their negligent and misleading conduct;

G.VI. Direct the respondents to pay a sum of Rs.1,00,000/- towards litigation expenses incurred by the complainant in pursuing the present complaint.

36. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. (supra)* has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:

37. 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):
- The respondent no.1 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 complainant from due date of possession i.e., 22.05.2024 till offer of possession plus two months or actual handing over of possession after obtaining Occupation Certificate from the competent authority, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules.

- ii. The respondent no.1 is directed to handover possession of the unit within 30 days from the date of offer of possession, after obtaining the Occupation Certificate.
 - iii. The arrears of such interest accrued from 22.05.2024 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules.
 - iv. The respondent is directed to execute the conveyance deed in favor of the complainant within a period of sixty (60) days from the date of obtaining the Occupation certificate.
 - v. The respondent shall not charge anything from the complainant which is not the part of the agreement.
38. This decision shall mutatis mutandis apply to cases as mentioned in para 3 of this order wherein date of allotment letter, date of execution of buyer's agreement and details of paid-up amount is mentioned in each of the complaints.
39. True certified copy of this order shall be placed in the case file of each matter.
40. File be consigned to registry.


Phool Singh Saini
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.05.2026


Arun Kumar
(Chairman)