

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

Complaint No. : 11 of 2018
Date of Institution : 08.02.2018
Date of Decision : 19.06.2018

1. G.V.S Sai Prasad, S/o G-Rama Murty, R/o A-3/204, Block-3, Kailash Dham SAS Plot No. E-01, Sector 50 Noida-201301 Uttar Pradesh.
2. B.S. Rao, S/O B-Venketeswarlu, R/o BLD-99, New No. 2, 3rd XST, Gill Nagar, Chennai-60094.

...Complainants

Versus

1. M/s Assotech Moonshine Urban Developers Pvt. Ltd. 148-F, Pocket-IV, Mayur Vihar, Phase-I Delhi 110091

...Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Complainant in person with
Shri Amit Srivastava

Advocate for the complainants

Shri Yogesh Sharma, legal
representative with Shri
Sanjeev Dhingra

Advocate for the respondent



ORDER

1. A complaint dated 08.02.2018 was filed under Section 31 of the Real Estate (Regulation & Development) Act, 2016 read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainants (Mr. G.V.S Sai Prasad and Mr. B.S. Rao) against the promoter (Assotech Moonshine Urban Developers Pvt Ltd.) on account of violation of clause 57 of the allotment letter for agreement executed on 20-07-2012 in respect of apartment no. F-1104 in the project "Assotech Blith" for not handing over possession on due date which is an obligation under section 11 (4) (a) of the Act *ibid*.
2. The particulars of the complaint are as under: -

1.	Name and location of the Project	Assotech Blith, sector 99, Gurugram
2.	Flat/Apartment/Plot No./Unit No.	F-1104
3.	Booking amount paid by the buyer to the builder/promoter/company vide agreement	Rs. 4,00,000/-
4.	Total consideration amount as per agreement	Rs. 86,50,750/-
5.	Total amount paid by the complainant upto date	Rs 58,80,527/-





6.	Percentage of consideration amount	Approx. 68 Percent
7.	Date of delivery of possession	20.01.2016
8.	Delay for number of years/months upto date	2 years and 6 months
9.	Penalty Clause as per builder buyer agreement	Clause 19(ii) i.e. Rs 10 per sq. ft per month
10.	Cause of delay in delivery of possession	No valid reason

3. As per the details provided above, which have been checked as per record of the case file. An allotment letter for agreement is available on record for the aforementioned apartment according to which the possession of the same was to be delivered to the complainants within 42 months from the issue of such allotment letter i.e. on 20th January 2016. The respondent company has not delivered the possession till 19.06.2018. The promoter has not fulfilled his committed liability as on date. Neither he has delivered the possession of the apartment as on date to the purchaser nor has paid any compensation i.e. @ Rs. 10 Sq. ft of the super area said unit per month for the period of the such delay as per the allotment letter for agreement.

Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance.



[Handwritten signature]



The respondent appeared on 11.04.2018. The case came up for hearing on 11.04.2018, 26.04.2018, 17.05.2018, 05.6.2018 & 19.06.2018. The respondent has filed the reply which has been perused and found to be vague and evasive. The complainants filed the rejoinder to rebut the reply filed by the respondent in which the complainants reaffirmed the contentions given in the complaint.

5. During hearings, oral arguments have been advanced by both the parties in order to prove their contentions. The respondent was asked to submit the status of the project along with the calculation sheet. By the documents provided by the respondent, it can be ascertained that the tower F in which the complainant had booked a flat is 95 % complete and the promoter will be in a position to provide possession of the same by ~~October 2018~~. *31/12/2018*
6. Since, the construction activity of the said tower is almost complete, it will not be fair on part of the builder to refund the amount after investing huge amounts in the project.
7. As per clause no. 19(i) of the allotment letter, the possession of the flat was to be handed over within 42 months from the date of allotment letter. Accordingly, the due date of possession was 20.01.2016. As far as the penalty clause in case *corrected vide order dated 11.12.2018*





of delay in possession is concerned which is Rs. 10/sq. mt. per month, it is held to be one-sided as held in para 181 of the judgment in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors.* (W.P 2737 of 2017), the Bombay HC bench held that:

".....Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

8. The complainants made a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

It was requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of

[Handwritten signature]



this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

9. Keeping in view the present status of the project and intervening circumstances, the complainant **does not intend to withdraw**. As per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the complainants (GVS Sai Prasad and BS Rao) interest at the prescribed rate for every month of delay till the handing over the possession as the promoter has not fulfilled his obligation. The complainants reserve their right to seek compensation from the promoter for which they shall make separate application to the adjudicating officer, if required.
10. Thus, it is held that the respondent is directed to give interest as prescribed from the date of possession as per allotment letter till actual date of handing over possession. Respondent is further directed to give interest on amount on 10th of every month. *Complainant as per calculation sheet attached needs to deposit an amount of Rs. 26,20,875/- (as he owes to the builder) at the prescribed rate of interest i.e. 10.35% per annum.*
11. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the *corrected vide order dated 11.12.2018.*





HARERA
GURUGRAM

Complaint No. 11 of 2018

promoter leaving aside compensation which is to be decided by the Adjudicating Officer.

12. The order is pronounced.

13. Case file be consigned to the registry.



(Samir Kumar)
Member

(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 11.12.2018
Complaint No.	11/2018 Case titled as GVS Sai Prasad & anr. V/S M/S Assotech Moonshine Urban Developers Pvt. Ltd.
Complainant	GVS Sai Prasad & anr.
Represented through	Complainant in person with Shri Umesh Chauhan Advocate
Respondent	M/s Assotech Moonshine Urban Developers Pvt. Ltd.
Respondent Represented through	Shri Yogesh Sharma Head (Sales & CRM) on behalf of respondent-company with Shri Sanjeev Dhingra Advocate.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari

Proceedings

Respondent has moved an application dated 21.8.2018 w.r.t. correction/rectification of due date as mentioned in the said application. For rectification of:-

- i) due date of possession i.e. 31.12.2018 instead of October 2018.
- ii) Complainant as per calculation sheet attached needs to deposit an amount of Rs.26,20,785/- (as he owes to the builder) at the prescribed rate of interest i.e. 10.35% per annum.

Change of date of possession i.e. 31.12.2018 instead of 31.10.2018 in earlier order dated 19.6.2018, the mistakes are clerical in nature and has

crept inadvertently, the same need to be rectified/modified for all intents and purposes. The authority unanimously decided the matter in favour of the respondent. The earlier order dated 19.6.2018 be modified to that extent. The original complainant may file his version, if not found correct on the basis of record. Copy of calculation sheet may be provided to the complainant by the counsel for the respondent. Both the parties are directed to sort out their give and take mutually as per the order pronounced today upto 11.1.2019.

Complaint stands disposed of. File be consigned to the registry.

Samir Kumar
(Member)

Subhash Chander Kush
(Member)