

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

Complaint no. : 347 of 2020
First date of hearing: 19.02.2020
Date of decision : 22.09.2021

1. Tawleen Kaur

2. Manjit Kaur

Both RR/o: D54, First Floor, Fateh Nagar, New
Delhi- 110018

Complainants

Versus

Assotech Moonshine Urban Developers Pvt.
Ltd.

Regd. office: 148 F, Pocket-IV, Mayor Vihar,
Phase-I, Delhi-110091

Respondent

CORAM:

Shri Samir Kumar

Shri Vijay Kumar Goyal

Member

Member

APPEARANCE:

Shri. Yogesh Yadav

None

Advocate for the complainants

Advocate for the respondent

EX- PARTE ORDER

1. The present complaint dated 20.01.2020 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

S. No.	Heads	Information
1.	Name and location of the project	"Assotech Blith" Sector 99, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	12.062 acres
4.	DTCP License	95 of 2011 dated 28.10.2011 valid till 27.10.2024
	Name of the licensee	M/s Uppal Housing Pvt. Ltd. M/s Moonshine Urban Developers Pvt Ltd
5.	HRERA registered/ not registered	Registered vide registration no. 83 of 2017 dated 23.08.2017. Valid upto 22.08.2023.
6.	Date of execution of flat buyer's agreement	Not executed
7.	Date of execution of allotment letter	18.01.2013
8.	Unit no.	E-802, 8 th floor (As on page 30 of the complaint)
9.	Super Area	1365 sq. ft.
10.	Payment plan	Construction linked payment plan (As per page 53 of the complaint)

11.	Total consideration	Rs. 68,85,681/- (As per customer ledger dated 01.06.2018 on page 61 of complaint)
12.	Total amount paid by the complainants	Rs. 64,30,384/- (As per customer ledger dated 01.06.2018 on page 63 of complaint)
13.	Due date of delivery of possession (The possession of the apartment shall be delivered to the Allottee(s) by the Company within 42 (Forty Two) months from the date of allotment subject to Froce Majure, circumstances, regular and timely payments by the intending Allottee(s), availability of building material, change of laws by Governmental/ Local Authorities etc. The construction shall be deemed to be complete on obtaining the occupation certificate by the Company from DTCP. No claim by way of damage, compensation shall lie against the Company in case of delay in handing over possession on account of delay in obtaining the occupation certificate or any other reasons beyond the control of the Company)	18.07.2016
14.	Offer of possession	Not offered
15.	Occupation Certificate	Not obtained
16.	Delay in delivery of possession till the date of decision i.e. 22.09.2021	5 years 02 months 04 days

B. Facts of the complaint

3. That the complainants were approached by the respondent to purchase an apartment in the project of respondent named "Assotech Blith" (hereinafter, "said Project"). The respondent assured the complainants that the possession of the apartment would be handed over expeditiously and also assured to compensate the complainants for any delay in the handing over of such possession.
4. That relying upon the assurances and representations of the respondent, the complainants applied for an apartment at the said Project vide application no. 056 dated 16.03.2012. It is pertinent to note that Manjit kaur (hereinafter, "complainants no. 2") is an aged lady and Tawleen Kaur (hereinafter, "complainants no. 1") wanted to ensure a comfortable life for her and as such wanted to provide for all her needs especially safety of a residence. Complainants no. 1 thus was motivated by the assurance of an expedited delivery put forth by the respondent so as to ensure a permanent residence for complainants no. 2.
5. That accordingly on 18.01.2013, the respondent issued an allotment letter for apartment no. E-802 ("said apartment"), thereby allotting the said apartment to our client in the said project.

"19. Possession: The Allottee(s) shall be entitled to the delivery of possession of the apartment only after the Allottee(s) has completed all formalities and paid all amounts due and payable by

the Allottee(s) and after the execution and registration of the sale deed or such other document as stipulated herein or required in accordance with the laws.

(i) The possession of the apartment shall be delivered to the Allottee(s) by the Company within 42 (Forty Two) months from the date of allotment subject to Force Majeure, circumstances, regular and timely payments by the intending Allottee(s), availability of building material, change of laws by Governmental/ Local Authorities etc. The construction shall be deemed to be complete on obtaining the occupation certificate by the Company from DTCP. No claim by way of damage, compensation shall lie against the Company in case of delay in handing over possession on account of delay in obtaining the occupation certificate or any other reasons beyond the control of the Company.

57. Possession Date: the apartment will be delivered to the allottee within 42 months from the issue of this allotment letter. No delayed charges shall be payable within the grace period."

6. That the complainants addressed several e-mails, telephonic representations and visits to the office of the respondent, on several occasions, the same were of no avail.
7. That the complainants wrote to the respondent pointing out the grossly negligent and illegal manner in which the respondent have conducted themselves and sought refund of amounts deposited by them. The respondent however, failed to receive the said letters on their official addresses and as such are attempting to benefit out of the negligence/ inaction and mis-utilise the amounts tendered by the complainants to the respondent thereby acting in contravention of the provisions Act of 2016.
8. That the complainants are constantly prejudiced from the delay in handing over of possession as the complainants are required to rent out a premise for the residence of her mother even though she

has paid substantial amounts to the respondent for delivery of possession of the said apartment. It is further pertinent to note that the complainants are also required to pay instalments on a monthly basis on the loan availed by them for purchase of the said apartment which includes payment of a high rate of interest.

9. That the narration of the facts as brought out above make it abundantly clear that the respondent has considerably failed to comply by the terms and conditions of the allotment letter and have indulged in gross malpractices in order to dishonestly enjoy the amounts received from the complainants thereby acting in clear contravention of the provisions of Act of 2016 specifically provisions under sections 13 and 18 of the Act.

C. Relief sought by the complainants:

10. The complainants have sought following relief:
- i. Direct the respondent to pay interest for every month of delay at the rate of 10.80% per annum, compounded from the date of receipt of the payments made to the respondent.
 - ii. Direct the respondent to handover the possession of the apartment.
11. The authority issued a notice dated 12.08.2021 to both the parties to go for mediation as per application of the respondent dated 20.07.2021. Since no amicable decision was arrived at by way of settlement between the parties, the matter was referred for further

arguments. The authority further issued a notice to the respondent on the given email address at smile@assotechlimited.com on 31.08.2021. The delivery reports have been placed in the file the complainants and the respondent on the given email address at. The delivery reports have been placed in the file. Despite service of notice, the respondent has preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

E. Jurisdiction of the authority

13. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial jurisdiction

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

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per the provisions of section 11(4) (a) of the Act of 2016 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings regarding relief sought by the complainants.

Relief sought by the complainants: Direct the respondent to pay interest for every month of delay at the rate of 10.80% per annum, compounded from the date of receipt of the payments made to the respondent.

G.1 Admissibility of delay possession charges

In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

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

14. As per clause 19(i) of the allotment letter dated 18.01.2013, the possession of the subject unit was to be handed over by of

18.07.2016. Clause 19(i) of the allotment letter provides for handover of possession and is reproduced below:

As per clause 19(i) : The possession of the apartment shall be delivered to the Allottee(s) by the Company within 42 (Forty Two) months from the date of allotment subject to Froce Majure, circumstances, regular and timely payments by the intending Allottee(s), availability of building material, change of laws by Governmental/ Local Authorities etc. The construction shall be deeme to be complete on obtaining the occupation certificate by the Company from DTCP. No claim by way of damage, compensation shall lie against the Company in case of delay in handing over possession on account of delay in obtaining the occupation certificate or any other reasons beyond the control of the Company..

15. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter. The incorporation of such clause in the flat buyer's agreement/allotment letter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

16. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, 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.*

17. 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.
18. 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., 22.09.2021 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
19. 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;"*

Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

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 are 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 executed between the parties on 18.01.2013, the possession of the subject apartment was to be delivered within 42 months from the date of allotment i.e. 18.07.2016. Therefore, the due date of handing over possession is 18.07.2016. The respondent have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil their obligations and responsibilities as per the agreement to hand over the possession within the

stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 18.07.2016 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority:

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

- i. The respondent shall pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 18.07.2016 till handing over of possession as per section 18(1) of the Act of 2016 read with rule 15 of the rules after obtaining occupation certificate.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month;

- iii. The respondent shall not charge anything from the complainants which is not the part of the agreement/allotment letter.
 - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(zb) of the Act.
21. Complaint stands disposed of.
22. File be consigned to registry.

(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Vijay Kumar Goyal)

Member

Dated:22.09.2021