

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 3113 of 2020
Date of decision : 27.10.2021

SIMON DUMARESQ BAZELEY
R/O : 2, School Lane, 2nd Floor,
Near Hotel, Bengali Market,
New Delhi

Complainant

Versus

ASSOTECH MOONSHINE URBAN
DEVELOPERS PVT. LTD.
ADDRESS: 148 F, Pocket IV,
Mayur Vihar Phase- I,
New Delhi- 110091

Respondent

APPEARANCE:

For Complainant:

Mr. Bijo Mathew Advocate

For Respondent:

Ms. Arti Sharma Advocate

ORDER

1. This is a complaint filed by Simon Dumarseq Bazeley (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act of 2016) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainant, on 31.05.2012, he booked a unit in respondent's project **Assotech Blith**, situated at sector-99, Gurugram and made payment of Rs 7,15,670 as booking amount. The respondent vide allotment letter, dated 19.06.2012 allotted a unit to him bearing unit No. E-202 admeasuring 1365 sq. ft. for a total consideration of Rs 84,43,945 /- including BSP, PLC, EDC etc.
3. As per Clause 19 (i) and (ii) of allotment letter, possession of said premisses was to be delivered within 42 months from the date of allotment letter, subject to force majeure circumstances, regular and timely payment by the allottee, availability of building materials with further grace period of 6 months. The respondent failed to complete the construction work and consequently to deliver same, till date.
4. As per the payment plan and demands raised by respondent, he (complainant) made timely payment of Rs 83,03,722/- but

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to his utter dismay, possession of the apartment has not been offered as assured by the respondent.

5. The complainant has paid almost 98 % of the total sale consideration but respondent failed to give any information about the progress of construction, which was scheduled to be completed in year 2016, and failed to tell definite date for delivery of possession. He (complainant) vide his email dated 03.06.2020, requested the respondent to refund his amount with interest. Till date, respondent has not replied to the said email.
6. In this way, the respondent has committed gross violation of the provisions of section 18(1) of the Act, by inordinately delaying the delivery of the possession, the booking of the unit was made in the year 2012 and till date, the project is nowhere near completion, and hence complainant is forced to file present complaint, seeking refund of entire amount of Rs 83,03,722/- along with interest @ 18 %, Rs 10,00,000 for mental agony and Rs 65,000 as cost of litigation.
7. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		

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1.	Project name and location	" Assotech Blith , situated at sector-99 Gurugram
2.	Project area	12.062 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	95 of 2011 dated 28.10.2011
5.	Name of licensee	Monshine Urban Developers Pvt. Ltd. and Uppal Housing Pvt. Ltd.
6.	RERA Registered/ not registered	Registered
UNIT DETAILS		
1.	Unit no.	E-202
2.	Unit measuring	1365 sq. ft.
3.	Date of Booking	31.05.2012
4.	Date of Allotment letter with detailed terms and conditions	19.06.2012
5.	Due Date of Delivery of Possession As per Clause 19 (i) and (ii) of allotment letter, possession of said premisses was to be delivered within 42 months from the date of allotment letter subject to force majeure	19.12.2015

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	circumstances, regular and timely payment by the allottee, availability of building materials with grace period of six months	
6.	Delay in handing over of possession till date	5 years 10 months
PAYMENT DETAILS		
7.	Total sale consideration	Rs 84,43,945 /-
8.	Amount paid by the complainants	Rs 83,03,722/-
9.	Payment Plan	Construction linked

8. Upon notice, the complaint was resisted by the respondent/ developer by filing written reply dated 05.08.2021. The respondent took a preliminary objection with respect to jurisdiction of adjudicating officer or Authority to entertain the complaint, on the ground that the issue of jurisdiction is still pending before Hon'ble Supreme Court.. It is averred that possession was to be delivered within 42 months from the date of allotment letter, subject to force majeure circumstances.
9. A contract for construction the subject project was executed on 03.04.2012 between respondent and Assotech Limited. The work was going on full swing till 2016. On 08.02.2016, the construction company was put on provisional liquidation

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by Hon'ble Delhi High Court in civil Petition No. 357 of 2015 and official liquidator (OL) was appointed. The OL sealed the office of construction company. The OL asked respondent to wait as the matter was sub-judice before the court. The respondent tried to arrange other contractors so that the work can be carried on but none came forward to take up the assignment of construction activity. The work was in mid way and acute recession was prevailing in the real estate market, at that time. In these circumstances the construction work remained hampered from 2016 to 2019 February. The construction work till 2016 was almost 70 % to 80 % complete at site. When Hon'ble High Court of Delhi ordered for revival of contractor company, the Assotech Limited immediately started the construction work with full force of manpower to recap loss of time.

10. Further, due to the orders passed by National Green Tribunal, and State Pollution Control Board, the construction work was stopped, and progress of work was hampered. Due to various orders passed by authorities at different occasions, regarding water shortage and pollution control etc, coupled with problems of labourers and contractors, the respondent faced grave difficulty, which affected the progress of the project. The sudden outbreak of pandemic Covid 19 is biggest reason for delay.

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11. It is further averred that the respondent has not diverted funds and has spent Rs 354.98 crores towards acquisition and development of project and EDC/IDC. The respondent applied for occupation certificate on 12.04.2021 for Towers E,F, C and G which include tower where unit in question is situated.
12. Contending all this, respondent prayed for dismissal of complaint.
13. I have heard Ld. counsels for the parties and perused the documents on record.
14. Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, provides for filings of complaint/application for inquiry to adjudge quantum of compensation by Adjudicating Officer. Matter came before the Hon'ble Haryana Real Estate Appellate Tribunal in case of **Sameer Mahawar Vs M G Housing Pvt Ltd**. Where it was held by the Appellate Tribunal on 02.05.2019, that the complaint regarding refund/compensation and interest for violations under section 12,14, 16 of the Act of 2016 are required to be filed before the Adjudicating Officer under Rule 29 of the Rules of 2017. In September 2019 Government of Haryana amended Rules of 2017, by virtue of which, the authority was given power to adjudicate issues stated above, except compensation. Amendment in the rules came into



challenge in Civil Writ Petition No. 34271/2019 before Hon'ble Punjab & Haryana High Court. The validity of amendment was upheld by the High Court. The judgment was further challenged before the Apex Court in Special Leave Petition No.13005 of 2020 & 1101 of 2021, wherein the Apex Court vide order dated 05.11.2020 was pleased to pass an order staying operation of impugned order, passed by Hon'ble Punjab & Haryana High Court referred above. Said special leave petition is still pending before the Apex Court.

15. When the order of Hon'ble Punjab & Haryana High Court upholding the validity of amendment in rules of 2017 has been stayed by the Apex Court, which amounts restoration of status qua ante i.e. when the complaints seeking refund, compensation and interest were entertained by the Adjudicating Officer. Considering all this, I don't find much substance in plea of respondent alleging that this forum has no jurisdiction to try and entertain complaint in hands.

16. So far as plea of respondent with respect to various orders of NGT orders and state pollution control board regarding stoppage of construction work, is concerned, no copy of any such order has been placed on record. Moreover, there is no evidences, to prove for how much days and months those orders remained in existence or construction work was

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halted due to that. The delay cannot be justified on such grounds, without any evidence to substantiate the same. True, pandemic of covid19 gripped entire nation and government of India was constrained to impose lockdown but all this happened on and after 23rd March 2020 i.e. much after lapse of agreed period for handing over possession of unit to complainant.

17. Although no BBA, was executed between the parties of this case. Neither complainant nor respondent disputed agreement. Even if it was an oral agreement respondent was obliged to handover possession within reasonable time and if allotment letter is taken as contract between parties, according to it possession of unit in question was to be handed over within 42 months from the date of allotment letter. Counting in this way, possession ought to have been delivered by 19.12.2015 and till date respondent has not been able to complete the construction work. The respondent has not disputed the payment of Rs 83,03,722/- made by the complainant.

18. When buyer made timely payment towards the allotted unit, same was well within his right to claim possession. A buyer cannot be made to wait indefinitely, for his/her dream unit. It is not claimed on behalf of respondent that it has obtained

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occupation certificate for the tower in which unit of complainant is situated.

19. Complaint in hands is thus, allowed and respondent is directed to refund the amount received from the complainant i.e. Rs 83,03,722/- to the latter, within 90 days from today, along with interest @ 9.30% p.a. from the date of each payment till its realisation. A cost of litigation etc, Rs 1,00,000 is imposed upon respondent to be paid to complainant.

File be consigned to the Registry.

27.10.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 15.11.2021.