

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

Complaint no. : 1377 of 2020
Date of decision : 27.10.2021

KRISHNA GOEL
R/O : Flat No. 5 D,
Tower J, Central Park-2
Sector-48, Gurugram.

Complainant

Versus

ASSOTECH MOONSHINE URBAN
DEVELOPERS PVT. LTD.
ADDRESS: Assotech ltd, H-127,
Sector-63, Gautam Budh Nagar,
Noida, UP-201301.

Respondent

APPEARANCE:

For Complainant:

For Respondent:

Mr. Arnab Sanyal Advocate

Mr. Sanjeev Dhingra -Advocate

Dr. J.

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ORDER

1. This is a complaint filed by Smt. Krishna Goel (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 05.07.2012, she booked a flat in respondent's project **Assotech Blith**, situated at sector-99, Gurugram and made payment of Rs 7,30,275 as booking amount. The respondent vide allotment letter, dated 24.04.2013 allotted a flat to her bearing unit No. A-1004 admeasuring 1365 sq. ft. for a total consideration of Rs 83,51,125/- including BSP, PLC, EDC etc.
3. As per Clause 19 of allotment letter, possession of said premises 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.. 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 69,92,185/- but

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

5. The complainant enquired about the completion of project but respondent failed to provide any such information. The representatives of respondent have false assurances that possession will be offered shortly but failed to do so till date. The respondent sold said unit on the basis of super area and not on the basis of carpet area. Calculating the price as per carpet area, total cost of unit comes to Rs 48,85,250/- whereas complainant has already paid Rs 69,92,185.
6. Even otherwise, she (complainant) has paid more than 80 % of the total sale consideration but respondent failed to give any information about the progress of construction, which was scheduled to be completed by January 2016. She (complainant) served a legal notice dated 14.09.2018 and requested for refund of her amount with interest @ 18 % p.a. and compensation.
7. 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 69,92,185/- along with interest @ 18 % , Rs 10,00,000 for mental agony and Rs 5,00,000 as cost of litigation.

8. The particulars of the project, in tabular form are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
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.	A-1004
2.	Unit measuring	1365 sq. ft.
3.	Date of Booking	05.07.2012
4.	Date of Allotment letter with detailed terms and conditions	24.04.2013

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5. Due Date of Delivery of Possession	24.10.2016
As per Clause 19 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.	
6. Delay in handing over of possession till date	5 years
PAYMENT DETAILS	
7. Total sale consideration	Rs 83,51,125/-
8. Amount paid by the complainant	Rs 69,92,185/-
9. Payment Plan	Construction linked

9. Upon notice, the complaint was resisted by the respondent/ developer by filing written reply dated 08.06.2021. The respondent took preliminary objection with respect to jurisdiction of adjudicating officer or Authority to entertain the complaint on the ground that the issue of jurisdiction (between the authority and adjudicating officer inter-se) is still pending before Hon'ble Supreme Court.

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10. It is averred that possession was to be delivered within 42 months from the date of allotment letter subject to force majeure circumstances. The contract for construction of 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 by Hon'ble Delhi High Court in Co. Petition No. 357 of 2015 and official liquidator (OL) was appointed. The OL sealed the office of contract company and OL asked respondent to wait as the matter was sub-judice before court. The respondent tried to arrange other contractors so that the work can be carried on, but none came forward to take up assignment of construction activity, because the work was in mid way and huge acute recession was prevailing in the real estate market at that time.

11. Further, due to the orders passed by National Green Tribunal and State Pollution Control Board the construction work was stopped. Further, 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 in finding new contractor and

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labourers which affected the progress of the project. Sudden outbreak of pandemic Covid 19 is biggest reason for delay.

12. It is further averred that the respondent did not divert funds and has spent Rs 350 + crores towards acquisition and development of project and EDC. The respondent denied that the on the basis of carpet area, total consideration of the unit will be Rs 48,85,935 and complainant has paid in excess. It is clarified that the area as per the allotment letter is 1365 sq. ft and total sale consideration is Rs 83,51,125. The complainant was fully informed about said fact before she decided to purchase the flat.

13. Contending all this respondent prayed for dismissal of complaint.

14. I have heard Ld. counsels for the parties and perused the documents on record.

15. 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.

16. 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.


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17. So far plea as of respondent with regarding various orders of NGT 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 evidence ~~on~~ ^h ~~record~~, to prove as for how many days those orders remained in existence or construction work was halted due to those orders. 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.
18. 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 24.10.2016 and till date respondent has not been able to complete the construction work. The respondent

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has not disputed the payment of Rs 69,92,185/- made by the complainant.

19. When buyer has 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 occupation certificate for the tower in which unit of complainant is situated.

20. Complaint in hands is thus, allowed and respondent is directed to refund the amount received from the complainant i.e. Rs 69,92,185/- 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 22.11.2021.