

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

Complaint no. :	3913 of 2023
Order reserved on:	07.02.2025
Order pronounced on:	11.04.2025

1. Ankush Prashar
2. Anita Prashar

Address at: 739, Ground Floor, Sector-31,
Near Huda Primary School, Gurugram,
Haryana-122001

Complainants

Versus

1. M/s DSC Estate Developers Pvt. Ltd.
Office: 1114, 11th floor, Hemkunt Chambers,
89, Nehru Palace, New Delhi-110019
2. PNB Housing Finance Limited
Office: 9th floor, Antriksh Bhawan, Kasturba
Gandhi Marg, New Delhi-110001

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Sahil Bhardwaj
Sh. Bhrigu Dhami

HARERA
GURUGRAM

Advocate for the complainants
Advocate for the respondent
no. 1
Advocate for the respondent
no. 2

Sh. Vikas

ORDER

1. The present complaint has been filed by the complainants/allottees 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 under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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.	Particulars	Details		
	Name of the project	Supertech Azalia, Sector-68, Golf Course Extn. Road, Gurgurgram-122101		
1.	Project area	55.5294 acres		
2.	Nature of project	Group Housing Colony		
3.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017		
	Validity Status	31.12.2021		
4.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013	89 of 2014 dated 08.08.2014	134 to 136 of 2014 dated 26.08.2014
	Validity status	25.12.2017	Renewed on 31.03.2023 up to 07.08.2024	license no. 134 of 2014 valid up to 25.08.2024 License no. 135 and 136 of 2014 valid up to 25.08.2019
	Name of licensee	Sarv Realtors Pvt. Ltd. & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.
5.	Unit no.	0606, 6th floor, Tower T4 (Page no. 81 of complaint)		
6.	Unit measuring	1225 sq. ft. (Super area)		



		(Page no. 81 of complaint)
7.	Date of Booking	22.08.2016 (Page no.81 of complaint)
8.	Date of execution of Builder developer agreement	17.09.2016 (Page no. 93 of complaint)
9.	Possession clause	E. POSSESSION OF UNIT: - <i>23. The possession of the unit shall be given by December 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Buyer(s) @ Rs.5.00/-(five rupees only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the offer letter of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure circumstances and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount, will be calculated after the lapse of grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the allottee till such date, at the time of final account settlement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special/beneficial scheme of the company i.e., No EMI till offer of possession, Subvention scheme, Assured Return etc. and who honour their agreed payment schedule and make the timely payment of due instalment and additional charges as per the payment plan given in allotment letter.</i> (Page 97 of the complaint)
10.	Due date of possession	30.06.2020 (Note:- December 2019 plus 6 months grace period)
11.	Total sale consideration	Rs.81,41,981 /- (page no. 82 of complaint)



12.	Total amount paid by the complainants	Rs. 61,78,348/-
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered
15.	Memorandum of understanding	19.09.2016 (Page no. 111 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- I. The complainants earlier had filed a complaint bearing number 4243 of 2021 titled as Ankush Prashar & others Vs Supertech Ltd, which was adjourned sine die by this authority on 13 May 2022 on the ground of initiation of insolvency proceedings and appointment of IRP against the respondent i.e., Supertech Ltd by the NCLT Delhi bench.
 - II. That the earlier complaint filed by the complainants were against the Supertech Limited in the capacity of the promoter, hence the initiation of the insolvency proceeding against Supertech Limited had the direct impact upon the continuation of the earlier complaint, however later on it was came into the knowledge of the complainants that project named "Supertech Azalia", situated within the revenue estate of Sector 68, Tehsil & District Gurugram, Haryana, for which the builder buyer agreement/MOU was executed with the complainants is not in the ownership of the Supertech Limited but actually and legally in the ownership of respondent no.1 and the same became evident from the order dated 29.11.2019 passed by this Hon'ble Authority in Suo moto complaint bearing no. 5802 of 2019.
 - III. That the respondent no.1 as well as the Supertech Ltd has failed and refused to comply with the aforesaid order of this Hon'ble authority and



never rectified the details of the promoter in the records of the authority as directed here in before.

- IV. That the Supertech Limited executed an illegal joint development agreement dated 25.04.2014 with the respondent no.1 and others and also secured the registration of said project with Interim Authority at Panchkula on 04.09.2017. The authority in its order dated 29.11.2019 passed in Suo moto complaint bearing no. 5802 of 2019 has categorically held that the registration with the authority is taken by the Supertech limited illegally without having any authority. The fraud has been played with this Authority by the Supertech Limited and respondent no. 1 in criminal conspiracy with each other and was never to be done without their malicious connivance and on the basis of said registration of the project, the complainants were induced to enter into the builder buyer agreement with the Supertech Limited instead of respondent no. 1.
- V. The Supertech Limited was fully aware of the order dated 29.11.2019 but has fraudulently concealed the same, when this Hon'ble Authority adjourned the earlier complaint along with many other complaints pending before it, sine die vide its order dated 13.05.2022 and in case the order dated 29.11.2019 as mentioned herein had been complied with the concerned parties then the sine die adjournment would not have happened, therefore a very deliberate and meticulous fraud has been played with this Hon'ble Authority and the respondent no. 2, who was also aware of this fact since inception is also involved in this fraud. The fact that the Supertech limited was never the owner of project named "Azalia" is also clear from the email dated 14.06.2022 written by the IRP Mr. Hitesh Goel to this Hon'ble Authority reiterating the said fact and also from the order dated 11.09.2020 passed in complaint bearing



No. 2145 of 2020 titled as Deepak Chowdhary Vs PNB Housing Finance Limited by this Hon'ble Authority.

- VI. That the respondent no.2 was very well aware of the fact that respondent no. 1 is the actual and legal owner of the said project and not the Supertech Limited, but still with an intention to cheat and defraud the complainants it, executed the tri-partite loan agreement by concealing the fact that Supertech is infact not the owner of the project and in fact disbursed the loan amount to the Supertech Limited. It is to be noted that any bank who finances the home loan on any project does its title due diligence to know the legal status of title of the land and project, and it was not possible at all that the respondent no. 2 did not become aware of the said fact and it therefore, deliberately concealed the said fact from this Hon'ble Authority as well the complainants and was in hand in gloves with the promoters.
- VII. That this Hon'ble Authority in its order dated 11.09.2020 passed in complaint bearing no. 2145 of 2020 titled as Deepak Chowdhary Vs PNB Housing Finance Limited has also categorically held that the respondent no. 2 being the assignee of the promoter and therefore falls within the ambit of the definition of the promoter under section 2(zk) of the RERA Act 2016. Hence, the present complaint is maintainable against the respondent no. 2 as per law and it is bound by provisions of RERA Act, 2016.
- VIII. That the respondent no. 2, who is also guilty of playing fraud with this Hon'ble Authority, is now continuously pressuring and harassing the complainants for recovery of loan amount, which was illegally disbursed by it to the Supertech Limited fully knowing the fact that it is not the owner and developer of the said project and loan amount should have been disbursed only after taking prior consent and concurrence of



the respondent no.1, who is the actual licensee of the said project named Supertech Azalia's vide license No. 106 and 107 of 2013 dated 26.08.2014 and licence No. 134-136 of 2014 dated 26.08.2014 issued by the competent authority for a group housing colony on an area admeasuring 32.83 acre in sector-68, Gurgaon in the name of respondent no. 1 and some other entities.

- IX. That as per the facts and circumstances mentioned hereinbefore, it is clear and apparent on the face of it, that respondent no. 1 is also the promoter of the said project as per law, hence in the present complaint DSC Estate Developer Private Limited is addressed as the respondent in this complaint.
- X. That the complainants upon becoming aware of the aforesaid fact, had filed an application bearing no. MA/161/2023 for the restoration of earlier complaint bearing no. 4243/ 2021 and while disposing off said application, this Hon'ble Authority, considering all the relevant facts and circumstances mentioned herein, has granted liberty to the complainants to file the complaint against relevant parties.
- XI. That the matter in dispute relate to intentional, willful, deliberate and vexatious non- deliver of the actual, physical and vacant possession of residential unit/ apartment/ flat bearing flat no. 606, building no. T4, in the name and style of "Supertech Azalia", complete in all respects over the land situated within the revenue estate of Sector 68, Tehsil & District Gurugram Haryana, for a total valuable price of 81,41,981/- including eye catching decorated possession along with service tax, or any other tax as applicable in breach of the terms & conditions of the builder buyer agreement, before (36) Months and at the most with the grace period i.e., on or before December, 2019.

- XII. That initially somewhere in the years 2015 through an advertising campaign in print and electronic media with ulterior motives of luring the prospective customers/ clients, the respondent launched a multistoried residential project in the name and style of "Supertech Azalia", complete in all respects over the land situated within the revenue estate of Sector 68, Tehsil & District Gurugram, Haryana wherein they offered various types & denominations of residential unit/ apartment with State of the Art modern facilities at very affordable prices.
- XIII. That believing on the words and the representation of the respondent, to be true, vide application for registration of allotment of flat dwelling unit, the complainants booked or registered him for the allotment of a residential unit/ apartment/ flat bearing flat no. 606, building no. T-4, in the name and style of "Supertech Azalia", upon payment of Initial booking amount of Rs. 8,49,544/- vide booking form dated 22nd Aug, 2016.
- XIV. Thereafter, the buyer developer agreement was executed by the Supertech Limited, as described and explained hereinabove, with the complainants on 17.09.2016 with all the terms and conditions for the said unit with a promise that the possession of said unit will be delivered to the complainants by December, 2019.
- XV. That on assurance of timely delivery by the respondent no. 1, the complainants obtained housing loan wherein Rs. 66, 93,000/- has been sanctioned as the loan amount and Rs. 50, 97, 266/- has been disbursed and as the Loan amount under the subvention scheme.
- XVI. That on 19.09.2016 the memorandum of understanding was also signed and duly executed by and between complainants and respondent no. 1 in respect of the scheme of purchasing of the said unit in form of no pre-



EMI till possession scheme and as per the said MOU developer agreed to pay the Pre-EMI to the buyer in case the possession is not offered in 36 months and the said payment shall be made by the respondent 1 till the offer of possession is handed over to the complainants.

- XVII. That a tri-partite agreement has been duly signed by and between the complainants and respondent and the financial institution and it was portrayed that the loan was under the subvention scheme wherein the respondent was responsible to pay emi till the delivery of the possession.
- XVIII. That despite being financially burdened from all fronts, the complainants performed their part of any/all the obligations by making all the payments well within the prescribed time in terms with the payment schedule part & parcel of the buyer's agreement dated 17.09.2016 which was duly received & acknowledged by the respondent, however they never cared to perform their part of contractual obligations by offering the actual, physical and vacant possession of the said unit/apartment.
- XIX. That the despite of all the assurance provided by the respondent no 1, they have failed to deliver the said unit in the name of the complainants within the prescribed period of time mentioned in the builder buyer agreement and additionally after December 2018 has failed to pay EMI's accruing out of the Home Loan approved by respondent no.2
- XX. That when respondent no .1 has failed to pay the EMI's, respondent no. 2 started harassing the complainants to make the payment towards the EMI's, wherein it was mentioned in the tri-partite agreement that the respondent no. 1 was solely responsible to pay the EMI till the delivery of the possession which caused mental and physical harassment to the complainants.



- XXI. That the respondent no. 1 in collaboration with respondent 2 asked the complainants to pay the EMI as respondent no. 1 was in a crucial financial difficulty wherein believing upon the words of the respondent 1 the complainants have paid the Pre EMI for three months i.e., Jan, 19, Feb,19 & March,19 amounting Rs 1,26,795/- (i.e., 42,265/- per month) and Rs. 2,871/- against the loan as the monthly insurance EMI till the May,2019 (Sept 16 to May,19 and total payment made in instalments is Rs 94,743/-). The complainants also paid Rs. 42,265/- as the Loan Interest EMI per month, however after three successive months the complainants got realized that the assurance made by the respondent no. 1 is false and bogus and vexatious in nature. Thus, this complaint before this forum to get back his hard-earned money and life savings.
- XXII. That the complainants do not have the capacity to make the payments towards the EMIs of the home loans sanctioned and disbursed by respondent no. 2. Despite knowing the fact respondent 1 & respondent 2 harassed the complainants for the above-mentioned loan on multiple occasions wherein the complainants have already made the payments towards the EMIs which arose against the disbursed loan amount for the residential flat booked by the complainants and stopped later on because no construction even started at the site.
- XXIII. That the complainants approached the respondent no. 1 personally on numerous occasions to request them to repay the loan amount as the complainants are not anymore interested to grant the possession of the said unit/apartment, upon which, initially the respondent no. 1 extended false assurances, later on avoided even to meet them, finally flatly refused to accede to their just and illegal requests, followed by harassment, humiliation and serious threats to their life, liberty and property. In this regard, respondent no. 2, also been updated by the

complainants' multiple times but due to the nexus to trap the complainants by the respondents.

- XXIV. That when the property was not delivered within the completion period, the complainants sent various email to the Supertech Limited, for intimating the refund request of the total amount. Instead of cancelling the unit and refund the respondent no. 1 sent a copy of the repayment plan to the complainants.
- XXV. That the respondents since the beginning had a malafide intention of causing financial loss and mental anguish to the complainants wherein the subvention scheme was a trap to convince the complainants to invest in the said residential flats to dupe the hard-earned money and tarnish the well-maintained reputation of the complainants.
- XXVI. That the complainants have no other efficacious remedy with him but to file the present complaint against the respondents.
- XXVII. That the construction of the said project has still not been started by the and even after extending the date of completion on multiple occasions, the project and specifically tower (T4) consisting the flat booked by the complainants, is nowhere in existence, so question of completion of the same does not arise at all.

C. Relief sought by the complainants:

- (i) Direct the respondents to refund the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.

D. Reply by the respondent no. 1

4. The respondent no. 1 has contested the complaint on the following grounds:
- I. That the answering respondent and M/s. Supertech Ltd. had entered into a master development agreement dated 29.10.2013. As per the said agreement Supertech was to develop and market the said project.

- II. That the complainants along with many other allottees had approached supertech, making enquiries about the project, and after thorough due diligence and complete information being provided to them booked an unit in the said project.
- III. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainants executed the buyer developer agreement dated 17.09.2016 allotting an apartment bearing no. 606, Tower - 4, for a total consideration of Rs. 81,41,981/- . It is pertinent to mention certain relevant clauses of the buyer developer agreement:-
- i. That as per clause 1 of the agreement timely payment of the instalments was the essence of the agreement;
 - ii. That as per clause 24 of the terms and conditions of the agreement, the possession of the apartment was to be given by December, 2019 with an additional grace period of 6 months. However, the Developer had agreed to compensate the allottee @ Rs.5/- per sq. ft. of super area of the unit for any delay in handing over possession of the unit beyond the given period plus grace period of 6 months and up to offer letter of possession or actual physical possession, whichever is earlier, to cover any unforeseen circumstances,
 - iii. That as per clause 24 of the agreement, compensation for delay in giving possession of the apartment would not be given to allottees akin to the complainant who have hooked their apartment under any special scheme such as 'no EMI till offer of possession, under a subvention scheme.' Further it was also categorically stipulated that any delay in offering possession due 'Force Majeure' conditions would be excluded from the aforesaid possession period.
 - iv. That as per clause 25 of agreement, possession of the apartment would only be given to the allottees, after payment of all dues.
 - v. Further, the complainants elected the 'construction linked payment plan' payment scheme whereby the construction of the apartment was premised on the timely payments made by the

complainants as per the payment schedule provided in the agreement. Non-compliance with the payment schedule would consequentially cause a delay in handing over possession of the Apartment.

- IV. That in the interim with the implementation of the Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide Registration no. "182 of 2017", dated 04.09.2017 upon Application filed and in the name of Supertech Limited.
- V. That this Authority vide Order dated 29.11.2019 passed in Suo Moto complaint bearing no. 5802/2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondents namely M/s DSC Estate Developers Pvt. Ltd. and M/s. SARV Realtors Pvt. Ltd. respectively. This Authority had further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the respective projects instead of M/s. Supertech Ltd. Certain important directions as passed by this Authority are as under;
- A. The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./DSC and others, as the case may be, be registered as promoters.
 - B. All the Assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. ***However, even after the rectification, Superech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Private Limited.***

That in lieu of the said directions passed by this Authority all asset and liabilities have been since transferred in the name of the answering respondent company. However, in terms of the said Order, M/s.

Supertech Ltd. still remains jointly and severally liable towards the booing/ allotment undertaken by it before the passing of the said Suo Moto Order.

- VI. That thereafter the said MDA were cancelled by the consent of the respondent no. 1 and Supertech vide cancellation agreement dated 03.10.2019 and the respondent no. 1 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- VII. That in terms of the said cancellation agreement the respondent no. 1 and Supertech had agreed that in terms of the mutual understanding between both the companies, both companies had decided to cancel the JDA's vide the said cancellation agreement.
- VIII. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainants.
- IX. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.

Preliminary Objections

- X. Admittedly the M/s Supertech Limited and respondent are jointly and severally liable in terms of the Suo Moto Order passed by this Hon'ble Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the Allotees is not bifurcated between both the respondent's. The respondent no. 1 in lieu of the CIRP proceedings ongoing against Supertech company, cannot be



made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.

- XI. That the complaint filed by the complainants are not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainants and the present complaint has been filed with malafide intention to blackmail the respondent no. 1 with this frivolous complaint.
- XII. The delay if at all, has been beyond the control of the respondent herein and as such extraneous circumstances would be categorised as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project. The delay in construction was on account of reasons that cannot be attributed to the respondent herein. That the flat buyers agreements provide that in case the developer/respondent delays in delivery of unit for reasons not attributable to the developer/respondent, then the developer/respondent shall be entitled to proportionate extension of time for completion of said project. The relevant clause, i.e. "clause 43" under the heading "General Terms and Conditions" of the "Agreement". The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.
- XIII. In view of the force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent, Covid - 19, shortage of Labour, shortage of raw materials, Stoppage of works due to court orders, etc. for completion of the project is not a delay on account of the Respondent for completion of the project.

- XIV. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before December, 2019. However, the buyer's agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around June, 2020. However, the said date was subject to the force majeure clause, i.e. "Clause 43". That the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavoured to deliver the property within the stipulated time. The respondent earnestly has endeavoured to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.
- XV. That the timeline stipulated under the flat buyers agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavor to finish the construction within the stipulated time, had from time to time obtained various Licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- XVI. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainants herein, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. That apart from the defaults on the part of the allottees, like the complainants herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent:

- i. Due to active implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including that of the Respondent herein, fell behind on their construction schedules for this reason amongst others. The said fact can be substantiated by newspaper articles elaborating on the above mentioned issue of shortage of labour which was hampering the construction projects in the NCR region. This certainly was an unforeseen one that could neither have been anticipated nor prepared for by the respondent while scheduling their construction activities. Due to paucity of labour and vast difference between demand and supply, the respondent faced several difficulties including but not limited to labour disputes. All of these factors contributed in delay that reshuffled, resulting into delay of the project.
- ii. Such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

XVII. That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract which are reproduced herein under:

- i. The event must be beyond the control of the parties;
- ii. The event either precludes or postpones performance under the contract;
- iii. The triggering event makes performance under the contract more problematic or more expensive;
- iv. The claiming party wasn't at fault or negligent;
- v. The party wanting to trigger the force majeure clause has acted diligently to try to mitigate the event from occurring;

In light of the aforementioned prerequisites read with the force majeure events reproduced in the aforementioned paragraphs, it is prima facie evident that the present case attracts the force majeure clause.

XVIII. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.

XIX. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation



of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

- XX. That the complainants have not come with clean hands before this Authority and have suppressed the true and material facts Authority this Forum. It would be apposite to note that the complainants are mere speculative investors who have no interest in taking possession of the apartment. In fact a bare perusal of the complaint would reflect that they has cited 'financial incapacity' as a reason, to seek a refund of the monies paid by him for the apartment. In view thereof, this complaint is liable to be dismissed at the threshold.
- XXI. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by December, 2019 with an extended grace period of 6 months which comes to an end by June, 2020. The completion of the building is delayed by reason of Covid - 19 outbreak, non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of



time for delivery of possession of the said premises as per terms of the agreement executed by the complainants and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. That due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in Pollution in Delhi NCR.

- XXII. That the enactment of the Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before this Authority. According to the terms of builder buyer's agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainants at the time final settlement on slab of offer of possession. The project is ongoing project and construction is going on.
- XXIII. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/unconstructed Projects and deliver the homes to the Homebuyers. The respondent/promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects. The said project is a continuance business of the respondent and it will be completed by the year 2025. That when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted.

XXIV. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Azalia' project of the Respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

XXV. That, graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.

XXVI. The table concluding the time period for which the construction activities in the Project was restrained by the orders of competent Authority/Court are produced herein below as follows:-

S. No.	Court/Authority & Order Date	Title	Duration
1.	National Green Tribunal- 08.11.2016 10.11.2016	Vardhman Kaushik v/s Union of India	08.11.2016 to 16.11.2016

2.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
3.	Press Note by EPCA- Environment Pollution (Prevention and Control) Authority	Press Note-31.10.2018	01.11.2018 to 10.11.2018
4.	Supreme Court-23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
5.	EPCA/ Bhure Lal Committee Order-31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
6.	Hon'ble Supreme Court 04.11.2019-14.02.2020	M.C Mehta v. Union of India Writ Petition (c) no. 13029/1985	04.11.2019 to 14.02.2020
7.	Government of India	Lockdown due to Covid- 19	24.03.2020 to 03.05.2020
8.	Government of India	Lockdown due to Covid- 19	8 weeks in 2021
	Total	37 weeks (approximately)	

XXVII. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the respondent were forced to return to their home towns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of *Gajendra Sharma*

v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors., has taken cognizance of the devastating conditions of the real estate sector, and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

XXVIII. Hence, the complainants are not entitled for any refund as claimed except for delayed charges, if any applicable as per clause 2 read with 24 of the builder buyer agreement. The complainants are not entitled for any compensation or refund claimed except for delayed charges as per clause 2 read with 24 of the builder buyer agreement.

E. Reply by respondent no. 2

5. The respondent no. 2 has contested the complaint on the following grounds:
 - I. That M/s Supertech Limited had commenced development & construction of the project bearing nomenclature as "Supertech Azalia", situated at Sector 68, Tehsil & District Gurugram, Haryana and also initiated its advertisement & marketing to attract the investment in the said project.
 - II. That the complainants became conscious of the advertisement and keen on investing in the project which led them to the representatives of the M/s Supertech Limited, enquiring about the project & sanctions as obtained by the Developer.
 - III. That the complainants had booked a unit no. 0606 in the project vide booking application dated 22.08.2016. Thereupon, the buyer developer agreement dated 17.09.2016 was effectuated between M/s Supertech

Limited & complainant(s) for the unit no. 0606, Tower – 4 admeasuring 1225 sq. ft. for the total sale consideration of Rs. 81,41,981/-. Additionally, the agreement postulates the date of handing over of possession in clause 23 of the agreement, wherein M/s Supertech Limited assured to handover the possession by Dec 2019 excluding the grace period of 6 months, which extends the date of handing over of possession by further six months.

- IV. That the complainant(s) were facing deficiency of funds in view of the total sale consideration of the unit, concomitantly, commenced for the search of the financial institution to support them in their purchase of the unit.
- V. Furthermore, respondent no. 2 being one of the largest housing finance company duly registered with the national housing bank and is a law abiding listed public company, primarily engaged in the business of rendering home loan/ finance facilities predominantly against security of immovable properties.
- VI. That the complainants approached the respondent no. 2 to finance their investment in the allocated unit and preferred a loan application dated 09.09.2016 and submitted in support of the application to demonstrate their bona-fide and also the complainant(s) placed the allocated unit as loan security. Thereupon, the respondent no. 2 performed the necessary assessment with regards to loan application.
- VII. Apparently, the respondent no. 2 sanctioned the loan amounting to Rs. 66,93,000/- in favour of the complainant(s) vide sanction letter dated 16.09.2016. and subsequently, the loan agreement was also entered into.
- VIII. Thereafter, the complainant(s) & M/s Supertech Limited, entered into an understanding with respect to the payment of Pre-EMIs or EMI's,

wherein the M/s Supertech Limited took the responsibility of paying the Pre-EMI's or EMIs till the offer or handing over of possession. Eventually, the complainant(s) & M/s Supertech Limited approached the respondent no. 2 representing their understanding for the repayment of loan.

- IX. The tripartite agreement dated 19.09.2016 was effectuated between the respondent no. 2, complainant(s) & M/s Supertech Limited. Additionally, M/s Supertech Limited had represented to the respondent no. 2 that PRE-EMIs shall be honoured by the M/s Supertech Limited till the offer of possession and such representation is duly captured within the tripartite agreement
- X. That the complainant(s) requested the part disbursement of the loan amount and thereby, the respondent no. 2 disbursed the amount of Rs. 50,97,266/-, upon the disbursement request forwarded by the complainant(s).
- XI. That the complainant(s) are being aggrieved by the inactions of M/s Supertech Limited, for committing a delay in handing over of possession & other obligations in consonance with the terms of the agreement as effectuated. Thereby, the complainant(s) approached the Learned Authority vide complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 having title as "Ankush Prashar & Anr. Vs Supertech Limited" bearing complaint no. CR/3970/2019/4243/2021 and sought the relief of refund of the amount paid towards the allocated unit. Further, the complainant(s) didn't cast major allegations on the Respondent No. 2.
- XII. In the meanwhile, the Learned Authority acknowledges the M/s Supertech Limited being admitted into the Insolvency proceedings in terms of the provisions of Insolvency & Bankruptcy Code, 2016

(henceforth referred to as "IBC") whereby also the Moratorium has been invoked in terms of Section 14 of IBC, which creates a bar on the civil suits during the course of Insolvency proceedings. In addition, the Learned Authority received the letter dated 06.04.2022 from M/s Supertech Limited, intimating about the appointment of Shri Hitesh Goel as an interim resolution professional (henceforth referred to as "IRP") by Learned National Company Law Tribunal, New Delhi vide its order dated 25.03.2022 passed in Company Petition (IB) No. 204/(ND)/2021 titled as "Union Bank of India vs M/s Supertech Limited". Further, the said letter also provides the list of projects falling within the purview of the Insolvency.

- XIII. Accordingly, the Learned Authority adjourned the proceedings of the matter to sine die. Whereas the complainant(s) preferred an application for restoration of the subject matter and contended therein that the project azalia doesn't fall within the list of projects under insolvency as submitted by the IRP, wherein the order dated 29.11.2019 passed by learned authority was placed on reliance and stated therein that the respondent no. 1 is the landowner & promoter in the project which binds the respondent no. 1 as equitably responsible for the acts of M/s Supertech Limited, however, learned authority recorded its observation that within the provisions of IBC, and granted the liberty to file the fresh complaint against the relevant party. Therefore, the matter was disposed off vide order dated 01.08.2023.
- XIV. Eventually, the complainant(s) approached the learned authority through a fresh complaint under Section 31 of the RERA, titled as "Ankush Prashar & Anr. Vs M/s DSC Estate Developers Private Limited & Anr" bearing complaint no. 3913 of 2023, seeking relief of refund on the paid-up amount. The complainant(s) have casted unsubstantiated

aspersions on the respondent no. 2 with the intent to harass & extract the monies. Further, the complainant(s) have whimsically interpreted the learned authority's order. Apparently, from the contents of the complaint, it appears that the complainant(s) aren't well aware about the true facts & events pertaining to the matter of "Deepak Chowdhary vs PNB Housing finance Limited" bearing complaint No. 2145 of 2020, wherein the learned authority had observed within the final order dated 11.09.2020.

- XV. That the respondent no. 2 had granted the project finance loan to M/s Supertech Limited, for the project "Hues", and the Deepak Choudhary being a complainant in the complaint no. 2145 of 2020 had propounded the contention that respondent no. 2 therein, had initiated the proceedings under SARFAESI Act, 2002, however, the learned authority had examined the action of the respondent no. 2 therein in terms of Section 15 of RERA and thereby observing that respondent no. 2 had taken over the project 'hues' in terms of the provisions of SARFAESI Act and e-auctioning the project "hues" which is an act of an assignee, thereby, the learned authority had reached to the conclusion that during the period commencing from taking the physical possession till transferring of the project to new promoter, the respondent no. 2 is performing the act of assignee, which makes it a promoter for the brief period. However, respondent no. 2 therein had challenged the order dated 11.09.2020 before the Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh which is still pending.
- XVI. That the project finance loan had been granted by respondent no. 2 for the project 'hues', not for the project Azalia which is a project of present dispute. In consideration of the aforesaid facts, the contentions of the complainants are misleading and hedged with falsifying interpretation.



XVII. That the respondent no. 2 seeks to raise the following objections, each of which have been taken in the alternative and is without prejudice to other. Nothing contained in the preliminary objections and in the reply on merits below may, unless otherwise specifically admitted, be deemed to be direct and tacit admission of any allegation made by the complainants in the instant complaint application.

6. 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 on the basis of these undisputed documents and submissions made by the complainants.

F. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

8. 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.

F.II Subject matter jurisdiction

9. 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) The promoter shall-

(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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides 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.

10. 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.

G. Findings on objections raised by the respondent no. 1

G.1 Objections regarding force majeure.

11. The respondent no. 1-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 17.09.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.06.2020. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than four years and even some happening after due date of handing over of possession. Further, the respondent no. 1 in lieu of the CIRP proceedings ongoing against Supertech Limited, cannot be made



wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Limited.

12. The Authority observes that vide Order dated 29.11.2019 passed by this Authority in Suo Moto complaint bearing no. 5802/2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondents namely M/s DSC Estate Developers Private Limited and M/s. SARV Realtors Private Limited respectively. This Authority had further directed that M/s. Sarv Realtors Private Limited and M/s. DSC Estate Developer Private Limited be brought on as the promoter in the respective projects instead of M/s. Supertech Ltd. In view of the above, the Authority allowed 6 months grace period on account of force majeure is being granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders.

G.II Objection raised by respondent no. 1 regarding CIRP against M/s Supertech Limited and consequent moratorium against proceedings against M/s Supertech Limited.

13. Respondent no. 1 has raised an objection and stated that vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as Union Bank of India Versus M/s Supertech Limited, the Hon'ble NCLT has initiated CIRP against M/s Supertech Limited and imposed moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 1 is no longer the assets of M/s Supertech Limited and admittedly, respondent no.1 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/ 5802/2019.**



Respondent no.1 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and M/s Supertech Limited vide cancellation agreement dated 03.10.2019. Thereon, respondent no.1 i.e., DSC Estates Private Limited admittedly took responsibility to develop the project and started marketing and allotting new units under its name. In view of the above, respondent no.1 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., M/s Supertech Limited remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & M/s Supertech Limited were jointly and severally liable for the project, no orders can be passed against M/s Supertech Limited in the matter **at this stage**.

H. Findings on the relief sought by the complainants:

- (i) Direct the respondents to refund the amount received by the promoter in respect of the allotted unit with interest at the prescribed rate.
14. In the present complaint, the complainants intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:-

"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. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

15. As per clause E(23) of the builder developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

"E. POSSESSION OF UNIT: -

23. The possession of the unit shall be given by December 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Buyer(s) @ Rs.5.00/- (five rupees only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the offer letter of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure circumstances and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount, will be calculated after the lapse of grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the allottee till such date, at the time of final account settlement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special/beneficial scheme of the company i.e., No EMI till offer of possession, Subvention scheme, Assured Return etc. and who honour their agreed payment schedule and make the timely payment of due instalment and additional charges as per the payment plan given in allotment letter."

16. **Due date of handing over of possession and admissibility of grace period:** As per clause E (23) of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the December 2019 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause



accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 30.06.2020.

17. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. The allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided 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.

18. 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.
19. 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., 11.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
20. 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;"*

21. On consideration of the documents available on record and submissions made by both the parties 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 E (23) of the agreement executed between the parties on 17.09.2016, the due date of possession is December 2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.06.2020.
22. It is pertinent to mention over here that even after a passage of more than 8 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to

withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

23. Further, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in *Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021*

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

24. Moreover, the Hon'ble Supreme Court of India in the cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)* reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022. observed as under: -

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and



regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

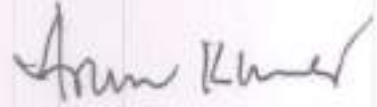
26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

I. Directions of the authority


27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund the amount i.e., Rs. 61,78,348/- received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from

the date of each payment till the actual date of refund of the deposited amount.

- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
28. Complaint as well as applications, if any, stands disposed off accordingly.
29. File be consigned to registry.



(Arun Kumar)
Chairman



Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.04.2025

HARERA
GURUGRAM