BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order reserved on: 21.01.2025
Order pronounced on: 25.03.2025

NAME OF THE BUILDER		M/s DSC Estates Developers Private Limited.
PROJECT NAME		"Supertech Azalia", Sector- 68, Gurugram, Haryana
S. No.	Case No.	Case title
1.	CR/2715/2023	Akansha Bhasin and Nikunj Bhasin V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)
2.	CR/2977/2023	Sanjeev Dhiman V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)
3.	CR/2852/2023	Nitish Kumar V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)
4.	CR/3061/2023	Kunal Sharma and Nancy Sharma V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)
5.	CR/3082/2023	Rakhi Jumrani V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)
6.	CR/3275/2023	Chander Dhar Sharma and Manju Sharma V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)
7.	CR/3355/2023	Manish Kumar and Alish V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2)

		M/s Supertech Limited through IRP (Respondent no. 3)
8.	CR/3357/2023	Anjali Khanna and Kanika Gupta V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)
9.	CR/3343/2023	Abhiman Bhanjan Mishra and Pratyasha Mishra V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)
10.	CR/3349/2023	Santosh Kumar V/S DSC Estate Developers Private Limited (Respondent no. 1) M/s Supertech Limited (Respondent no. 2) M/s Supertech Limited through IRP (Respondent no. 3)

APPEARANCE:

Sh. Harshit Batra (Advocate)	**Complainant**
Shri Rohit Arora and Dushyant Tewatia (Advocates)	**Respondent no. 1**
Shri Bhrigu Dhami (Advocate)	**Respondent no. 2&3**

CORAM:

Shri Arun Kumar	**Chairman**
Shri Vijay Kumar Goyal	**Member**
Shri Ashok Sangwan	**Member**

ORDER

1. This order shall dispose of 10 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Supertech Azalia", Sector- 68, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s DSC Estate Developers Private Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of refund of the entire paid up amount along with interest and other reliefs.

3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Supertech Azalia" at Sector 68, Gurugram.		
Project area	55.5294 acres		
Registrable area	32.83 acres		
Nature of the project	Group housing colony		
DTCP license no. and other details			
DTCP License No.	Valid up to	Area admeasuring	Name of licensee Holder
89 of 2014 dated 08.08.2014	07.08.2024	10.25 acres	Om Parkash, Jai Bhagwan Ss/o Amarchand and Suresh Kumar, Rajesh Kumar, Mukesh Kumar, Sanjay Kumar Ss/o Jeevan Lal and 2 others
106 of 2013 dated 26.12.2013	25.12.2017	13.74 acres	Sarv Realtors Pvt. Ltd.
107 of 2013 dated 26.12.2013	25.12.2017	13.75 acres	Sarv Realtors Pvt. Ltd.
134 of 2014 dated 26.08.2014	25.08.2024	4.85 acres	Smt. Aruna Lohia W/o Om Parkash Lohia, Smt. Savitri W/o Jai Bhagwan, DSC Estate Developers Pvt. Ltd. and 2 others
135 of 2014 dated 26.08.2014	25.08.2019	7.71 acres	Attractive Implex Pvt. Ltd. and 2 others
136 of 2014 dated 26.08.2014	25.08.2019	5.84 acres	ASP Sarin Realty Pvt. Ltd. and 2 others

RERA Registered/ not registered	Registered bearing no. 182 of 2017 dated 04.09.2017 Valid up to 31.12.2021 (**Hues Tower**- A, B, E, F, G, H. M, N, K, T, V, W, O, P, C and D, and **Azalia Tower**- T1, T2, T3, T4, T5, T6 and T7)
Occupation certificate	Not yet obtained
Possession clause as per buyer's agreement	*"E. **POSSESSION OF UNIT: -*** *23. **The possession of the unit shall be given by December 2021 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."*

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.
1.	CR/2715/2023 Akansha Bhasin and Nikunj Bhasin V/S DSC Estate Developers Private Limited and others **DOF:** 13.06.2023 **Reply by R1:** 30.07.2024	**0106, 1st floor, Tower T4** 1225 sq. ft. (Super area) [Page 20 of complaint]	**BBA** **31.07.2017** [Page 18 of complaint] **MoU** **23.12.2017** [Page 76 of complaint]	**30.06.2022** (As per clause E (23) of the buyer's developer agreement: by December 2021 plus 6 Month grace period)	**TC:** **77,14,425/-** [As per payment plan at page 21 of complaint] **AP:** **28,54,429/-** [As alleged by the complainant at page 14 of complaint]

2.	CR/2977/2023 Sanjeev Dhiman V/S DSC Estate Developers Private Limited and others **DOF:** 30.06.2023 **Reply by R1:** 30.07.2024	**0308, 3rd floor, Tower T1** 600 sq. ft. (Super area) [Page 18 of complaint]	**BBA** **27.05.2016** [Page 17 of complaint]	**30.06.2020** (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	**TC:** **35,70,818/-** [As per payment plan at page 19 of complaint] **AP:** **17,16,736/-** [As per receipt information at page 66 of complaint]
3.	CR/2852/2023 Nitish Kumar V/S DSC Estate Developers Private Limited and others **DOF:** 30.06.2023 **Reply by R1:** 30.07.2024	**1506, 15th floor, Tower T6** 1020 sq. ft. (Super area) [Page 27 of complaint]	**BBA** **18.01.2018** [Page 26 of complaint] **MoU** **18.01.2018** [Page 77 of complaint]	**31.03.2021** (As per clause E (23) of the buyer's developer agreement: by September 2020 plus 6 Month grace period)	**TC:** **59,72,920/-** [As per payment plan at page 21 of complaint] **AP:** **33,43,305/-** [As alleged by the complainant at page 18 of complaint]
4.	CR/3061/2023 Kunal Sharma and Nancy Sharma V/S DSC Estate Developers Private Limited and others **DOF:** 03.07.2023 **Reply by R1:** 30.07.2024	**1105, 11th floor, Tower T6** 1020 sq. ft. (Super area) [Page 23 of complaint]	**BBA** **26.10.2016** [Page 22 of complaint] **MoU** **28.09.2016** [Page 74 of complaint]	**30.06.2020** (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	**TC:** **66,90,184/-** [As per payment plan at page 24 of complaint] **AP:** **50,14,491/-** [As per statement of payment received at page 73 of complaint]
5.	CR/3082/2023 Rakhi Jumrani V/S DSC Estate Developers Private Limited and others **DOF:**	**0208, 2nd floor, Tower T4** 1225 sq. ft. (Super area) [Page 23 of complaint]	**BBA** **16.01.2016** [Page 22 of complaint] **MoU** **16.01.2016**	**30.06.2020** (As per clause E (23) of the buyer's developer agreement: by December 2019	**TC:** **83,63,675/-** [As per payment plan at page 24 of complaint] **AP:** **60,54,078/-**

	04.07.2023 **Reply by R1:** 30.07.2024		[Page 73 of complaint]	plus 6 Month grace period)	[As per statement of payment received at page 72 of complaint]
6.	CR/3275/2023 Chander Dhar Sharma and Manju Sharma V/S DSC Estate Developers Private Limited and others **DOF:** 02.08.2023 **Reply by R1:** 30.07.2024	**0906, 9th floor, Tower T3** 600 sq. ft. (Super area) [Page 17 of complaint]	**BBA** **15.12.2017** [Page 16 of complaint]	**30.06.2022** (As per clause E (23) of the buyer's developer agreement: by December 2021 plus 6 Month grace period)	**TC:** **37,38,600/-** [As per payment plan at page 18 of complaint] **AP:** **20,92,716/-** [As alleged by the complainant at page 13 of complaint]
7.	CR/3355/2023 Manish Kumar and Alish V/S DSC Estate Developers Private Limited and others **DOF:** 18.07.2023 **Reply by R1:** 30.07.2024	**1108, 11th floor, Tower T1** 600 sq. ft. (Super area) [Page 18 of complaint]	**BBA** **10.01.2019** [Page 17 of complaint]	**30.06.2022** (As per clause E (23) of the buyer's developer agreement: by December 2021 plus 6 Month grace period)	**TC:** **40,98,000/-** [As per payment plan at page 19 of complaint] **AP:** **20,64,582/-** [As per statement of payment received at page 70 of complaint]
8.	CR/3357/2023 Anjali Khanna and Kanika Gupta V/S DSC Estate Developers Private Limited and others **DOF:** 18.07.2023 **Reply by R1:** 30.07.2024	**1703, 17th floor, Tower T3** 600 sq. ft. (Super area) [Page 20 of complaint]	**BBA** **01.04.2017** [Page 19 of complaint] **MoU** **25.10.2017** [Page 74 of complaint]	**30.06.2020** (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	**TC:** **40,95,000/-** [As per payment plan at page 21 of complaint] **AP:** **29,94,810/-** [As alleged by the complainant at page 14 of complaint]
9.	CR/3343/2023	**2006, 20th floor, Tower T5**	**BBA** **24.05.2017**	**30.06.2020**	**TC:** **60,69,820/-**

	Abhiman Bhanjan Mishra and Pratyasha Mishra V/S DSC Estate Developers Private Limited and others **DOF:** 18.07.2023 **Reply by R1:** 30.07.2024	1020 sq. ft. (Super area) [Page 19 of complaint]	[Page 18 of complaint] **MoU 03.06.2017** [Page 71 of complaint]	(As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	[As per payment plan at page 20 of complaint] **AP: 57,00,559/-** [As per statement of payment received at page 70 of complaint]
10.	CR/3349/2023 Santosh Kumar V/S DSC Estate Developers Private Limited and others **DOF:** 18.07.2023 **Reply** Not filed	**1204, 12th floor, Tower T1** 600 sq. ft. (Super area) [Page 18 of complaint]	**BBA 11.01.2016** [Page 17 of complaint]	**30.06.2020** (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	**TC: 40,39,000/-** [As per payment plan at page 19 of complaint] **AP: 34,72,120/-** [As alleged by the complainant at page 12 of complaint]

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s
BBA	Builder Buyer's Agreement
AL	Allotment Letter
MOU	Memorandum of understanding

Relief sought by the complainant(s):-

i. That the respondents are jointly and severally liable as per the order dated 29.11.2019 in suo-moto complaint no. HARERA/GGM/5802/2019/Suo-Motu (complaints) dated 29.11.2019;

ii. Direct the respondents refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation;

iii. To settle the claims and obligations as per the memorandum of undertaking dated 23.12.2017 and the tri-partite agreement dated 03.12.2017;

iv. Direct the respondents to not sell/create third party right till complete realisation/refund;

v. To grant leave to the Complainants to file a complaint under section 71 and 72 of the Act for violation of the Agreement dated 31.07.2017, MOU dated 23.12.2017 and various provisions of the Act, 2016 and the rules of 2017 and regulations thereunder;

vi. To take suo-moto action against the respondents for non-submission of BIP and violation of section 59, 63 and other sections of the Act 2016.

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case ***CR/2715/2023***

titled as ***Akansha Bhasin and Nikunj Bhasin V/s DSC Estate Developers Private Limited and others.*** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

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

CR/2715/2022 *titled as* ***Akansha Bhasin and Nikunj Bhasin V/s DSC Estate Developers Private Limited and others.***

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
	Name of licensee	Sarv Realtors Pvt. Ltd. & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.
5.	Unit no.	**0106, 1st floor, Tower T4** (Page no. 20 of complaint)		
6.	Unit measuring	1225 sq. ft. (Super area) (Page no. 20 of complaint)		
7.	Date of Booking	28.07.2017 (Page no.19 of complaint)		
8.	Date of execution of Builder developer agreement	31.07.2017 (Page 19 of complaint)		
9.	Possession clause	***E. POSSESSION OF UNIT: -*** ***23.*** *The possession of the unit shall be given* ***by December 2021 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.* (Page 21 of the complaint)
10.	Due date of possession	30.06.2022 (Note:- December 2021 plus 6 months grace period)
11.	Total sale consideration	Rs.77,14,425 /- (page 21 of complaint)
12.	Total amount paid by the complainants	Rs.28,54,429/-
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered
15.	Memorandum of understanding	23.12.2017 (Page 76 of complaint)

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -

I. That that respondent no. 1 i.e., M/s DSC Estates Developers Private Limited is the licensee and co-promoter of the project and had obtained license number 106 & 107 of 2013 dated 26.10.2013, license no. 89 of 2014 dated 08.08.2014, and license no. 134 to 136 of 2014 dated 26.08.2014 for the

development of the group housing colony on the land falling in sector 68 which included the project land. The said licenses that the respondent no. 1 was authorized to develop the project by the Department of Town Country and Planning.

II. That the respondent no. 2 had initially advertised the project and assured through its advertisements, assurances, and warranties that it has the complete authority to develop the said project. The respondent no. 2 had further assured the timely completion of the project and the handover of the units to the prospective buyers. The respondent no. 2 represented himself to be the developer of the project and hence falls within the meaning of section 2(zk) of the Act. The respondent no. 2 went into insolvency when an application was filed under section 7 of the Insolvency and Bankruptcy Code, 2016 and was admitted vide order dated 25.03.2022 in IB-204/(ND)/2021, however, the same is not in respect to the project in question and Mr. Hitesh Goel was appointed as the IRP and is currently responsible for the functioning of the company, hereby as respondent no. 3.

III. That it has come to the knowledge of the complainants that respondent no. 2 had never attained permission for the development of the project and had grossly misrepresented the complainants, not only with respect to the authority of development of the project but also the completion of the pre-requisite formalities/compliances of DTCP and HARERA.

- **Misrepresentation by Supertech Limited and DSC Estates Private Limited**

IV. That the permission for development of the project was given to respondent no. 1, however, the advertisement of the project and the development was assured, represented, and warranted to have been done by respondent no. 2. The complainants were made to believe that the respondent no. 2 has the complete authority to develop the project.

V. That certain ongoing proceedings before the DTCP in respect to the land on which the group housing colony is being developed, show that the permission for transfer of the development rights, i.e., the Beneficiary Interest Permission (the "BIP") has not been made in favour of the respondent no. 2. As such, the respondent no. 1 is still the developing authority of the project and is a promoter within the meaning of section 2(zk) of the Act.

- **Respondent no. 1 and 2 are jointly and severally liable**:

VI. That the respondent no. 2 had assured the complainants of its developing authority and had also communicated that it is undergoing the compliances required under the Act. It was categorically communicated to the complainants that the registration certificate of the project will soon be granted in favour of the respondent no. 2. That relying on the representations, assurances, and warranties of the respondent no. 2, a booking was made for a 3 BHK residential apartment bearing no. T-4 Flat No. 0106, 1st floor having its super area 1225 sq. ft., and consequently, a buyer development agreement dated 31.07.2017 was executed between the parties herein.

VII. That on the basis of the representations given by respondent no. 2, the registration certificate number 182 of 2017 dated 04.09.2017 was granted by this Authority vide memo number HARERA-279/2017/873.

VIII. That later in 2019, when the fact of the no permission for development with the Respondent no. 2 was brought to light, this Authority took cognizance of the matter in suo-moto complaint no. ***HARERA/GGM/5802/2019/Suo-Motu(complaints) dated 29.11.2019***, wherein, this Authority passed an **order dated 29.11.2019,** where it was directed that all the assets and liabilities including customer receipts, and project loans of whatsoever

nature, in the project Azalia be shifted to DSC Estate Developers Pvt. Ltd., and the registration of the project Azalia be rectified in the name of DSC Estate Developers Pvt. Ltd. who was noted to be a promoter under the meaning of 2(zk) of the Act of 2016 for the development in regard to the License No. 106 and 107 of 2013 dated 26.10.2023, license no. 89 of 2014 dated 08.08,2014 and License no 134 – 136 of 2014 dated 26.08.2014 i.e., the Group Housing in question. Further, this Authority had categorically noted in the above-mentioned order that the liability against the project is both of the respondent no. 1 and 2. That the same was also noted in a similar case titled as ***Rashi Asthana v Supertech limited in complaint no. 2144 of 2021,*** where this Authority has already taken cognizance of such a matter and issued notices to DSC Estate Developers Pvt. Ltd. Hence, on the basis of the above, it becomes amply clear that the liability of the respondents in respect to the development of the project is joint and several.

- **The project "Supertech Azalia" is not a part of the insolvency proceedings of Supertech limited which are only limited to project ECO Village-II, hence, there is no bar to the present complaint**

IX. That proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 were initiated against the respondent no. 2, vide order dated order dated 25.03.2022 of the NCLT an IRP, Mr Hitesh Goel was appointed. That after the initiation of the said proceedings, it was clarified that the name of the project "***Azalia***" was noted not to be a part of the CIRP and was confirmed by the respondent no. 2 and the IRP, Mr. Hitesh Goel, to the allottees of the project. The same was also confirmed by the IRP to Haryana RERA, Gurugram bench, as is evident from the following:-

- Email dated 12.05.2022 from Supertech providing the list of projects that do not fall under the purview of IRP, which clearly mentions the name of "Azalia".

- The email dated 01.06.2022 from IRP, Hitesh Goel to Haryana RERA noting that "all assets and liabilities of the project were transferred from Supertech Limited to M/s DSC Estate Developers Pvt. Ltd."

Moreover, respondent no. 2 issued notices showing the list of projects affected by the NCLT Order dated 25.03.2022. That these, *ex facie* show that "Azalia" is not a part of the Insolvency proceedings.

X. That without prejudice to the contentions of the complainants, it is also additionally submitted that the further course of events in the insolvency proceedings of the respondent no. 2 show that CIRP and CoC is restricted to only project Eco-Village II and not any other project. In an appeal against the said order dated 25.03.2022, the NCLAT passed an order dated 10.06.2022, wherein the NCLAT has issued a slew of directions that practically have the effect of converting the corporate insolvency resolution process into a "project-wise insolvency resolution process" in as much as the constitution of a committee of creditors has been restricted only to one project named "Eco Village-II". The relevant part of the said order states as under:

> *.....That all other projects of the Corporate Debtor apart from Eco Village II Project shall be kept as ongoing project. The* ***Construction of all other projects shall continue with overall supervision of the IRP with the assistance of the ex-management and its employees and workmen.***

XI. That this order had the effect of adoption of a reverse CIRP thereby freeing all other projects of respondent no. 2 from the embargo of the Insolvency Resolution process and restricting the said process only to the project Eco-Village II. The financial creditors of the respondent no. 2 were aggrieved by the said order and hence a challenge against the said order of NCLAT dated 10.06.2022 was made before the Hon'ble Supreme Court of India under Civil Appeal Number 1925 of 2023. The grievance and contention of the Appellant was with respect to the fact that the other projects of the

Respondent No. 2 were freed from the CIRP. The relevant paras showing the same are reiterated as under:

> *5. Dissatisfied with the interim directions so issued by the Appellate Tribunal, the appellants, financial creditors of corporate debtor, have filed appeals before this Court, essentially challenging the adoption of reverse CIRP by the* ***Appellate Tribunal and limiting the CIRP and constitution of CoC to only one project of corporate debtor, i.e., Eco Village-II****.*
>
> *6. It has been contended on behalf of the appellants that the Appellate Tribunal does not have power under IBC to allow project-wise CIRP and does not have power to accept a resolution plan presented by the promoter without giving opportunity to the CoC to study the commercial viability of the plan. It has also been contended that there is no concept of project-wise resolution under IBC and the order impugned was passed by the Appellate Tribunal without notice to the appellants, who are the financial creditors having substantial stakes in the matter.*

The concept of balance of convenience was noted by the Hon'ble Supreme Court and it was categorically noted that the course which has a lower risk of injustice has to be adopted. In light of the same, the Hon'ble Supreme Court had agreed with the order with the NCLAT and noted that it is in the best interest of the other projects if the same are kept as "ongoing" and not under the state of uncertainty. The para 10 of the order is reiterated hereunder:

> *10. In the light of the principles aforesaid, in our view, as at present, we should adopt the course which appears to carry lower risk of injustice, even if ultimately in the appeals, this Court may find otherwise or choose any other course. In that regard, the element of balance of convenience shall have its own significance. On one hand is the position that the Appellate Tribunal has adopted a particular course (which it had adopted in another matter too) while observing that the project-wise resolution may be started as a test to find out the success of such resolution.* ***The result of the directions of the impugned order dated 10.06.2022 is that except Eco Village-II project, all other projects of the corporate debtor are to be kept as ongoing projects and the construction of all other projects is to be continued under the supervision of the IRP with the ex-management, its employees and workmen. Infusion of funds by the promoter in different projects is to be treated as interim finance, regarding which total account is to be maintained by IRP. If at the present stage, on the submissions of the appellants, CoC is ordered to be constituted for the corporate debtor as a whole in displacement of the directions of the Appellate Tribunal, it is likely to affect those ongoing projects and thereby cause immense hardship to the home buyers while throwing every project into a state of uncertainty. On the other hand, as indicated before us, the other projects are being continued by the IRP and***

efforts are being made for infusion of funds with the active assistance of the ex-management but without creating any additional right in the ex-management. In our view, greater inconvenience is likely to be caused by passing any interim order of constitution of CoC in relation to the corporate debtor as a whole; and may cause irreparable injury to the home buyers. In this view of the matter, we are not inclined to alter the directions in the order impugned as regards the projects other than Eco Village-II.

XII. That the above-mentioned facts and circumstances categorically show that the project "Azalia" does not fall within the ambit of insolvency proceedings of respondent no. 2 and even otherwise, without prejudice to the complainants, the insolvency proceedings are restricted to only Eco Village II and not any other project and hence, there is no bar to the present proceedings.

- **Inordinate delay in handing over of possession of the unit and the unabridged right of the complainants to seek refund**

XIII. The respondent no. 2 was completely engrossed with its blazoning gimmick through various authorised representatives. The complainants were made to believe that the proposed development of the respondents was reserving fast owing to the gigantic future benefits being perceived by the many allottees and that the respondents had attained all the sanctioned plans and permission for development of the project.

XIV. That as per clause 1, page 4 of BBA, the possession of the unit had to be delivered by December 2021, however, the respondents miserably failed in living up to their obligations of delivering the same. That till date, a substantial sum of Rs.28,54,429/- has been paid till date. However, no corresponding development has been made by the respondents. That till date, with a delay of 1.5 years, the development of the project is nowhere near completion and it is anticipated that the respondents will be unable to refund amount paid by the complainants. That till date, no occupancy

certificate has been obtained by the respondent and the possession of the unit has not been given, till date, even in almost 6 years of booking.

XV. That the complainants cannot, in any manner, foresee the delivery of possession and having waited for a substantial amount of time, has lost faith in the bonafide conduct of the respondents. The complainants stand well within his rights in claiming the refund as they cannot be expected to wait indefinitely for the delivery of possession as was held in ***Fortune Infrastructure v. Trevor d' lima (2018) 5 scc 442 : (2018) 3 scc (civ) 1 and was reiterated in Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** -"a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation"

XVI. Moreover, it is the right of the Complainants to claim refund of the deposited amounts as has been recently observed by the Hon'ble SC in ***Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors. etc. CIVIL APPEAL NO(S) 6745-6749 of 2021***

XVII. Accordingly, the complainants should be directed to refund the complete deposited amount along with interest. That the respondents have made extensive delayed in the delivery of possession of unit and leads to the violation of section 11(4), 12, 18(1) and 18(3) of the Act, hence, the present complaint.

XVIII. That in light of the above facts, the Authority is requested to refund the amount that the complainants have paid till date in view of section 18 of the Act, 2016 along with the interest and compensation as they have been unnecessarily subjected to mental and financial harassment by the respondents by illegally retaining her money.

- **Failure of the respondents to fulfil their obligation under the memorandum of understanding dated 23.12.2017**

XIX. That the booking of the unit was made on a subvention scheme and a loan was taken by the complainants from L&T Housing Finance Limited, consequently, a Tri-Partite agreement dated 03.12.2017, was executed between the parties. Thereafter, the respondent no. 2 had executed a memorandum of understanding dated 23.12.2017. That upon the booking of the unit being under the subvention scheme, it was initially the obligation of the respondent no. 2 to make the payment of Pre-EMI till 36 months, i.e., till December 2020. However, the said obligation was revised by the MOU clause b, and the obligation of the respondents for payment of pre-EMI extended till offer of possession. The relevant clause of the MOU is reiterated hereunder:

> *(b) That the tenure of this subvention scheme as approved by L&T Housing Finance Limited is 36 months. The Developer expects to offer possession of the booked unit to the Buyer by that time. However if due to any reason, the possession offer of the booked unit gets delayed, then the Developer undertakes to pay the Pre EMI only to the Buyer even after 36 months.* ***The payment of Pre EMI shall continue till offer of possession with regard to the booked flat is issued to the Buyer.***

XX. That however, the respondent has failed to make the said payment after December 2020. In a similar case of refund, the ***Haryana REAT in appeal no. 366 of 2019 titled as HDFC Bank v Mohit Manchanda*** noted that the obligations in regards to the pre-Emi, are to be completed. Hence, the same should also be done at the present instance.

C. Relief sought by the complainant: -

7. The complainant has sought following relief(s):

I. That the respondents are jointly and severally liable as per the order dated 29.11.2019 in suo-moto complaint no. HARERA/GGM/5802/2019/Suo-Motu (complaints) dated 29.11.2019;

II. Direct the respondents refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation;

III. To settle the claims and obligations as per the memorandum of undertaking dated 23.12.2017 and the tri-partite agreement dated 03.12.2017;

IV. Direct the respondents to not sell/create third party right till complete realisation/refund;

V. To grant the complainants to file a complaint under section 71 & 72 of the Act for violation of the Agreement dated 31.07.2017, MOU dated 23.12.2017 and various provisions of the Act, 2016 and the rules of 2017 and regulations thereunder;

VI. To take suo-moto action against the respondents for non-submission of BIP and violation of section 59, 63 and other sections of the Act 2016.

8. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the act to plead guilty or not to plead guilty.

9. In complaint no. 3349 of 2023, the defence of the respondent was struck off vide order dated 21.01.2025. In the interest of justice, the written argument filed by the respondent no. 1 is taken on record.

D. Reply by the respondent no. 1

10. The respondent is contesting the complaint on the following grounds:-

i. The respondent no. 1 is one of the leading real estate developers in the State of Haryana and NCR. It has several projects across the state, and as such has built a great reputation for having the highest quality of real estate developments. The respondent no. 1 has been represented in the instant proceedings by its authorized representative, Ms. Isha Dang. One of its marquee projects is the Azalia, located in Sector 68, Gurugram, and Haryana.

ii. That the respondent no. 1 was issued license bearing no. 89 of 2014 dated 11.08.2014 for developing the said land. That in furtherance of the same, the respondent no. 1 and 2, entered into a Master Development Agreement dated 29.10.2013. In terms of the said MDA, Supertech was to develop and market the said project. The complainant 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 had sought to book an apartment(s)/ unit(s) in the said project.

iii. That, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 24.05.2017 an apartment being no. 0106, Tower – T4, having super area as 1225 sq. ft. for a total consideration of Rs.77,14,425/-. 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 23 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 23 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 24 of agreement, possession of the apartment would only be given to the allotees, after payment of all dues.

v. Further, the complainants elected the 'special 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 complainant.

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 respondent no. 2 i.e., M/s Supertech Limited is admitted to insolvency proceedings and R-3 is the IRP appointed for R2, therefore the present maters deems to be adjourned sine die till the finalization of the CIR process against the Supertech Limited.

xi. That as M/s. Supertech Ltd. and the answering respondent are jointly and severally liable in terms of the Suo-Moto order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between both the respondent's. 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.

xii. That the complaint filed by the complainant is 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 complainant and the present complaint has been filed with malafide intention to blackmail the respondent no. 1 with this frivolous complaint.

xiii. 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.

xiv. 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.

xv. 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 42". 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 timeline stipulated under the flat buyer's agreements was only tentative, subject to force majeure reasons which are beyond the

control of the respondent. The respondent in an endeavour 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. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant 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 complainant 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. 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.

xvi. That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract. 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.

xvii. 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. 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.

xviii. 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.

xix. That the complainant has 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 complainant is a mere speculative investor who has no interest in taking possession of the apartment.

xx. 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 complainant 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.

xxi. 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 complainant at the time final settlement on slab of offer of possession. The project is ongoing project and construction is going on.

xxii. 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.

xxiii. 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

xxiv. 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)**	

xxv. 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. 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.

xxvi. Hence, the complainant is 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 complainant is not entitled for any compensation or refund claimed except for delayed charges as per clause 2 read with 24 of the builder buyer agreement.

10. No reply has been submitted by respondent nos. 2 & 3. However, counsel for respondent no. 2 has stated that respondent no. 2 is under CIRP vide order dated 25.03.2022 passed by Hon'ble NCLT New Delhi Bench in case no. IB-204/ND/2021 titled as ***Union Bank of India Versus M/s Supertech Limited*** and moratorium has been imposed against respondent no.2 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against respondent no.2.

11. 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 submission made by the parties.

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

13. 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

14. 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.*

15. 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.

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

F.I Objections regarding force majeure.

16. The respondent-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 31.07.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to

be 31.12.2021. 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 three years and even some happening after due date of handing over of possession. However, the Authority observes that there is provision of 6 months grace period in lieu of force majeure conditions as per clause E (23) of the BBA dated 31.07.2017 and the same is unqualified.

17. In view of the above, the Authority allows 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/promoter.

F.II Objection regarding CIRP against respondent no. 2 and consequent moratorium against proceedings against respondent no. 2.

18. Respondent no. 1 has filed an application dated 01.12.2023 for staying the proceedings in the matter as 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 respondent no.2 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 1 is no longer the assets of respondent no. 2 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 no. ***HARERA/GGM/ 5802/2019***. Respondent no. 1 has stated in the reply that the MDA was cancelled by consent of respondent no. 1 and respondent no. 2 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., respondent no. 2 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 2 were jointly and severally liable for the project, no orders can be passed against respondent nos. 2 in the matter at this stage.

G. **Findings on the relief sought by the complainants.**

G.I That the respondents are jointly and severally liable as per the order dated 29.11.2019 in suo-moto complaint no. HARERA/GGM/ 5802/2019/Suo-Motu (complaints) dated 29.11.2019;

G.II Direct the respondents refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation;

G.III To settle the claims and obligations as per the memorandum of undertaking dated 23.12.2017 and the tri-partite agreement dated 03.12.2017;

G.IV Direct the respondents to not sell/create third party right till complete realisation/refund;

19. The above-mentioned reliefs sought by the complainants, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.

20. In the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them 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)

21. As per clause E(23) of the buyer's 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 2021 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."*

22. **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 2021 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 30.06.2022.

23. **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.

24. 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.

25. 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., 25.03.2025 is **9.10%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

26. 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.

27. 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 31.07.2017, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.12.2021. 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 30.06.2022.

28. It is pertinent to mention over here that even after a passage of more than 4 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. It is also to mention that complainants have paid almost 37% of total consideration till February 2018. 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.

29. 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……"*

30. 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."

31. 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.

32. 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 no. 1 is established. As such, the complainant is 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. The amount paid by the respondent towards Pre-EMI shall be adjusted in above refundable amount. (**Note: -** Vide proceeding dated 25.03.2025, the word inadvertently mentioned as 'respondents' instead of 'respondent no. 1'), the same is corrected accordingly.

33. Out of total amount so assessed, the amount paid by the bank/financial institution be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainants.

H. Directions of the Authority

34. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

i. The respondent no.1 is directed to refund the amount received from each of the complainant(s) 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 and the amount paid by the respondent towards Pre-EMI if any shall be adjusted in above refundable amount.

ii. Out of total amount so assessed, the amount paid by the bank/financial institution be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainant.

iii. 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.

iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.

v. No directions are being passed in the matter qua respondent nos. 2 & 3 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.

35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, total sale consideration, amount paid by the complainants are mentioned in each of the complaints.

36. Complaint as well as applications, if any, stand disposed of accordingly.

37. Files be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 25.03.2025