

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

Complaint no. : 2144 of 2021
Order reserved on: 11.03.2025
Order pronounced on: 07.04.2025

1. Mr. Mukesh Jain
2. Ms. Rashi Asthana
Regd. Address: H.No. -71, Pocket H-17, Sector-7
New Delhi-110085

Complainants

Versus

1. M/s Supertech Limited
Regd. office: 114, 11th floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi-110019
2. PNB Housing Finance Limited
Regd. office: 9th Floor, Antriksh Bhavan 22
Kasturba Gandhi Marg, Near Connaught Place,
New Delhi-110001
3. DSC Estate Developers
Regd. office: 114, 11th floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi-110019

Respondent no. 1

Respondent no.2

Respondent no. 3

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh.Harshit Batra (Advocate)
Sh.Bhrigu Dhami (Advocate)
Sh.Gunjan Kumar (Advocate)
Ms.Isha Dang (AR)

Counsel for Complainant
Counsel for Respondent no. 1
Counsel for Respondent no. 2
AR for Respondent no. 3

ORDER

1. That the present complaint has been filed by the complainants/allottees 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.

A. Project and unit related details

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

S. No.	Particulars	Details
	Name of the project	Supertech Azalia, Sector-68, Gurugram-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	
4.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013
	Validity status	25.12.2017
	Name of licensee	Sarv Realtors Pvt. Ltd. & Ors.
5.	Unit no.	1605, Tower T2
6.	Unit measuring	600 sq. ft. super area
7.	Date of Booking	28.03.2017
8.	Date of MoU	23.06.2017 (Annexure C-2 of complaint)
9.	Possession clause	That the tenure of this subvention scheme as approved by PNB Housing Finance Limited is 36 months. The Developer expects to offer of 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.
10.	Due date of possession	23.06.2020 + 6 months grace period in lieu of Covid-19 = 23.12.2020 (as per recital (b) of the MoU).
11.	Total sale consideration	Rs. 36,32,580/-
12.	Total amount paid by the complainants	Rs. 30,36,057/-
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

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

That the complainants are believing on such false representation and claims at the pretext of the respondent no.1 through its authorized representatives, booked an apartment in the said project on 20.03.2017 details of being such-apartment bearing no.1605, tower-T2, 16th floor, Sector-68, Golf Course Extn. Road, Gurugram, Haryana, admeasuring super area 600 sq. ft. and accordingly paid a booking amount of Rs. 50,000/-.

- That in respect of allotment, Memorandum of Understanding was executed between the complainants and the respondents on 26.06.2017. According to the latter, the complainants opted for the subvention scheme or No Pre-Emi till possession scheme. In lieu of the subvention scheme, the complainants took financial assistance from respondent no. 2 i.e. PNB Housing Financing Limited for an amount of Rs. 28,94,000/-. On the pretext of the subvention scheme, a tri-partite agreement was executed on 18.06.2017 amongst respondent no. 1, respondent no. 2 and the complainants.

- b. That as per the MOU dated 26.06.2017, it was the responsibility of the respondent no-1 to pay the Pre-EMI to respondent no. 2 till the delivery of possession of the unit is made to the complainants. However, instead of obliging by the same, the respondent no.1, through its malafide and unlawful conduct defaulted in paying of Pre-EMI to the respondent no. 2.
- c. That the default in paying the Pre-EMI by respondent no. 1 began in December 2018 and the already paid Pre- EMI amount were also paid after the expiry of the stipulated time period and is still in default as has violated the terms of Section 18(3) of the Act. Moreover, the complainants were being harassed since December 2018 by both respondent no. 1 and respondent no. 2 with the wrong communication of the complainants' liability to pay the Pre-EMI from December 2018.
- d. That due to continuance late payment and overdue of Pre EMI by the respondent no. 1 has affected the CIBIL of the complainants ridiculously due to which their application of car loan got rejected causing serious damages to their credibility in the society.
- e. That the malafide conduct of the respondent no. 1 can be seen from the very inception, at the time of the booking/agreement. In lieu of the subvention scheme, an allotment letter was signed between the respondent no. 1 and the complainants. The respondent no. 1 never provided the same to the complainant, even after numerous requests on personal visits, phone calls. The respondent no.1 paid no heed to the requests of the complainants and replied in an ambiguous manner.

- f. That the respondent no. 1 has not delivered the possession yet and not even executed the builder buyer agreement till date which amounts to grave violation of section 13 of the act.
- g. That the respondent no. 2 on its own liberty without following the due process and the guidelines, rules, regulations, laid down under National Housing Bank act, 1987 as well as the RBI, disbursed an amount of Rs. 26,26,550/- out of the sanctioned loan amount of Rs. 28,94,000 to respondent no. 1. The disbursement of the loan amount by respondent no. 2 is done without investigating and inspecting and analyzing the status of the project, failing to investigate the status of the project prior disbursement of the funds and in connivance with respondent no. 1, has unlawfully and illegally disbursed the loan amount. The complainants have lost faith in respondent no. 1 and in respondent no. 2 as well, since the respondent no. 2 acted unethically, unprofessionally by not linking the disbursements to various stages of construction of housing project and instead making an upfront payment of an amount of Rs.26,26,550/- to the respondent no. 1. In doing so, they have gone against the RBI's circular DBR.NO.DIR.BC.13/08.12.001/2015-2016 RBI/2015-2016/46 dated 01.07.2015.
- h. That there has been no breach in terms & conditions of the MOU from the complainants side. Corresponding to the malafide conduct on part of both the respondents, the complainants have always had a bonafide conduct. They have always made payments in a timely manner. They have made a total payment of Rs. 30,36,057/- including the disbursed amount by the respondent no. 2. No further demand for the balance amount has been raised by respondent no. 1 for the said unit and it resulted in no further

disbursement by respondent no. 2. It clearly shows that all payments were paid by bank or the complainant's were on time. No further demand for the balance amount has so far been raised clearly showing that the construction and development of the project is on fault from a long period of time

- i. That for the non-payment of Pre EMI by respondent no. 1, the respondent no.2 instead of serving notices to respondent no. 1, served notices to the complainants for the due payments of Pre EMI. Each time the respondent no.1 was asked and requested to pay such EMIs, but to the utter shock, the respondent no.1 failed to fulfill the obligation to pay such EMIs. The respondent no.1 instead had made several attempts in persuading the complainants to take various schemes, which were completely unacceptable to the complainants, as was also communicated by the complainants to the respondent.
- j. That due to failure on part of the respondent in fulfilling the obligation to offer possession on time, the complainants had to accommodate rental premises as residential premises. Had the respondent offered possession on agreed date of possession, it would have escaped a financial burden on the complainants on account of rental expenditure. The financial expenditure and mental agony caused to the complainants makes the respondent liable to pay compensation to make of the good the loss caused.
- k. That such malafide and unlawful conduct of the respondent no. 1 is not new, and at many occasions the same has been recorded by the Haryana Real Estate Regulatory Authority. In complaint no. 1003 of 2018: MANU/RR/0112/2019, the respondent no.1 was directed to refund the amount along with the interest due to no development in the project. It is

further pertinent to mention that authority also observed the respondent No.1's previous default with regard to the payment of the Pre-EMI.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
 1. To direct the respondent no. 1 to refund the entire deposited amount of the complainants along with prescribed rate of interest from the date of respective deposits till actual realization, in accordance with the provisions of the Act.
5. 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.

D. Reply by the respondent no. 1

6. The respondent is contesting the complaint on the following grounds:-
 - a. That the matter with respect to jurisdiction of the Hon'ble Authority or the Hon'ble Adjudicating officer is still pending adjudication before the Apex Court, thus no statutory vested jurisdiction being available with either the Authority or the Adjudicating officer, present complaint ought to be adjourned sine die till the final decision on the subject matter by the Hon'ble Apex Court, vesting jurisdiction to adjudicate upon refund matter either upon the Authority or the Adjudicating officer.
 - b. That the complaint filed by the complainants 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 complainants and the present complaint has been filed with malafide intention to blackmail the respondent no. 1 with this frivolous complaint.
 - c. That the reliefs for refund of Rs.30,36,057/- is not maintainable in view of the fact that the complainants had taken a loan from PNB Housing Finance

Ltd. for an amount of Rs. 28,29,400/- and in this regard had entered into a tripartite agreement on 18.06.2017 with the respondent and PNBHFL.

- d. That the clauses of the tripartite agreement dully set out the terms and conditions which bind all the parties with respect to the said transaction. The TPA clearly stipulates that in the event of cancellation of the apartment for any reason whatsoever the entire amount advanced by the PNBHFL would be refunded by the builder to PNBHFL, therefore the complainants subrogated all his rights for refund with respect to the said residential apartment in favour of the PNBHFL. Thus, the complainants are devoid any right to seek refund of the amount advanced for the subject apartment.
- e. That the respondent has paid substantial amounts towards pre-EMI on behalf of the complainants to the PNBHFL and in fact is entitled to refund of the same from the complainants.
- f. That the complainants after entering into agreements which clearly specify the rights and obligations of parties cannot wriggle out of its obligations merely on its whim and fancies and more over merely on the ground of financial difficulties without substantiating the said averment. It is submitted that the complainants may be put to strict proof in this regard.
- g. Without prejudice to the afore-said, the delay if at all, has been beyond the control of the answering respondents 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.
- h. The delay in construction was on account of reasons that cannot be attributed to the respondent. The agreements provide that in case the respondent delays in delivery of unit for reasons not attributable to the respondent, then the respondent would be entitled to proportionate

extension of time for completion of said project. The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.

- i. 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 for completion of the project is not a delay on account of the respondent for completion of the project.
- j. The project got inadvertently delayed owing to the above noted force majeure events. Further, since March, 2020, as owing to the nationwide Govt. imposed lockdown, no construction/ development could take place at site. It is submitted that owing to the lockdown, the construction labour workers were forced to return to their native villages and thus, even at the unlocking stage no conclusive construction/ development could take place at site. It is submitted that such a long break in construction has put the project many milestones back. However, the respondent has dedicated itself to delivering the projects at the earliest.
- k. Due to the covid condition and the its devastating effect on the Indian economy specially the real-estate sector arranging of funds for completion of projects has become an impossible task as the banks and NBFC's have made it difficult for builders to apply for loans for completion of pending projects. However, the respondent undertakes to handover possession of the subject unit at the earliest.
- l. 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.

- m. That the timeline stipulated under the agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent 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.
- n. That despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainants, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. 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 no.1.
- o. That the project "Supertech Azalia" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 04.09.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021.
- p. That the possession of the said unit was proposed to be delivered by the respondent to the complainants 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, non-availability of steel or cement or other building materials or water supply or electric power 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 unit 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. Due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for a considerable period of days due to high rise in Pollution in Delhi NCR.

- q. That the enactment of RERA Act 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 the HRERA Authority. According to the terms of Aagreement also it is mentioned that all the amount of delay possession would be completely paid/adjusted to the complainants at the time of final settlement on slab of offer of possession.
- r. 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. Respondent/promoter, being a bonafide builder has also applied for realty stress funds for its Gurgaon based projects.

- s. That the project is an ongoing project and orders of refund at a time when the real-estate sector is at its lowest point, would severally prejudice the development of the project which in turn would lead to transfer of funds which are necessary for timely completion of the project. It is most humbly submitted that any refund order at this stage would severally prejudice the interest of the other allottees of the project as the diversion of funds would severally impact the project development. Thus, no order of refund may be passed by this Authority in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.
- t. That the complainants cannot unilaterally cancel/ withdraw from the project at such an advance stage as the same would fly in the face of numerous judicial pronouncements as well as the statutory scheme as proposed under the Real Estate (Regulation and Development) Act, 2016.
- u. 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 "Supertech 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. 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.

- v. 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.

Preliminary Submissions

- w. That the respondent received the environmental clearance on 15.03.2016 and the license no. 106 and 107 of 2013, 89 of 2014, 134-136 of 2014, for development of the said project on 26.10.2013, 08.08.2014 and 26.08.2014, respectively.
- x. That it is an admitted position that the parties had executed an allotment letter dated 19.03.2018. However, the main document has not been placed on record by the complainants. Without the same being placed on record, no relief as sought for can be granted.

- y. That the pandemic of Covid-19 has gripped the entire nation since March of 2020. The Government of India has itself categorised the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the unit to the complainants.
- z. This Authority vide its order dated 26.05.2020 had acknowledged the Covid-19 as a force majeure event and had granted extension of six months period to ongoing projects. Furthermore, it is of utmost importance to point out that vide notification dated 28.05.2020, the Ministry of Housing and urban affairs has allowed an extension of 9 months vis-à-vis all licenses, approvals, end completion dates of housing projects under construction which were expiring post 25.03.2020 in light of the force majeure nature of the covid pandemic that has severely disrupted the workings of the real estate industry.
- aa. 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. Hence, the complainants are not entitled for any compensation or refund claimed except for delayed charges as per clause 2 read with clause 24 of the builder buyer agreement.

E. Reply by the respondent no. 2

- 7. The respondent no. 2 is contesting the complaint on the following grounds:-
 - a. That PNB Housing Finance Limited is one of the largest housing finance duly registered with the national housing bank and is a law abiding company, primary engaged in the business of rendering home loan/finance facilities, predominantly against the security of immovable properties.

- b. That the adjudicating officer does not have the jurisdiction to entertain the present complaint against the respondent as section 31 of the Act mandates filing the complaint for any violation or contravention of the provisions of the act or rules and regulations made thereunder only against any promoter, allottee or real estate agent and the respondent does not fall under any of those categories and consequently is incapable of committing any violation or contravention of the provisions contain duties and obligations only of the three entities mentioned above viz., promoters, allottees and real estate agents.
- c. That section 36 of the Act only empowers the Authority to issue interim order against promoters, real estate agents and allottees. Doctrine of *ejusdem generis* states that where law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed. The sections lists out the persons or entities to which the adjudicating officer may issue directions. The general statement that such directions shall be binding on all concerned applies only to same kind of persons or entities specifically listed.
- d. That the complainants only seeking refund from the respondent no. 1, paid by the complainants for the purchase of the aforementioned unit. Refund process can only be done by respondent no. 1 and not the respondent no. 2 and also the adjudicating officer does not have jurisdiction to entertain the present complaint against the respondent no. 2.
- e. The adjudicating officer would be exceeding its jurisdiction as conferred by the act in entertaining the present complaint against the respondent. It is well settled law that what cannot be done directly, the same cannot be

done indirectly and has been widely recognized, in particular, in the case of *Jagir Singh Vs. Ranbir Singh, AIR 1979 SC 381 as well as State of Tamil Nadu & Ors. Vs. K. Shyam Sunder & others, Civil appeal nos. 6015-6057/2011*.

- f. That the instant complaint is preferred by the complainants before the adjudicating officer primarily against the promoter Supertech Ltd. In respect of the unit booked in the same project for failure on the part of the respondent no. 1 to deliver the unit within the prescribed time limit. Hence the complainants had prayed for refund of entire amount paid by the complainants to the respondent no. 1.
- g. That the complainants opted for and booked a unit in the project of the respondent no.1. The complainants were facing short of finance for purchase of the unit, the complainants approached the respondent no. 2 seeking extension of a loan facility, which, after necessary assessment, was duly sanctioned for an amount of Rs. 28,94,000/-.
- h. That the complainants have grievances with the respondent no. 1 regarding delivery of the unit even after making payments. The respondent cannot be made party to the present case and no relief has been sought from the respondent except or restoring CIBIL which is not in the hands of the respondent.
- i. That the respondent no. 1 was granting an interest subvention on the loan availed where under the complainants would receive the Pre-EMIs from the promoter until possession of the unit was delivered. The complainants by their own volition opted for the subvention scheme being offered by the respondent no. 1. The complainants have duly read all the terms and conditions of the subvention scheme and agreed the same and thereby

respondent no. 1 and the complainants approached the respondent no.2, in furtherance to which the tripartite agreement was entered into, however, subject to terms and conditions of the loan agreement.

- j. That the complainants avail their own free consent had approached the respondent to avail the loan facility in order to get financial assistance to purchase unit in the project. It is the duty of the complainants to pay EMIs to the respective loan amount and ultimate liability to pay the entire outstanding amount was always envisaged to be that of the complainants.
- k. That the complainants are fully aware of the terms and conditions at the time to execution tripartite agreement and was also aware of the facts that the respondent no. 2 is just providing financial assistance to the complainant. The grievances related to refund of the amount paid and related issues are subject matter between the respondent no. 1 and the complainants.
- l. That the complainants in an arbitrary manner are manipulating the facts of the case in order to evade their obligations under the loan agreement and tripartite agreement. The complainants have failed to realise that the role of the respondent no. 2 is solely confined to providing financial assistance in furtherance of the loan agreement to purchase the respective unit and respondent no. 2 has fulfilled all its obligations under the loan agreement and tripartite agreement.
- m. That the respondent no. 2 is a financial institution and had advance a loan facility to the complainants for purchase of a unit after being approached by the complainants for the mentioned intention and on the representation made by the complainants that the promoter is of their choice and that they have satisfied themselves with regard to integrity and capability of the

builder for quality construction and the builder's ability and efficiency in timely completion and delivery of the project.

- n. That at the time of execution of the tripartite agreement, the complainants represented, and such representation being a continuing representation since the execution of the tripartite agreement, that their obligation to repay the loan shall be distinct and independent obligation more particularly independent of any issues/concern/dispute of whatsoever nature between the complainants and respondent no. 1. The complainants even undertook that subsequent to the disbursements as requested by them, there would be no repayment default for any reason whatsoever including but not limited to any concern/issues by and between the borrowers and the builder.
- o. That the complainants are bound by the terms and conditions of the loan agreement read with the most important terms and conditions executed with the respondent no. 2 and the tripartite agreement dated 27.10.2017 entered into between the complainants and the respondents.
- p. That even cancellation of the allotment by the complainants does not absolve the complainants of their obligations under the loan agreement and tripartite agreement towards the respondent no. 2 till the amount is refunded by the respondent no. 1.
- q. That it is evident that the complainants have wilfully agreed to the terms and conditions of the agreements and they cannot make the respondent no. 2 a party to the present lis which is primarily against the respondent no.1 and also when there is no cause of action against the respondent no. 2.

F. Reply by the respondent no. 3

8. The respondent no. 3 implead as party vide order dated 10.12.2024 is contesting the complaint on the following grounds:-
- a. That respondent no. 3 was issued license bearing nos. 89 of 2014 dated 11.08.2014 for developing the said land. That the respondent no. 3 and respondent no. 2 had entered into a master development agreement dated 29.10.2013.
 - b. That in terms of the said MDA, Supertech was to develop and market the said project the complainants along with many other allottees had approached M/S Supertech Ltd., making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book unit in the said project.
 - c. That after fully understand the various contractual stipulations and payments plans for the unit, the complainants executed the buyer develop agreement dated 23.06.2017 with respondent no. 1 only and unit being number no. 1605, tower- T2, having super area as 600 sq. ft. for a total consideration of Rs.36,32,580/-.
 - d. That in the interim with the implementation of the RERA 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 Ltd.
 - e. That the Authority vide order dated 29.11.2019 passed in Suo-Moto complaint 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 respondent (M/s SARV Realtors Pvt.) Ltd. and **M/s. DSC Estate Developer Pvt. Ltd.** respectively. The 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 project instead of M/s. Supertech Ltd. Certain important directions as passed by this Hon'ble Authority are as under:

(i) 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.

(v) 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, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd. / DSC and others fail to discharge its obligations towards the allottee

That in lieu of the said directions passed by the Authority all asset and liabilities have been since transferred in the name of the respondent company. However, in terms of the said order, M/s. Supertech Ltd. still remains jointly and severally liable towards the booking/ allotment undertaken by it before the passing of the said Suo Moto order.

- f. That thereafter the said MDA's were cancelled by the consent of both parties vide cancellation agreement dated 03.10.2019 and the respondent from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- g. That in terms of the said cancellation agreement the respondent and M/s. Supertech Ltd. had agreed that as M/s. Supertech Ltd. was not able to complete and develop the project as per the timeline given by the Authority

and DTCP, therefore the parties had decided to cancel the JDA's vide the said cancellation agreement.

- h. 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.
- i. 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.
- j. That as admittedly respondent no. 1 is admitted to insolvency proceedings and IRP appointed for R -1, therefore the present matters deems to be adjourned sine die till the finalisation of the CIRP Process against the R -1 company.
- k. That the complaint deems to be dismissed sine-die or dismissed as the R2 company, i.e. M/s. Supertech Ltd. is undergoing corporate insolvency resolution process and therefore all matters like the present one in which Supertech Ltd. is a party deem to be adjourned sine-die or dismissed in lieu of the moratorium imposed upon M/s. Supertech Ltd. U/s 14 of the IBC, 2016.
- l. That the present case deems to be prima facie dismissed as there is no privity of contract between the complainants and the respondent. Furthermore, despite filing its application for change in promoter, the same has not been allowed till date and the same is still pending adjudication before the Authority. Thus, no case can proceed against the respondent till the final decision of the said application.

- m. That the present case also deems to be prima facie dismissed as admittedly the BBA was executed solely with M/s Supertech Ltd., all sale consideration was also paid to M/s Supertech Ltd., thus as no sale consideration as paid to the respondent neither any written agreement was signed between the complainants and respondent, the respondent cannot be ordered to refund any amounts, if any, by the Authority. It is reiterated that M/s Supertech Ltd. is jointly liable as per the Suo-Moto order.
- n. That as M/s. Supertech Ltd. and the respondent are jointly and severally liable in terms of the Suo Moto Order passed by the Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between the respondent and M/s. Supertech Ltd. The respondent cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Ltd.
- o. The delay in construction was on account of reasons that cannot be attributed to the respondent. The buyers' agreements provide that in case the respondent delays in delivery of unit for reasons not attributable to the respondent, then the respondent shall be entitled to proportionate extension of time for completion of said project.
- p. That 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.

- q. 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 buyers' 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".
- r. 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. The delay in construction, if any, is attributed to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the agreement.
- s. That the project "AZALIA" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 4.9.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project by December, 2021.
- t. 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. 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.

- u. 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.
- v. 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. When the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted.

w. 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.

9. 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.

G. Jurisdiction of the Authority

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

E.1 Territorial jurisdiction

11. 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

12. 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.

13. 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 complainant at a later stage.

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

F.I Objections regarding force majeure.

14. 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. Further, the Authority has gone

through the memorandum of understanding and observed that due date for possession is 23.06.2020. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and LAs 3696-3697/2020** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

15. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 23.06.2020 i.e., after 25.03.2020. Consequently, an extension of 6 months is to be given over on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of subject unit comes to 23.12.2020 and the events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

F.II Objection regarding CIRP against respondent no. 1 and consequent moratorium against proceedings against respondent no.1.

16. Respondent no. 1 has 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 respondent no.1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 3 is no longer the assets of respondent no. 1 and admittedly, respondent no. 3 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.3 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.3 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.3 i.e., DSC Estates Pvt. Ltd. admittedly took responsibility to develop the project and started marketing and allotting new units under its name. In view of the above, respondent no.3 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.1 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 3 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage.

I. Findings on the relief sought by the complainants.

H.1 Direct the respondents refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation;

17. In the present complaint, the complainants intend 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)

18. As per recital (b) of the Memorandum of Understanding talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

(b). That the tenure of this subvention scheme as approved by PNB Housing Finance Limited is 36 months. The Developer expects to offer of 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....."

[Emphasis Supplied]

19. **Due date of handing over of possession and admissibility of grace period:**

As per recital (b) of the memorandum of understanding, the possession of the allotted unit was supposed to be offered within 36 months. The Authority in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic has allowed the grace period of 6 months to the promoter. Therefore, the due date of handing over possession comes out to be 23.12.2020.

20. **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.

21. 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.
22. 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., 07.04.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
23. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

24. 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 recital (b) of the memorandum of understanding dated 23.06.2017, the due date of possession is 23.06.2020. 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 23.12.2020.
25. It is pertinent to mention over here that even after a passage of more than 4 years 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 complainant has paid almost 61% of total 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.

26. 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....."

27. 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."

28. 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.

29. 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 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*.

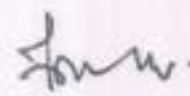
J. Directions of the Authority

30. 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:
- The respondent no. 3 (*inadvertently mention as respondent no.2 in proceeding dated 07.04.2025*) i.e., DSC Estate Pvt. Ltd. is directed to refund the entire paid-up amount i.e., Rs. 30,36,057/- received by it from each of 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. Out of the total amount so assessed, the amount paid by the bank/ financial institution be refunded first and the balance amount along with interest if any, be refunded to the complainant-allottees. Further, the respondent /promoter is directed to provide the No Objection Certificate (NOC) to the complainant after getting it from the bank/financial institution.
 - 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/complainants .
 - v. No directions are being passed in the matter qua respondent nos. 1 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.
31. Complaint as well as applications, if any, stands disposed of accordingly.
32. Files be consigned to registry.

(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

v.1 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2025