



HARERA
GURUGRAM

Complaint No. 2279 of 2023

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

Complaint no. 2279 of 2023
Date of filing complaint 07.06.2023
Date of decision 25.03.2025

Preeta Singh
R/o: 158, FF, Sector 15, Part- 1, Gurgaon, Harayana

Complainant

Versus

M/s Supertech Limited (R:1)
M/s DSC Estates Developers Pvt. Ltd. (R:2)
Regd. office: AB-28-29, Sector 58, NOIDA.

Respondent no. 1
Respondent no. 2

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Complainant in person
Sh. Bhrigu Dhami
Sh. Dhruv Dargan

Complainant
Respondent no. 1
Respondent no. 2

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real -Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

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

S.No.	Particulars	Details		
1.	Name of the project	Supertech Azalia, Sector-68, Golf Course Extn. Road, Gurgurgram-122101		
2.	Project area	55.5294 acres		
3.	Nature of project	Group Housing Colony		
4.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017		
	Validity Status	31.12.2021		
5.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013	89 of 2014 dated 08.08.2014	134-136 of 2014 dated 26.08.2014
	Validity status	25.12.2017	Renewed on 31.03.2023 upto 07.08.2024	Renewed on 27.03.2023 upto 25.08.2024
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.
6.	Unit no.	0908, 9 th floor, tower T3, (Page no. 41 of complaint)		
7.	Unit measuring	600 sq. ft. super area (Page no. 41 of complaint)		
8.	Date of Booking	31.07.2017 (Page no.41 of complaint)		
9.	Date of execution of Builder developer agreement	17.10.2017 (Page 40 of complaint)		
10.	Possession clause	1. POSSESSION OF THE UNIT:- <i>"The Possession of the Unit shall be given by Dec, 2021. However, this period can be extended for the further grace period of 6 months ..."(Emphasis supplied)</i>		
11.	Due date of possession	Dec, 2021 + 6 months = June 2022		
12.	Total sale consideration	Rs.40,08,859 /-(page 42 of complaint)		

13.	Total amount paid by the complainant	Rs. 13,50,193/- (page 14 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Memorandum understanding of	02.12.2017 (page 28 of complaint)

B. Facts of the complaint

5. The complainant has made the following submissions in the complaint: -

- a. That in 2017, the complainant has booked a unit bearing no. 0908, t-3 admeasuring 600 sq.ft. at Supertech Azalia, Sector 68, Gurgaon. To meet the financial demands, complainant paid her hard-earned money and also took home loan for the booked residential unit.
 - b. That the loan was taken under subvention scheme whereby the bank has released the sanctioned amount directly to the builder and the builder was supposed to pay the Pre-EMIs or Full EMIs to the bank till the possession of the flats are not delivered.
 - c. That after taking payment from the complainant and through the bank loan, the builder has not fulfilled his obligation of delivery of possession of unit in Dec 2021 neither honoured the commitment of paying pre-EMIs to the bank. The project has also been listed as unregistered project and there are no chances of it to be completed. It is clear that the builder has defaulted, in view of the same, the complainant is entitled for refund of total amount paid by her. Also, direct the builder to pay an additional amount of Rs. 1,00,000/- as litigation charges incurred by the complainant.
6. 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.

C. Relief sought by the complainant:



7. The complainant has sought following relief(s)
- Direct the respondent to refund the full deposited money which is withheld with the respondent along with other commitments.
 - Direct the respondent to reimburse litigation cost of Rs. 1,00,000/- to the complainant.

D. Reply by the respondents

8. The present complaint was filed before the Authority on 07.06.2023. The respondent was granted several opportunities to file a reply. However, despite specific opportunities respondent failed to file reply. In view of the same respondent defence was struck off vide order dated 21.01.2025. Furthermore, during the proceedings held on 21.01.2025, in the interest of justice, the parties were permitted to file brief written submissions within a period of three weeks, with an advance copy to be served on each other. Pursuant to the same, respondent no. 2, i.e., DSC Estate Developer Pvt. Ltd., filed its written submissions on 21.03.2025 and made the following submissions:
- That the respondent was issued license bearing no's 106 and 107 dated 26.12.2013 and license no's. 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent and M/s. Supertech Ltd. had entered into two joint development agreement's dated 25.04.2014 and dated 26.08.2014 respectively.
 - That the complainant along with many other allottee 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 a unit(s) in the said project. Consequentially, after fully understanding



the various contractual stipulations and payment plans for the said unit, the complainant executed the buyer developer agreement dated 17.10.2017 with M/s. Supertech Ltd. for a unit bearing 0908, tower T3, having super area as 600 sq.ft., for a total consideration of Rs. 40,08,859/-.

- c. 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.(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.
- ii. (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, Superech 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.

- d. That thereafter the said JDA'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.
- e. 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.
- f. 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.
- g. That admittedly the complainant till date has only made a merge payment of Rs. 13,50,193/- out of the total sale consideration of Rs. 40,08,859/-. Thus, a defaulter cannot be awarded for its own wrong.



- h. 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.
- i. 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.
- j. 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 both the respondent's. The respondent in lieu of the CIRP proceedings ongoing against Supertech company, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Ltd.
- k. That the present complaint further also deems to be prima facie dismissed as till there is no bifurcation of the liabilities between R1 and the respondent, no liability can be imposed upon the respondent, as admittedly the BBA was executed only with R1 and the sale consideration was also paid to R1 only.
- l. The delay if at all, has been beyond the control of the respondent 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.



- m. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the unit allottee by December, 2021 with an extended grace period of 6 months which comes to an end by June, 2021. 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 would 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 allottee. Due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.
- n. That as the registration of the project still stands in the name of M/s. Supertech ltd. The present proceedings cannot be continued. The respondent has already applied for change in registration which till date is pending adjudication before the Authority.
- o. That 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. 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 labour 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.

E. Jurisdiction of the Authority

9. 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

10. 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

11. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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.
13. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on ***11.11.2021*** and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020*** decided on ***12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint



reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Findings on objections raised by the respondent no.2
F.I Objections regarding force majeure.

15. 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 17.10.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.06.2022.
16. The Authority observes that the events taking place such as restriction on construction were for a shorter period of time and are yearly one and do not

impact on the project being developed by the respondent. Though some allottee may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take care of unforeseen eventualities. Therefore, no further grace period is warranted on account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

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

17. Respondent no. 2 has filed an application dated 28.03.2024 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. 2 is no longer the assets of respondent no. 1 and admittedly, respondent no.2 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/ 5802/2019**. Respondent no.1 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.2 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.1 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 no.2 in the matter at this stage.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to refund the full deposited money which is withheld with the respondent along with other commitments.

18. That the complainant booked a unit 0908, 3rd floor, in the project of the respondent namely, "Azalia" admeasuring super area of 600 sq. ft. for an agreed sale consideration of Rs.40,08,859/- against which complainant paid an amount of Rs.13,50,193/- and the respondent has failed to hand over the physical possession till date. That the complainant intends to withdraw from the project and are seeking refund of the paid-up amount as provided under the section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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 allottee, 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)

19. As per clause 1 of the agreement provides for handing over of possession and is reproduced below:

"The possession of the allottee unit shall be given to the Allottee/s by the Company by DEC, 2021. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the Allottee/s and the Allottee/s agrees to strictly abide by the same in this regard."

20. **Due date of handing over of possession and admissibility of grace period:** As per clause 1 of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the June 2022 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.

21. **Admissibility of refund along with prescribed rate of interest:** The complainant are seeking refund the amount paid by them along with interest prescribed rate of interest. However, 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.

22. 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.
23. 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%**.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

25. 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 no.2 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 1 of the agreement executed between the parties on 30.07.2014, the due date of possession is Dec 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 June 2022.

26. It is pertinent to mention over here that even after a passage of more than 2.5 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 no.2. 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 no. 2 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.

27. 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 allottee 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 allottee 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....."

28. 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."

29. 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 allottee 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 no.2 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.

30. 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.2 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*.

G.II Direct the respondent to reimburse litigation cost of Rs. 1,00,000/- to the complainant.

31. The complainant are seeking above mentioned relief w.r.t. litigation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of



compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the authority

32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act:

- i. The respondent no. 2 i.e., DSC Estate Developer Pvt. Ltd. is directed to refund the amount received by it 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.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

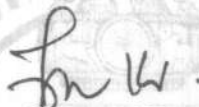
iv. No directions are being passed in the matter qua respondent no.1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.

33. Complaints stand disposed of.

34. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 25.03.2025

HARERA
GURUGRAM