

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

Date of decision: 27.05.2025

NAME OF THE BUILDER		M/s DSC Estates Developers Private Limited.	
PROJECT NAME		"Supertech Azalia", Sector- 68, Gurugram, Haryana	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/440/2020	Mr. Mohit Kohil and Mrs. Arpita Kohil V/s M/s Supertech Limited (R1) M/s DSC Estate Pvt. Ltd. (R2)	Sh. Harshit Batra (Complaints) Sh. Bhrigu Dhami (Advocate) (R1) and Sh. Rohit Arora and Dushyant Tewatia (Advocates) (R2)
2.	CR/4708/2020	Sh. Sandeep Bhatia V/s M/s Supertech Limited (R1) M/s DSC Estate Pvt. Ltd. (R2)	Sh. Harsh Jain (Complaint) Sh. Bhrigu Dhami (Advocate) (R1) and Sh. Rohit Arora and Dushyant Tewatia (Advocates) (R2)
3.	CR/801/2021	Mrs. Kavita Chauhan and Mr. Sachin Chauhan V/s M/s Supertech Limited (R1) M/s Indiabulls Housing Finance Limited (R2) M/s DSC Estate Pvt. Ltd. (R3)	Ms. Daggar Malhotra (Complaints) Sh. Bhrigu Dhami (Advocate) (R1) None (R2) Sh. Rohit Arora and Dushyant Tewatia (Advocates) (R3)

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

ORDER

1. This order shall dispose of all the complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Supertech Azalia", Sector- 68, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s DSC Estate Developers Private Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of refund of the entire paid up amount along with interest and other reliefs.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Supertech Azalia" at Sector 68, Gurugram.		
Project area	55.5294 acres		
Registrable area	32.83 acres		
Nature of the project	Group housing colony		
DTCP license no. and other details			
DTCP License No.	Valid up to	Area admeasuring	Name of licensee Holder
89 of 2014 dated 08.08.2014	07.08.2024	10.25 acres	Om Parkash, Jai Bhagwan Ss/o Amarchand and Suresh Kumar. Raiesh Kumar.



			Mukesh Kumar, Sanjay Kumar Ss/o Jeevan Lal and 2 others
106 of 2013 dated 26.12.2013	25.12.2017	13.74 acres	Sarv Realtors Pvt. Ltd.
107 of 2013 dated 26.12.2013	25.12.2017	13.75 acres	Sarv Realtors Pvt. Ltd.
134 of 2014 dated 26.08.2014	25.08.2024	4.85 acres	Smt. Aruna Lohia W/o Om Parkash Lohia, Smt. Savitri W/o Jai Bhagwan, DSC Estate Developers Pvt. Ltd. and 2 others
135 of 2014 dated 26.08.2014	25.08.2019	7.71 acres	Attractive Implex Pvt. Ltd. and 2 others
136 of 2014 dated 26.08.2014	25.08.2019	5.84 acres	ASP Sarin Realty Pvt. Ltd. and 2 others
RERA Registered/ not registered	Registered bearing no. 182 of 2017 dated 04.09.2017 Valid up to 31.12.2021 (Hues Tower- A, B, E, F, G, H, M, N, K, T, V, W, O, P, C and D, and Azalia Tower- T1, T2, T3, T4, T5, T6 and T7)		
Occupation certificate	Not yet obtained		
Possession clause as per buyer's agreement	<p>"E. POSSESSION OF UNIT: -</p> <p>23. The possession of the unit shall be given by December 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Buyer(s) @ Rs.5.00/- (five rupees only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the offer letter of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure circumstances and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount, will be calculated after the lapse of grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the allottee till such date, at the time of final account settlement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special/beneficial scheme of the company i.e., No EMI till offer of possession, Subvention scheme, Assured Return etc. and who honour their agreed payment schedule and make the timely payment of due instalment and additional charges as per the payment plan given in allotment letter."</p>		

S. No.	Complaint no., Case title, Date of	Unit no. and size	Allotment Letter	Due date of possession	Total sale consideration
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	filing of complaint and reply status		And BBA		and Total amount paid by the complainant in Rs.
1.	CR/440/2020 Mr. Mohit Kohil and Mrs. Arpita Kohil V/S M/s Supertech Limited and others DOF: 19.02.2020 Reply by R1 & R2: 08.02.2021, 18.03.2025	2408, 24th floor, Tower T5 1020 sq. ft. (Super area) [Page 14 of complaint]	BBA 08.12.2016 [Page 13 of complaint] MoU 08.12.2016 [Page 35 of complaint]	30.06.2020 (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	TC: 55,87,593/- [As per payment plan at page 15 of complaint] AP: 41,29,009/- [As per customer ledger at page 44 of complaint]
2.	CR/4708/2020 Sh. Sandeep Bhatia V/S M/s Supertech Limited and others DOF: 24.12.2020 Reply by R1 & R2: 08.02.2021, 23.05.2025	0602, 6th floor, Tower T5 1020 sq. ft. (Super area) [Page 22 of complaint]	BBA 22.12.2015 [Page 21 of complaint]	30.06.2020 (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	TC: 69,30,720/- [As per payment plan at page 23 of complaint] AP: 41,00,351/- [As alleged by the complainant at page 12 of complaint]
3.	CR/801/2021 Mrs. Kavita Chauhan and Mr. Sachin Chauhan V/S M/s Supertech Limited and others DOF:	0401, 4th floor, Tower T4 1225 sq. ft. (Super area) [Page 19 of complaint]	BBA 24.11.2015 [Page 18 of complaint]	30.06.2020 (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	TC: 83,67,963/- [As per payment plan at page 21 of complaint] AP: 41,18,172/- [As per statement of payment received]

	18.02.2021				dated 17.11.2020 at page 48 of complaint]
	Reply by R1 & R2: 28.07.2021, 20.05.2025				

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

Abbreviation Full form

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

Relief sought by the complainant(s):-

- Direct the respondent to refund the amount of Rs.41,29,009/- along with interest in terms of Section 18(1)(a) of the Act, 2016 read with Rules 15 of the Rules, 2017.
- Direct the respondent to refund the amount of Pre-Emi's have been paid by the complainants from August 2019 till actual realization.

- The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/440/2020** titled as **Mr. Mohit Kohil and Mrs. Arpita Kohil V/s DSC Estate Developers Private Limited and others.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

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

CR/440/2020 titled as Mr. Mohit Kohil and Mrs. Arpita Kohil V/s DSC Estate Developers Private Limited and others.

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.	2408, 24 th floor, in tower-T5 (Page no. 14 of complaint)		
7.	Unit measuring	1020 sq. ft. (page 14 of complaint)		
8.	Date of Booking	20.10.2016 (Page no.14 of complaint)		
9.	Date of execution of Builder developer agreement	08.12.2016		
10.	Possession clause	E. POSSESSION OF UNIT:- 23. The possession of the unit shall be given by December 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Buyer(s) @ Rs.5.00/-(five rupees only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the offer letter of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure circumstances and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount, will be calculated after the lapse of grace period and shall be adjusted or paid, if		

		<i>the adjustment is not possible because of the complete payment made by the allottee till such date, at the time of final account settlement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their unit under any special/beneficial scheme of the company i.e., No EMI till offer of possession, Subvention scheme, Assured Return etc. and who honour their agreed payment schedule and make the timely payment of due instalment and additional charges as per the payment plan given in allotment letter."</i>
11.	Due date of possession	30.06.2020 (Note:- December 2019 plus 6 months grace period)
12.	Total sale consideration	Rs.55,87,593 /- (As per payment plan at page 15 of complaint)
13.	Total amount paid by the complainant	Rs.41,29,009/- (As per customer ledger at page 44 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Loan sanctioned by ICICI Bank	Rs.46,00,000/- (As alleged by the complainant at page 7 of the complaint)

B. Facts of the complaint

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

1. That after going through the advertisement published by the respondents in the newspapers and as per the broacher/prospectus provided by them, complainant had booked a 2 BHK residential Apartment bearing No. T-5, Flat No. 2408, having its Super Area 1020 Sq. Ft. in your upcoming project named "Supertech Azalia" situated at Sector-68, Golf Course Extension Road, Distt. Gurugram being developed by M/s Supertech Limited for a total sale consideration of Rs.55,87,593/-, and the complainant had paid a sum of Rs.5,87,738/- as booking amount in respect of the above said Flat/Unit



to be developed by the respondents which was acknowledged by you addressee.

- II. That the respondents are in right to exclusively develop, construct and build residential building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc.
- III. That the buyer Developer Agreement was executed in favour of the complainant on 08.12.2016 and a total sum of Rs.41,29,009/- has been paid duly to the respondents by the complainant in respect of the above said flat/unit.
- IV. That the complainant booked the above said flat under subvention scheme, where the developer was legally bound to pay the Pre-EMI till possession of the flat. The MOU regarding the above said subvention Scheme was also executed between the complainant and the respondents on 08.12.2016. It is also pertinent to mention here that as per the terms and conditions of the MOU dated 08.12.2016, the respondents/developer were under legal obligation to pay the pre-Emi Interest till the offer of possession, but the respondent have miserably failed and stopped the Pre-EMIs interest which is due from August, 2019.
- V. That as per commitment by the respondent, and accordingly, to para no. 23 of the buyer developer agreement, the possession of the flat was supposed to be delivered by December, 2019. The complainant visited the project site in the first week of January, 2020 and found that the project was at very initial stage with only 2-3 floors constructed on the tower booked wherein the flat was allotted to the complainants. That further the construction work has been completed stopped on the tower and from physical verification, the respondents will not able to handover the actual physical possession to



the complainant in nearby future. Even after receiving nearly 80% of the total amount, the construction at the project site is still at very initial stage and there does not seem to be any hope that the project will be completed in near future.

- VI. That the respondents have also stopped paying the Pre-Emi to the complainant from August 2019 and the complainant is forced to pay the extra burden of the EMIs to the bank which was actually the liability of the respondents to pay the Pre-EMI till possession of the flat. The complainant confronted the respondents regarding the status of the project and requested to pay the Pre-EMI as per their commitment, but no assurance was given to the complainant by the respondents, neither any assurance was made regarding the completion of the project and expected date of possession of the above said Flat.
- VII. That, till today the complainant had not received any satisfactory reply from the respondents regarding the payment of Pre-EMIs as well as completion of project, due to which the complainant is suffering a lot of mental, physical and financial agony and harassment.
- VIII. That also as per section 11 of the Act, 2016 the builder is under obligation to fulfil and comply with the condition of the agreement made with the allottees and thus, under such provision he is under legal obligation to pay the Pre-Emi's to the allottee/complainant till the actual possession of the flat. That under such provision, the respondents are entitled to refund the amount paid by them to the respondent in respect of the above said flat.

C. Relief sought by the complainants: -

7. The complainants have sought following relief(s):
 - I. Direct the respondent to refund the amount of Rs.41,29,009/- along with interest in terms of Section 18(1)(a) of the Act, 2016 read with Rules 15 of the Rules, 2017.

II. Direct the respondent to refund the amount of Pre-Emi's have been paid by the complainants from August 2019 till actual realization.

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

D. Reply by the respondent no. 2 (M/s DSC Estate Private Limited)

9. The respondent is contesting the complaint on the following grounds:-
- i. The respondent is one of the leading real estate developers in the State of Haryana and NCR. It has several projects across the state, and as such has built a great reputation for having the highest quality of real estate developments. The respondent no. 1 has been represented in the instant proceedings by its authorized representative, Ms. Isha Dang. One of its marquee projects is the Azalia, located in Sector 68, Gurugram, and Haryana.
 - ii. That the respondent was issued license bearing no. 89 of 2014 dated 11.08.2014 for developing the said land. That in furtherance of the same, the respondent no. 1 (M/s Supertech Limited), entered into a Master Development Agreement dated 29.10.2013. In terms of the said MDA, Supertech was to develop and market the said project. The complainant along with many other allottees had approached Supertech, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book an apartment(s)/ unit(s) in the said project.
 - iii. That, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 08.12.2016 an apartment being no. 2408, Tower - T5, having super area as 1020 sq. ft. for a total consideration of



Rs.55,87,593/-. It is pertinent to mention certain relevant clauses of the buyer developer agreement:-

- i. That as per clause 1 of the agreement timely payment of the instalments was the essence of the agreement;
 - ii. That as per clause 23 of the terms and conditions of the agreement, the possession of the apartment was to be given by December, 2019 with an additional grace period of 6 months. However, the Developer had agreed to compensate the allottee @ Rs.5/- per sq. ft. of super area of the unit for any delay in handing over possession of the unit beyond the given period plus grace period of 6 months and up to offer letter of possession or actual physical possession, whichever is earlier, to cover any unforeseen circumstances,
 - iii. That as per clause 23 of the agreement, compensation for delay in giving possession of the apartment would not be given to allottees akin to the complainant who have booked their apartment under any special scheme such as 'no EMI till offer of possession, under a subvention scheme.' Further it was also categorically stipulated that any delay in offering possession due 'Force Majeure' conditions would be excluded from the aforesaid possession period.
 - iv. That as per clause 24 of agreement, possession of the apartment would only be given to the allottees, after payment of all dues.
 - v. Further, the complainants elected the 'special payment plan' payment scheme whereby the construction of the apartment was premised on the timely payments made by the complainants as per the payment schedule provided in the agreement. Non-compliance with the payment schedule would consequentially cause a delay in handing over possession of the Apartment.
- iv. That in the interim with the implementation of the Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide Registration no. "182 of 2017", dated 04.09.2017 upon Application filed and in the name of Supertech Limited.



- v. That this Authority vide order dated 29.11.2019 passed in Suo Moto complaint bearing no. 5802/2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondents namely M/s DSC Estate Developers Pvt. Ltd. and M/s. SARV Realtors Pvt. Ltd. respectively. This Authority had further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the respective projects instead of M/s. Supertech Ltd. Certain important directions as passed by this Authority are as under;
- A. The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./DSC and others, as the case may be, be registered as promoters.
 - B. All the Assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. ***However, even after the rectification, Superech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Private Limited.***
- That in lieu of the said directions passed by this Authority all asset and liabilities have been since transferred in the name of the answering respondent company. However, in terms of the said Order, M/s. Supertech Ltd. still remains jointly and severally liable towards the booing/ allotment undertaken by it before the passing of the said Suo Moto Order.
- vi. That thereafter the said MDA were cancelled by the consent of the respondent no. 1 and Supertech vide cancellation agreement dated 03.10.2019 and the respondent no. 1 from there on took responsibly to develop the project and started marketing and allotting new units under its name.



- vii. That in terms of the said cancellation agreement the respondent no. 1 and Supertech had agreed that in terms of the mutual understanding between both the companies, both companies had decided to cancel the JDA's vide the said cancellation agreement.
- viii. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- ix. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.

Preliminary Objections

- x. Admittedly respondent no. 1 i.e., M/s Supertech Limited is admitted to insolvency proceedings therefore the present matters deems to be adjourned sine die till the finalization of the CIR process against the R-1 company i.e., Supertech Limited.
- xi. That as M/s. Supertech Ltd. and the answering respondent are jointly and severally liable in terms of the Suo-Moto order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between both the respondent's. The respondent no. 1 in lieu of the CIRP proceedings ongoing against Supertech Limited, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Limited.



- xii. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent no. 1 with this frivolous complaint.
- xiii. The delay if at all, has been beyond the control of the respondent herein and as such extraneous circumstances would be categorised as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project. The delay in construction was on account of reasons that cannot be attributed to the respondent herein.
- xiv. In view of the force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent, Covid - 19, shortage of Labour, shortage of raw materials, Stoppage of works due to court orders, etc. for completion of the project is not a delay on account of the Respondent for completion of the project.
- xv. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before December, 2019. However, the buyer's agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around June, 2020. However, the said date was subject to the force majeure clause, i.e. "Clause 42". That the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavoured to deliver the property within the stipulated time. The timeline stipulated under the flat buyer's agreements



was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant herein, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. That apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent:

- i. Due to active implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/ workforce in the real estate market. Due to paucity of labour and vast difference between demand and supply, the respondent faced several difficulties including but not limited to labour disputes. All of these factors contributed in delay that reshuffled, resulting into delay of the Project.
- ii. Such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the

complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

- xvi. That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract. In light of the aforementioned prerequisites read with the force majeure events reproduced in the aforementioned paragraphs, it is prima facie evident that the present case attracts the force majeure clause.
- xvii. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. Thus, in light of the aforementioned it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.
- xviii. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector.
- xix. That the complainant has not come with clean hands before this Authority and have suppressed the true and material facts Authority this Forum. It would be apposite to note that the complainant is a mere speculative investor who has no interest in taking possession of the apartment.
- xx. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by December, 2019 with an extended grace period of 6 months which comes to an end by June, 2020. The completion of the building is delayed by reason of Covid – 19 outbreak, non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow down strike



as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees.

- xxi. That the enactment of the Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before this Authority. According to the terms of builder buyer's agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time final settlement on slab of offer of possession. The project is ongoing project and construction is going on.
- xxii. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/unconstructed Projects and deliver the homes to the Homebuyers. The respondent/promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.
- xxiii. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all

construction activity in the Delhi- NCR region. It would be apposite to note that the 'Azalia' project of the Respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period

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

S. No.	Court/Authority & Order Date	Title	Duration
1.	National Green Tribunal- 08.11.2016 10.11.2016	Vardhman Kaushik v/s Union of India	08.11.2016 to 16.11.2016
2.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
3.	Press Note by EPCA- Environment Pollution (Prevention and Control) Authority	Press Note-31.10.2018	01.11.2018 to 10.11.2018
4.	Supreme Court-23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
5.	EPCA/ Bhure Lal Committee Order-31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
6.	Hon'ble Supreme Court 04.11.2019-14.02.2020	M.C Mehta v. Union of India Writ Petition (c) no. 13029/1985	04.11.2019 to 14.02.2020
7.	Government of India	Lockdown due to Covid- 19	24.03.2020 to 03.05.2020
8.	Government of India	Lockdown due to Covid- 19	8 weeks in 2021
Total		37 weeks (approximately)	

- xxv. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. The Hon'ble Supreme Court in the seminal case of *Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors.*, has taken cognizance of the devastating conditions of the real estate sector, and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.
- xxvi. Hence, the complainant is not entitled for any refund as claimed except for delayed charges, if any applicable as per clause 2 read with 24 of the builder buyer agreement. The complainant is not entitled for any compensation or refund claimed except for delayed charges as per clause 2 read with 24 of the builder buyer agreement.
10. The counsel for respondent no. 1 (M/s Supertech Limited) has stated that respondent no. 1 is under CIRP vide order dated 25.03.2022 passed by Hon'ble NCLT New Delhi Bench in case no. IB-204/ND/2021 titled as *Union Bank of India Versus M/s Supertech Limited* and moratorium has been imposed against respondent no.2 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against respondent no.2.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

13. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

15. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on objections raised by the respondent no. 2

F.I Objections regarding force majeure.

16. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The buyer developer agreement was executed between the parties on 08.12.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.06.2020. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. However, the Authority observes that there is provision of 6 months grace period in lieu of force majeure conditions as per clause E (23) of the BBA dated 08.12.2016 and the same is unqualified.
17. In view of the above, the Authority allows 6 months grace period on account of force majeure is being granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent/promoter.

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

18. Respondent no. 1 has filed an application dated 01.12.2023 for staying the proceedings in the matter as vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as Union Bank of India Versus M/s Supertech Limited, the Hon'ble NCLT has initiated CIRP respondent no. 1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 1 is no longer the assets of respondent no. 2 and admittedly, respondent no. 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 no. **HARERA/GGM/5802/2019**. Respondent no. 1 has stated in the reply that the MDA was cancelled by consent of respondent no. 1 and respondent no. 2 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.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.2 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 nos. 2 in the matter at this stage.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the amount of Rs.41,29,009/- along with interest in terms of Section 18(1)(a) of the Act, 2016 read with Rules 15 of the Rules, 2017.

G.II Direct the respondent to refund the amount of Pre-Emi's have been paid by the complainants from August 2019 till actual realization;

19. The above-mentioned reliefs sought by the complainants, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.
20. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:-

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

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

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

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

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

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

"E. POSSESSION OF UNIT: -

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

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

As per clause E (23) of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the December 2019 with a grace

period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 30.06.2020.

23. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. The allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules.
24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 27.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
26. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.
27. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the

agreement. By virtue of clause E (23) of the agreement executed between the parties on 08.12.2016, the possession of the subject apartment was to be delivered within stipulated time i.e., by 31.12.2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.06.2020.

28. It is pertinent to mention over here that even after a passage of more than 8.5 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainants have paid almost 73.89% of total consideration till June 2017. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
29. Further, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait

indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

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

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

31. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent no. 1 is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank

of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. The amount paid by the respondent towards Pre-EMI shall be adjusted in above refundable amount.

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

H. Directions of the Authority

34. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- The respondent no. 2 is directed to refund the amount received from each of the complainant(s) along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount and the amount paid by the respondent towards Pre-EMI if any shall be adjusted in above refundable amount.
 - Out of total amount so assessed, the amount paid by the bank/financial institution be refunded first in the bank and the balance amount along with interest if any will be refunded to the complainant.
 - A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

- iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.
- v. No directions are being passed in the matter qua respondent nos. 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.
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of due date of possession, total sale consideration, amount paid by the complainants are mentioned in each of the complaints.
36. Complaint as well as applications, if any, stand disposed of accordingly.
37. Files be consigned to registry.

(Ashok Sangwan)
Member

V.I
(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025