

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

Date of decision:

29.07.2025

NAME OF THE BUILDER		M/s DSC Estate Developer Pvt. Ltd	
PROJECT NAME		"Supertech Azalia", Sector- 68, Gurugram, Haryana	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2585/2021	Milkesh Mistry & Anr. Supertech Limited, DSC Estate Developer Pvt. Ltd	Sh. Harshit Batra (Complaint) None (Respondent no. 1) Sh.Dushyant Tewatia (Respondent no.2)
2.	CR/3470/2019	Kapil Chaudhary vs. M/s Supertech Limited And India bulls housing finance limited. And M/s DSC Estate Developer Pvt. Ltd	Sh. Abhijeet Gupta (Complaint) None (Respondent no. 1 & 2) Sh. Dushyan Tewatia (Respondent no.2)
3.	CR/1131/2020	Ramesh Solanki and Sumit Solanki V/s M/s Supertech Limited And India bulls housing finance limited. And M/s DSC Estate Developer Pvt. Ltd.	Sh.Abhijeet Gupta (Complaint) None (Respondent no. 1&2) Sh. Dushyant Tewatia (Respondent no.2)
4.	CR/1145/2021	Bhawna Dixit V/s M/s Supertech Limited And PNB Housing Finance limited And M/s DSC Estate Developer Pvt. Ltd.	Sh.Abhijeet Gupta (Complaint) None (Respondent no. 1) Sh. Gunjan (Respondent no.2) Sh. Dushyant Tewatia (Respondent no.3)
5.	CR/2688/20219	Raj Kumar & Jayanti Devi V/s M/s Supertech Limited And PNB	Sh.Geetansh Nagpal (Complaint)

		Housing Finance limited And M/s DSC Estate Developer Pvt. Ltd.	None (Respondent no. 1) None(Respondent no.2) Sh. Dushyan Tewatia (Respondent no.3)
6.	CR/402/2019	Ambrish Pratap Singh V/s M/s Supertech Limited And PNB, DSC Estate Developer Pvt. Ltd	Sanjeev Kumar Shrma (Complaint) None (Respondent no. 1) None(Respondent no.2) Sh. Dushyan Tewatia (Respondent no.3)
7.	CR/404/2019	Seema Walia V/s M/s Supertech Limited And PNB, DSC Estate Developer Pvt. Ltd	Sanjeev Kumar Shrma (Complaint) None (Respondent no. 1) None (Respondent no.2) Sh. Dushyan Tewatia (Respondent no.3)

CORAM:

Shri Arun Kumar

Shri Ashok Sangwan

Chairman
Member
ORDER

1. This order shall dispose of all the complaints titled as above filed before this authority in form CRA 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 between 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"** (group housing colony) being developed by the same respondent/promoter i.e., **M/s Supertech Limited**. The terms and conditions of the 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 delay possession charges along with interest.
3. The details of the complaints, reply to status, 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 Hues", Sector-68, Gurugram-122101			
		Occupation certificate: - Not obtained			
		Offer of possession: Not offered			
CR No.	Unit	BBA	Possession clause	Due date	TSC AP
CR/2585/2021	2105, 1020 sq. ft. (Page no. 17 of complaint)	17.02.2017 (Page 16 of complaint)	1. <i>The Possession of the Unit shall be given by DEC, 2019 or extended period as permitted by the agreement</i>	June 2020	Rs.62,88,100 /- (page 18 of the complaint) Rs.49,45,421/- (as alleged by the complainant, page 11 of the complaint)
CR/3470/2019	1308, 600 sq.ft. (Page no. 22 of complaint)	20.04.2016 (Page 21 of complaint)	<i>The Possession of the Unit shall be given by Dec 2019 or extended period as permitted by the agreement.</i>	June, 2020 (Page 47 of the complaint)	Rs.42,40,606/- (Page 23 of the complaint). Rs.4,22,740/- + Rs.34,00,000/- (booking amount plus loan amount) (Page 10 and 40 of the complaint)

CR/3504/ 2019	1006, 600 sq. ft. (Page 44 of compla int)	11.02.2016 (Page 43 of complaint)	E. Possession of the unit: The possession of the allotted unit shall be given to the buyer(s) by the developer by Dec, 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (page 22 of complaint)	June 2020	Rs. 44,95,000/- (page 47 of complaint) Rs. 37,09,440/-
CR/1131/ 2020	1208, 600 sq. ft. (Page 44 of compla int)	15.02.2016 (Page 25 of complaint)	E. Possession of the unit: The possession of the allotted unit shall be given to the buyer(s) by the developer by Dec, 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (page 22 of complaint)	June 2020	Rs. 44,95,000/- (page 47 of complaint) Rs. 37,09,440/-
CR/1145/ 2021	0707, 600 sq. ft. (Page 14 of compla int)	19.10.2016 (Page 25 of complaint)	1 Possession of the unit: The possession of the allotted unit shall be given to the buyer(s) by the developer by Dec, 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (page 22 of complaint)	June 2020	Rs. 41,65,034/- (page 47 of complaint) Rs.30,60,996/- (As per customer statement at page 32 of the complaint)
CR/2688/ 2019	2005, 600 sq. ft. (Page 24 of	27.06.2017 (Page 24 of complaint)	1 Possession of the unit: The possession of the allotted unit shall be given to	June 2020	Rs. 39,43,000/- (page 47 of complaint)

	complaint)		the buyer(s) by the developer by Dec, 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (page 22 of complaint)		
CR/402/20219	0704-1020sq.ft. (page 26 of complaint)	Date of booking: 05.09.2015 (BBA is not executed between the parties)	1 Possession of the unit: The possession of the allotted unit shall be given to the buyer(s) by the developer by Dec, 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. Possession clause is taken from another file of the same project.	June 2020	Rs.70,75,540/- (page 26 of complaint) 7,32,852/- (as alleged by the complainant)
CR/404/2019	0606, 1020 sq.ft. (page 26 of complaint)	16.10.2015	The Possession of the Unit shall be given by DEC, 2019 or extended period as permitted by the agreement. 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 installments and other dues by the allottee/s and the allottee/s agrees to strictly abide by the same in this regard. ..."	June 2020	Rs.73,28,500/- (page 21 of complaint) 49,88,355/- (as alleged by the complainant)

			(Emphasis supplied)		
Relief sought by the complainant(s):- 1. Refund 2. Litigation cost					

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking refund.
 5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/2585/2021 Milkesh Mistry Vs Supertech Ltd. & Dsc Estates Developer Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.
- A. Project and unit related details**
7. 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:

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.	2105, (Page no. 17 of complaint)		
7.	Unit measuring	1020 sq. ft. super area (Page no. 17 of complaint)		
8.	Date of Booking	30.10.2016 (Page no.17 of complaint)		
9.	Date of execution of Builder developer agreement	17.02.2017 (Page 16 of complaint) (duly signed by both the parties)		
10.	Possession clause	E. POSSESSION OF THE UNIT:- <i>"The Possession of the Unit shall be given by DEC, 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @Rs.5.00/- (Five rupees Only) per sq. ft. of super area of the unit per month for any delay in handling over possession of the unit beyond the given period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier. ..."</i> (Emphasis supplied) (Page 24 of the complaint)		
11.	Due date of possession	DEC, 2019+ 6 months = June 2020 (Page 24 of the complaint)		

12.	Total sale consideration	Rs.62,88,100 /- (page 18 of the complaint)
13.	Total amount paid by the complainant	Rs.49,45,421/- (as alleged by the complainant, page 11 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Loan sanctioned by ICICI Bank	Rs. 49,45,421/- (Page 9 of the complaint)
17.	Tripartite agreement	Signed but date not mentioned

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
 - a. That the respondent is well known real estate company represented to be having significant presence in North India and also huge land for effectuating the various projects. The respondent has widely advertised its upcoming project in Gurugram in the name and style of "AZALIA".
 - b. That the marketing official of the respondent approached to the complainant at their accommodation in Gurugram mentioned in the body of the builder buyer agreement in the Second week of January 2017 and represented that the project is affordable group housing project located in Sector -68 of the Gurgaon.
 - c. That the representative of the respondent further represented that various sizes of the units are available in project keeping under consideration the different financial capacity of the customers. Since the project is primarily characterized as the project being completely residential in nature, hence the complete and easy financial assistance are being offered by various NBFC's and banking companies as well.

- d. That marketing official of the respondent has further offered to the complainants that site visit can be availed by the complainants together and as the respondent is famous for complying with the time line with complete dedication thus complainants should not miss the life time opportunity as the booking was to be closed completely in few days.
- e. That complainant considering the various representations of the marketing official of the opposite party has decided to book a unit in the aforesaid project in tower T-5 at 21st Floor bearing flat No. 2105 measuring super area round 1020 sq. ft. That it was represented that the complainant can opt for the subvention scheme for making the payment of the unit booked. The total sale consideration of the unit including IDC/EDC Charges, Club Membership charges and PLC park facing charges would be INR 62,88,100/-.
- f. That thereupon the complainants had constrained to avail the loan facility for providing the sale consideration against the unit booked and consequently ICICI Bank Limited has agreed to sanction the loan for the aforesaid unit and accordingly a tripartite agreement was entered into between the builder, buyers and bank. Consequently an amount of Rs. 49,40,333/- have been paid both from the assistance of the housing loan and personal savings of the complainants. Against the payment of above amount, opposite party has also issued various receipts and further admitted the same through issuance of the statement of account maintained in the name of the complainants. The same amount was duly paid from the complainant loan account to the opposite party and also utilised by the respondent.

- g. That soon after the booking of the aforesaid unit in the project of the opposite party, buyer developer agreement was executed on 17.02.2017, wherein the extensive and detailed terms / conditions have been diligently contemplated to be complied by the respective parties. That the detailed terms/conditions with respect to price/sale consideration, maintenance of the unit, payments, construction and completion of the unit etc have been incorporated. The respondent has cleverly laid down the conditions with respect to the penal interest to be imposed upon the buyer for the delay in making the sale consideration, whereas for its own default meagre compensation of Rs.15/- per sq. ft. was payable.
- h. That respondent has unilaterally and whimsically incorporated the terms and conditions according to its advantage and benefit by exercising its dominant position. It was explicitly mentioned in the buyer developer agreement dated 17.02.2017 that the builder shall deliver the possession of the unit by 01.06.2020 including grace period of 6 months.
- i. That complainant has made the payment of more than 80% of the sale consideration to the builder by availing the loan facility and simultaneously serving the regular EMI of the above mentioned NBFC. The complainant has strived to fulfil her obligation on time without committing a single default. However, respondent has failed to abide by its contractual obligations and categorically defaulted in the matter of handing over the possession of the unit on its scheduled time.
- j. That complainant taking into consideration the above, felt to be cheated and deceived at the hands of the opposite party, despite of making the complete payment both to the builder through bank and from their own life time savings, nothing material has happened thus there is no hope of

availability of the demised flat to the complainants in near future. Complainants thereafter compelled to seek refund of the amount paid from the opposite party. However, apparently, the opposite party in contravention of the stipulated provisions contemplated under RERA vis a vis terms and conditions of the Allotment Agreement, failed to provide the refund on one or other pretext. The opposite party has syphoned the money to some other project and duped the large number of customer's thereby bagged huge amount.

- k. Aggrieved by the continuous omissions and default committed by respondent in providing handing over the possession to the complainant as per the agreed date, the present complaint is being filed.
- l. Therefore the complainants jointly and severally most respectfully prays to allow the present complaint for refund of the amount paid till date with interest at the prevailing rate of interest.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s):
 - I. Direct the respondent to refund the amount paid till date by the complainant along with interest @ 15 % per annum in view of the equity and natural justice.
 - II. Direct the compensation of Rs.1,00,000/- for the mental agony and litigation cost.
10. 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

- 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.49,45,421/- is not maintainable in view of the fact that the complainants had taken a loan from ICICI Bank Ltd. and in this regard had entered into a tripartite agreement.
- 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 ICICI Bank Ltd. would be refunded by the builder to ICICI bank Ltd, therefore the complainants subrogated all his rights for refund with respect to the said residential apartment in favour of the ICICI Bank Ltd. 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 ICICI bank Ltd. 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.

- i. Implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission leading 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.

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 attributed to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the agreement.

- o. That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract, it is prima facie evident that the present case attracts the force.
- p. 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.

- q. 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.
- r. 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 Agreement 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.

- s. 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.
- t. 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.
- u. 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.
- v. 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.

w. 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.

x. 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.

- y. After fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the allotment agreement dated 17.02.2017. Consequently, the complainant was allotted a unit being number no. 2105, 21st floor, tower 5 admeasuring 1020 sq.ft. for a total consideration of Rs. 62,88,100/.
- z. 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.
- aa. In the interregnum, 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 apartment to the complainant.
- bb. The 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-a 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.
- cc. The construction of the project is in full swing, and the delay is 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. However, the respondent undertakes to offer possession of the unit by Jun 2022.

E. Reply by the respondent no. 2

The respondent no. 2 implead as party vide order dated 18.03.2025 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. 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.
- c. That 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.
- d. That after fully understand the various contractual stipulations and payments plans for the unit, the complainant executed the buyer develop agreement dated 17.02.2017 with respondent no. 1 only and unit being number No. 2105, having super area as 1020 sq. ft. for a total consideration of Rs.62,88,100/-.
- e. 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.
- f. That the Authority vide order dated 29.11.2019 passed in Suo Moto complaint no. 5802 of 2019, had passed certain directions with respect to

the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondent no. 3 and M/S SARV Realtors 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 respective projects instead of M/S Supertech Ltd. certain important directions as passed by the Authority are as under:

- i. (i) The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./DSC and other, as the case may 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, 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 fails to discharge its obligations towards the allottees.

In lieu of the said directions passed by the Authority all asset and liabilities have been since transferred in the name of the answering. 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.

- g. That the said MDA were cancelled by the consent of the respondent no. 3 and Supertech vide cancellation agreement dated 03.10.2019 and the respondent no. 3 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- h. That in terms of cancellation agreement the respondent no. 3 and Supertech had agreed that in terms of the mutual understanding between

both the companies, both companies had decided to cancel the JDA's vote the said cancellation agreement.

- i. That 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 'force majeure' condition, which automatically extends the timeline of handing over the possession of the apartment to the complainant.
- j. 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 consideration activity.
- k. The present complaint further also deems to be prima facie dismissed for non-joinder of necessary parties. It is reiterated that in terms of the own admission of the complainant the BBA was executed solely with M/s. Supertech Ltd. and furthermore, all payments qua the booking were also made to M/s. Supertech Ltd. Thus, the present complaint deems to be dismissed for non-joinder of M/s. Supertech Ltd.
- l. That as M/s. Supertech Ltd. and the respondent no.3 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 the respondent no.3 and M/s. Supertech Ltd. The respondent no.3 cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.
- m. 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. 3 with this frivolous complaint.

- n. The delay in construction was on account of reasons that cannot be attributed to the respondent herein. The flat buyers' agreements provide that in case the developer/respondent delays in delivery of unit for reasons not attributable to the developer/respondent, then the developer/respondent shall be entitled to proportionate extension of time for completion of project.
- o. 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.
- p. That with respect to the 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 432". 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.
- q. 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.

- r. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant, 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 complainant herein, the delay in completion of project was on account of the following reasons/circumstances like:
- i. Implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including that of the Respondent herein, fell behind on their construction schedules for this reason amongst others. The said fact can be substantiated by newspaper articles elaborating on the above mentioned issue of shortage of labour which was hampering the construction projects in the NCR region. This certainly was an unforeseen one that could neither have been anticipated nor prepared for by the respondent while scheduling their construction activities. Due to paucity of labour and vast difference between demand and supply, the respondent faced several difficulties including but not limited to labour disputes. All of these factors contributed in delay that reshuffled, resulting into delay of the Project.

- ii. That 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.
- s. 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.
- t. That the project "**HUES**" 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 04.09.2017 to 31.12.2021.
- u. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by June, 2019 with an extended grace period of 6 months which comes to an end by December, 2019. 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.
- v. 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 the 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.

- 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 'Hues' 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.
- x. That, graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
- y. 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
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1.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
2.	Press Note by EPCA- Environment Pollution (Prevention and Control) Authority	Press Note- 31.10.2018	01.11.2018 to 10.11.2018
3.	Supreme Court- 23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
4.	EPCA/ Bhure lal Committee Order- 31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
5.	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
6.	Government of India	Lockdown due to Covid-19	24.03.2020 to 03.05.2020
7.	Government of India	Lockdown due to Covid-19	8 weeks in 2021
	Total	37 weeks (approximately)	

- z. 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. That the pandemic is clearly a 'Force

Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

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

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.

F. 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.

F.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.

F.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 complainant at a later stage.

G. Findings on objections raised by the respondent no. 3

G.I Objections regarding force majeure.

16. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 17.02.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be June 2020.
17. 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 stakeholder concerned with the said project cannot be put on hold due to fault of some of 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 advance in this regard is untenable.

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

18. 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.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 asset 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 Developers 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.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.1 in the matter at this stage.

H. Findings on the relief sought by the complainants.

H.I Direct the respondent to refund the amount paid till date by the complainant along with interest @ 15 % per annum in view of the equity and natural justice.

19. That the complainants booked a unit bearing no. 2105, tower 5, 21st floor, in the project of the respondent namely, "Azalia" admeasuring super area of 1020 sq.ft. for an agreed sale consideration of Rs. 62,88,100/- against which complainants have paid an amount of Rs. 49,45,421/- and the respondent has failed to handover the physical possession till date. That 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)

20. As per clause 1 of the buyer's developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

"1. POSSESSION OF UNIT: -

The Possession of the allotted unit shall be given to the Allottee/ s by the company by DEC 2019. 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 and the allottee/ s agrees to strictly abide by the same in this regard.

[Emphasis Supplied]

21. **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 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 June 2020.

22. **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.

23. 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.
24. 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., 29.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
25. 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:

"(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;"*

26. 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 1 of the agreement executed between the parties on 17.02.2017, the due date of possession is Dec 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 June 2020.
27. It is pertinent to mention over here that even after a passage of more than 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. 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 more than the 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.

28. 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....."

29. 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."

30. 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.
31. 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*.
32. However, while paying sale consideration against the allotted units, some of the allottee(s) raised loans from the financial institution/bank under the subvention facilities. While refunding the amount deposited by the allottee(s) who has raised loans against the allotted units, the promoter shall clear such of the loan amounts up-to date with that financial institution and the balance amount shall be paid to the allottee within a period of 90 days from the date of order.

H.IV Direct the compensation of Rs.1,00,000/- for the mental agony and financial loss suffered by the complainant.

33. The complainant is seeking above mentioned relief w.r.t. compensation. 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.

I. Directions of the authority

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

- i. The respondent DSC Estates 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. While paying against the allotted unit, the allottee(s) raised loan from the financial institution/bank and that amount was to be paid back to it. So, while refunding the amount deposited by allottee(s) who raised loans against the allotted unit, the promoter is directed to clear such of the loan amount up to date with that financial intuition and the balance amount be paid to the allottee within a period of 90 days.

- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.
- v. No directions are being passed in the matter qua respondent nos. 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 rate of assured return, area of the unit, amount paid by the complainant(s)-allottee and amount of assured return received by the complainant(s) is mentioned in each of the complaints.
36. Complaint as well as applications, if any, stands disposed of accordingly.
37. True certified copies of this order be placed on the case file of each matter.
38. Files be consigned to registry.


(Ashok Sangwan)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.07.2025