

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

**Complaint no. :** 7798 of 2022  
**Date of filing** 21.12.2022  
**Date of decision** 08.07.2025

1. Mr. Vinod Kumar  
2. Ms. Suman Chaudhary  
**Regd. Address:** DX-59, Sector 56, Kendriya Vihar,  
Gurugram, Hayana-122011

**Complainants****Versus**

1. M/s Supertech Limited  
**Regd. office:** 114, 11<sup>th</sup> floor, Hemkunt Chambers,  
89, Nehru Place, New Delhi-110019  
2. DSC Estate Developers  
**Regd. office:** 114, 11<sup>th</sup> floor, Hemkunt Chambers,  
89, Nehru Place, New Delhi-110019

**Respondent no. 1****Respondent no.2****CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman**  
**Member**

**APPEARANCE:**

Sh.Sahil Daggar (Advocate)  
Sh.Bhrigu Dhami (Advocate)  
Sh.Dushyant Tewatia (Advocate)

**Counsel for Complainant**  
**Counsel for Respondent no. 1**  
**Counsel for Respondent no. 2**

**ORDER**

1. That the present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 (hereinafter referred as “the rules”) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

**A. Project and unit related details**

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

S.No.	Particulars	Details
1.	Name of the project	Supertech Azalia, Sector-68, Gurugram-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
	Validity status	25.12.2017
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.
6.	Unit no.	J69B
7.	Unit tentatively measuring	1375 sq. ft. super area
8.	Date of Booking	23.05.2016
9.	Date of buyer developer agreement	15.12.2017 (page 36 of complaint)
10.	Possession clause as per buyer developer agreement	The possession of the allotted unit shall be given to the allottee /s by the company by Dec 2021. However, this period can be extended for a further grace period of 6 months.
11.	Due date of possession	Dec 2021 + 6 months = June 2022
12.	Basic sale consideration	Rs.38,22,750/- (page 40 of complaint)
13.	Total amount paid by the complainant	Rs. 28,01,056/- (page 69 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	MoU	26.12.2017 (page 66 of complaint)

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint: -
  - a. That the complainants approached the respondent no. 1, seeking an allotment of a flat and the complainants paid an amount of Rs. 4,50,000/- on 04.02.2016 towards their booking amount and got their flat booked on 23.05.2016. Thereafter, the complainants were allotted a 3BHK flat by the respondent no. 1 in the project of the respondent namely, Officer's Enclave, Hill Town situated at Sector 2, Sohna Road, Gurgaon, Haryana-122103. The said unit of flat was allotted vide allotment letter dated 28.06.2016, and identified as unit number R058LR0J69B at 2<sup>nd</sup> Floor with super area 1375 sq.ft. The date of booking mentioned in the allotment letter is 23.05.2016.
  - b. That the possession of the aforesaid flat unit was supposed to be delivered by June 2019 as promised by the respondent, but even after a lapse of 1 year, the respondent showed its incapability to initiate the project as promised and therefore, on persuasion by the complainants, the respondent agreed to allot another flat in lieu of the aforesaid flat J69 in officer's enclave and adjusted the booking amount of the aforesaid flat to the newly allotted flat unit vide transfer receipt dated 30.06.2017. Further, at the time of signing the transfer receipt, the respondent raised one more payment of Rs. 50,000/- and the complainant paid the same at the time of signing of the transfer receipt. This led to the change in circumstances and the complainants were allotted another flat bearing no. 1704/T2 in the vicinity **Supertech Azalia** situated at Sector 68, Golf Course Extn. Road, Gurgaon-1210, with a super area of 600 Sq. ft.

- c. That the respondent no. 1 entered into a builder buyer agreement dated 15.12.2017 with the complainants whereby the respondent agreed to hand over the aforesaid built up flat to them by December 2021. Further, it is imperative to mention herein that the payment plan in this new project is also construction linked as can be seen from the BBA.
- d. That a tripartite agreement was executed in Dec 2017 between the complainants and respondent and the PNB Bank whereby the bank agreed to disburse the loan to the respondent for the construction of the aforesaid flat. The subvention period in the said tripartite was set for 30 months. Subsequently, the bank disbursed the amount to the respondent as decided, but the time period of 30 months have already been expired and the bank has started charging the complainants for the interest/EMI.
- e. That the respondent also entered into a memorandum of understanding dated 26.12.2017 with the complainants. It is clearly mentioned in the said memorandum of understanding that the possession of the built up flat will be handed over by the respondent to the complainants within 30 months, which also forms the part of subvention period. As per the clause (b) of the said memorandum of understanding, the subvention scheme as approved by the bank is 30 months, and respondent expects to deliver the possession of the booked flat by that time, however, if respondent fails to comply with the said condition then, respondent undertakes to pay the Pre EMI to the complainants even after the expiry of 30 months till the possession of the flat. This memorandum of understanding is a part of the aforesaid builder buyer agreement.

- f. That the complainants have approached the respondent and the bank regarding the subvention period and further condition of extending the subvention scheme, but they have not responded to the complainants. This is a clear violation of the terms incorporated in the agreement executed between the complainants and the respondent as well as the terms of MOU dated 26.12.2017.
- g. That a total amount of Rs.28,01,056/- has been paid to the respondent by the complainant. Rs. 4,50,000/- was paid as transfer receipt 30.06.2017, Rs. 50,000/- at the time of signing transfer receipt, Rs. 16,39,840/- was paid on 30.12.2017, Rs. 6,20,000/- was paid on 23.05.2018, Rs.21,953/- was paid on 13.08.2018 and a sum of Rs. 19,263/- on 12.11.2021.
- h. That, as already promised by the respondent, that till the time of subvention period of 30 months, it will provide the possession of the aforesaid flat to the complainants, else the subvention period would be extended and it would keep on paying the EMI to the bank, but neither the respondent gave the possession of the flat nor they are paying the EMI to the bank or the complainant, instead the bank has started charging the complainants of that amount, which is not at all justifiable and a clear conduct of cheating the complainants by the respondent and the bank.
- i. That till date the respondent has not given the possession of the said flat not offered the possession. Further, the respondent is also not complying with the terms and conditions of the MOU dated 26.12.2017. On the other hand the bank is imposing penalties on the complainants even after knowing the whole scenario. Moreover, it is imperative to mention herein



that the said bank has been recommended by the respondent which clearly shows that the respondent and the bank is hand in gloves with each other.

**C. Relief sought by the complainants: -**

4. On 11.04.2025, the counsel for the complainant filed an application to amend the relief from delayed possession charges to a refund and the same was allowed on 20.05.2025.
  - i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest as per provisions of Section 18 of the Act, 2016.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.
6. No reply has been submitted by the respondent no.1 i.e., M/s Supertech Ltd. However, the counsel for respondent no. 1 has stated that the respondent no.1 is under CIRP vide order dated 25.03.2022 passed by the Hon'ble New Delhi in case no. IB-204/ND/2021 titled as **Union Bank of India Versus M/s Supertech Limited** and moratorium has been imposed against the respondent no. 1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against the respondent no. 1.

**D. Reply by the respondent no. 2**

7. The respondent no. 2 i.e., DSC Estates Pvt. Ltd. (*inadvertently mention M/s Sarv Realtors Pvt. Ltd. in proceeding dated 20.05.2025*) implead as party vide order dated 20.05.2025 is contesting the complaint on the following grounds:-
  - a. That respondent no. 2 was issued license bearing nos. 89 of 2014 dated 11.08.2014 for developing the said land. That the respondent no. 1 and

respondent no. 2 had entered into a master development agreement dated 29.10.2013.

- b. That in terms of the said MDA, Supertech was to develop and market the said project the complainants along with many other allottees had approached M/S Supertech Ltd., making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book unit in the said project.
- c. That after fully understand the various contractual stipulations and payments plans for the unit, the complainants booked an apartment being number no. 1704, tower- T2, 17<sup>th</sup> floor having super area as 600 sq. ft. for a total consideration of Rs.38,22,270/-. The possession was to be handed over by December 2021 plus 6 months i.e., June 2022.
- d. That in the interim with the implementation of the RERA Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide registration no. 182 of 2017 dated 04.09.2017 upon application filed and in the name of Supertech Ltd.
- e. That the Authority vide order dated 29.11.2019 passed in Suo-Moto complaint no. 5802/2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondent (M/s SARV Realtors Pvt.) Ltd. and **M/s. DSC Estate Developer Pvt. Ltd.** respectively. The Authority had further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the project instead of M/s. Supertech Ltd. Certain important directions as passed by this Hon'ble Authority are as under:

(i) The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./ DSC and others, as the case may be, be registered as promoters.

(v) All the assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. However, even after the rectification, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd. / DSC and others fail to discharge its obligations towards the allottee

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

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



- h. In the interregnum, the pandemic of covid-19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainants.
- i. That the construction of the project is in full swing, and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort of construction activity.
- j. That as admittedly respondent no. 1 is admitted to insolvency proceedings and IRP appointed for R -1, therefore the present matters deems to be adjourned sine die till the finalisation of the CIRP Process against the R -1 company.
- k. That as M/s. Supertech Ltd. and the respondent are jointly and severally liable in terms of the Suo Moto Order passed by the Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between the respondent and M/s. Supertech Ltd. The respondent cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Ltd.
- l. That the complaint further also deems to be prima facie dismissed as there is admittedly no pleadings against the answering respondent neither any relief is sought against it. It is trite law that the court cannot grant any relief over and above what has been sought by the complainant.
- m. The present matter further also deems to be prima facie dismissed as even though admittedly the complainant has subrogated is entire right w.r.t. to

refund of amounts paid in favour of PNBHFL, she has failed to make PNBHFL a party to the present proceedings. Thus, in lieu of the tri-partite agreement, the complainant has no right or locus to file for refund of amounts paid to Supertech Ltd. for the booking.

- n. That the present matter further also deems to be prima facie dismissed as there are no pleadings qua the respondent, neither any relief is sought against the respondent. It is trite law that no court can grant relief over and above what has been sought by the complainant.
- o. That the complainant further also deems to be prima facie dismissed as admittedly there is no privity of contract between the complainant and the respondent. Furthermore, as the respondent was neither a party nor has any nexus with the alleged subvention scheme, it cannot be burned with any liability qua the same. The liability, if any, will be respondent no.1 only.
- p. That till date the registration for the project has not been changed in the name of the respondent. Hence the name of respondent no.1 is still reflecting in the registration of the project, thus without having the registration in its name, no liability can be imposed upon the respondent.
- q. The delay in construction was on account of reasons that cannot be attributed to the respondent. The buyers' agreements provide that in case the respondent delays in delivery of unit for reasons not attributable to the respondent, then the respondent shall be entitled to proportionate extension of time for completion of said project.
- r. That in view of the *force majeure* clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but

not limited to the dispute with the construction agencies employed by the respondent, Covid-19, shortage of labour, shortage of raw materials, stoppage of works due to court orders, etc. for completion of the project is not a delay on account of the respondent for completion of the project.

- s. 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.
- t. 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 like:
  - 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.
- iii. 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.

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.

- u. That the project "AZALIA" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 4.9.2017 to 31.12.2021.
- v. The completion of the building is delayed by reason of Covid – 19 outbreak, non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its

officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. Due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.

- w. 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.
- x. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/unconstructed Projects and deliver the homes to the Homebuyers. The respondent/promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects. The said project is a continuance business of the respondent and it will be completed by the year 2025. When the parties have contracted and limited their liabilities,



they are bound by the same, and relief beyond the same could not be granted.

y. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Azalia' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

8. 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**

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

**E.1 Territorial jurisdiction**

10. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is

situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

## **E.II Subject matter jurisdiction**

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

### **Section 11**

.....

(4) 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.

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

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

### **F.1 Objections regarding force majeure.**

13. 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. Buyer developer agreement was

executed between the parties on 15.12.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 15.06.2022.

14. 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.

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

15. Respondent no. 1 has stated that vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as ***Union Bank of India Versus M/s Supertech Limited***, the Hon'ble NCLT has initiated CIRP respondent no.1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 2 is no longer the assets of respondent no. 1 and admittedly, respondent no. 2 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/ 5802/2019**. Respondent no.2 has stated 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 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.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 no.1 in the matter at this stage.

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

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

16. That the complainants booked a unit bearing no. 1704, tower M, in the project of the respondent namely, "AZALIA" admeasuring super area of 600 sq.ft. for an agreed sale consideration of Rs. 38,22,750/- against which complainants have paid an amount of Rs. 28,01,056/- 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)*

17. Clause 1 of the buyer developer agreement provides for handing over of possession and is reproduced below: -

*"The Possession of the allotted unit shall be given to the Allottee/s by the Company by Dec, 2021. However, this period can be extended for a further grace period of 6 months.*

*[Emphasis Supplied]*

18. **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 2021 with a grace period of 6(six) months. Since in the present matter the buyer developer agreement 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 2022.

19. **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.*

20. 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.
21. 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., 08.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause—*

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

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent which is the same as is being granted to them in case of delayed possession charges.
24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 1 of the agreement executed between the parties on 15.12.2017, the due date of possession Dec,2021. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is June 2022.
25. It is pertinent to mention over here that even after a passage of more than 4 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 73% of total consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
26. Further, the Occupation Certificate/Completion Certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The

authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

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

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

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a).

The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

#### **H. Directions of the Authority**

30. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- The respondent no. 2 i.e., DSC Estate Pvt. Ltd. is directed to refund the entire paid-up amount i.e., Rs. 28,01,056/- received by it from each of the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.



- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
  - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainants.
  - iv. No directions are being passed in the matter qua respondent nos. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.
31. Complaint as well as applications, if any, stands disposed of accordingly.
32. Files be consigned to registry.



**(Ashok Sangwan)**  
Member



**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2025