

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

Complaint no.: 609 of 2024  
Date of filing: 19.02.2024  
Date of first hearing: 10.04.2024  
Order pronounced on: 06.08.2025

**Preeti Pal**

**R/o:** - House no. 77, F/28, Jyoti Park,  
Gurugram, Haryana

**Complainant**

**Versus**

- 1. M/s Supertech Limited**
- 2. DSC Estate Developers Private Limited**
- 3. Sarv Realtors Private Limited**

**Registered Office at:** 1114, 11<sup>th</sup> Floor,  
Hemkunt Chambers, 89, Nehru Place, New  
Delhi- 110019

**Respondents**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Mr. Anshul Yadav (Advocate)

Mr. Dushyant Tewatia (Advocate)

None

**Complainants**

**Respondent No. 1 and 2**

**Respondent No. 3**

**ORDER**

1. This complaint has been filed by the complainant-allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or

the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details.**

2. The particulars of unit details, 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:

Sr. 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.	2206, 22 <sup>nd</sup> floor, tower T1 (Scarlet Studio) (Page no. 15 of complaint)		
7.	Unit measuring	600 sq. ft. super area (Page no. 15 of complaint)		
8.	Date of Booking	23.03.2017 (Page no. 11 of complaint)		
9.	Date of execution of Builder developer agreement	08.05.2017 (Page 14 of complaint)		



	(duly signed by both the parties)	
10.	Possession clause	E. POSSESSION OF THE UNIT: - <i>"23. The possession of the unit shall be given by December,2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @Rs.5.00/- (Five rupees Only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period <b>plus the grace period of 6 months</b> and up to the Offer Letter of possession or actual physical possession whichever is earlier. ..."</i> (Page 20 of the complaint)
11.	Due date of possession	30.06.2020 (31.12.2019 + 6 months grace period in lieu of Covid-19) (Page 20 of the complaint)
12.	Total sale consideration	Rs.37,58,680/- (BBA at page 16 of the complaint)
13.	Total amount paid by the complainant	Rs.12,64,698/- (As per receipts annexed by complainant at page 33, 34 and 35 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Request for cancellation	15 <sup>th</sup> September (page 36 of complaint)

#### B. Facts of the complaint.

3. The complainants have made the following submissions by way of filing the amended complaint dated 18.04.2025: -

- I. That as per the project ID: RERA-GRG-PROJ-450-2019 respondent no. 2 and 3 are the promoters of the aforesaid project and are jointly responsible for the duties and obligations as mentioned in the BBA. That hence the respondent no. 2 and 3 have stepped into the shoes of respondent no. 1 in the said BBA in the project without in any manner diluting the interest of the complainant or affecting the obligations of the promoter towards the complainant.

- II. However, the Hon'ble authority took Suo-motu cognizance on a complaint filed by PNB Housing Finance Ltd. against Supertech Limited, for violating the provisions of the Real Estate (Regulation and Development) Act, 2016. Where all the assets and liabilities whatsoever in nature, in the Project "Supertech Hues and Azalia" in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd./DSC and others. The relevant portion of the said order is reproduced here:

*a. All the assets and liabilities including customer receipts and project loans of whatsoever nature, in the Project "Supertech 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 allottees.*

- III. The Hon'ble authority further observed that vide registration bearing no. 182 of 2017 dated 04.09.2017 valid up to 31.12.2021 for License bearing no. 106-107 of 2013, 89 of 2014 and 134-136 of 2014 issued by the Department of Town and Country Planning, Haryana for an area 32.83 acres Group Housing Colony ("Hues Towers- A,B,E,F,G,H,M,N,K,T,V,W,O,P,C and D and Azalia Towers T-1,T-2,T-3,T-4,T- 5,T-6 & T-7) situated in Village Badshahpur, Sector 68, Gurugram are registered with the this authority.
- IV. That in view of the same M/s Sarv Realtors Pvt. Ltd./DSC Estate Developers Pvt. Ltd. and others are bound to follow the order of the authority along with Supertech Ltd. as they are liable for all the assets and liabilities of Supertech Ltd. in connection to project Supertech Azalia and Supertech Hues.
- V. That all the assets and liabilities including customer receipts, payments etc. of whatsoever nature, in the project Supertech Hues and Azalia in the name of Supertech Limited have shifted to respondent No. 2 and 3.

- VI. That the respondents have failed to intimate the complainant about the rectification of the name of the promoter in the registration of the project "Supertech Hues and Azalia" and shifting of all the costs and liabilities from Supertech Limited to Sarv Realtors/ DSC Estate Developers Pvt. Ltd.
- VII. That the respondents planned to construct/create a residential housing project named as "Supertech Azalia" (hereinafter referred to as said Project/Complex/Colony) in the year 2013 in Sector 68, Golf Course Extn. Road, Gurgaon. The details of the same have been clearly mentioned in the builder buyer agreement.
- VIII. That the complainant based on promises made by the respondent no.1 applied to the company for possession of the dwelling unit in the said complex and a builder buyer agreement dated 08.05.2017 was executed between the complainant and the respondent. The respondent on the basis of the same allotted a unit bearing No. T1 - 2206, 22nd floor, Tower - T1, measuring 600 sq. ft. in the said complex.
- IX. That before the execution of the above said builder buyer agreement the complainant was made to pay an amount of Rs. 3,49,000/- on 24.03.2017, later after the execution of builder buyer agreement Rs. 3,60,760/- on 26.05.2017, and last payment of Rs.5,54,938 /- on 24.06.2017 and as such a total amount of Rs. 12,64,698/- for the unit has been transferred to the builder till date.
- X. That the respondent has acknowledged the above said payment vide the payment acknowledgement receipt issued in the name of the complainant dated 24.03.2017, 26.05.2017, 24.06.2017 . That the above said payments as mentioned in para 5 were taken before signing of the builder buyer agreement. The intentions of the builder were clear from the initial phase of the transaction when the above said payments totalling to Rs.



12,64,698/- were taken by the builder from the respondent without even giving the allotment letter.

- XI. That the complainant has made all the payments timely as demanded by the builder in accordance with the terms and conditions agreed between the parties at the time of signing the said agreement. The complainant has made a total payment of Rs.12,64,698 /- as demanded by the builder.
- XII. That as per clause "Possession of the Unit" of the terms and conditions i.e. possession time and compensation of the said buyer agreement signed on 08.05.2017, it was promised by the respondent that the possession of the said unit will be delivered to the complainant by December, 2019. The said dwelling unit was allotted by the respondent to the complainant vide the builder buyer agreement and the respondent with the intention to defraud the complainant already took Rs. 3,94,000/- before executing above said documents.
- XIII. That the complainant has made timely payments as asked by the respondent but the respondent has failed to keep the promises made by him as per the terms and conditions of the said agreement. That the respondent has failed to deliver the possession of the said unit by December, 2019.
- XIV. That the complainant has time and again requested the respondent to refund the amount paid by the complainant, but the respondent being affluent and an influential player in real estate choose not to respond or take any action regarding the said requests. The complainant was given assurances by the officials of the respondent that the possession will be handed over timely and the construction is going at a good pace. The respondent has not yet offered the possession of the said unit and the same is far from being complete.

XV. That all the pleas of the complainant to the respondent to refund the payment of the amount paid to the builder of the said unit fell on the deaf ears of the officials of the respondent. The uncalled conduct of the officials of the respondent is causing a lot of mental agony and harassment to the complainant.

XVI. That the cause of action for filing present complaint first arose when the respondent denied refunding the amount paid by the complainant of the said unit after delay of almost 4 years and the cause of action is still continuing and subsisting one as the respondent has failed to provide the complainant with the refund of the amount so paid.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):

I. To refund of Rs. 12,64,698/- and along with interest for the period of delay of more than 3 years, i.e. December, 2019 till the filing of this complaint (calculated @10% per annum) of the amount of Rs. 4,79,199/-, and additional delay compensation till the time of actual realisation of the amount.

II. Pay Rs.30,000/- as litigation expenses.

III. Pay Rs.5,00,000/- for harassment and mental agony suffered by the complainant.

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

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

6. The respondent no. 2 has contested the complaint on the following grounds vide its reply dated 14.08.2024:

I. That the respondent no. 1 was issued license bearing no. 89 of 2014 dated 11.08.2014 for developing the said land. That in furtherance of the same,

the respondent no. 1 and 2, entered into a Master Development Agreement dated 29.10.2013. In terms of the said MDA, Supertech was to develop and market the said project. The complainant along with many other allottees had approached Supertech, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book an apartment(s)/ unit(s) in the said project.

II. That, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 08.05.2017 an apartment being no. 2206, Tower-1 for a total consideration of Rs.37,58,680/-. It is pertinent to mention certain relevant clauses of the buyer developer agreement:-

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

III. That with the implementation of the Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide Registration no. "182 of 2017", dated 04.09.2017 upon Application filed and in the name of Supertech Limited.



IV. That this Authority vide Order dated 29.11.2019 passed in Suo Moto complaint bearing no. 5802/2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondents namely M/s DSC Estate Developers Pvt. Ltd. and M/s. SARV Realtors Pvt. Ltd. respectively. This Authority had further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the respective projects instead of M/s. Supertech Ltd. Certain important directions as passed by this Authority are as under:

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

*B. All the Assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. However, even after the rectification, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Private Limited.*

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

V. That thereafter the said MDA were cancelled by the consent of the respondent no. 1 and Supertech vide cancellation agreement dated 03.10.2019 and the respondent no. 1 from there on took responsibly to develop the project and started marketing and allotting new units under its name.

VI. That in terms of the said cancellation agreement the respondent no. 1 and Supertech had agreed that in terms of the mutual understanding between

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

- VII. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- VIII. That the present matters deems to be adjourned sine die as Respondent No 1 is currently undergoing Corporate Insolvency Resolution Process (CIR Process) therefore, in terms of the Moratorium imposed u/s 14 IBC, 2016 the present matter deems to be adjourned sine die.
- IX. That as M/s. Supertech Ltd. and the answering respondent are jointly and severally liable in terms of the Suo-Moto order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between both the respondents. The respondent no. 1 in lieu of the CIRP proceedings ongoing against Supertech Limited, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Limited.
- X. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent no. 1 with this frivolous complaint.
- XI. The delay if at all, has been beyond the control of the respondent herein and as such extraneous circumstances would be categorised as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project. The delay in construction was on



account of reasons that cannot be attributed to the respondent herein. 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 said project. The relevant clause, i.e. "clause 42" under the heading "General Terms and Conditions" of the "Agreement". The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.

- XII. 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.
- XIII. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before December 2019. However, the buyer's agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around June 2020. However, the said date was subject to the force majeure clause, i.e. "Clause 42". That the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavoured to deliver the property within the stipulated time. The timeline stipulated under the flat buyer's agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time



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

- i. Due to active implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/ workforce in the real estate market 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.
- ii. Such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

XIV. That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract which are reproduced herein under:

- i. The event must be beyond the control of the parties;
- ii. The event either precludes or postpones performance under the contract;
- iii. The triggering event makes performance under the contract more problematic or more expensive;
- iv. The claiming party wasn't at fault or negligent;
- v. The party wanting to trigger the force majeure clause has acted diligently to try to mitigate the event from occurring;

In light of the aforementioned prerequisites read with the force majeure events reproduced in the aforementioned paragraphs, it is prima facie evident that the present case attracts the force majeure clause.

- XV. 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. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.
- XVI. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.
- XVII. That the complainant has not come with clean hands before this Authority and have suppressed the true and material facts Authority this Forum. It would be apposite to note that the Complainant is a mere speculative investor who has no interest in taking possession of the apartment. In fact,



a bare perusal of the complaint would reflect that he has cited 'financial incapacity' as a reason, to seek a refund of the monies paid by him for the apartment. In view thereof, this complaint is liable to be dismissed at the threshold.

XVIII. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by December, 2019 with an extended grace period of 6 months which comes to an end by June, 2020. The completion of the building is delayed by reason of Covid - 19 outbreak, non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. That 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.

XIX. 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.

XX. 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.

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

7. All other averments made in the complaint were denied in toto.

8. No reply has been submitted by respondent nos. 1 and 3. However, counsel for respondent no. 1 has stated that respondent no. 1 is under CIRP vide order dated 25.03.2022 passed by Hon'ble NCLT New Delhi Bench in case no. IB-204/ND/2021 titled as "*Union Bank of India Versus M/s Supertech Limited*" and moratorium has been imposed against respondent no.2 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against respondent no.1.

9. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of the Authority:**

10. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.I Territorial Jurisdiction:**

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

**E.II Subject-matter Jurisdiction:**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

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

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

14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)* and 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* wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

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

#### **F. Findings on the objection raised by the respondent no. 2.**

##### **F.I Objection regarding force majeure conditions:**

16. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit.



The buyer's agreement was executed between the parties on 08.05.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.06.2020. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. Further, admittedly respondent no. 1 i.e., M/s Supertech Limited is admitted to insolvency proceedings. The respondent no. 1 in lieu of the CIRP proceedings ongoing against Supertech Limited, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Limited.

17. The Authority observes that vide Order dated 29.11.2019 passed by this Authority in Suo Moto complaint bearing no. 5802/2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondents namely M/s DSC Estate Developers Private Limited and M/s. SARV Realtors Private Limited respectively. This Authority had further directed that M/s. Sarv Realtors Private Limited and M/s. DSC Estate Developer Private Limited be brought on as the promoter in the respective projects instead of M/s. Supertech Ltd. In view of the above, the Authority allowed 6 months grace period on account of force majeure and thus, no period over and above grace period of 6 months can be given to the respondent-promoter.

**F.II Objection regarding CIRP against respondent no. 2 and consequent moratorium against proceedings against respondent no.2.**

18. Respondent no. 1 has filed an application dated 01.12.2023 for staying the proceedings in the matter as vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as "*Union Bank of India Versus*

**M/s Supertech Limited**", the Hon'ble NCLT has initiated CIRP respondent no.1 and imposed moratorium under section 14 of the IBC, 2016. The Authority observes that the project 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 in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.2 i.e., "DSC Estates Private Limited" admittedly took responsibility to develop the project and started marketing and allotting new units under its name. In view of the above, respondent no.2 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., respondent no.1 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 and 2 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter.

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

**G.I To refund of Rs. 12,64,698/- and along with interest for the period of delay of more than 3 years, i.e. December, 2019 till the filing of this complaint (calculated @10% per annum) of the amount of Rs. 4,79,199/-, and additional delay compensation till the time of actual realisation of the amount.**

19. In the present complaint, the complainant intends 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 E(23) of the buyer's developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

***"E. POSSESSION OF UNIT: -***

*23. The possession of the unit shall be given by December 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Buyer(s) @ Rs.5.00/- (five rupees only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the offer letter of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure circumstances and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount will be calculated after the lapse of grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the allottee till such date, at the time of final account settlement before possession of the unit. The penalty clause will be applicable to only those Allottees who have not booked their*

*unit under any special/beneficial scheme of the company i.e., No EMI till offer of possession, Subvention scheme, Assured Return etc. and who honour their agreed payment schedule and make the timely payment of due instalment and additional charges as per the payment plan given in allotment letter."*

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

As per clause E (23) of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the December 2019 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 30.06.2020.

**22. Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest prescribed rate of interest. The allottee intend to withdraw from the project and is 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, *ibid*. 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, *ibid* 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., 06.08.2025 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(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;"***

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 the agreement dated 08.05.2017, the due date of handing over possession was 30.06.2020. It is pertinent to mention over here that even after a delay of 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 complainant cannot be expected to wait endlessly for taking possession of the unit which is

allotted to them. 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.

27. Further, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the 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 I of the project....."*

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

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not*



*attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

29. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under Section 11(4)(a). The promoter has failed to complete and give possession of the unit in accordance with the terms of agreement for sale. Accordingly, since the allottees wish to withdraw from the project, the respondent is liable 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 under the provisions of Section 18(1) of the Act of 2016.
30. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by her 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**


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

- I. The respondent no.2 i.e., "DSC Estates Private Limited" is directed to refund the amount received by it from the complainant 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/complainant.
- IV. No directions are being issued in the matter qua respondent no. 1 i.e., "M/s Supertech Limited" 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."
- V. No directions are being issued in the matter qua respondent no. 3, i.e., "Sarv Realtors Limited", in view of the Suo-Motu proceedings dated 29.11.2019 in Complaint No. HARERA/GGM/5802/2019, wherein "Sarv Realtors Pvt. Ltd." expressly admitted its responsibility for the development of the sole project 'Hues' and commenced marketing and allotment of new units under its own name. Since the present complaint concerns the project 'Azalia', respondent no. 3 bears no liability in this matter.



32. Complaint stands disposed of.
33. File be consigned to registry.

**Dated: 06.08.2025**

  
**Ashok Sangwan**  
(Member)  
Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
GURUGRAM