

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

Complaint no. : 1770 of 2021
Order reserved on: 05.04.2021
Order pronounced on: 05.08.2025

Mr. Sanjeev Gupta

R/o: H.No. -53, Vikas Nagar, Rohtak, Haryana-124001

Complainant

Versus

1. M/s Supertech Limited

Regd. office: 114, 11th floor, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019

Respondent no. 1

2. DSC Estate Developers

Regd. office: 114, 11th floor, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019

Respondent no.2

CORAM:

Shri Arun Kumar

Chairman

Shri Ashok Sangwan

Member

APPEARANCE:

Sh.Subham Kaushik (Advocate)

Counsel for Complainant

Sh.Bhrigu Dhami (Advocate)

Counsel for Respondent no. 1

Sh.Dushyant Tewatia (Advocate)

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, 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.	2405, 24 th floor admeasuring 1020 sq.ft. (Page no. 17 of complaint)		
7.	Date of Booking	23.06.2016 (Page no.17 of complaint)		
8.	Date of execution of Builder developer agreement	20.08.2016		
9.	Possession clause	1. POSSESSION OF THE UNIT:- ".The Possession of the Unit shall be given by DEC, 2019 or extended period as permitted		

		<i>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.. ..."</i> (Emphasis supplied) (Page 18 of the complaint)
10.	Due date of possession	DEC, 2019 + 6 months grace period = June 2020 (Page 18 of the complaint)
11.	Total sale consideration	Rs.55,15,846 /- (page 18 of complaint)
12.	Total amount paid by the complainant	Rs.28,73,634/- (as alleged by the complainant, page 6 of the complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered
15.	Memorandum of understanding (Subvention scheme)	20.08.2016 (page 12 of complaint)
16.	Loan sanctioned by Indiabulls Housing Finance Limited	Rs. 20,14,269/- (Page 4 of the complaint)
17.	Tripartite agreement	Date not mentioned

B. Facts of the complaint

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

- That the complainant, in 23.06.2016, booked a residential unit in the project named "Supertech Azalia" of the respondent at Sector-68, Golf Course Extn. Road, Gurgaon, Haryana-122101 vide booking form and by making a payment of INR 5,00,000/- as booking amount.
- That the complainant was granted a Home Loan- Indiabulls Housing Finance Limited of Rs. 20,14,269/-dated 14.06.2016 where in the complainant booked a unit bearing no. 2405, 24th floor, tower T6 in "Supertech Azalia" project at Sector-68, Golf Course Extn. Road, Gurgaon,

Haryana had been kept as security for repayment of the loan amount. A MOU was agreed and executed between respondent and complainant on 20.08.2016 vis-à-vis scheme of purchase of the property.

- c. That the respondent executed the builder buyer agreement dated 20.08.2016. The agreement contained various one-sided and arbitrary clauses, yet the complainant could not negotiate on any of the terms, since the respondent had already collected significant amount of money from the complainant. The complainant was allotted residential unit admeasuring 1020 sq. ft. bearing no. 2405, 24th floor, block/tower T6 in "Supertech Azalia" project at Sector-68, Golf Course Extn. Road, Gurgaon, Haryana - 122101.
- d. That the complainant and respondent entered into a tripartite agreement with IHFL in 2016. Further complainant and respondent under the subvention scheme approached IHFL for a loan for the purpose of financing the purchase of the unit under builder subvention facilities whereas IHFL sanction Rs. 20,14,269/- home loan to the complainant dated 14.06.2016 for the purpose of financing the purchase of the unit.
- e. That as per clause 23 of the builder buyer agreement dated 20.08.2016, the respondent was supposed to provide possession the unit by December 2019 with a grace period of 6 months i.e., June 2020. The complainants did not get offered the possession of the plot on this date. The complainants had made a total payment of INR 28,73,634/- to the respondent as and when demanded as per the payment plan even though possession was not offered on time.

- f. That the complainant, owing to the unreasonable delay in construction and the gross deficiency in services offered by the respondent, is demanding a complete refund of the payments made to the respondent along with interest for the delay.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
- I. To direct the respondent to refund the amount of Rs.28,73,634/- deposited by the complainant and pay interest@18% per annum on deposited amount with effect from the promised date of possession till the date of order from the Authority for the offer of possession.
 - II. Direct the respondent to pay a sum of Rs.1,00,000/- to complainant as reimbursement of legal expenses.
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 the respondent no. 1

- a. 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.

E. Reply by the respondent no. 2

- 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. 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 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 executed the buyer develop agreement dated 20.08.2016 with respondent no. 1 only and unit being number no. 2405, tower- T6.
- 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, Superech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd. / DSC and others fail to discharge its obligations towards the allottee

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

- 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 present complaint further also deems to be prima facie dismissed as there is admittedly no pleadings against the respondent nether 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. 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 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 of respondent no.1 only.
- n. 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.

- o. 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.
- p. 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 buyers' 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".
- 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 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. 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.
- u. 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.

- v. 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.
- 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 '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.

- 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
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. Hence, 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.

6. 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

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

E.I Territorial jurisdiction

8. 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

9. 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.

10. 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. 1

F.I Objections regarding force majeure.

11. 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 20.08.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be June 2020. The Authority put reliance judgment of Hon'ble Delhi High Court

in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020*** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself

12. All the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottee may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take case of unforeseen eventualities. Therefore, no further grace period is warranted in account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

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

13. 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.3 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.3 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.

H. 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;

14. 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)

15. 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:-

"POSSESSION OF UNIT: -

1. *The possession of the unit shall be given to the buyer in 42 months i.e. by December 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months"*

[Emphasis Supplied]

16. **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.

17. **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.

18. 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.
19. 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., 05.08.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
20. 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;"*

21. 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 20.08.2016, 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.

22. 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. 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.
23. 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....."

24. 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."

25. 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.

26. 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*.

I. Directions of the Authority

27. 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 no. 2 i.e., DSC Estate Pvt. Ltd. is directed to refund the entire paid-up amount i.e., Rs. 28,73,634/- 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. Out of the total amount so assessed, the amount paid by the bank/ financial institution be refunded first and the balance amount along with interest if any, be refunded to the complainant-allottees. Further, the respondent /promoter is directed to provide the No Objection Certificate (NOC) to the complainant after getting it from the bank/financial institution.

- 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/complainants.
- 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.

28. Complaint as well as applications, if any, stands disposed of accordingly.

29. Files be consigned to registry.


(Ashrok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2025