

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

Date of decision: 05.08.2025

NAME OF THE BUILDER		M/s DSC Estates Developers Private Limited.	
PROJECT NAME		"Supertech Azalia", Sector- 68, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/842/2021	Pankaj Jindal & Namta Anand Jindal V/S M/s Supertech Limited (R1) DSC Estate Developers Private Limited (R2)	Shri Sahil Bhardwaj Advocate (Complainants) Shri Bhrigu Dhami Advocate (Respondent no. 1) Shri Dushyant Tawatia Advocates (Respondent No. 2)
2.	CR/1764/2021	Megha Raina V/S M/s Supertech Limited (R1) DSC Estate Developers Private Limited (R2)	Adv. Vibhore Goel proxy (Complainant) Shri Bhrigu Dhami Advocate (Respondent no. 1) Shri Dushyant Tawatia Advocates (Respondent No. 2)
3.	CR/1769/2021	Sanjeev Gupta V/S M/s Supertech Limited (R1) DSC Estate Developers Private Limited (R2)	Adv. Subham Kaushik (Complainant) Shri Bhrigu Dhami Advocate (Respondent no. 1) Shri Dushyant Tawatia Advocates (Respondent No. 2)
4.	CR/1282/2021	Uma V/S M/s Supertech Limited (R1) DSC Estate Developers Private Limited (R2)	Shri Gaurav Rawat Advocate (Complainants) Shri Bhrigu Dhami Advocate (Respondent no. 1) Shri Dushyant Tawatia Advocates (Respondent No. 2)

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

ORDER

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

Project Name and Location	"Supertech Azalia" at Sector 68, Gurugram.
Project area	55.5294 acres
Registrable area	32.83 acres
Nature of the project	Group housing colony

DTCP license no. and other details			
DTCP License No.	Valid up to	Area admeasuring	Name of licensee Holder
89 of 2014 dated 08.08.2014	07.08.2024	10.25 acres	Om Parkash, Jai Bhagwan Ss/o Amarchand and Suresh Kumar, Rajesh Kumar, Mukesh Kumar, Sanjay Kumar Ss/o Jeevan Lal and 2 others
106 of 2013 dated 26.12.2013	25.12.2017	13.74 acres	Sarv Realtors Pvt. Ltd.
107 of 2013 dated 26.12.2013	25.12.2017	13.75 acres	Sarv Realtors Pvt. Ltd.
134 of 2014 dated 26.08.2014	25.08.2024	4.85 acres	Smt. Aruna Lohia W/o Om Parkash Lohia, Smt. Savitri W/o Jai Bhagwan, DSC Estate Developers Pvt. Ltd. and 2 others
135 of 2014 dated 26.08.2014	25.08.2019	7.71 acres	Attractive Implex Pvt. Ltd. and 2 others
136 of 2014 dated 26.08.2014	25.08.2019	5.84 acres	ASP Sarin Realty Pvt. Ltd. and 2 others
RERA Registered/ not registered	Registered bearing no. 182 of 2017 dated 04.09.2017 Valid up to 31.12.2021 (Hues Tower- A, B, E, F, G, H, M, N, K, T, V, W, O, P, C and D, and Azalia Tower- T1, T2, T3, T4, T5, T6 and T7)		
Occupation certificate	Not yet obtained		
Possession clause as per buyer's agreement	"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		

	<i>who have not booked their unit under any special/beneficial scheme of the company i.e., No EMI till offer of possession, Subvention scheme, Assured Return etc. and who honour their agreed payment schedule and make the timely payment of due instalment and additional charges as per the payment plan given in allotment letter."</i>
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S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.
1.	CR/842/2021 Pankaj Jindal and Namta anand Jindal V/S M/s Supertech limited Vs. M/s DSC Estate Developers Private Limited DOF: 09.02.2021 Reply by R1: 06.04.2021 Reply by R2: 08.07.2025	0103, T4, 1225 sq.ft., 1st floor (Page no. 26 of complaint)	27.10.2015 (Page 25 of complaint)	30.06.2020 (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period)	TC: Rs.88,19,375/- (Page 27 of the complaint) AP: Rs.47,29,827/- (As alleged by the complainant at pg.8 of the complaint)
2.	CR/1764/2021 Megha Raina Vs. M/s Supertech limited Vs. M/s DSC Estate Developers Private Limited DOF: 09.04.2021 Reply by R1: 21.01.2022 Reply by R2: 08.07.2025	0504, 5th floor, tower T1 (Page no. 26 of complaint)	NA	30.06.2020 (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period) possession clause is taken from another file of the same project.	Rs.42,85,000 /- (as alleged by the complainant, page 4 of the complaint) AP: Rs.34,08,748/- (as alleged by the complainant, page 4 of the complaint)

3.	CR/1769/2021 Sanjeev Gupta V/S M/s Supertech limited Vs. M/s DSC Estate Developers Private Limited DOF: 05.04.2021 Reply by R1: 29.07.2021	0202, 2nd floor, tower T2, 600 sq.ft. (Page no. 17 of complaint)	BBA 20.08.2016 (page 16 of complaint)	30.06.2020 (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period) possession clause is taken from another file of the same project.	TC: Rs.41,03,320 /- (page 18 of complaint) AP: Rs.21,68,796/- (as alleged by the complainant, page 6 of the complaint)
4.	CR/1282/2021 Uma V/S M/s Supertech limited Vs. M/s DSC Estate Developers Private Limited DOF: 31.03.2021 Reply by R1: 03.11.2021 Reply by R2: 08.07.2025	2003, 20th floor, T2, 600 sq.ft. (page 18 of complaint)	BBA 10.05.2016	30.06.2020 (As per clause E (23) of the buyer's developer agreement: by December 2019 plus 6 Month grace period) possession clause is taken from another file of the same project.	TC: Rs.35,08,000 /- (page 18 of complaint) AP: Rs.20,15,534/- (as alleged by the complainant)

Relief sought by the complainant(s): -

- Direct the respondent to refund the amount paid by the complainants towards sale consideration of the said flat along with the amount of EMI's paid by the complainant till the disposal of this complaint and along with the interest at prescribed rate.
- direct the Respondent to pay an amount of Rs.55,000/- to the Complainants as cost of the present litigation.

- The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/842/2021** titled as **Pankaj Jindal & Namta Anand Jindal V/s M/s Supertech Limited & M/s DSC Estate Developers Private Limited.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

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

CR/842/2021 titled as Pankaj Jindal & Namta Anand Jindal V/s M/s Supertech Limited & M/s DSC Estate Developers Private Limited.

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	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.	0103 (Page no. 26 of complaint)		
7.	Unit measuring	1225 sq. ft. super area (Page no. 26 of complaint)		
8.	Booking date	05.09.2015 (Page 26 of complaint)		
9.	Date of execution of Builder developer agreement (duly signed by both the parties)	27.10.2015 (Page 25 of complaint)		
10.	Possession clause	<i>E. POSSESSION OF THE UNIT:-</i>		

		<i>"23.The Possession of the Unit shall be given by DEC, 2019. However, this period can be extended fir the further grace period of 6 months..."(Emphasis supplied)</i> (Page 28 of the complaint)
11.	Due date of possession	DEC, 2019+ 6 months June 2020 (Page 28 of the complaint)
12.	Total sale consideration as per buyer developer agreement	Rs.88,19,375/- (Page 27 of the complaint)
13.	Total amount paid by the complainant	Rs.47,29,827/- (As alleged by the complainant at pg.8 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Loan sanctioned by Indiabulls Housing Finance Limited	Rs.72,77,085/- (Page 45 of the complaint)
17.	Out of total sanctioned loan amount disbursed directly in the favor of respondent	Rs.31,52,569/-
18.	Tri-partite Agreement between complainant, Supertech and Indiabulls	17.10.2015 (Page 50 of the complaint)

B. Facts of the complaint

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

- I. That in 2015, the respondent through its marketing executives and advertisement done through various medium and means approached the complainants with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "Azalia" on Sector-68, Gurugram. The respondent had represented to the complainants that the respondent is very ethical business house in the field of construction of residential and commercial project and in case the complainants would invest in the project of respondent then they would

deliver the possession of proposed flat on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainants that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The complainants while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of the respondent to book the residential flat in the project of respondent.

- II. That the respondent arranged the visit of its representatives to the complainants and they also assured the same as assured by the respondent to the complainants, wherein it was categorically assured and promised by the respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential flat in the name of complainants immediately upon the booking. Relying upon those assurances and believing them to be true, the complainants booked a residential flat bearing T4/0103 of 3BHK on 1st floor having super area of 1225 sq. ft. for total sale consideration of Rs.96,36,340/- at the proposed project. It was assured and represented to the complainants by the respondent that they had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time as assured by the respondent. Accordingly, the complainants had paid Rs.1,77,516/- through one cheque bearing nos. 771569 respectively dated 23.06.2015 as booking amount.

- III. That the respondent assured the complainants that it would execute the flat buyer agreement at the earliest and maximum within one week. However, the respondent did not fulfil its promise and have not executed the agreement as agreed by it and executed it on 27.10.2015. Thereafter, the respondent started raising the demand of money /instalments from the complainants as per the agreed timelines and complainants as on today had paid total amount of Rs.47,56,421/- to the respondent as sale consideration of the aforesaid flat.
- IV. That from the date of booking and till today, the respondent had raised various demands for the payment of instalments on complainants towards the sale consideration of the said flat and the complainants has duly paid and satisfied all those demands without any default or delay on their part.
- V. That it was agreed by the respondent wide a tripartite agreement that the respondent would pay/bear the pre-Emi for the aforesaid flat till the possession of flat, but the respondent deliberately and miserably ignored the terms of the agreement and not paid the Pre-Emi's till now due to which the complainant had to pay the Pre-Emi's on his own along with the monthly rent of their own accommodation.
- VI. That as per the records of complainants, the complainants had already paid Rs.47,56,421/- towards the sale consideration as on today to the respondent as demanded by it, time to time.
- VII. That the complainants had written several e-mails to the respondent inquiring the status of project but respondent chose not to reply any of those e-mails. The complainants had also written e-mails to the respondent and its office bearers demanding the refund of their hard-earned money, paid as the sale consideration of aforesaid flat, as the respondent

misappropriated the money for its personal use to the respondent paid by the complainants.

- VIII. That the conduct on the part of respondent has cleared the dust on the fact that all the promises made by the respondent at the time of sale of said flat were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said flat basis its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainants.
- IX. That the complainants had faced all these financial burdens and hardship from their limited income resources, only because of respondent's failure to fulfil its promises and commitments. Failure of commitment on the part of respondent has made the life of the complainants miserable socially as well financially as all their personal financial plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, the respondent has forced the complainants to suffer grave, severe and immense mental and financial harassment with no-fault on their part. The complainants being common person just made the mistake of relying on respondent's false and fake promises, which lured them to buy a flat in the aforesaid residential project of the respondent.
- X. That the cause of action accrued in favor of the complainants and against the respondent on 15.09.2015, when the complainants had booked the said flat and it further arose when respondent failed/neglected to construct the said flat qua the project as agreed by the respondent, while booking the said

flat by showing rosy picture to the complainants. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has not refunding the amount paid by the complainants even after various repeated requests made by the complainants to the respondent in this regard.

C. Relief sought by the complainant: -

7. The complainant has sought following relief(s):
 - I. Direct the respondent to refund of Rs.47,29,827/- along-with interest at the rate of 18% per annum from the date of payment till its actual realization to the complainants, paid by the complainants to the respondent on various dates, as is evident from the annexures appended with complaint;
 - II. Direct the respondent to pay an amount of Rs.30,00,000/- mental and physical harassment.
8. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1

9. The respondent is contesting the complaint on the following grounds: -
 - i. 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 and cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
 - ii. That the reliefs for refund of Rs. 47,29,827/- is not maintainable in view of the fact that the complainant had taken a loan from Indiabulls Housing Finance Ltd. for an amount of Rs. 72,77,085/- and in this regard had entered into a tripartite agreement dated 17.10.2015 with the respondent and IHFL.

- iii. That the clauses of the tripartite agreement dully set out the terms and conditions which bind all the parties with respect to the said transaction. The TPA clearly stipulated that in the event of cancellation of the apartment for any reason whatsoever the entire amount advanced by the IHFL will be refunded by the builder to IHFL the complainant therefore the complainant subrogated all his rights for refund with respect to the said residential apartment in favor of the IHFL. Thus, the complainant is devoid any right to seek refund of the amount advanced for the subject apartment.
- iv. That the complainant has not been financially prejudice in any way in as much as beside paying and advance payment of Rs.9,12,678/- the respondent has not received any other monies from him and has only received money disbursed by the bank and not by the complainants. Therefore, they are not entitled to seek any refund over and above the amount mentioned above or any other relief prayed for.
- v. That in fact the respondent has paid substantial amounts towards pre-Emi on behalf of the complainant to the IHFL and in fact is entitled to refund of the same from the complainant.
- vi. That the complainant after entering into agreements which clearly specify the rights and obligations of parties cannot wriggle out of its obligations merely on its whim and fancies and more over merely on the ground of financial difficulties without substantiating the said averment. The complainant may be put to strict proof in this regard.
- vii. That there has been no default on part of the respondent in paying the pre-Emi as under the tripartite agreement the respondent has assumed liability of pre-Emi only for the subvention period and under the MoU had further agreed to pay pre-Emi after the period specified in the tripartite agreement

to the complainant till offer of possession subject to receiving 090% of the sale consideration in advance.

- viii. That without prejudice to the afore-said the complaint regarding refund on discontinuation of pre-Emi by the respondent is not maintainable before the forum in view of the fact that the rights and obligations have been duly reduced in writing under a valid tripartite agreement or MoU between the parties which are beyond the jurisdiction of the forum and are in nature of civil disputes.
- ix. That without prejudice to the afore-said, the delay if at all, has been beyond the control of the respondents and as such extraneous circumstances would be categorized as "Force Majeure", and would extend the timeline of handing over the possession of the unit, and completion the project.
- x. That the delay in construction was on account of reasons that cannot be attributed to the respondent. The agreement provide that in case the developer 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. The relevant clauses which relate to the time for completion, offering possession extension to the said period is clause 23 under the heading "Possession of floor/apartment" of the agreement. The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.
- xi. That in view of the *force majeure* clause, it is clear that the occurrences of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of the respondent for completion of the project.

- xii. 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 agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the agreement was to be handed over in and around June 2020.
- xiii. That project got inadvertently delayed owing to the above noted force majeure events. Further, since March 2020 as owing to the nationwide Govt. imposed lockdown, no construction/development could take place at site. Owing to the lockdown, the construction labour workers were force to return to their native villages and thus, even at the unlocking stage no conclusive construction could take place at site. Such a long break in construction has put the project many milestones back. However, the respondent has dedicated itself to delivering the project at the earliest.
- xiv. That due to the covid condition and the its devastating effect on the Indian economy specially the real estate sector arranging of funds for completion of projects has become an impossible task as the banks an NBFC's have made it difficult for builders to apply for loans for completion of pending projects. However, the respondent undertakes to handover possession of the subject unit at the earliest.
- xv. 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 has endeavored to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.
- xvi. 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 endeavor 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 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, 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. 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. 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.

xvii. 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.

xviii. 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.

- xix. 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.
- xx. 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.

- xxi. 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.
- xxii. 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.

- xxiii. 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.
- xxiv. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the respondent were forced to return to their home towns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of *Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors.*, has taken cognizance of the devastating conditions of the real estate sector, and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

- xxv. The said project is a continuance business of the respondent and it will be completed by the year 2025. That when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted.
- xxvi. 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.
- xxvii. That the respondent received the environment clearance on 15.03.2016 and the license no. 124 of 2014 for development of the said project on 25.08.2014.
- xxviii. That, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 27.10.2015 an apartment being no. 0103, Tower - T4, having super area as 1225 sq. ft. for a total consideration of Rs.88,19,375/-. 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,;
 - iii. That compensation for delay in giving possession of the apartment would not be given to allottees akin to the complainant who have hooked 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.
- xxix. That the parties, including Indiabulls Housing Finance Limited also entered into a Tri-Partite agreement dated 17.10.2015 which recorded the terms and conditions of the loan amount and its repayment as opted by the complainant and we seek to rely on the clauses of the same during the arguments.
- xxx. That in the interregnum, the pandemic of covid-19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a "Force Majeure" conditions, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- xxxi. That the Authority vide its Order dated 26.05.2020 had acknowledged the covid-19 as a force majeure event and had granted extension of six months period to ongoing projects. Furthermore, it is of utmost importance to point out that vide notification dated 28.05.2020, the Ministry of Housing and Urban Affairs has allowed an extension of 9 months vis-a-vis all licenses,

approvals, end completion dated of housing projects under construction which were expiring post 25.03.2020 in light of the force majeure nature of the covid pandemic that has severely disrupted the working of the real estate industry.

- xxxii. That the construction of the project is in full swing, and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level. However, the respondent undertakes to offer of the unit by December 2020.

E. Reply by the respondent no.2

10. The respondent no. 2 implead as party and 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. The respondent no. 2 and respondent no. 2 had entered into a master development agreement dated 29.10.2013.
 - b. That in terms of the said MDA, Supertech was to develop and market the said project.
 - c. That the complainants along with many other allottees had approached M/S Supertech Ltd., making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book unit in the said project.
 - d. That after fully understand the various contractual stipulations and payments plans for the unit, the complainant executed the buyer develop agreement dated 27.10.2015 with respondent no. 1 only and unit being

number no. 0103, tower 4 having super area as 1225 sq. ft. for a total consideration of Rs.88,19,375/-.

- e. That in the interim with the implementation of the RERA Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide registration no. 182 of 2017 dated 04.09.2017 upon application filed and in the name of Supertech Ltd.
- f. That the Authority vide order dated 29.11.2019 passed in Suo Moto complaint no. 5802 of 2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondent no. 2 and M/S SARV Realtors Pvt. Ltd. respectively. The Authority had further directed that M/S Sarv Realtors Pvt. Ltd. and M/S DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the respective projects instead of M/S Supertech Ltd. certain important directions as passed by the Authority are as under:
 - A. (i) The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./DSC and other, as the case may be be registered as promoters.
 - B. (v) All the assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and AZALIA, in the name of Supertech Ltd. be shifted to SARV Realtors Pvt. Ltd./DSC and others. However, even after the rectification, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd./DSC and others fails to discharge its obligations towards the allottees.

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

terms of the said order, M/s Supertech Ltd. still remains jointly and severally liable towards the booking/allotment undertaken by it before the passing of the said Suo-Moto Order.

- g. That the said MDA were cancelled by the consent of the respondent no. 2 and Supertech vide cancellation agreement dated 03.10.2019 and the respondent no. 2 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- h. That in terms of cancellation agreement the respondent no. 2 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.
- i. That in the interregnum, the pandemic of covid -19 has gripped the entire nation since March of 2020. The government of India has itself categorized the said event as 'force majeure' condition, which automatically extends the timeline of handing over the possession of the apartment to the complainant.
- j. That the construction of the project is in full swing and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort of consideration activity.
- k. That as M/s. Supertech Ltd. and the respondent no.2 are jointly and severally liable in terms of the Suo Moto Order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between the respondent no.2 and M/s. Supertech Ltd. The respondent no.2 cannot proceed further until the said liability qua the allottee is not bifurcated between both the respondent'. The respondent in lieu of the CIRP

proceedings ongoing against Supertech, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s Supertech Ltd.

- l. 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. 2 with this frivolous complaint.
- m. The delay in construction was on account of reasons that cannot be attributed to the respondent herein. The flat buyers' agreements provide that in case the developer/respondent delays in delivery of unit for reasons not attributable to the developer/respondent, then the developer/respondent shall be entitled to proportionate extension of time for completion of project.
- n. 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.
- o. That with respect to the agreement, the time stipulated for delivering the possession of the unit was on or before June, 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 January, 2019. However, the said date was subject to the force majeure clause, i.e. "Clause 42". 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.

- p. 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.
- q. 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.

- iii. 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.
- a. 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.
- b. That the project "**HUES**" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021.
- c. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by June, 2019 with an extended grace period of 6 months which comes to an end by

December, 2019. The completion of the building is delayed by reason of Covid-19 outbreak, non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent.

- d. That the enactment of the Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before the Authority. According to the terms of builder buyer's agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time final settlement on slab of offer of possession.
- e. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Hues' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

- f. 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.
- g. 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)	

- h. 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.
- j. That the complainant is not entitled for any compensation or refund claimed except for delayed charges, if applicable as per clause 2 read with 24 of the builder buyer agreement.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority

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

F.I Territorial jurisdiction

13. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with

offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

G. Findings on objections raised by the respondent no. 1

G.I Objections regarding force majeure.

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

developer agreement and observed that due date for possession is 30.06.2020. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** 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 I.As 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

17. 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.

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

18. Respondent no. 1 has stated that vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as ***Union Bank of India Versus M/s Supertech Limited***, the Hon'ble NCLT has initiated CIRP respondent no.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 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 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 respondent to refund of Rs. 47,29,827/- along-with interest at the rate of 18% per annum from the date of payment till its actual realization to the complainants, paid by the complainants to the respondent on various dates, as is evident from the annexures appended with complaint.**

19. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:-

"Section 18: - Return of amount and compensation

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

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

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

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

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

(Emphasis supplied)

20. As per clause 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 complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. The allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 05.08.2025 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 clause E(23) of the buyer developer agreement dated 27.10.2015, the due date of possession is December 2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is June 2020.
27. It is pertinent to mention over here that even after a passage of more than 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 53.62% 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.

28. Further, the Occupation Certificate/Completion Certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

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

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

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

30. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

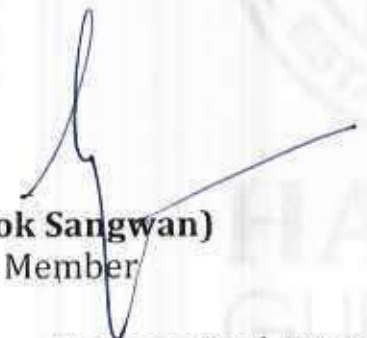
H.II Direct the respondent to pay an amount of Rs.30,00,000/- mental and physical harassment.

32. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

I. Directions of the Authority

33. 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 is directed to refund the amount received by it from each of the complainant(s) along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. Out of refundable amount, the loan amount with interest be cleared first and only the remaining amount is to be disbursed to the complainant/allottee along with no dues certificate of the 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/complainant.
 - v. No directions are being passed in the matter qua respondent nos. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid-up amount is mentioned in each of the complaints.
35. Complaints as well as applications, if any, stands disposed of accordingly.
36. Files be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2025