BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint No: 6117 of 2022
Date of decision: 05.08.2025

NAME OF THE BUILDER		M/s DSC Estates Pvt. Ltd.	
PROJECT NAME		"Supertech Azalia", Sector- 68, Gurugram, Haryana	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/6117/2022	Susmita Das & Sanjib Majumdar V/s M/s Supertech Limited And ICICI Bank Ltd. And M/s DSC Estates Pvt. Ltd.	Sh. Vinit Jain (Complaint) Sh. Bhrigu Dhami (Respondent no. 1) None(Respondent no.2) Ms. Dhruv Dargon (Respondent no.3)
2.	CR/2951/2023	Sonia & Maneesh Madan V/s M/s Supertech Limited And M/ DSC Estates Pvt. Ltd.	Amit Gabha (Complaint) Sh. Bhrigu Dhami (Respondent no. 1) Ms. Isha Dang, AR (Respondent no.2)

CORAM:

Shri Arun Kumar — **Chairman**

Shri Ashok Sangwan — **Member**

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act

wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **"Supertech Azalia"** (group housing colony) being developed by the same respondent/promoter i.e., **M/s Supertech Limited**. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	**" Supertech Azalia", Sector-68, Gurugram-122101**				
	Occupation certificate: - Not obtained				
	Offer of possession: Not offered				
CR No.	**Unit**	**BBA**	**Possession clause**	**Due date**	**TSC AP**
CR/6117/2022	2106, T5, 21st floor, 1020 sq.ft. (page 24 of complaint)	30.11.2016 (P-23 of complaint)	***E. POSSESSION OF THE UNIT:- 24. The Possession of the Unit shall be given by Dec 2019 or extended period as permitted by the agreement.*** *However, Developer hereby agrees to compensate the Buyer(s) @Rs.5.00/- (Five rupees Only) per sq. ft. of super area of the unit per*	CR/6117/2022	2106, T5, 21st floor (page 24 of complaint)

			month for any delay in handling over possession of the unit beyond the given period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances ***(Emphasis supplied)*** *(Page 37 of the complaint)*		
CR/2951/2023	0707, T4, 7th floor, 1225 Sq.ft. (page 11 of complaint)	26.11.2016 (70 of complaint)	***1 Possession of the unit:*** *The possession of the allotted unit shall be given to the buyer(s) by the developer by Dec, 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (page 22 of complaint)*	CR/2951/2023	0707, T4, 7th floor, 1225 Sq.ft. (page 11 of complaint)
Relief sought by the complainant(s): - 1. Direct the respondent to refund the amount of Rs. 43,59,303/- received by the respondent on behalf of the complainant for the purchase of the unit, along with interest. 2. Direct the respondent to repay the money paid by the complainants to the respondent no.2 as instalments towards the top up loan issued to the complainants for purchase of the said unit amount to Rs, 76,977/- till 06.09.2019 along with interest					

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking refund.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/6117/2022 Susmita Das V/s Supertech Limited and ICICI Bank Ltd. And M/s DSC Estate Developers Pvt. Ltd.*** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

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

S.No.	Particulars	Details
1.	Name of the project	Supertech Azalia, Sector-68, Gurugram-122101
2.	Project area	55.5294 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017
	Validity Status	31.12.2021
5.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013
	Validity status	25.12.2017
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.

6.	Unit no.	2106, tower 5, 21st floor (page 24 of complaint)
7.	Unit tentatively measuring	1020 sq. ft. super area
8.	Date of Booking	24.10.2016
9.	Date of buyer developer agreement	30.11.2016 (page 16 of complaint)
10.	Possession clause as per buyer developer agreement	The possession of the allotted unit shall be given to the allottee/s by the company by Dec 2019. However, this period can be extended for a further grace period of 6 months.
11.	Due date of possession	Dec 2019 + 6 months = June 2020
12.	Basic sale consideration	Rs.59,68,024/- (page 25 of complaint)
13.	Total amount paid by the complainant	Rs. 43,59,303/-
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

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

a. That the officials of the respondent no. 1 made proposals of providing the best apartment in the best location and at the lowest cost. The officials of the respondent no. 1 showed a rosy picture to the complainants where the complainants under the 'subvention plan' of the respondent no. 1 would only be required to pay 10% of the amount of the apartment and would then be required to pay another 10% of the total consideration only upon possession. The offer of the respondent no. 1 was that it would help the complainants get a loan from the respondent no. 2 under a Pre EMI scheme where the complainants would not be required to pay any amount towards pre EMIs till possession was provided to them, and 80% of the total consideration will be issued by the respondent no. 2 in form of a loan and the complainants would only be required to pay EMIs towards the loan after receiving the possession of their unit.

b. That the complainants were apprehensive yet, they were convinced in buying an apartment in an upcoming project as the complainants were in urgent need of a house – given the fact that the complainants were living in rented premises and were required to shift on regular basis.

c. That the officials of the respondent no. 1 then assured the complainants that the respondent no. 1 is a very well reputed company and holds a very good reputation in the market. The officials of the respondent no. 1 showed the brochure of the project to the complainants and also advised the complainants to visit the website of the respondent no. 1 where the project was advertised.

d. That the projection of the project as depicted in the brochure and on the website of the respondent no. 1 was very convincing. Further, the officials of the respondent no. 1 made several representations, promises and gave their personal guarantees that the respondent no. 1 would deliver the possession of the project within a maximum period of 3 years.

e. That the respondent no. 1 even invited the to its site office in Sector 68, Gurgaon and showed the complainants a sample flat of the project and a 3D video with moving chairs, light and sound which was very appealing and further lured the complainants.

f. That the complainant no. 1 had undergone a critical heart ailment for which the angioplasty surgery was done in Max Hospital, Gurgaon. Given the medical condition of the complainant no. 1, Gurgaon was a better place to live for the complainants as there are better medical facilities in Gurgaon and also that the workplace of the complainants is in Gurgaon.

g. That the respondents taking advantage of the aforementioned fact further persuaded the complainants to book a unit in the respondent no. 1's project.

h. That the respondent no. 1 promised the complainants that the project would be complete and ready for possession by and before 3 years i.e., by or before December 2019 with all the promised amenities and further assured the complainants that the complainants would not be required to pay any EMI or any amount apart from the booking price i.e. only 10% of the total amount.

i. That the complainants wanted to shift to a permanent house with facilities of security, green areas, recreational activities, accommodation for their pet and other such amenities and the project as advertised by the respondent no. 1 was a perfect match. The complainants were lured in the proposals of the respondent no. 1.

j. That further the respondent no. 1 even introduced the complainants to the respondent no. 2. The official of the respondent no. 2 namely Mr. Rajender Rajouria further assured the complainants and gave his personal guarantees and promises that the respondent no. 2 would sanction a loan to the complainants equivalent to 80% of the total consideration of the unit and that the complainants would not be required to pay any amount towards the EMIs/ Pre EMIs of the Loan as the said loan would be a Pre-EMI loan and the respondent no. 1 would pay the Pre-EMIs till the time the complainants get the possession of their unit.

k. That subsequent to payment of the booking amount the respondent no. 1 allotted the unit bearing number 2106, on the 21st floor tower 5 'T5', having a super area of 1020 sq. ft. to the complainants. A builder buyer agreement was executed between the complainants and the respondent no. 1 on 30.11.2016. In terms of the BBA, the possession of the unit had to provide to the complainants by or before December 2019.

l. That subsequent to booking of the said unit an official of the respondent no. 2 namely Mr. Rajender Rajouria from the ICICI Bank Branch, Udyog Vihar, Gurgaon approached the complainants for their signatures on the loan documents. From the very first moment of the meeting with the complainants, the official of the respondent no. 2 was very intimidating and was in a rush to complete the documentation. The complainants were apprehensive in signing the said documents without reading them properly and wanted to confirm if they were required to pay any EMI/ Pre EMI till the date of possession. The said official of the respondent no. 2 stated that he was very busy and could not waste time waiting for the complainants to thoroughly read all the documents. He asked the complainants to trust him and represented the respondent no. 2 company as a very well reputed company. He assured the complainants that there was nothing to worry about and gave his personal guarantees that the complainants would not be required to pay any amount towards the loan being taken by them till the date of possession of their flat. The said official hurriedly got the documents signed and made a representation that if the complainants wanted the respondent no. 2 to issue a loan for their house, then they would have to take a home insurance.

m. That the official of the respondent no. 2 stated that the respondent no. 2 would be sanctioning a loan of Rs.45,00,000/- and as the complainants require a loan of Rs. 47,00,000/- approximately, the complainants would be required to take a top-up loan. The said official of the respondent no. 2 informed that the said top-up loan would also cover the premium of Rs. 40,000/- for the alleged 'Home Insurance'. The official of the respondent no. 2 then persuaded the complainants to quickly sign the documents for the said top-up loan and insurance documents. However, did not provide any policy documents and stated that the complainants would soon receive the loan and insurance policy and documents soon. Insurance policy documents signed by the complainants clearly mentioned that the policy being taken was a 'home insurance' policy.

n. That subsequent to signing the loan documents and insurance documents, the complainants were provided with the loan documents and they were shocked to learn that the loan amount sanctioned was Rs. 42,00,000/- and not Rs. 45,00,000/- as promised by the official of the respondent no. 2. However, the official of the respondent no. 2 assured the complainants that there was nothing to worry about and that when time would come the respondent no. 2 would sanction the rest of the amount in form of a top-up loan. Additionally, the amount of Rs.1,84,300/- was sanctioned in form of a top-up loan. All the above-mentioned amount was supposed to be released by the respondent no. 2 directly to the respondent no. 1.

o. That further the complainants requested the respondent no. 2 to provide the complainants with the home insurance documents. However, the respondent no. 2 evaded providing the complainants with the insurance documents from a very long time and after several months the complainants were shocked when they received the insurance documents.

p. That to the utter dismay of the complainants the insurance policy issued by the respondent no. 2 was not a home insurance policy but was a medical insurance policy for which the respondent no. 2 had already deducted an approximate amount of Rs. 42,941/- from the top-up loan of the complainants. The complainants already had a medical insurance policy and thus confronted the official of the respondent no. 2 as to why a medical insurance policy was issued to them and why were they mislead in believing that the complainants would not get a loan if they do not take a home insurance policy. However, the officials of the respondent no. 2 did not provide any answer to the complainants and kept on sending them from pillar to post. After running from pillar to post for more than 6 months the medical insurance policy of the complainants was cancelled and an amount of Rs. 20,000/- were deducted by the respondent no. 2 as cancellation fee. The complainants never asked for a medical insurance policy and were compelled to suffer a loss of Rs. 20,000/- as cancellation charge of the said maliciously issued medical policy. The balance amount from the said insurance policy of approximately Rs. 20,000/- was also not returned to the complainants and was allegedly adjusted in the loan amount of the complainants.

q. That further to the utter dismay of the complainants the respondent no. 2 started charging money from the complainants towards the said top-up loan. It was promised by the respondents that the complainants would not be required to pay any instalment till the date of possession, however, the respondent no. 2 started deducting an approximate amount of IRs. 1,650/-

from the bank accounts of the complainants on the pre-text that the said instalments were for the top-up loan and the complainants would have to pay the instalments for the top-up loan and the respondent no. 1 would only pay the instalments towards the loan of the complainants.

r. That the complainants felt cheated, however, as the amount of the instalments for the said top-up loan were just Rs. 1,650/-, the complainants decided not to fight with the respondents and continued paying the said instalments.

s. That subsequent to witnessing such mala fide acts of the respondent no. 2 the complainants inquired about the manner in which rest of the top-up loan amount was used. However, the officials of the respondent no. 2 refused to provide any information to the complainants on the ground that they had no knowledge themselves. The complainants were again compelled to run from pillar to post and are till date not provide with any answers and documentation.

t. That the complainants booked the apartment in October, 2016 and were promised possession within a maximum period of 3 years. That is by and before December, 2019. The complainants regularly followed up with the respondent no. 1 on the construction stage and made several requests from site visits and meetings. However, the respondent no. 1 always asked the Complainants to meet the officials of the Respondent No. 1 in the office of the Respondent No. 1 at signature towers Gurgaon. That the Respondent No. 1 always discouraged the Complainants to visit the site and time and again assured the Complainants that the construction of the project would be complete on time and that the Complainants would receive possession of their unit without any delays.

u. That the complainants were living in rented accommodations and were waiting for the possession of their unit. However, the dreams of the complainants were about to get shattered. The complainants in the month of January, 2019 visited the project and were shocked to learn that the project was nowhere near completion. The complainants confronted the respondent no. 1 and the respondent no. 1 assured the complainants that there is nothing to worry about and the project would be ready within time. The respondent no. 1 asked the complainants to visit the project once again in a couple of months and assured the complaints that they would then see that the project would be almost complete.

v. That the unit allotted to the complainants of which the complainants were promised possession by and before December 2019 is on the 21st floor of tower 5 and to the utter dismay of the complainants the 5th floor of the said tower has also not been constructed till date.

w. That the complainants approached the respondent no. 1 enquiring the respondent no. 1 about the delay in the project. However, the respondent no. 1 refused to entertain the complainants. The complainants even informed the respondent no. 1 that the complainants could not wait any further and requested the respondent no. 1 to refund the money paid by the complainants. However, the respondent no. 1 turned a deaf ear to the complainants and has till date not refunded the money paid by the complainants and has not even bothered to address the concerns of the complainants. The complainants understood that they were not going to receive the possession of the unit for the next 3 years and that the complainants would have to consider other options as they were under a pressure from their landlord to vacate the rental premises.

x. That the worries of the complainants did not end here. To the utter dismay of the complainants on 01.08.2019 the respondent no. 2 deducted a hefty amount of Rs. 28,846/- from the bank account of the complainants without any authority or prior intimation.

y. That the complainants approached the respondent no. 2 confronting the respondent no. 2 about the unauthorized withdrawal. The complainants were shocked to learn that the respondent no. 2 had deducted the said amount as the respondent no. 1 had stopped paying the Pre EMI instalments to the respondent no. 2. Both the respondent no. 1 and 2 had promised and assured the complainants that the complainants would not be required to pay any instalments till the time the complainants received the possession of their unit and that the respondent no. 1 had unconditionally promised to pay the Pre EMI instalments till the time the complainants get possession of their unit.

z. That the complainants requested the respondent no. 2 to refund the amount deducted and not to deduct any other amount as the said deduction was unauthorized and in terms of the agreement between the parties the complainants was not liable to pay the said amount wrongfully deducted from the accounts of the complainants. However, the respondent no. 2 refused to listen to the complainants and further illegally deducted an amount of Rs. 8,385/- from the account of the complainants on 12.09.2019. The respondent no. 2 clearly stated that it would keep deducting money from the complainants account as the respondent no. 1 had stopped making payments and asked to complainants to contact the respondent no. 1.

aa. That the respondent no. 1 promised and assured the complainants that the respondent no. 1 would pay the EMIs towards the loan issued by the respondent no. 2 till the time the complainants would not receive possession of their unit, and in the event if the respondent no. 1 could not deliver the possession within three years then the respondent no. 1 would pay all the pre-EMI instalments and would then pay the EMI to the complainants in their account so that the complainants could further pay the EMI to the respondent no. 2. However, till date the respondent no. 1 in term of the agreement between the complainants, the respondent no. 1 and the respondent no. 2 is liable to pay all the pre-EMI instalments directly to the respondent no. 2 and is liable to make such payments till December, 2019. The respondent no. 2 has illegally withdrawn the said amounts from the bank account of the complainants without any authority.

bb. That the complainants then contacted the respondent no. 1 and sought clarification. However, to the utter dismay of the complainants the respondent no. 1 turned a deaf ear to the concerns of the complainant and refused to provide any reply. It was then the complainants once again visited the project in September, 2019 and were shocked to learn that there was still no development on the project. The complainants were further shocked to learn that the there was a meeting conducted by the respondent no. 1 on 14.09.2019 where the respondent no. 1 assured to pay the Pre EMI instalments to the banks and declared that the respondent no. 1 would be able to give possession of the complainants unit in tower 5 of the project by December, 2021 i.e. after two more years and the respondent even now has not provided any date of the completion of the project. Even when the respondent no. 1 has assured the respondent no. 2 that the respondent no. 1 would pay the Pre EMI instalments of the complainants, the respondent no. 2 illegally deducted money from the accounts of the complainants and have till date not refunded the said amount.

cc. That the respondent no. 1 has not only cheated the complainants but there are several other buyers who are victims of the illegal and mala fide acts of the respondent no. 1. There was also a protest conducted by several buyers of the project in front of the respondent no. 1's office in Noida. The said buyers are also aggrieved by the mala fide conduct of the respondent no. 1, undue delay in the project and non-responsive behaviour of the respondent no. 1.

dd. That the respondent no. 1 refused to provide any response to the said protesters and even refused to speak with the media. The respondent no. 1 by ways of adopting unfair trade practice and by making rosy representations and promises lured the buyers including the complainants to purchase units in the project and has now fallen flat on all its promises. The respondent no. 1 from the very beginning had not intentions to fulfil the promises made and the only intention of the respondent no. 1 was to attract buyers and extract as much money as it could.

ee. That the respondent no. 1 and 2 in collusion with each other lured the complainants in their rosy proposals and representations only to extract money from the complainants for their wrongful gains. The respondents made promises with the knowledge that they would not be able to keep their promises. The respondents from the very beginning had no intention to fulfil their promises and their only intentions was to make wrongful gains.

ff. That the complainants have till date paid and amount of Rs. 5,96,802/- from their pockets and an amount of Rs. 37,62,501/- has been released by the respondent no. 2 to the respondent no. 1 on behalf of the complainants in form of a loan. Additionally, the respondent no. 2 has illegally deducted a total of Rs. 37,231/- from the bank account of the complainants towards the Pre-EMI instalments that the respondent no. 1 was liable to pay. Further the complainants have also paid an amount of Rs. 76,977/- in instalments towards the top-up loan that was provided by the respondent no. 2 and further the respondent no. 2 has illegally forfeited an amount of Rs. 20,000/- towards cancellation of the medical policy that was never taken by the complainants. In totality, the respondent no. 1 has received an amount of Rs. 43,59,303/- on behalf of the complainants.

gg. That the hard-earned money of the complainants is stuck in a dead lock and there is no possibility that the construction of the project would be completed in near future. The complainants are suffering from grave mental agony, monetary losses and harassment.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s):

   I. Direct the respondent to refund the amount of Rs. 43,59,303/- received by the respondent on behalf of the complainant for the purchase of the unit, along with interest.

   II. Direct the respondent to repay the money paid by the complainants to the respondent no.2 as instalments towards the top up loan issued to the complainants for purchase of the said unit amount to Rs, 76,977/- till 06.09.2019 along with interest.

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

11. No reply has been submitted by the respondent no.1 i.e., M/s Supertech Ltd. However, the counsel for respondent no. 1 has stated that the respondent no.1

is under CIRP vide order dated 25.03.2022 passed by the Hon'ble New Delhi in case no. IB-204/ND/2021 titled as ***Union Bank of India Versus M/s Supertech Limited*** and moratorium has been imposed against the respondent no. 1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against the respondent no. 1.

D. Reply by the respondent (DSC Estates Developer Pvt. Ltd.)

12. The respondent no. 3 implead as party vide order dated 10.12.2024 is contesting the complaint on the following grounds:-
    a. That respondent no. 3 was issued license bearing nos. 89 of 2014 dated 11.08.2014 for developing the said land. The respondent no. 3 and respondent no. 2 had entered into a master development agreement dated 29.10.2013.
    b. That in terms of the said MDA, Supertech was to develop and market the said project.
    c. That the complainants along with many other allottees had approached M/S Supertech Ltd., making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book unit in the said project.
    d. That after fully understand the various contractual stipulations and payments plans for the unit, the complainant executed the buyer develop agreement dated 30.11.2016 with respondent no. 1 only and unit being number no. 2106, T5, having super area as 1020 sq. ft. for a total consideration of Rs.59,68,024/-.
    e. That in the interim with the implementation of the RERA Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide registration no. 182 of 2017 dated 04.09.2017 upon application filed and in the name of Supertech Ltd.

f. That the Authority vide order dated 29.11.2019 passed in Suo Moto complaint no. 5802 of 2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondent no. 3 and M/S SARV Realtors Pvt. Ltd. respectively. The Authority had further directed that M/S Sarv Realtors Pvt. Ltd. and M/S DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the respective projects instead of M/S Supertech Ltd. certain important directions as passed by the Authority are as under:

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

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

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

g. That the said MDA were cancelled by the consent of the respondent and Supertech 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.

h. That in terms of cancellation agreement the respondent and Supertech had agreed that in terms of the mutual understanding between both the companies, both companies had decided to cancel the JDA's vode 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.3 are jointly and severally liable in terms of the Suo Moto Order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allotees is not bifurcated between the respondent no.3 and M/s. Supertech Ltd. The respondent no.3 cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.

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 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.

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.

r. 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.

s. That the project "**AZALIA**" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021.

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 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.

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 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.

v. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the '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 in realized after long period of time.

w. 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.

x. 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)**	

y. 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.

z. 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.

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

E. Jurisdiction of the Authority

14. 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

15. 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

16. 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.*

17. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by

the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on objections raised by the respondent

E.I Objections regarding force majeure.

18. 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 30.11.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be June 2020, which was prior to the effect of Covid-19 on above project could happen.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."*

19. But 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.

20. 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.3 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 3 is no longer the assets of respondent no1 and admittedly, respondent no.3 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/ 5802/2019.** Respondent no.1 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.3 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.3 i.e., DSC Estate Developers Pvt. Ltd. admittedly took responsibility to develop the project and started marketing and allotting new units under its name. In view of the above, respondent no.1 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., respondent no.2 remains under

moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 3 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage.

G. Findings on the relief sought by the complainants.

G.I Direct the Respondent No. 1 to refund the amount of INR 43,59,303/- received by the Respondent No. 1 on behalf of the Complainants for the purchase of the Unit, along with interest p.a. at the prevailing RERA rate of interest;

G.II Direct the Respondent No. 1 to repay the money paid by the Complainants to the Respondent No. 2 as instalments towards the top up loan issued to the Complainants for purchase of the said unit amounting to INR 76,977/- till 06.09.2019 along with interest p.a. at the prevailing RERA rate of interest and future payments.

21. The above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.

22. That the complainants booked a unit bearing no. 2106, tower 5, 21^{st} floor, in the project of the respondent namely, "Azalia" admeasuring super area of 1020 sq.ft. for an agreed sale consideration of Rs. 59,68,024/- against which complainants have paid an amount of Rs. 43,59,303/- and the respondent has failed to handover the physical possession till date. That the complainants intend to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:-

> ***"Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

> ***he shall be liable on demand to the allottees****, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available,* ***to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed*** *in this behalf including compensation in the manner as provided under this Act:*
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*
>
> *(Emphasis supplied)*

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

> *"**1.** The possession of the allotted unit shall be given to the allottee/s by the company by Dec 2019. However, this period can be extended for a further grace period of 6 months......."* *[Emphasis Supplied]*

24. **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 Dec, 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.

25. **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.*

26. 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.

27. 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%.**

28. 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;"*

29. 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 30.11.2016, 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.

30. It is pertinent to mention over here that even after a passage of more than 5 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid more than the total consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

31. 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......."*

32. 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.*"

33. 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.

34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India

highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. Directions of the Authority

35. 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 i.e., DSC Estates Developers Pvt. Ltd. *(inadvertently mention as M/s SARV Realtors Pvt. Ltd. In proceeding dated 05.08.2025)* 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 total amount so assessed, the amount paid by the bank be refunded first to the bank and the balance amount along with interest will be refunded to the complainants. Further, the respondent i.e., DSC Estates Developers Pvt. Ltd. is directed to get the NOC from the bank and give it to the complainants within a period of 30 days of this order.

   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 no. 1 i.e., M/s Supertech Ltd. 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.

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

37. Files be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2025