BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision: 05.08.2025

NAME OF THE BUILDER		M/s DSC Estate Developer Pvt. Ltd	
PROJECT NAME		"Supertech Azalia", Sector- 68, Gurugram, Haryana	
S. No.	**Case No.**	**Case title**	**APPEARANCE**
1.	CR/5585/2022	Rashmi Singh & Anr. Supertech Limited, DSC Estate Developer Pvt. Ltd	Heman Gupta (Complaint) Sh. Bhrigu Dhami (Respondent no. 1) Ms. Dhruv Dargon (Respondent no.2)
2.	CR/5586/2022	Rashmi Singh & Anr. Supertech Limited, DSC Estate Developer Pvt. Ltd	Heman Gupta (Complaint) Sh. Bhrigu Dhami (Respondent no. 1) Ms. Dhruv Dargon (Respondent no.2)

CORAM:

Shri Arun Kumar — **Chairman**

Shri Ashok Sangwan — **Member**

ORDER

1. This order shall dispose of all 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 delay possession charges 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/5585/ 2022	2507, T3, 600 sq. ft	27.04.2018	*The possession of the allotted unit shall be given to the allottee /s by the company by Dec 2021. However, this period can be extended for a further grace period of 6 months*	June 2022	Rs.39,31,500 /- Rs.18,84,321/-
CR/5586/ 2022	2107, T3, 600 sq.ft. compla int)	11.06.2018	*The possession of the allotted unit shall be given to the allottee /s by the company by Dec 2021. However, this period can be*	June 2022	Rs.34,60,320 /- Rs.14,82,500/-

			extended for a further grace period of 6 months.		

Relief sought by the complainant(s):-
1. Refund
2. Litigation cost

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/5585/2022 Rashmi Singh Vs Supertech Ltd. & Dsc Estates Developer 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.	2507, T3 (page no. 19 of complaint)
7.	Unit tentatively measuring	600 sq. ft. super area (page no. 19 of complaint)
8.	Date of Booking	20.02.2018 (page no. 19 of complaint)
9.	Date of buyer developer agreement	27.04.2018(page no. 19 of complaint)
10.	Possession clause as per buyer developer agreement	The possession of the allotted unit shall be given to the allottee /s by the company by Dec 2021. However, this period can be extended for a further grace period of 6 months.
11.	Due date of possession	Dec 2021 + 6 months = June 2022
12.	Basic sale consideration	Rs.39,31,500/-(page 19 of complaint)
13.	Total amount paid by the complainant	Rs. 18,84,321/-
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

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

a. That complainant booked a residential apartment in above mentioned project and was allotted one residential unit bearing no. 2507, tower T3, 25th floor, unit type 1 BHK, super area admeasuring 600 Sq. ft. in "Supertech Azalia" Sector-68, Gurugram. That the basic sale price of the said property was Rs. 34,96,500/- . The complainant had already paid an amount of Rs. 18,84,321/- to the respondent.

b. That despite the fact that the complainant had made first payment in Feb 2018, the respondent had entered into buyer development agreement with the complainant only on 27.04.2018 i.e. after expiry of more than two months from the date of first payment made to the respondent. This clearly shows that the intention of the respondent from the very beginning was to cheat the complainant as the above act was nothing but to illegally gain additional time for handing over possession by delaying the signing of the buyer development agreement.

c. That as per clause 23 of buyer development agreement the respondent company assured the complainant that the physical possession of the said plot would be handed over by December 2021.

d. That complainant had already made a payment of Rs. 14,82,500/- but surprisingly there was no work at site and even the project is lying closed.

e. That complainant having gone through immense mental agony, stress and harassment has constantly raising the issue of huge delay with respondent, but unfortunately no satisfactory response or any concrete information or the reasons of this huge delay has come forth from respondent's end.

f. That since the respondent failed to fulfil its promise to deliver the project in time i.e. December 2021 as per the terms of buyer development agreement, the complainant is no more interested in the project and wants refund of her money invested in the above project along with interest @ 24 % per annum from the date of payment till realization. The respondent is also liable to compensate the complainant for the cheating and harassment done by him.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s):
   - I. Direct the respondent to return/refund the money paid by the complainant/petitioner i.e. Rs. 18,84,321/- along with interest @ 24 % per annum from the date of payment till realization.
   - II. Direct the compensation of Rs.1,00,000/- for the mental agony and litigation cost.

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.

10. The complainant has filed an application for impleadment of M/s DSC Estate Developers Pvt. Ltd. and the same was allowed by the Authority on 11.03.2024

11. That present complaint was filed on 23.08.2022 and registered as complaint no. 5855 of 2022. As per the registry, the complainant sent a copy of the complaint along with annexures via speed post as well as email. The tracking report for the same was submitted by the complainant along with the complaint. On 11.03.2025, the respondent no.2 i.e., DSC Estate Developers Pvt. Ltd was directed to file a reply within the stipulated time period. On 07.04.2025, Sh. Bhrigu Dhami & Isha Dang, AR on behalf of the respondent no.2 was present. Moreover, after the application for impleadment was allowed, respondent no. 2, i.e., DSC Estate Developers Pvt. Ltd., was also directed to file a reply within the stipulated time. However, the reply was still not filed by the respondent no.1 & respondent no.2. Despite specific directions, the respondents failed to file a written reply and did not comply with the order of the Authority. This indicates that the respondents

are intentionally delaying the proceedings of the Authority by failing to file a written reply. Therefore, the defence of the respondents were struck off for non-filing of the reply, and the matter is being decided based on the facts and documents submitted with the complaint, which remain undisputed.

12. 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.

D. Jurisdiction of the Authority

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

D.I Territorial jurisdiction

14. 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.

D.II Subject matter jurisdiction

15. 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.

16. 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.

E. Findings on objections raised by the respondents during hearing

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

17. 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.2 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.1 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 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.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.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to return/refund the money paid by the complainant/petitioner i.e. Rs. +/- along with interest @ 24 % per annum from the date of payment till realization.

18. That the complainants booked a unit bearing no. 2507, tower 3, in the project of the respondent namely, "Azalia" admeasuring super area of 600 sq.ft. for an agreed sale consideration of Rs. 39,31,500/- against which complainants have paid an amount of Rs. 18,84,321/- 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)*

19. 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. **POSSESSION OF UNIT: -***
> *The Possession of the allotteed unit shall be given to the Allottee/ s by the company by DEC 2021. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the allottee and the allottee/ s agrees to strictly abide by the same in this regard. [Emphasis Supplied]*

20. **Due date of handing over of possession and admissibility of grace period:** As per clause 1 of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the December 2021 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be June 2022.

21. **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.*

22. 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.

23. 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%.**

24. 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;"*

25. 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 27.04.2018, the due date of possession is Dec 2021. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is June 2022.

26. 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.

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

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

28. Moreover, the Hon'ble Supreme Court of India in the cases ***of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of***

India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under: -

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

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

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by 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.

31. However, while paying sale consideration against the allotted units, some of the allottee(s) raised loans from the financial institution/bank under the subvention facilities. While refunding the amount deposited by the allottee(s) who has raised loans against the allotted units, the promoter shall clear such of the loan amounts up-to date with that financial institution and the balance amount shall be paid to the allottee within a period of 90 days from the date of order.

H.IV Direct the compensation of Rs.1,00,000/- for the mental agony and financial loss suffered by the complainant.

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.

G. 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 DSC Estates Developer Pvt. Ltd. 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. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.

iv. No directions are being 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. Complaint as well as applications, if any, stands disposed of accordingly.

35. Files be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2025