BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no	**898 of 2021**
Date of filing	**18.02.2021**
Date of decision	**11.11.2025**

Mr. Roushan Kumar
Regd. Address: G-32, 2nd floor, SL-2, Sector 57, Gurugram — **Complainant**

Versus

1. M/s Supertech Limited
   Regd. office: 114, 11th floor, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019 — **Respondent no. 1**
2. DSC Estate Developers
   Regd. office: 114, 11th floor, Hemkunt Chambers, 89, Nehru Place, New Delhi-110019 — **Respondent no.2**
3. Lt Housing Finance Limited
   Regd. Office: Plot no-177, CST Road, Kalina, Santacruz, Mumbai — **Respondent no.3**

CORAM:

Shri Ashok Sangwan — **Member**
Shri Phool Singh Saini — **Member**

APPEARANCE:

Sh. Harsh Jain (Advocate)	**Counsel for Complainant**
None (Advocate)	**Counsel for Respondent no. 1**
Sh. Dushyant Tewatia (Advocate)	**Counsel for Respondent no. 2**
Sh. Ajay Yadav (Advocate)	**Counsel for Respondent no.3**

ORDER

1. That the present complaint has been filed by the complainant/allottee 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 allottee as per the agreement for sale executed inter se parties.

A. Project and unit related details

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

S.No.	Particulars	Details
1.	Name of the project	Supertech Azalia, Sector-68, 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.	1604, T5, 16th floor (Page no. 39 of complaint)
7.	Unit measuring	1020 sq. ft. super area (Page no. 39 of complaint)
8.	Booking date	15.05.2018 (Page 39 of complaint)

9.	Date of execution of Builder developer agreement (duly signed by both the parties)	23.05.2018 (Page 38 of complaint)
10.	Possession clause	***1 POSSESSION OF THE UNIT:-*** ***The Possession of the Unit shall be given by SEPT, 2020. However, this period can be extended fir the further grace period of 6 months..."*** ***(Emphasis supplied)*** (Page 40 of the complaint)
11.	Due date of possession	SEPT, 2020+ March 2021 (Page 40 of the complaint)
12.	Total sale consideration as per buyer developer agreement	Rs.59,18,248/- (Page 40 of the complaint)
13.	Total amount paid by the complainant	Rs.53,21,654/- (As alleged by the complainant at pg.29 of the complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Loan sanctioned by LT Housing Pvt. Ltd.	Rs.52,00,000/- (Page 46 of the complaint)

B. Facts of the complaint

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

a. That the complainant along with his family members visited the project site and marketing office of respondent no.1 in Sector 68 Village Badshahpur, Gurugram. Being convinced with location of the project, the complainant consulted the office bearers of the developer and the office bearers of developer allure the complainant wit proposed specifications of the project. The office bearers of the respondent represented the payment plans of "No Pe-EMI subvention plan" and schemes and gave brochures, application form and price list for different sizes of flats/apartments in the

project. Marketing staff of builder assured to complainant that possession of flat would be handover within 36 months, as construction was already been started.

b. That believing on representation, for total sale consideration of Rs. 59,18,248/- inclusive of all charges and with one covered car parking, complainant remitted Rs. 50,000/- as token for booking under the offered "No Pre-EMI subvention payment plan,' respondent no.1 provisionally allotted a 2 BHK type unit no. 1604 on 16th floor in tower no. T5, admeasuring super area of 1020 Sq.Ft. in the project Azalia-Supertech, Sector 68, Gurugram and respondent no.1 issued a payment receipt against the allotted said flat. The office bearers assured that the unit will be handed over by September 2020.

c. That on 23.05.2018, respondent no.1 executed a pre-printed, arbitrary, unilateral BDA where respondent no.1 mentioned the cost price of the unit as Rs. 59,18,248/- inclusive of all charges for covered car parking, IFMS, club membership, EDC/IDC, electricity with power backup and also specified the payment plan opted by the complainant as "Subvention Payment Plan". Subvention payment plan was specified as i.e., 10% at booking time, 80% from L&T Housing finance limited and balance 10% on possession of the unit. The delivery date was specified as September 2020. It is also agreed in BDA that in case of delay in handing over possession or actual physical possession respondent no.1 will pay penalty to the allottee/s @5.000/- per sq.ft. of super area of the allotted unit per month from the given delivery date plus grace period of 6 months and upto the possession of the unit.

d. That the complainant paid Rs.6,00,000/- on 02.06.2018 by issuing 02 cheques on Kotak Mahindra Bank for amount Rs.3,00,000/- each, against the booking amount of unit no. 1604/T5 in project Azalia, with consideration of excess amount to be adjusted in future payments.

e. That on 24.05.2018, respondent no.1 executed a pre-printed, arbitrary, unilateral MoU where respondent no.1 clearly specified that the complainant has opted for "No Pre-EMI till possession scheme. Clause a, b, and c contradict are meant the sole purpose of cheating with homebuyers for taking possession of their hard-earned money and that of home loan amount. The said scheme is approved by L& T Housing finance limited and delivery is expected in 30 months so scheme's tenure in 30 months or maximum by September 2020 and during this time developer wants to make payment of Pre-EMI only to buyer, but not to lender or the scheme approver.

f. That on 29.06.2018 you executed a pre-printed, arbitrary, unilateral TPA along with L& T Housing Finance Limited and very surprisingly its key point (j) reduces the subvention duration of 30 months to 22 months and this looks good in case of speedy construction and expectation of before-time delivery of the project however in case of delayed project if such period is reduced, with no specific reasons it again created doubts and questions on the intention of both developer as well as lender.

g. That respondent no.3 or L&T housing finance limited approved a home loan of Rs. 52,00,000/- under a loan account no H15500905181227 and an ECS mandate was duly executed and released nearly Rs. 29,79,933/- on date 24.07.2018 and Rs. 13,39,100/- on date 13.09.2018 through RTGS to respondent no.1.

h. That on 27.12.2019, after receiving a notification call from respondent no.2 related to completion of subvention scheme, complainant enquired about clarity on the same from respondent no.1 as L&T housing finance limited informed that the "Subvention Scheme" is ending on 15.03.2020, and that the pre-EMI would start hitting the account of complainant from April 2020 onwards, and this was contradicting clauses of BDA, MoU and other contracts agreements. The No Pre-EMI subvention scheme was valid till possession and the expected date of possession was in September 2020. The different commitments in different contract or agreement created room for developers to trap innocent homebuyers.

i. That the respondent didn't respond until January 2020 on the concerns of the complainant even after regular follow-ups and on 23.01.2020 respondent no.1 sent an e-mail to its various departments and to the complainant about Hon'ble court HARERA's issued directions for project "Azalia" being transferred to M/s DSC Estate Developers Pvt. Ltd. Respondent no. 2 is wholly owned associate company of respondent no0.1 and that they are the land owners and license holding entity.

j. That instead of paying Pre-Emi and honor the terms of MoU, respondent no.1 gives couple of offers which are not suitable to complainant.

k. That from 07.04.2020 onwards, respondent no. 3 started charging the interest/Pre-EMI and complainant has paid Rs. 3,52,621/- till 08.02.2021 from his Kotak Mahindra Bank's account towards the Pre-EMI without receiving the Pre-EMI/interest from the builder as committed in MOU.

l. That on 28.09.2020 complainant visited the project site to see the progress of project and surprisingly the project is abandoned at initial level, it was

very clear that there is no construction since a long time, as there was rusting all around the project and after feeling cheated complainant sent an email top respondent no.1 about being disappointed with the respondent no.1 and decision to cancel his unit.

m. That respondent no.1 has defaulted on all paraments set by RERA act, and it has also defaulted on most of the points specified in the BDA & MOU agreement. There was no development when the complainant re-visited the project site and found that site was still not getting any attention from the builder and the hard-earned money of the complainant and homebuyers is t stake and not safe with the respondent.

n. That as per the loan account statement, the complainant has paid Rs. 53,21,654/- from home loan and self-sources, current EMI of loan is nearly Rs. 32,420/- which need to be bear by complainant. The respondent stopped paying Pre-EMI since March 2020. The respondent did not raise the construction from paid money but uses the funds for self-enrichment.

o. That the main grievance of the complainant in the present complaint is that in spite of complainant making and honoring all demand payments by himself and through home loan from L&T housing finance limited with no restrictions imposed by the complainant, still the respondent has measurably failed to deliver the possession of the flat and used funds so released for unjustified and illegal enrichment.

p. That the complainant had purchased the flat with intention that after purchases, his family will live in own flat. It was promoted by the respondent party at the time of receiving payment for the flat that the possession will be along with all other amenities as shown in brochure and

would be handed over to the complainant as soon as the construction work is complete i.e., by September 2020.

q. That the given time and even the structure of tower is not yet complete, it clearly shows the negligence of the builder. As per project site conditions, it seems that project will take more than 2-3 years to complete in all aspect, subject to willingness of respondent to complete the project.

r. That due to above acts of the respondent and of the terms and conditions of the builder buyer agreement, the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.

s. That for the first time cause of action for the present complaint arose in May 2018, when the buyer builder agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottee. The cause of action further rose in April 2020, when the respondent failed to pay Pre-EMI as promised in MoU and buyer agreement & in September 2020 when respondent failed to handover the possession of the flat as per the buyer agreement. The cause of action is alive and continuing and will continue to subsist till such time as the Authority restrains the respondent party by an order of injunction and passes the necessary orders.

C. Relief sought by the complainant: -

i. Direct the respondent to refund the amount of Rs. 53,21,654/- paid by the complainant to the respondent as instalments towards purchase of flat along with prescribed rate of interest.

ii. Direct the respondent to pay an amount of Rs.5,00,000/- for deficiency in service (justification- because as per the agreement, the respondent required to handover the possession maximum by September 2020 and complainant is suffering huge financial loss on their investment.

iii. Direct the respondent to pay an amount of Rs. 10,00,000/- on account of causing mental agony and physical harassment to the complainant.

iv. Direct the respondent to pay an amount of Rs. 1,50,000/- as litigation expenses.

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

D. Reply by the respondent no.1

a. At the outset, it is submitted that the instant complaint is untenable both on facts and in law and is liable to be rejected on this ground alone.

b. That the matter with respect to jurisdiction of the Hon'ble Authority or the Hon'ble Adjudicating officer is still pending adjudication before the Apex Court, thus no statutory vested jurisdiction being available with either the Authority or the Adjudicating officer, present Complaint ought to be adjourned sine die till the final decision on the subject matter by the Hon'ble Apex Court, vesting jurisdiction to adjudicate upon refund matter either upon the Authority or the Adjudicating officer.

c. Further, the Hon'ble Apex court has vide Order dated 05.11.2020 issued a stay on the judgment and law as decided/declared by the Hon'ble Punjab and Haryana High Court vide judgment being CWP no. 34271/2019.

d. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare

reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent no. 1 with this frivolous complaint.

e. That the present complaint has been filed seeking the following reliefs, which are as follows:-

i. Respondent no. 1 may kindly be directed to refund the amount of RS. 53,21,654/- paid by the complainant to the respondent as instalments towards purchase of flat along with prescribed interest of 24% per annum compound from the date of deposit under Section 18 & 19(4) of Act, 2016.

ii. Respondent may kindly be directed to pay an amount of Rs. 5,00,000/- for efficiency in service.

iii. Respondent no. 1,2 & 3 may kindly be directed to pay an amount of Rs.10,00,000/- on account of causing mental agony and physical harassment to the complainant, due to negligence and unfair trade practice on Pre-EMI payments charges from complainant's banking account through ECS, especially during the pandemic covid 19 impact, national lockdown & moratorium restrictions imposed by RBI.

iv. Respondent may be directed to pay an amount of Rs.1,50,000/- as litigation expenses.

f. That the reliefs for refund of Rs.53,21,645/- is not maintainable in view of the fact that the complainant had taken a loan from L&T Housing finance Ltd. for an amount of Rs. 52,00,000/- and in this regard had entered into a tripartite agreement on 24.06.2016.

g. 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 stipulates that in the event of cancellation of the apartment for any reason whatsoever the entire amount advanced by the L&T Housing Finance Ltd. will be refunded by the builder to financier, therefore the complainant subrogated all his rights for refund with respect to the said residential apartment in favour of the financier. Thus, the complainant is devoid any right to seek refund of the amount advanced for the subject apartment.

h. That the complainant has not been financially prejudiced in any way and has only paid an advance amount at the time of booking and just wants to gain wrongful benefit out of the misery of the L&T Housing Finance Ltd.

i. That the Respondent has paid substantial amounts towards pre-EMI on behalf of the complainant to the financer and in fact is entitled to refund of the same from the complainant.

j. 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. It is submitted that the complainant may be put to strict proof in this regard.

k. Without prejudice to the afore-said, the delay if at all, has been beyond the control of the answering respondents and as such extraneous circumstances would be categorised as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.

l. The delay in construction was on account of reasons that cannot be attributed to the respondent. It is most pertinent to state that the agreements provide that in case the respondent delays in delivery of Unit

for reasons not attributable to the respondent, then the respondent shall be entitled to proportionate extension of time for completion of said project. The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.

m. 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 for completion of the project is not a delay on account of the respondent for completion of the project.

n. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before September 2020. 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 March 2021. However, the proposed possession date was subject to the force majeure clause.

o. The 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. It is submitted that owing to the lockdown, the construction labour workers were forced to return to their native villages and thus, even at the unlocking stage no conclusive construction/ development could take place at site. It is submitted that such a long break in construction has put the project many milestones back. However, the respondent has dedicated itself to delivering the projects at the earliest.

p. 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 and 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.

q. That the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavoured to deliver the property within the stipulated time. The respondent earnestly has endeavoured to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.

r. 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 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.

s. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant herein, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. That apart from the defaults on the part of the allottee, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent:

i. Due to active implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National

Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes. 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.

iii. 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.

t. 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 attributed to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the agreement.

u. That the possession of the said unit was proposed to be delivered by the respondent to the complainant by September 2020 with an extended grace period of 6 months which comes to an end by March 2021. The completion of the building is delayed by reason of Covid – 19, 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 unit 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 allottee. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for a considerable period of days due to high rise in Pollution in Delhi NCR.

v. That the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottee and to protect the interest of allottee in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before the HRERA Authority. According to the terms of Agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time of final settlement on slab of offer of possession.

w. 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. It is submitted that the Answering Respondent/Promoter, being a bonafide

Builder. has also applied for Realty Stress Funds for its Gurgaon based projects. The said news was also published in Daily News/Media.

x. That the project is an ongoing project and orders of refund at a time when the real-estate sector is at its lowest point, would severally prejudice the development of the project which in turn would lead to transfer of funds which are necessary for timely completion of the project. It is most humbly submitted that any refund order at this stage would severally prejudice the interest of the other allottee of the project as the diversion of funds would severally impact the project development. Thus, no order of refund may be passed by this Authority in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottee at large.

y. That the complainant cannot unilaterally cancel/ withdraw from the project at such an advance stage as the same would fly in the face of numerous judicial pronouncements as well as the statutory scheme as proposed under the Real Estate (Regulation and Development) Act, 2016.

z. That the Hon'ble Supreme Court in its judgment of ***Pioneer Urban Land and Infrastructure Limited & Anr. V. Union of India & Anr.***, the Supreme Court has nuanced a balanced approach in dealing with legitimate builders. Furthermore, the Court has laid emphasis on the concept of "legitimate/bonafide buyers" whereby one cannot be considered a homebuyer if the he/she is not willing to see the project to its end or is investing in the project with a speculative mindset, to withdraw his/her money before giving credence to the project. The said reasoning has also been used by the Hon'ble National Company Law Appellate Tribunal in its judgment titled ***"Navin Raheja v. Shilpi Jain and Ors."***. The Hon'ble NCLAT was even more strenuous in its approach whereby it called these

speculative investors as trigger-happy investors who ignite the flame which may very well lead the genuine developer company to its death.

aa. 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 "Supertech 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. 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.

i. 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. That the pandemic is clearly a "Force Majeure event, which automatically extends the timeline for handing over possession of the Apartment.

E. Reply by the respondent no. 2

5. On 06.08.2025, the respondent no.2 was directed to file the reply within stipulated time period. Further, on 30.09.2025, the respondent was again directed to file brief written submissions within 15 days. However, despite specific directions, the respondent no. 2 failed to file the written reply and has failed to comply with the order of the Authority. It shows that the respondent is intentionally delaying the proceedings of the Authority by non-filing of written reply. Thus, the defense of the respondent was struck off for not filing reply and is being decided on basis of facts and documents submitted with the complaint which are undisputed.

F. Reply by the respondent no. 3

a. That the present complaint has been filed against respondent no. 3, M/s L&T Housing Finance (LTHF). Under the Scheme of amalgamation by way of merger by absorption approved by the National Company Law Tribunal, Mumbai as well as National Company Law Tribunal, Kolkata, L&T Housing Finance Limited has merged with L&T Finance Limited (w.e.f. 12th April, 2021.

b. That the LTHF after merger by absorption has lost its legal sanctity and no suit/complaint/petition/proceedings can be continued against

respondent, thus the present complaint in the current form is not maintainable and the same is liable to be dismissed.

c. That the present written statement has been filed by LTF company registered under the Companies Act, 1956 having its registered office at Technopolis, 7th floor, A wing, plot no. 4, block-BP, Sec-V, Salt Lake, Kolkata-700091, West Bengal, on behalf of LTHF arrayed as respondent no. 3 in the present complaint. Mr. Puneet Gaurh is the authorized representative of LTF and is even otherwise fully aware of the affairs of the LTF and has been duly authorized to file and contest proceedings for and on behalf of the LTF and accordingly the present written version/ reply is being signed and verified by him.

d. That the complaint of the complainant against the answering respondent is not sustainable and the applicant herein is the finance company, who has provided the finance at the insistence of the complainant and as a result loan of Rs. 52,00,000/- was sanctioned to the complainant and a loan agreement vide agreement number H14382100818054556 was entered into between the parties. Thus, the present complaint as preferred against the answering respondent is not sustainable and the same is same is liable to be dismissed qua the answering respondent and respondent be deleted from array of parties. The answering respondent has preferred an application under order 1 rule 10 CPC and the contents stated therein be read as part and parcel of present written statement.

e. That the applicant/ respondent no. 3 cannot be treated as promoter or real estate agent by any stretch of imagination and thus the present complaint against the respondent is not sustainable and liable to be dismissed.

f. That on 29.6.2020, HRERA released a circular prescribing procedures to be adopted for effectuating transfer of rights and obligations of a real estate project under Section 15 of the Act, by a promoter (Part 1), as well as by a third party such as banks, either by operation of law or by enforcement of security (Part II). While part 1 requires the promoter to obtain the consent of two-third allottee as well as an order from HRERA before effectuating a transfer, a similar provision does not exist in part II. In fact, part II does not contemplate that the third party itself would be categorised as a promoter due to any existing mortgage; rather it would merely facilitate the transfer of right from erstwhile promoter to the intended promoter.

g. That the company is secured creditor as the properties have been mortgaged in favour of company towards the amount loaned to borrower. Section 31B of SARFAESI At, with the objective of giving the secured creditors priority over rights of central and state government or any other local authority was inserted. Thus, with an intent of safeguarding interest of secured creditor SARFAESI Act.

h. That any hindrance to the enforcement of securities by financial institutions goes against the very spirit of SARFAESI. By way of the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, the legislature has added Section 26E to SARFAESI which mandates that irrespective of any other law in force, the debts due to secured creditors must be given utmost priority. This clearly places financial institutions on a higher pedestal. In ***Xander Finance Pvt. Ltd. v. TriveshPooniwala,*** the Maharashtra Real Estate Appellate Tribunal actively recognized the right of the financial

institution as a mortgagee for enforcement of securities. Any registered mortgage deed in the favor of a financial institution is enough to grant the financial institution the right to recover its loan under Section 13 of SARFAESI concerning the provisions of enforcement. The Hon'ble Supreme Court in ***Solidaire India Ltd. Vs Fairgrowth Financial Services Ltd. &Ors., (2001) 3 SCC 71*** has held that the provisions of the amended SARFAESI Act prevail over the provisions of the PMLA as the amended SARFAESI Act is the subsequent legislation to the PMLA. The Hon'ble Supreme Court further held that if there is no direct/indirect involvement of any person or property with the proceeds of the crime, then it cannot be said that the said person is connected with any activity or process with the proceeds of the crime. The same principle should be applied while judging the involvement of any property of any person in money laundering. Similarly, in case titled as ***Standard Chartered Bank Vs. Deputy Director, Directorate of Enforcement,*** **the Appellate Tribunal, Prevention of Money Laundering Act, New Delhi** has clarified the anomaly regarding the right of the Enforcement Directorate to attach assets, which have previously been mortgaged to banks, by way of lending. The Appellate Tribunal held that the ED cannot claim right over assets of individuals who are suspected of criminal activity if banks have created prior right over such assets through lending and there exists no direct or indirect relation between the asset and the proceeds of crime. The Appellate Tribunal further noted that such mortgaged assets act as security to the loans and cannot be subject to attachment, particularly when they were purchased and mortgaged prior to the events of funds diversion or fraud committed by the borrowers. The Appellate Tribunal accordingly held that the

Appellant Bank shall be entitled to recover huge amounts in the above loan accounts and stood as mortgagee/transferee of the interest in the properties. Further, no case of money-laundering is made out against the consortium of banks. In such circumstances, the bank will have priority on assets of the secured creditors to recover the loan amount/debts by sale of assets over which security interest is created.

i. That Section 34 of SARFAESI provides that no civil court can exercise jurisdiction to entertain any suit or proceeding in respect of any matter, which the Debts Recovery Tribunal or Debts Recovery Appellate Tribunal is empowered to determine by or under the SARFAESI Act. Thus, this Hon'ble Forum has no jurisdiction to try the proceedings against the answering respondent and thereby the present application qua answering respondent is likely to be dismissed.

j. That the respondent has acquired lawful interest in the properties in due course of their banking activities. It is also admitted fact that the Company is entitled to pursue lawful remedies where-under these very properties can be legitimately attached and sold, by public auction, to satisfy their claims, such satisfaction, in turn, concededly giving a lawful discharge to the borrowers for the corresponding debt. That the complaint preferred by the complainant against the answering respondent is non-est and non-maintainable. That the answering respondent is not the necessary party in the present proceedings and thus the proceedings filed against the answering respondent is liable to be quashed and answering respondent be deleted from array of parties.

k. That the respondent is not guilty of any deficient services or unfair trade practice and thereby the present complaint against the respondent is not

maintainable. The respondent has been wrongly made party in the present proceedings.

l. That the complainant has not sought any relief against the answering respondent which can be granted by this Hon'ble Forum, that the complainant has sought the relief of compensation against the answering respondent, however failed to allege even single default on part of the answering respondent and secondly it has been sought that the CIBIL of the complainant be restored, which again cannot be granted in favour of the complainant under the present proceedings.

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

G. Jurisdiction of the Authority

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

G.I Territorial jurisdiction

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

G.II Subject matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

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

H.I Objections regarding force majeure.

11. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. Buyer developer agreement was executed between the parties on 23.05.2018 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be March 2021.

12. The Authority observes that 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 stakeholder concerned with the said project cannot be put on hold due to fault of some of allottee. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take care of unforeseen eventualities. Therefore, no further grace period is warranted on account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advance in this regard is untenable.

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

13. Respondent no. 1 has stated that 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 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.

I. Findings on the relief sought by the complainant.

I. I Direct the respondents refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation;

14. That the complainant booked a unit bearing no. 1604, tower 5, 16th floor in the project of the respondent namely, "AZALIA" admeasuring super area of 1020 sq.ft. for an agreed sale consideration of Rs. 59,18,248/- against which complainant has paid an amount of Rs. 53,21,654/- and the respondent has failed to handover the physical possession till date. The complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:-

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -*
> *(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
> *(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*
> ***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*
>
> *(Emphasis supplied)*

15. Clause1 of the buyer developer agreement provides for handing over of possession and is reproduced below: -

*"The Possession of the allotted unit shall be given to the Allottee/s by the Company by **Sep,2020**. However, this period can be extended for a further **grace period of 6 months**. [Emphasis Supplied]*

16. **Due date of handing over of possession and admissibility of grace period:** As per clause 1 of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the September 2020 with a grace period of 6(six) months. Since in the present matter the buyer developer agreement 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 March 2021.

17. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them along with interest prescribed rate of interest. The allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

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

19. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 11.11.2025 is **8.85%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%.**

20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent which is the same as is being granted to them in case of delayed possession charges.

22. 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 23.05.2018, the due date of possession Sep,2020. 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 March, 2021.

23. 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 89.91% 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.

24. 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....."*

25. 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."*

26. 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 allottee 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.

27. 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., @ 10.85% 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.

J. Directions of the Authority

28. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

i. The respondent no. 2 i.e., DSC Estate Pvt. Ltd. is directed to refund the entire paid-up amount i.e., Rs. 53,21,654/- received by it from each of the complainant along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

ii. Out of total amount so assessed, the amount paid by the financial institution be refunded first to the financial institution and the balance amount along with interest will be refunded to the complainant. 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 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.

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

30. Files be consigned to registry.

(Phool Singh Saini)
Member

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.11.2025