

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

Complaint no	4117 of 2021
Date of filing	18.10.2021
Date of decision	09.12.2025

Mr. Sunpreet Singh

R/o: 13A,8, Marla Road, Model Town, Ground floor, Gurugram-122001, HR.

Ms. Manvinder Kaur

R/o: 6661/6, Street no. 1-1/2, Ludhiana, Punjab-141008.

Complainants

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. PNB Housing Finance Ltd.

Regd. Office: 9th floor, Antriksh Bhawan, Kasturba Gandhi Marg, New Delhi-110001

Respondent no.3

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

APPEARANCE:

Sh. Daggar Malhotra (Advocate)

Counsel for Complainant

None

Counsel for Respondent no. 1

Sh. Dushyant Tewatia (Advocate)

Counsel for Respondent no. 2

Sh. None

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	89 of 2014 dated 08.08.2014	134-136 of 2014 dated 26.08.2014
	Validity status	25.12.2017	Renewed on 31.03.2023 upto 07.08.2024	Renewed on 27.03.2023 upto 25.08.2024
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.



6.	Unit no.	1503, 15 th floor, T5 (Page no. 9 of complaint)
7.	Unit measuring	1020 sq. ft. super area (Page no. 9 of complaint)
8.	Booking date	04.10.2017 (Page 9 of complaint)
9.	Date of execution of Builder developer agreement (duly signed by both the parties)	24.11.2017 (Page 8 of complaint)
10.	Possession clause	1 POSSESSION OF THE UNIT:- <i>The Possession of the Unit shall be given by Dec, 2021. However, this period can be extended for the further grace period of 6 months..." (Emphasis supplied)</i> (Page 10 of the complaint)
11.	Due date of possession	Dec, 2021 + 6 month = June 2022 (Page 10 of the complaint)
12.	Total sale consideration as per buyer developer agreement	Rs.55,82,007/- (Page 10 of the complaint)
13.	Total amount paid by the complainant	Rs.6,19,983/- (paid by the complainant) + Rs. 34,41,704/- (disbursed by the bank) = Rs. 39,99,929/- (total paid up amount)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:-
 - a. That the complainants and respondent entered into a builder developer agreement on 24.11.2017. The complainants were allotted flat bearing No. 1503 in respondent's project i.e., Supertech Azalia at Sector-68, Golf Course Extension, Road, Gurgaon-122101. The total cost of which was Rs.55,82,007/-. The complainants opted for the subvention payment plan and a tri-partite agreement was entered between the complainant, respondent and the bank. Accordingly, under the subvention scheme, Rs.6,19,983/- was paid by the complainants to respondent and the remaining amount was paid under subvention scheme through Loan from

PNB Housing Finance Ltd. Till date, Rs.34,41,704/- have been disbursed by the bank to respondent vide statement of loan account dated 25.09.2021. Therefore, the respondent has received a total of Rs. 39,99,929/- till date in regard to the said flat.

- b. That, the complainants and the respondent entered into a memorandum of understanding dated 11.12.2017 vide which the complainant opted for the No Pre- EMI till offer of possession scheme. Clause (b) of the said MoU provides that the tenure of this subvention scheme as approved by PNB Housing Finance Limited is 30 months. The developer expects to offer possession of the booked unit to the buyer by that time. However, if due to any reason the possession offer of the booked unit gets delayed, then, the developer undertakes to pay the Pre-EMI only to the buyer even after 30 months. The payment of Pre-EMI shall continue till offer of possession with regard to the booked flat is issued to the buyer.
- c. That the possession of the allotted unit was stated to be given by December, 2021 with an extended grace period of 6 months i.e., June 2022. Even construction has not begun till date. Respondent was supposed to pay the Pre-EMI on the said loan till offer of possession as per clause (b) of the MoU but the respondent unilaterally refused to pay the same because of which the complainants have been harassed by the bank and the bank has even issued legal notice against the complainants.

C. Relief sought by the complainant: -

- i. Direct the respondent to refund the principal amount of Rs.6,19,983/-paid by the complainants with interest and refund Rs.34,41,704/- disbursed by the bank, alongwith interest, as the complainants are no longer interested in taking possession of the said Unit due to delay in completion of the Unit

and non-delivery of possession within time, even construction has not begun till date.

- ii. Direct the respondent to pay the Pre-EMI on the house loan to bank, during the pendency of this present complaint, as the liability of this payment is on the builder and not the complainant as per clause (b) of the MoU.
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. To direct the respondent no.1 to refund the entire amount deposited and other reliefs.
- f. That the reliefs for refund of Rs.39,99,939/- is not maintainable in view of the fact that the complainant had taken a loan from PNB Housing Finance Ltd. for an amount of Rs. 34,41,704/- and in this regard had entered into a tripartite agreement on 11.12.2017.
- 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 PNB 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. 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.

- o. 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.
- p. 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.
- q. 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.
- r. 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.

s. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. 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.

t. That the possession of the said unit was proposed to be delivered by the respondent to the complainant by December 2021 with an extended grace

period of 6 months which comes to an end by June 2022. 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.

- u. 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.
- v. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced

Rs. 25,000 Crore to help the Bonafide Builders for completing the Stalled/unconstructed projects and deliver the homes to the Homebuyers. 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.

- w. 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.
- x. 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.
- y. 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.

- z. 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 is 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

- i. That the complainant along with many other allottees had approached Supertech, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to booked a unit in the said project.
- ii. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant booked an apartment being number no. 1503, 15th floor, tower - T5, 1020 sq. ft. super area for a total consideration of Rs. 55,82,007/- . The possession was to be handed over by December, 2021 plus 6 months, i.e. June, 2022.
- iii. That in the interim with the implementation of the Real Estate (Regulation & Development) Act, 2016 the project was registered with the Hon'ble 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.

iv. That the Hon'ble Authority vide Order dated 29.11.2019 passed in Suo Moto Complaint No. 5802/ 2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondent 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 others, 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, Superech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd./DSC and others fail to discharge its obligations towards the allottees.

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

vi. That thereafter 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.

- vii. That in terms of the said 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 vide the said cancellation agreement.
- viii. That in the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- ix. That as admittedly respondent no. 1 is admitted to insolvency proceedings and the IRP has been appointed for R -1, therefore the present matters deem to be adjourned sine die till the finalisation of the CIR Process against the R -1 company as per section 14 of the IBC.
- x. That M/s. Supertech Ltd. and the respondent are jointly and severally liable in terms of the *Suo Moto* Order passed by the Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between both the respondents. The respondent in lieu of the CIRP proceedings ongoing against M/s Supertech, cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.
- xi. That the complaint further also deems to be *prima facie* dismissed as there is admittedly no pleadings against the respondent neither any relief is

sought against it. It is trite law that the court cannot grant any relief over and above what has been sought by the complainant.

- xii. That the present matter further also deems to be *prima facie* dismissed as even though admittedly the complainants have subrogated their entire right w.r.t to refund of amounts paid in Favor of PNBHFL, however they have with malafide failed to make PNBHFL a party to the present proceedings. Thus, in lieu of the tri-partite agreement, the complainant has no right or locus to file for refund of amounts paid to Supertech Ltd. for the booking.
- xiii. That the present matter further also deems to be *prima facie* dismissed as there are no pleadings *qua* the respondent, neither any relief is sought against the respondent. It is trite law that no court can grant relief over and above what has been sought by the complainant.
- xiv. That the complaint further also deems to be *prima facie* dismissed as admittedly there is no privity of contract between the Complainant and the respondent. Furthermore, as the respondent was neither a party nor has any nexus with the alleged subvention scheme, it cannot be burned with any liability *qua* the same. The liability, if any, will be of R1 only.
- xv. That till date the registration for the project has not been changed in the name of the respondent, hence the name of R1 is still reflecting in the registration of the project, thus without having the registration in its name, no liability can be imposed upon the respondent.
- xvi. That in terms of *Suo Moto* order R1 and the respondent were jointly and severally made responsible for the project, thus till there is a final demarcation of the liabilities no order of refund can be passed *qua* the respondent alone. The respondent cannot be made liable for the defaults

of R1 and any schemes undertaken by it, i.e. subvention scheme or its defaults.

- xvii. 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. The delay if at all, has been beyond the control of the respondent 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.
- xviii. That the delay in construction was on account of reasons that cannot be attributed to the respondent. It is most pertinent to state that 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 said project. The relevant clause, i.e. "clause 42" under the heading "GENERAL TERMS AND CONDITIONS" of the "agreement". The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.
- xix. That in view of the *force majeure* clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent, Covid – 19, shortage of Labour, shortage of raw materials, stoppage of works due to court orders, etc. for completion of the project is not a delay on account of the respondent for completion of the project.

xx. That the timeline stipulated under the flat buyers' 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.

xxi. The respondent no. 2 has also just reiterated the reasons for delay and force majeure as stated in the reply of respondent no. 1

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

F. Jurisdiction of the Authority

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

F.I Territorial jurisdiction

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

F.II Subject matter jurisdiction

8. 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.

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

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

G.I Objections regarding force majeure.

10. 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 24.11.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be June 2022.
11. 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.

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

12. 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.

H. Findings on the relief sought by the complainant.

H.I Direct the respondent to refund the principal amount of Rs.6,19,983/-paid by the complainants with interest and refund Rs.34,41,704/- disbursed by the bank, alongwith interest, as the complainants are no longer interested in taking possession of the said Unit due to delay in completion of the Unit and non-delivery of possession within time, even construction has not begun till date.

H.II Direct the respondent to pay the Pre-EMI on the house loan to bank, during the pendency of this present complaint, as the liability of this payment is on the builder and not the complainant as per clause (b) of the MoU;

13. That the complainant booked a unit bearing no. 1503, 15th floor, T5 in the project of the respondent namely, "AZALIA" admeasuring super area of 1020 Sq.ft. for an agreed sale consideration of Rs. 55,82,007/- against which complainant has paid an amount of Rs. 39,99,929/- 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)

14. 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 Dec,2021. However, this period can be extended for a further grace period of 6 months.
[Emphasis Supplied]*

15. 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 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 June 2022.

16. **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.

17. 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.
18. 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., 09.12.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
19. 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;"*

20. 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.
21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section

11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 1 of the agreement executed between the parties on 24.11.2017, the due date of possession 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.

22. It is pertinent to mention over here that even after a passage of more than 4 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 71.65% 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.
23. Further, the Occupation Certificate/Completion Certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

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

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

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

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the 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.

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

I. Directions of the Authority

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

- i. The respondent no. 2 i.e., DSC Estate Pvt. Ltd. is directed to refund the entire paid-up amount i.e., Rs. 39,99,929/- received by it from the complainant along with interest at the rate of 10.85% 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.

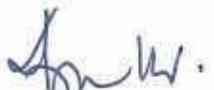
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount 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.

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

29. Files be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.12.2025