

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

Complaint no. : 6349 of 2019
First date of hearing: 08.01.2020
Date of decision : 20.05.2025

Swati Singh

R/o: - 1208, tower-H, Wembley Estate, Rose wood
City, Sec-50, Gurugram, Haryana

Complainant

Versus

M/s Supertech Limited

M/s Sarv Realtors Pvt. Ltd.

Registered Office: 1114, 11th Floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi - 110019

Respondent no.1
Respondent no.2

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Harshit Batra
None
Sh. Gaurav Raghav

Counsel for Complainant
Counsel for Respondent no. 1
Counsel for Respondent no. 2

ORDER

1. The present complaint dated 09.12.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the

under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Particulars	Details		
1.	Name of the project	Supertech Hues, 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		
6.	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 Realto rs Pvt. Ltd & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.
7.	Unit no.	2001, tower-E on 20 th floor, (Page no. 19 of complaint)		
8.	Unit tentatively measuring	1180 sq. ft. super area (Page no.19 of complaint)		

9.	Date of Booking	12.03.2014 (Page no.19 of complaint)
10.	Date of execution of Builder developer agreement	07.07.2014 (Page 18 of the complaint)
11.	Possession clause as per buyer developer agreement	1. POSSESSION OF THE UNIT:- <i>1. The Possession of the allotted unit shall be given to the Buyer by the Developer in 42 months i.e., by September 2017. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (Emphasis supplied)</i> (Page 20 of the complaint)
12.	Due date of possession	March, 2018 (Page 20 of the complaint)
13.	Total sale consideration	Rs.93,32,240/- (Page 19 of the complaint)
14.	Total amount paid by the complainant	Rs.92,18,264/- (page 59 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered
17.	Tri-partite Agreement	Date is not mentioned
18.	Memorandum of understanding	07.07.2014 (page 80 of complaint)

B. Facts of the complaint

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

- I. That the complainant comes to know about the project Supertech Hues situated at, Sector - 68, Gurugram promoted by a reputed Supertech Limited i.e. the respondent party through a real estate agent/authorize agent of respondent.
- II. That the complainant along with their family members visited the project site and local marketing office of respondent. The location was excellent and they consulted the local representative of the developer. The local representatives

of developer allure the complainant with proposed specification of project. The representative of respondent gives her a brochure, application form and price list. The representative of respondent assured that the construction would be completed in 3 years and they would give the possession of the same and being over burdened by the monthly rent complainant made their mind to own their house in respondents' project.

- III. That believing on representation of the respondent, the complainant has booked a unit in upcoming residential project of the respondent, namely Supertech Hues, situated at Sector -68, Gurugram, for Rs.93,29,225/- and remitted Rs. 7,00,000/- as booking amount , against the allotted flat no. E 2001 at Supertech Hues, admeasuring 1180 sq. ft. It was represented by marketing staff of respondent at the time of receiving of money that flat would be handover within 42 months.
- IV. That on 07.07.2014, a pre-printed, arbitrary, unilateral buyer developer agreement was executed between respondent and complainant. As per clause no. 1 of buyer agreement, respondent has to give the possession of flat by September, 2017.
- V. That on 07.07.2014, a memorandum of understanding was executed between respondent and complainant. As per MOU it was agreed that "the tenure of this subvention scheme, as approved by HDFC Limited is 42 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 42 months. The payment of Pre-EMI shall continue till offer of possession with regard to the booked flat is issued to the buyer.

- VI. That on 05.04.2014 the complainant entered a tripartite agreement with Supertech Limited and HDFC Finance Limited for availing subvention Facility on recommendation of the respondent. On 05.04.2014 HDFC Limited sanctioned home Loan Facility. The complainant sent many mail regarding her financial incapability and requested to pay the Pre -EMIS.
- VII. That the respondent after so many communications paid some of the Pre -EMI in part till 10.10.2018 and after that stopped paying the same. Aggrieved by the non-payment, the complainant sent another grievance emails dated: 04.01.2019 to respondent asking for releasing of Pre -EMI payment and payment of the difference in EMIs paid by the respondent and Actual EMI paid by the complainant.
- VIII. That Instead of paying Pre -EMI and honour the terms of MOU, respondent gives couple of offers which are not suitable to complainant.
- IX. That as per loan account statement dated 22.03.2019 current EMI of loan, which need to be bear by complainant. The respondent stopped paying Pre-EMI since December, 2018. The complaint is not able to bear the burden of EMIS and they are bouncing again and again. The respondent did not raise the construction from paid money but uses the funds for self-enrichment. Complainant is unable to bear the burden of EMIs as the income is far less than the expenditure and further paying EMIs would be suicidal.
- X. That as per statement of account dated 08/06/2019, the complainant has paid Rs.92,18,264/- till date.
- XI. That since 2015, complainant and their family members are regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted flat, but all in vain, in spite of several visits by the complainant. The complainant never been able to understand the actual status of construction. The respondent fails to raise the

construction of tower in which unit of complainant situated. The office bearers of respondent always give new excuses for delay in raising the construction and keep assuring to give the possession by April, 2020.

- XII. That the main grievance of the complainant in the present complaint is that in spite of complainant paid more than 90% i.e. Rs.92,18,264/- till date of the actual amounts of flats and ready and willing to pay the remaining amount, the respondent party has measurably failed to deliver the possession of flat.
- XIII. That the complainant had purchased the flat with intention that after purchase, her family will live in own flat. It was promised by the respondent at the time of receiving payment for the flat that the possession of fully constructed flat along like basement and surface parking, landscaped lawns, club/ pool etc. as shown in brochure at the time of sale, would be handed over to the complainant as soon as construction work is complete i.e. by 2018.
- XIV. That it is more than 4 years from the date of booking and even the structure of tower is not yet fully complete, it clearly shows the negligence towards the builder. As per project site conditions, it seems that project takes further more than three year to complete in all respect, subject to willingness of respondent to complete the project.
- XV. That the respondent fails to honour the obligations under MOU and stopped to making payment of Pre-EMI since December, 2018. Respondent used the paid money for unjustified and illegal enrichment.
- XVI. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such they are liable to be punished and compensate the complainant.

- XVII. That due to above acts of the respondent and of the terms and conditions of the builder buyer agreement, the complainant have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- XVIII. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the Complainant and others is prima facie clear on the part of the respondent which makes them liable to answer this Hon'ble Authority.
- XIX. That there is an apprehension in the mind of the complainant that the respondent is playing fraud and are not disclosing the exact facts to the complainant just to embezzle the hard-earned money of the complainant and others co-owners. Now a day many builders are being prosecuted by court of law for siphon off the funds and scraping the project mischievously. A probe needs to initiate to find out the financial and structural status of project.
- XX. That for the first time cause of action for the present complaint arose in March, 2014, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottee. The cause of action further arose in September, 2017 when the respondent failed to handover the possession of the flat as per the buyer agreement. Further the cause of action again arose on various occasions, including on: a) May, 2018; b) July, 2018; c) December 2018, d) Jan. 2019, June, 2019 and on many time till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble

Adjudicating Officers restrains the respondent by an order of injunction and passes the necessary orders.

XXI. It is submitted that the stipulated period of handing over the possession including the grace period has expired long ago and the possession of the residential premises has still not been offered and hence, the complainant is liable to receive the entire refund of the amount paid till date along with interest payable as per RERA.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
 1. Direct the respondent to refund total amount of Rs. 92,18,264/- along with interest.
5. 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.

6. The respondent is contesting the complaint on the following grounds:-
 - i. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with the frivolous complaint.
 - ii. That the reliefs for refund of entire amount is not maintainable in view of the fact that the complainant had taken a loan from HDFC Ltd. and in this regard had entered into a tripartite agreement dated 05.04.2014, with the respondent and HDFC Ltd.
 - iii. That the clauses of the tripartite agreement dully set out the terms and conditions which bind all the parties with respect tp 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 HDFC Ltd. will be refunded by the builder to HDFC Ltd. the complainant therefore the complainant subrogated all his rights for refund with respect to the said residential apartment in favour of the HDFC Ltd. Thus the complainant is devoid any right to seek refund of the amount advanced for the subject apartment.

- iv. That the present complaint is also bad for non-joinder of necessary party as the HDFC Ltd. which has provided major part of sale consideration has not been made a party in this complaint. Therefore, for this reason also the complaint deserves to be dismissed at the outset.
- v. That the complainant has not been financially prejudiced in any way in as much as besides paying an advance payment, the respondent has not received any other monies from him and has only received money disbursed by the bank and not by the complainant. Therefore, he is not entitled to seek any refund over and above the amount mentioned herein above or any other relief prayed for.
- vi. That the respondent has paid INR substantial amount towards pre-EMI on behalf of the complainant to the HDFC Ltd. and in fact is entitled to refund of the same from the complainant.
- vii. That the complainant after entering into agreements which clearly specify the rights and obligation of parties cannot wriggle out of its obligation merely on its whim and fancies and more over merely on the ground of financial difficulties without substantiating the said averment.
- viii. That there has been no default on part of the respondent in paying the pre-EMI as under the tripartite agreement the respondent has assumed liability of pre-Emi only for a period of 36 months and under the memorandum of

understanding had further agreed to pay pre-EMI after the period specified in the tripartite agreement to the complainant till offer of possession subject to receiving 90% of the sale consideration in advance.

- ix. That the present complaint regarding on discontinuation of pre-EMI by the respondent is not maintainable before the Authority in view of the fact that the rights and obligations have been duly reduced in writing under a valid tripartite agreement or memorandum of understanding between the parties which are beyond the jurisdiction of the Authority and are in nature of civil disputes.
- x. Without prejudice to the afore-said, the delay is at all, has been beyond the control of the answering respondents and as such extraneous circumstances would be categorized as "*Force Majeure*", and would extend the timeline of handing over the possession of the unit, and completion the project.
- xi. That the delay in construction was on account of reasons that cannot be attributed to the answering respondent. The agreements provide that in case the developer/respondent delays in delivery of unit for reasons not attributable to the developer, then the developer/respondent shall be entitled to proportionate extension of time for completion of said project. The relevant clauses which relate to the time for completion, offering possession extension to the said period is "clause 25 under the heading "Possession of floor/apartment" of the agreement. The answering respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.
- xii. 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 answering respondent, including but not limited to the dispute with the construction agencies

- employed by the answering respondent for completion of the project is not a delay on account of the answering respondent for completion of the project.
- xiii. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before September, 2018. However, the agreement duly provide for extension period of 6 months over and above the said dat. Thus, the possession in strict terms of the agreement was to be handed over in and around March, 2019.
- xiv. That 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. 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. Such a long break in construction has put the project many milestone back. However, the answering respondent has dedicated itself to delivering the projects at the earliest.
- xv. That the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the answering respondent had endeavored to deliver the properties within the stipulated time. The answering respondent earnestly has endeavored to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.
- xvi. That the timeline stipulated under the agreements was only tentative, subject to force majeure reasons which are beyond the control of the answering respondent. the respondent endeavor to finish the construction with 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.

- xvii. That despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant herein, the answering respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. Apart from the defaults on the part of the allottees, like the complainant like:
- xviii. Implementation of social scheme like National Rural Employment Guarantee Act and Jawaharlal Nehru National Urban Renewal Mission, 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 number of real estate projects, including that of the answering 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 by the respondent while scheduling their construction activities.
- xix. It is submitted by the respondent herein that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the project.

In light of the aforementioned prerequisites read with the force majeure events reproduced in the aforementioned paragraphs, it is prima facie evident that the present case attracts the force majeure clause.

- xx. 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 more res integra that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent as such the respondent may be granted reasonable extension in terms of the agreement.
- xxi. Anent to the above, it is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the Respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

- xxii. That the complainant has not come with clean hands before the Authority and have suppressed the true and material facts from the Authority. It would be apposite to note that the complainant is a mere speculative investor who has no interest in taking possession of the apartment.
- xxiii. That it is submitted that the project "HUES" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 4.9.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project by December, 2021.
- xxiv. That it is pertinent to reiterate that the possession of the said premises was proposed to be delivered by the respondent to the complainant by September, 2017 with an extended grace period of 6 months which comes to an end by March 2018. 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 Answering respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. 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.

- xxv. That the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before the 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.
- xxvi. 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/- Cr. to help the bonafide builders for completing the stalled/unconstructed projects and deliver the homes to the Homebuyers. The respondent/promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.
- xxvii. 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 allottees of the project as the diversion of funds would severally impact the project development. Thus, no order of refund may be passed by the Authority in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.
- xxviii. 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 Act, 2016.

- xxix. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Hues project of the Respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities.
- xxx. That, Graded Response Action Plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, these short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
- xxxi. 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, and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, it is most humbly submitted that the pandemic is clearly a "Force Majeure" event, which automatically extends the timeline for handing over possession of the apartment.

- xxxii. Hence, the complainant is not entitled for any compensation or refund claimed except for delayed charges as per clause 25 of the agreement.
7. On 30.12.2024, the complainant has filed an application for impleadment of M/s Sarv Realtors Pvt. Ltd. and for restoration of complaint as the Authority had *sine die* adjourned the matter owing to the insolvency proceedings going against certain projects developed by the M/s Supertech, which involved the project in question in the captioned matter i.e., Supertech Hues. Certain projects of M/s Supertech are undergoing insolvency, nonetheless, the particular project under the name and style of "Hues" is not included under the projects undergoing insolvency. On 21.01.2025 both the applications were allowed in view of the order of the Authority dated 29.11.2019 as per the project is to be transferred to M/s Sarv Realtors Pvt. Ltd.
8. On 09.05.2025, the respondent no. 2 has filed a reply and contesting the complaint on the following grounds:

- i. That the respondent was issued license bearing no's 106 and 107 dated 26.12.2013 and license no's. 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent and M/s. Supertech Ltd. had entered into two joint development agreement's dated 25.04.2014 and dated 26.08.2014 respectively.
- ii. That the complainant along with many other allottees had approached M/s. Supertech Ltd., making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book a unit(s) in the said project. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said unit, the complainant executed the buyer developer agreement dated 15.06.2017 with M/s. Supertech Ltd. for a unit bearing number o/ 0404, tower - B, having a super area of 1765 sq.ft. (approx.) for a total consideration of Rs. 1,33,17,410/-.
- iii. That the 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 (**M/s SARV Realtors Pvt.) Ltd.** and M/s. DSC Estate Developer 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 project instead of M/s. Supertech Ltd. Certain important directions as passed by this Hon'ble Authority are as under:
 - a. (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.

b. (v) All the assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. However, even after the rectification, 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.

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 booing/ allotment undertaken by it before the passing of the said Suo Moto order.

- iv. That thereafter the said JDA's were cancelled by the consent of both parties 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.
- v. That in terms of the said cancellation agreement the respondent and M/s. Supertech Ltd. had agreed that as M/s. Supertech Ltd. was not able to complete and develop the project as per the timeline given by the Authority and DTCP, therefore the parties had decided to cancel the JDA's vide the said cancellation agreement.
- vi. 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.

- vii. It would be apposite to note that the construction of the project is in full swing, and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort of construction activity.
- viii. That the complaint deems to be dismissed sine-die or dismissed as the R2 company, i.e. M/s. Supertech Ltd. is undergoing corporate insolvency resolution process and therefore all matters like the present one in which Supertech Ltd. is a party deem to be adjourned sine-die or dismissed in lieu of the moratorium imposed upon M/s. Supertech Ltd. U/s 14 of the IBC, 2016.
- ix. That the present case deems to be prima facie dismissed as there is no privity of contract between the complainant and the respondent. Furthermore, despite filing its application for change in promoter, the same has not been allowed till date and the same is still pending adjudication before the Authority. Thus, no case can proceed against the respondent till the final decision of the said application.
- x. That the present case also deems to be prima facie dismissed as admittedly the BBA was executed solely with M/s Supertech Ltd., all sale consideration was also paid to M/s Supertech Ltd., thus as no sale consideration as paid to the respondent neither any written agreement was signed between the complainant and respondent, the respondent cannot be ordered to refund any amounts, if any, by the Authority. It is reiterated that M/s Supertech Ltd. is jointly liable as per the Suo-Moto order.
- xi. That as 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 the respondent

and M/s. Supertech Ltd. The respondent cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.

- xii. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds.
- xiii. The delay in construction was on account of reasons that cannot be attributed to the respondent. The buyers' 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.
- xiv. 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.
- xv. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before May, 2017. However, the buyers' agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around October, 2017. However, the said date was subject to the force majeure clause, i.e. "Clause 43".
- xvi. That the timeline stipulated under the buyers agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent.

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

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

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

11. 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.

12. 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.
13. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgment passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."** *SCC Online SC 1044 decided on 11.11.2021* wherein it has been laid down as under:
86. *From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.*
14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on objections raised by the respondent no. 1
F.1 Objections regarding force majeure.

15. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 07.07.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.03.2018, which was much prior to the effect of Covid-19 on above project could happen. The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

16. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottee may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take case of unforeseen eventualities. Therefore, no further grace period is warranted in account of Covid-

19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

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

Respondent no. 1 has stated that vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as Union Bank of India Versus M/s Supertech Limited, the Hon'ble NCLT has initiated CIRP respondent no.1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 2 is no longer the assets of respondent no. 1 and admittedly, respondent no.2 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. HARERA/GGM/ 5802/2019. Respondent no.2 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.2 i.e., SARV Realtors 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.

G. Findings on the relief sought by the complainant.

G.I Direct the Respondent to refund total amount of Rs. 92,18,264/- along with interest.

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

"Section 18: - Return of amount and compensation

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

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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

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

(Emphasis supplied)

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

POSSESSION OF UNIT: -

1. The Possession of the allotted unit shall be given to the Allottee/s by the Company by September, 2018. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the Allottee/s and the Allottee/s agrees to strictly abide by the same in this regard."

20. **Due date of handing over of possession and admissibility of grace period:** As per clause 1 of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the September 2017 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly,

the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be March 2018.

21. **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.

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 20.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
24. The definition of term 'interest' as defined under section 2(z) 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:
- "(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. — For the purpose of this clause—*

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 1 of the agreement executed between the parties on 07.07.2014, the due date of possession is September 2017. 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 2018.
26. It is pertinent to mention over here that even after a passage of more than 7 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 90% (approx.) 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.

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

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

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

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

29. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes

to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority

31. 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., M/s Sarv Realtors Pvt. Ltd. is directed to refund the amount received by it from each of the complainant(s) along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant, and even if, any transfer is

initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.

- iv. No directions are being passed in the matter qua respondent nos. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.

32. Complaint stands disposed of.

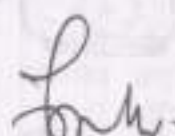
33. Files be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025

HARERA
GURUGRAM