

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

Complaint no. : 3072 of 2023
First date of hearing: 27.10.2023
Date of decision : 06.05.2025

1. Rajat bhayana
2. Anmol bhayana
Both RR/o: - A-118 Sushant Lok-3, Sector-57,
Gurgaon, Haryana-122017

Complainants**Versus**

M/s Sarv Realtors Pvt. Ltd.
M/s Supertech Limited
M/s Supertech through IRP
Registered Office: 1114, 11th Floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi - 110019

Respondent no.1
Respondent no.2
Respondent no.3

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Harshit Batra
Sh. Dushyant Tewatia
Sh. Bhirgu Dhami

Counsel for Complainant
Counsel for Respondent no.1
Counsel for Respondent no.2 & 3

ORDER

1. The present complaint dated 18.07.2023 has been filed by the complainants/allottees 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 promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees 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 |
| 5. | DTPC License no. | 106 & 107 of 2013 dated 26.10.2013 |
| | Validity status | 25.12.2017 |
| | Name of licensee | Sarv Realtors Pvt. Ltd & Ors. |
| 6. | Unit no. | 1901, on 19 th floor, (Page no. 22 of complaint) |
| 7. | Unit tentatively measuring | 1180 sq. ft. super area (Page no. 22 of complaint) |
| 8. | Unit type | 2bhk + 2 Toil (page 22 of complaint) |
| 9. | Date of Booking | 06.10.2016 (Page no. 22 of complaint) |
| 10. | Date of execution of Builder developer agreement | 06.10.2016 (Page 20 of the complaint) (duly signed by all the parties) |
| 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(s) by the developer by June 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (Emphasis supplied) (Page 25 of the complaint)</i> |
| 12. | Due date of possession | June, 2019 + 6 months = Dec 2019 (Page 23 of the complaint) |
| 13. | Total sale consideration | Rs.31,18,061/- (Page 23 of the complaint) |
| 14. | Total amount paid by the complainant | Rs.31,10,000/- (as alleged by the complainant, page 14 of complaint) |
| 15. | Occupation certificate | Not obtained |

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That that respondent no. 1 i.e., M/s Sarv Realtors Private Limited is the licensee and co-promoter of the project and had obtained license number 106 & 107 of 2013 dated 26.10.2013, license no. 89 of 2014 dated 08.08.2014, and license no. 134 to 136 of 2014 dated 26.08.2014 for the development of the group housing colony on the land falling in sector 68 which included the project land. The said licenses that the respondent no. 1 was authorized to develop the project by the Department of Town Country and Planning.
- II. That the respondent no. 2 had initially advertised the project and assured through its advertisements, assurances, and warranties that it has the complete authority to develop the said project. The respondent no. 2 had further assured the timely completion of the project and the handover of the units to the prospective buyers. The respondent no. 2 represented himself to the developer of the project and hence falls within the meaning of section 2(zk) of the Act. The respondent no. 2 went into insolvency when an

application was filed under section 7 of the Insolvency and Bankruptcy Code, 2016 and was admitted vide order dated 25.03.2022 in IB-204/(ND)/2021, however, the same is not in respect to the project in question and Mr. Hitesh Goel was appointed as the IRP and is currently responsible for the functioning of the company, hereby as respondent no. 3.

- III. That it has come to the knowledge of the complainant that respondent no. 2 had never attained permission for the development of the project and had grossly misrepresented the complainants, not only with respect to the authority of development of the project but also the completion of the pre-requisite formalities/compliances of DTCP and HARERA.

Misrepresentation by Supertech Limited and SARV Realtors Pvt. Ltd.

- IV. That the permission for development of the project was given to respondent no. 1, however, the advertisement of the project and the development was assured, represented, and warranted to have been done by respondent no. 2. The complainant were made to believe that the respondent no. 2 has the complete authority to develop the project.
- V. That certain ongoing proceedings before the DTCP in respect to the land on which the group housing colony is being developed, show that the permission for transfer of the development rights, i.e., the Beneficiary Interest Permission (the "BIP") has not been made in favour of the respondent no. 2. As such, the respondent no. 1 is still the developing authority of the project and is a promoter within the meaning of section 2(zk) of the Act.

Liability of non-development is also of Sarv Realtors Pvt Ltd:

- VI. That the respondent no. 2 had assured the complainant of its developing authority and had also communicated that it is undergoing the compliances required under the Act. It was categorically communicated to the

complainant that the registration certificate of the project would soon be granted in favour of the respondent no. 2. Relying on the representations, assurances, and warranties of the respondent no. 2, a booking was made for a 2 BHK residential apartment bearing no. 1901, 19th floor, having its super area 1180 sq. ft., and consequently, a buyer development agreement dated 06.10.2016 was executed between the parties.

- VII. That on the basis of the representations given by respondent no. 2, the registration certificate number 182 of 2017 dated 04.09.2017 was granted by this Authority vide memo number HARERA-279/2017/873.
- VIII. That later in 2019, when the fact of the no permission for development with the Respondent no. 2 was brought to light, this Authority took cognizance of the matter in suo-moto complaint no. **HARERA/GGM/5802/2019/Suo-Motu(complaints) dated 29.11.2019**, wherein, this Authority passed an **order dated 29.11.2019**, taking cognizance of the matter, the Authority passed an order dated 29.11.2019, wherein it was directed that the registration of the project shall be amended to the extent of recognizing Sarv Realtor Pvt. Ltd. as the promoter. The Authority noted "Sarv Realtor Pvt. Ltd. being the licensee is responsible for development, marketing and sale of the project admeasuring 32.84 acreas and Sarv Realtor Pvt. Ltd was noted to be a promoter under the meaning of 2(zk) of the Act of 2016 for the development in regard to the License No. 106 and 107 of 2013 dated 26.10.2023, i.e., the project in question.
- IX. That the same was also noted in a similar case titled as **Anurag Chugh v Supertech limited in complaint no. 425 of 2022**, where this Authority has already taken cognizance of such a matter and issued notices to Sarv Realtors. Hence, on the basis of the above, it becomes amply clear that the

liability of the respondents in respect to the development of the project is joint and several.

The project "Supertech Hues" is not a part of the insolvency proceedings of Supertech limited which are only limited to project ECO Village-II, hence, there is no bar to the present complaint

- X. That proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 were initiated against the respondent no. 2, vide order dated order dated 25.03.2022 of the NCLT an IRP, Mr Hitesh Goel was appointed. That after the initiation of the said proceedings, it was clarified that the name of the project "**Hues** was noted not to be a part of the CIRP and was confirmed by the respondent no. 2 and the IRP, Mr. Hitesh Goel, to the allottees of the project. The same was also confirmed by the IRP to Haryana RERA, Gurugram bench, as is evident from the following:-
- XI. Email dated 12.05.2022 from Supertech providing the list of projects that do not fall under the purview of IRP, which clearly mentions the name of "Hues".
- XII. The email dated 01.06.2022 from IRP, Hitesh Goel to Haryana RERA noting that "all assets and liabilities of the project were transferred from Supertech Limited to M/s Sarv Realtor Pvt. Ltd."
- XIII. Moreover, respondent no. 2 issued notices showing the list of projects affected by the NCLT Order dated 25.03.2022. That these, *ex facie* show that "Hues" is not a part of the Insolvency proceedings.
- XIV. That without prejudice to the contentions of the Complainant, it is also additionally submitted that the further course of events in the insolvency proceedings of the respondent no. 2 show that CIRP and CoC is restricted to only project Eco-Village II and not any other project. In an appeal against the said order dated 25.03.2022, the NCLAT passed an order dated 10.06.2022, wherein the NCLAT has issued a slew of directions that practically have the effect of converting the corporate insolvency resolution process into a

"project-wise insolvency resolution process" in as much as the constitution of a committee of creditors has been restricted only to one project named "Eco Village-II".

- XV. That this order had the effect of adoption of a reverse CIRP thereby freeing all other projects of respondent no. 2 from the embargo of the Insolvency Resolution process and restricting the said process only to the project Eco-Village II. The financial creditors of the respondent no. 2 were aggrieved by the said order and hence a challenge against the said order of NCLAT dated 10.06.2022 was made before the Hon'ble Supreme Court of India under Civil Appeal Number 1925 of 2023. The grievance and contention of the Appellant was with respect to the fact that the other projects of the Respondent No. 2 were freed from the CIRP.
- XVI. The concept of balance of convenience was noted by the Hon'ble Supreme Court and it was categorically noted that the course which has a lower risk of injustice has to be adopted. In light of the same, the Hon'ble Supreme Court had agreed with the order with the NCLAT and noted that it is in the best interest of the other projects if the same are kept as "ongoing" and not under the state of uncertainty.
- XVII. That the above-mentioned facts and circumstances categorically show that the project "Hues" does not fall within the ambit of insolvency proceedings of respondent no. 2 and even otherwise, without prejudice to the Complainant, the insolvency proceedings are restricted to only Eco Village II and not any other project and hence, there is no bar to the present proceedings.
- Inordinate delay in handing over of possession of the unit and the unabridged right of the Complainant to seek refund**
- XVIII. The respondent no. 2 was completely engrossed with its blazoning gimmick through various authorized representatives. The complainant was made to

believe that the proposed development of the respondents was reserving fast owing to the gigantic future benefits being perceived by the many allottees and that the respondents had attained all the sanctioned plans and permission for development of the project.

- XIX. That as per clause 1, page 4 of BBA and clause 24, page 10 of BBA, the possession of the unit had to be delivered by June 2019, however, the respondents miserably failed in living up to their obligations of delivering the same. Till date, a substantial sum of Rs.31,10,000/- has been paid till date. However, no corresponding development has been made by the respondents. Till date, with a delay of 6 years, the development of the project is nowhere near completion and it is anticipated that the respondents would be unable to refund amount paid by the complainant.
- XX. That the complainant cannot, in any manner, foresee the delivery of possession and having waited for a substantial amount of time, has lost faith in the bonafide conduct of the respondents. The complainant stands well within his rights in claiming the refund as they cannot be expected to wait indefinitely for the delivery of possession as was held in ***Fortune Infrastructure v. Trevor d' lima (2018) 5 scc 442 : (2018) 3 scc (civ) 1*** and ***was reiterated in Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** - "a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation"
- XXI. Moreover, it is the right of the complainant to claim refund of the deposited amounts as has been recently observed by the Hon'ble SC in ***Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors. etc. CIVIL APPEAL NO(S) 6745-6749 of 2021***

XXII. Accordingly, the complainant should be directed to refund the complete deposited amount along with interest.

A. Relief sought by the complainant: -

1. The complainant has sought following relief(s):
 - I. To direct refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation.
 - II. To direct the Respondents to not sell/create third party right till complete realisation/refund.
2. 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.
3. No reply has been submitted by the respondent no.2 i.e., M/s Supertech Ltd. However, the counsel for respondent no. 1 has stated that the respondent no.1 is under CIRP vide order dated 25.03.2022 passed by the Hon'ble New Delhi in case no. IB-204/ND/2021 titled as *Union Bank of India Versus M/s Supertech Limited* and moratorium has been imposed against the respondent no. 1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against the respondent no. 2.

B. Reply by the respondent no.1.

4. The respondent is 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 respondent no. 2, i.e. M/s. Supertech Ltd. had entered into two Joint Development Agreement's dated 25.04.2014 and dated 26.08.2014 respectively. In terms of the said JDA's the respondent no. 2 was to develop and market the said project.

- ii. That the complainants along with many other allottees had approached the respondent no. 2, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book a unit in the said project.
- iii. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said unit, the complainants executed the buyer developer agreement dated 06.10.2016 a unit bearing number no. A/1901, 19th floor, having a super area of 1180 sq. ft. for a total consideration of Rs.31,18,061/-.
- iv. 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 R2.
- v. 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 (**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;
- (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.

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

That in lieu of the said directions passed by this Authority all asset and liabilities have been since transferred in the name of the respondent no. 2. 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 JDA's were cancelled by the consent of the respondent no. 2 and M/s Supertech Limited vide cancellation agreement dated 03.10.2019 and the respondent no. 2 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 no. 2 and M/s Supertech Limited had agreed that as M/s Supertech Ltd. was not able to complete and develop the project as per the timeline given by this Hon'ble Authority and DTCP, therefore the parties had decided to cancel the JDA's vide cancellation agreement.
- viii. 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 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. Till date, there are several embargos qua construction at full operational level.
- x. That the present 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..
- i. That as M/s. Supertech Ltd. and the respondent no.2 are jointly and severally liable in terms of the Suo Moto Order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between the respondent no.2 and M/s. Supertech Ltd. The respondent no. 2 cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.
- ii. 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. 2 with this frivolous complaint.
- iii. The delay in construction was on account of reasons that cannot be attributed to the respondent herein. The flat buyers' agreements provide that in case the developer/respondent delays in delivery of unit for reasons not attributable to the developer/respondent, then the developer/

respondent shall be entitled to proportionate extension of time for completion of project.

- iv. 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.
- v. That with respect to the agreement, the time stipulated for delivering the possession of the unit was on or before June, 2019. However, the buyer's agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around January, 2019. However, the said date was subject to the force majeure clause, i.e. "Clause 43". 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 endeavored to deliver the property within the stipulated time.
- vi. The timeline stipulated under the flat buyer's agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- vii. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant, the respondent could not do so due to certain limitations, reasons and circumstances beyond the

control of the respondent. Apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances like:

- 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.
- That such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex..

- viii. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. The delay in construction, if any, is attributed to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the agreement.
- ix. 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 04.09.2017 to 31.12.2021.
- x. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by June, 2019 with an extended grace period of 6 months which comes to an end by December, 2019. The completion of the building is delayed by reason of Covid-19 outbreak, non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent.
- xi. That the enactment of the Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before the Authority. According to the terms of builder buyer's agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time final settlement on slab of offer of possession.
- xii. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all

construction activity in the Delhi- NCR region. It would be apposite to note that the 'Hues' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

- xiii. 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.
- xiv. The table concluding the time period for which the construction activities in the Project was restrained by the orders of competent Authority/Court are produced herein below as follows:-

| S. No. | Court/Authority & Order Date | Title | Duration |
|--------|---|--|---------------------------------|
| 1. | National Green Tribunal 09.11.2017 | Vardhman Kaushik vs Union of India | Ban was lifted after 10 days |
| 2. | Press Note by EPCA- Environment Pollution (Prevention and Control) Authority | Press Note-31.10.2018 | 01.11.2018 to 10.11.2018 |

| | | | |
|--------------|---|--|--------------------------|
| 3. | Supreme Court-23.12.2018 | Three-day ban on industrial activities in pollution hotspots and construction work | 23.12.2018 to 26.12.2018 |
| 4. | EPCA/ Bhure lal Committee Order-31.10.2018 | Complete Ban | 01.11.2019 to 05.11.2019 |
| 5. | Hon'ble Supreme Court 04.11.2019-14.02.2020 | M.C Mehta v. Union of India Writ Petition (c) no. 13029/1985 | 04.11.2019 to 14.02.2020 |
| 6. | Government of India | Lockdown due to Covid - 19 | 24.03.2020 to 03.05.2020 |
| 7. | Government of India | Lockdown due to Covid-19 | 8 weeks in 2021 |
| Total | | 37 weeks (approximately) | |

xv. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the respondent were forced to return to their home towns, leaving a severe paucity of labour. That the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

xvi. That the complainant is not entitled for any compensation or refund claimed except for delayed charges, if applicable as per clause 2 read with 24 of the builder buyer agreement.

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.

C. 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.

E.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.

E.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.

10. 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.

11. 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.

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

D.1 Objections regarding force majeure.

12. 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 06.10.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be December 2019, which was prior to the effect of Covid-19 on above project could happen. The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that-

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

13. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottee may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take case of unforeseen eventualities. Therefore, no further grace period is warranted in account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

F.II Objection regarding CIRP against respondent no. 2 and consequent moratorium against proceedings against respondent no.2.

14. Respondent no. 2 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. 1 is no longer the assets of respondent no. 2 and admittedly, respondent no.1 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/5802/2019**. Respondent no.1 has stated in the reply that the MDA was cancelled by consent of respondent no.2 and respondent no.1 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.1 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.1 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., respondent no.2 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 2 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage
- E. **Findings on the relief sought by the complainants.**
- G.I **Direct the respondent to refund total amount of Rs. 27,35,944/- along with interest@24% per annum from the date of payment till its actual realization.**
- G.II **Cost of litigation of Rs.2,00,000/-**
15. The complainants have submitted that they initially filed a complaint bearing No. CR/3753/2020, titled **Rajat Bhanaya & Anmol Bhayana vs. Supertech**

Limited, before the Authority in Gurugram. The Authority, vide order dated 27.10.2020, held that the complainants are entitled to delayed possession charges under Section 18(1) of the Act, 2016, at the prescribed interest rate of 9.30% per annum. However, the respondent has neither paid the delayed interest amount in compliance with the order nor handed over possession of the unit. Furthermore, there appears to be no likelihood of possession being delivered in the near future. Therefore, the complainants now wish to withdraw from the project. The initial complaint was filed **Limited**, for violating the provisions of The Real Estate (Regulation and Development) Act, 2016. Where all the assets and liabilities whatsoever in nature, in the project "Supertech Hues and Azalia" in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. The relevant portion of the said order is reproduced here:

vi. All the assets and liabilities including customer receipts and project loans of whatsoever nature, in the Project "Supertech Hues and Azalia" in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd./DSC and others. However, even after the rectification, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if Sarv Realtors Pvt. Ltd./DSC and others fail to discharge its obligations towards the allottees

16. The Authority further observes that vide registration bearing no.182 of 2017 dated 04.09.2017 valid upto 31.12.2021 for License bearing no. 106- 107 of 2013, 89 of 2014 and 134-136 of 2014 issued by the Department of Town and Country Planning, Haryana for an area 32.83 acres Group Housing Colony ("Hues Towers- A,B,E,F,G,H,M,N,K,T,V,W,O,P,C and D and Azalia Towers T-1,T-2,T-3,T-4,T- 5,T-6 & T-7) situated in Village Badshapur, Sector 68 are registered with the Authority. In view of the same M/s Sarv Realtors Pvt. Ltd. /DSC and others are bound to follow the order of the authority along with Supertech Ltd. as they are liable for all the assets and liabilities of Supertech Ltd. in connection to project Supertech Azalia and Supertech Hues.

17. Moreover, on hearing dated 11.03.2025, the counsel for the complainants clarifies that the refund is being sought from the M/s Sarv Realtors Pvt. Ltd. to whom the project has been handed over and impleadment has already been allowed by the Authority on 10.12.2024.
18. In the present complaint, the complainants intend 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 complainants, 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 June, 2019. 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 June 2019 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason

for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be December 2019.

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

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

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

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

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 06.05.2025 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:

"(za) 'interest' means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

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

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 1 of the agreement executed between the parties on 06.10.2016, the due date of possession June 2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is December 2019.
26. It is pertinent to mention over here that even after a passage of more than 6 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 99% 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*.

F. 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:
- The respondent no.1 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.

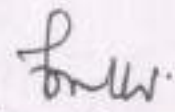
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.
 - iv. No directions are being passed in the matter qua respondent nos. 2 & 3 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: 06.05.2025