

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

Complaint no. : 2361 of 2021
First date of hearing: 02.08.2021
Date of decision : 13.05.2025

1. Surinder Ahlawat**2. Savitri Ahlawat**

R/o: - House No. 653/21, Sant Colony, Railway
Road, Bahadurgarh, District Jhajjar

Complainants

Versus

M/s Supertech Limited

M/s Sarv Realtors Pvt. Ltd.

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

Respondents**CORAM:**

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman**Member****Member****APPEARANCE:**

None

Sh. Bhirgu Dhami

Sh. Rohit Arora

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

1. The present complaint dated 09.06.2021 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

- 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.	1001, on 10 th floor, (Page no. 21 of complaint)
7.	Unit tentatively measuring	1180 sq. ft. super area (Page no. 21 of complaint)
8.	Date of Booking	29.03.2014 (Page no. 21 of complaint)
9.	Date of execution of Builder developer agreement.	02.02.2016 (page 20 of complaint)
10.	Possession clause as per buyer developer agreement	The possession of the allotted unit shall be given to the allottee/s by the company by JULY 2018. However, this period can be extended for a further grace period of 6 months.
11.	Due date of possession	JULY 2018 + 6 months = January 2019
12.	Basic sale consideration	Rs.90,46,680/- (Page 22 of the complaint)
13.	Total amount paid by the complainant	Rs.27,35,944/-

14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - I. That the complainant had purchased a residential unit bearing No. 1001, 10th floor, admeasuring 1180 Sq.ft. in the said in the project known as "Supertech Hues" Revenue Estate of Village Badshahpur, Sector-68, Gurugram-122001 for a total sale consideration of Rs. 88,82,660/-. The said unit was purchased on a possession linked plan and the amount had to be paid to the builder as the work of the project progresses on various stages. At that time a few installments were due and the complainant had given Rs. 27,35,944/- approximately to the respondent as per possession linked plan.
 - II. That as per the demands of the respondent, the complainants had deposited total amounting to Rs. 27,35,944/- in installments.
 - III. That after taking the money, the respondent failed to deliver the possession as per the terms and conditions of the agreement that the possession of the said premises to be delivered by the developer to the complainants by July, 2018 with grace period of six months. The respondent has failed to deliver the possession of the above said unit within prescribed time period. But still after elapsed many years after taking huge hard earned money from various investors, the respondent has intentionally and deliberately did not deliver the possession of the flats.
 - IV. That complainants at the time of booking of the unit and also at the time of signing of the buyer developer agreement on 02.02.2016 were repeatedly assured that the project would be completed in stipulated time period and the possession of the flat to them would be given as per planned schedule i.e. till July, 2018 with grace period of six months. However, the contractual

delivery of the possession of the unit to complainants by the respondent was July, 2018.

- V. That it is abundantly clear by the act and conduct of the respondent that they have not only defrauded the complainants, but also have violated the terms and conditions of the agreement. It is apparent that the respondents have provided deficient services, are guilty of unfair trade practices, and have planned to fleece the complainants of their hard-earned money in a well directed and pre-planned manner.
- VI. That the actions of the respondent are violative of the principles of natural justice and the services rendered are deficient, malafide, unfair, unjust and illegal as have been shown in the preceding paragraphs. The said practices are against principal of natural justice and the respondent is liable to be severely deprecated by this Hon'ble Authority.
- VII. That the respondent has caused monetary losses to the complainant and has denied them the right to enjoy the property for which they have already paid major amount. Even more damaging, they have caused immense mental agony, confusion, insecurity and pain to the complainants.
- VIII. That the complainants have also further incurred costs towards the legal/documentation and other expenses due to no fault of their own.
That the complainants have until date deposited Rs. 27,35,944/- i.e. 35% of total amount in furtherance of the terms and conditions of buyer developer agreement with the respondent as per their demands raised.
- IX. That the act and conduct of the respondent amounts to grave deficiency in service and unfair trade practice of the highest degree. The respondent has caused great mental agony and physical harassment to the complainants. The complainants have paid such a huge amount after collecting their life's savings with hope to move into their own apartment in the NCR region.

- X. That the respondent is guilty of deficiency in service as per Act. The complainants have suffered on account of deficiency in service by the respondent. As such the respondent is fully liable to deliver the possession of the above said unit along with penalty of Rs. 5/- per sq.ft. of super area of the unit per month for any delay in handing over possession of the unit.
- XI. That the respondent has retained the hard earned money of the complainant and has failed to render specific service of providing a unit on time to the complainants and now the respondent flatly refused to deliver the possession.
- XII. That in the period following the making of the above stated payments, the complainants gradually came to realize that the promises of timely possession of the above unit were nothing but false assurances and misrepresentations on the parts of the respondent. There have been a situation where the respondents have failed to deliver possession of the constructed unit as per the schedule that had been promised by the respondent 36+6 months from the date of execution of the buyer's agreement.
- XIII. That it was at this stage that the complainants again contacted the representatives of the respondent to find out status of unit handing over. The complainants sought information on the tentative timeline for possession by way of a clear and firm assurance by the respondent that they shall complete the project on time. Much to their dismay, the respondent refused to provide any such assurance.
- XIV. That it is abundantly clear by the act and conduct of the respondent that they have not only defrauded the complainants, but also have violated the terms of the builder's buyer agreement by not offering possession within stipulated time period. It is apparent that the respondent has provided deficient

services are guilty of unfair trade practices, and have planned to fleece the complainant of their hard-earned money in a well-directed and pre-planned manner. Due to this, on the one hand, the complainant is deprived of moving into his own unit in the pre-agreed timeframe and, on the other hand, they are suffering additional loss because of blocked capital of a very heavy amount for no fault of their own.

- XV. That the actions of the respondent are violative of the principles of natural justice and the services rendered are deficient, malafide, unfair, unjust and illegal as have been shown in the preceding paragraphs. The said practices are against the tenants of ethical business and are liable to be severely deprecated by the Authority.
- XVI. That the respondent has caused monetary losses to the complainant and has denied them the right to enjoy the property for which they have already paid major amount. Even more damaging, they have caused immense mental agony, confusion, insecurity and pain to the complainants. That the complainants have also further incurred costs towards the legal/documentation and other expenses due to no fault of their own.
- XVII. That the complainants have until date deposited Rs. 27,35,944/- in furtherance of the buyer's agreement with the respondent as per their demands raised. However, the respondent has failed to deliver/offer possession of their allotted unit to the complainants within the stipulated time.
- XVIII. That the act and conduct of the respondent amounts to grave deficiency in service and unfair trade practice of the highest degree. The respondent has caused great mental agony and physical harassment to the complainant. The complainant has paid such a huge amount after collecting their life's savings with hope to move into their own unit in the NCR region.

- XIX. As per clause no. E (24) of the agreement the possession of unit was to be handed over till July, 2018. So far, the complainant has not been offered possession which is violation of obligations/ responsibility as per the agreement.
- XX. That the respondent is guilty of deficiency in service as per Act. The complainant has suffered on account of deficiency in service by the respondent. As such the respondent is liable to refund the entire amount of Rs. 27,35,944/- along with interest @ 24% per annum from the date of payment till its actual realization.
- XXI. That the complainants had filed a complaint bearing No. **CR/6779/2019 titled as Surinder Ahlawat Vs. Supertech Limited** before Haryana Real Estate Regulatory Authority, Gurugram, whereby the Hon'ble Authority was pleased to pass that the complainant is entitled for delayed possession charges Under Section 18(1) of the Real Estate (Regulation & Development) Act, 2016 at the prescribed rate of interest i.e. 9.30% per annum from the due date of possession till the handing over of physical possession of the allotted unit on the amount deposited by the complainant with the respondent vide order dated 27.10.2020. Respondents neither paid the delayed interest amount in compliance of order nor deliver the possession of the unit and there is no scope of handing over the above said unit in near future to the complainant by the respondent.
- XXII. That the complainant is running from pillar to post for her legal and lawful grievances but the respondent did not pay any heed to the request of the complainant and as such the complainant has suffered huge financial loss, mental agony, harassment, pain and suffering at the hands of the respondent.

D. Relief sought by the complainant: -

1. The complainant has sought following relief(s):

- I. To 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.
 - II. Cost of Litigation of Rs. 2,00,000/-.
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.
- C. Reply by the respondent no.1.**
3. The respondent is contesting the complaint on the following grounds:-
- i. It is submitted that the matter with respect to jurisdiction of the Hon'ble Authority or the Hon'ble Adjudicating officer is still pending adjudication before the Apex Court, thus no statutory vested jurisdiction being available with either the Hon'ble Authority or the Hon'ble Adjudicating officer, present complaint ought to be adjourned sine die till the final decision on the subject matter by the Hon'ble Apex Court, vesting jurisdiction to adjudicate upon refund matter either upon the Hon'ble Authority or the Hon'ble Adjudicating officer. It is submitted that the order with respect to the Jurisdiction has been reserved by the Hon'ble Apex Court.
 - ii. That the complainant has already sought relief under section 18 of the Act and was awarded compensation vide order dated 07.10.2020 by HRERA in complaint no. CR/6779/2019. Therefore, by the principle of Res-judicata the complainant is barred to make differed claims on the same cause of action and extraneously benefit from the situation of the respondent.
 - iii. Further, the Hon'ble Apex court has vide order dated 05.11.2020 issued a stay on the judgment and law as decided/declared by the Hon'ble Punjab and Haryana High Court vide judgment being CWP no. 34271 / 2019.

- iv. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- v. It may be pointed out that the complainants have not been financially prejudiced in any way in as much as besides paying approx. 35% of the amount, the respondent has not received any other moneys from him. Therefore, they are not entitled to seek any refund over and above the amount mentioned herein above or any other relief prayed for.
- vi. It is submitted that the complainant after entering into agreements which clearly specify the rights and obligations of parties cannot wriggle out of its obligations merely on its whim and fancies and more over merely on the ground of financial difficulties without substantiating the said averment. The complainant may be put to strict proof in this regard.
- vii. As being the regular benefactor through means of wrongful gains, the complainant has strictly failed to abide by the terms of the clause F of the builder buyer's agreement which clearly defines the process of cancellation and loss it can cause to both the buyer and the developer.
- viii. Without prejudice to the afore said, the delay if at all, has been beyond the control of the 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 of the project.
- ix. The delay in construction was on account of reasons that cannot be attributed to the respondent. The 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

would 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 1 under the heading "possession of floor/ apartment" of the agreement. The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.

- x. In view of the force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of the respondent for completion of the project.
- xi. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before July 2018. However, the agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the agreement was to be handed over in and around December, 2018. However, the proposed possession date was subject to the force majeure clause.
- xii. 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 milestones back. However, the respondent has dedicated itself to delivering the projects at the earliest.
- xiii. Due to the Covid condition and the its devastating effect on the Indian economy specially the real-estate sector arranging of funds for completion

of projects has become an impossible task as the banks and NBFC's have made it difficult for builders to apply for loans for completion of pending projects. However, the respondent undertakes to handover possession of the subject unit at the earliest.

- xiv. It is a known fact that the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavored to deliver the property within the stipulated time. The 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.
- xv. It is submitted that the timeline stipulated under the agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- xvi. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant herein, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. 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:
 - i. 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 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 for by the Respondent while scheduling their construction activities.

- ii. 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..

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. 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 Answering Respondent and as such the Answering Respondent may be granted reasonable extension in terms of the Agreement.

- iii. 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 demonetization led to systemic operational hindrances in the real estate sector, whereby the Answering 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.

- iv. That the complainant has not come with clean hands before this Hon'ble Forum and have suppressed the true and material facts from this Hon'ble Forum. It would be apposite to note that the Complainant is a mere speculative investor who has no interest in taking possession of the apartment.
- v. That the project "HUES" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 04.09.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project by June 2022.
- vi. That the possession of the said premises was proposed to be delivered by the respondent to the Complainant by July 2018 with an extended grace period of 6 months which comes to an end by December, 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 Answering



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 Answering Respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the Answering Respondent to get the delivery of project, delayed, to the allottees. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was I has been stopped for a considerable period of days due to high rise in Pollution in Delhi NCR.

- vii. 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 Answering 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.
- viii. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs. 25,000 Crore to help the Bonafide Builders for completing the Stalled/unconstructed projects and deliver the homes to the Homebuyers. It is submitted that the Answering Respondent/Promoter, being a bonafide Builder, has also applied for Realty Stress Funds for its Gurgaon based projects. The said news was also published in Daily News/Media.

- ix. 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 this Hon'ble forum in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.
- x. That the complainant cannot unilaterally cancel/withdraw from the project at such an advance stage as the same would fly in the face of numerous judicial pronouncements as well as the statutory scheme as proposed under the Real Estate (Regulation and Development) Act, 2016.
- xi. That the Hon'ble Supreme Court in its judgment of ***Pioneer Urban Land and Infrastructure Limited & Anr. V. Union of India & Anr.***, the Supreme Court has nuanced a balanced approach in dealing with legitimate builders. Furthermore, the Court has laid emphasis on the concept of "legitimate/bonafide buyers" whereby one cannot be considered a homebuyer if he/she is not willing to see the project to its end or is investing in the project with a speculative mindset, to withdraw his/her money before giving credence to the project. The said reasoning has also been used by the Hon'ble National Company Law Appellate Tribunal in its judgment titled "***Navin Raheja v. Shilpi Jain and Ors.***". The Hon'ble NCLAT was even more strenuous in its approach whereby it called these speculative investors as trigger-happy investors who ignite the flame which may very well lead the genuine developer company to its death.

- xii. That when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted.
- xiii. 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. 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.
- xiv. 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.
- 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 was 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. 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. Hence, the complainant is not entitled for any compensation or refund claimed except for delayed charges as per clause 25 of the agreement.

4. On 10.12.2024, the respondent no.2 was directed to file the reply within stipulated time period. Further, on 11.03.2025, the respondent was again directed to file reply to the main complainant within 15 days. However, despite specific directions, the respondent no. 2 failed to file the written reply and has failed to comply with the order of the Authority. It shows that the respondent is intentionally delaying the proceedings of the Authority by non-filing of written reply. Thus, the defence of the respondent was struck off for not filing reply and is being decided on basis of facts and documents submitted with the complaint which are undisputed.
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.

E. 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.

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

F.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 02.02.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to

be January 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. 1 and consequent moratorium against proceedings against respondent no.1.

14. 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 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/6779/2019, titled *Surinder Ahlawat 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,

calculated from the due date of possession until the actual handing over of physical possession of the allotted unit, on the amount deposited by the complainants with the respondent. 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 July, 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 July 2018 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 January 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., 13.05.2025 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 02.02.2016, the due date of possession is July 2018. 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 January 2019.

26. It is pertinent to mention over here that even after a passage of more than 8 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 37% 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 I 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:
- 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 complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.
 - iv. No directions are being passed in the matter qua respondent nos. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.
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: 13.05.2025