

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

Complaint no. : 212 of 2019
Date of filing: 29.10.2019
Date of decision : 27.05.2025

1. Sh. Mohan Lal through LR's
 - i. Suniel Gautam
 - ii. Meena
 - iii. Mala Gautam

Regd. Address: House No. 17/228, Sector-7,
Rohini, North West Delhi, New Delhi-110085

2. Mr. Ramesh Kumar Raheja

Regd. Address: House No. 139, Huda Sector- 11,
Panipat, Haryana-132103

Complainants**Versus**

1. M/S Supertech Limited
Regd. office: 114, 11th floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi-110019
2. M/S Sarv Realtors Pvt. Ltd
Regd. office: 114, 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:**

Sh. Harshit Batra (Advocate)

Sh. Bhriugu Dhami (Advocate)

Sh. Gaurav Raghav (Advocate)

Complainants**Respondent no. 1****Respondent no. 2****ORDER**

1. That the present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016

(hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

A. Project and unit related details

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

S. No.	Particulars	Details
	Name of the project	Supertech Hues, Sector-68, Gurugram-122101
1.	Project area	55.5294 acres
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017
	Validity Status	31.12.2021
4.	DTPC License no.	106 & 107 of 2013 dated 26.12.2013
	Validity status	25.12.2017
	Name of licensee	Sarv Realtors Pvt. Ltd. & Ors.
5.	Unit no.	F 1004, 10 th floor, Tower V (Page no. 35 of complaint)
6.	Unit measuring	1430 sq. ft. super area (Page no. 35 of complaint)
7.	Date of Booking	13.10.2013 (Page no.35 of complaint)
8.	Date of execution of Buyer developer agreement	19.06.2014 (Page 34 of complaint)
9.	Possession clause	POSSESSION OF UNIT: - <i>I. The possession of the allotted unit shall be given to the allottee /s by the company by April 2017. However, this period can be extended for a further grace period of 6 months.</i> (Page 37 of the complaint)

10.	Due date of possession	April 2017 + 6 months = October 2017
11.	Total sale consideration	Rs. 1,06,27,240/- (page 36 of complaint)
12.	Total amount paid by the complainants	Rs. 28,00,000/- approx. paid by the complainants. Rs. 48,00,000/- approx. disbursed by the bank.
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered
15.	Tripartite agreement	28.07.2016

B. Facts of the complaint

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

- That the complainants were allured by the tall claims of the promoter/ developer for world class infrastructure and timely possession of the flat. The advertisement and the brochure were shown on the official website. Facilities like clubhouse and other amenities were shown as an added advantage to the project, to be booked by the customers.
- That the promoter issued an advertisement in newspaper/electronic media/e-mail and other media inviting the applications for the purpose of flat in the real estate project located in Gurgaon, in the project, in the project named "Supertech Hues" at Sector 68, Gurugram, Haryana.
- That the complainants are a retired government official and from his hard earned savings booked the flat for his son and paid an amount of Rs. 6lacs on 12.10.2013. The respondent, thereafter, prepared the buyers agreement on 19.06.2014 i.e. after 8 months of receiving booking amount.
- That the complainants were assured that the possession of the unit shall be given by April, 2017 and the grace period of 6 months shall be given and by October, 2017, the possession shall be handed over. The clause 24 of the buyer's agreement is crystal clear giving the date of possession.

- e. That the complainants entered the buyer's agreement and opted for tower V and unit no. 1004 was allotted as per complainants' preference looking at the site map and preference location. The net basic price of the unit was Rs.92,49,240/- and over and above, preference location charges were to be paid, club membership, development charges, electricity installment charges, IFMS charges, parking, power backup and the total amount was calculated at Rs.1,06,27,240/-. The service tax would have been extra. The payment plan was construction link plan which clear from agreement itself. That the complainants paid the amount without any delay and honoured the covenants of the agreement and continued to pay as per the construction link plan.
- f. That the respondent wrote an e-mail dated 13.06.2016, wherein, the developers promoted a subvention scheme and construction updated was shown as on 08.06.2016 that the entire superstructure was complete in pictures.
- g. That the respondent in order to fool the gullible consumer, introduced a subvention scheme, wherein, no EMI will be paid by the consumer till the possession at no extra cost and the construction update was shown to be that the project is structurally complete. The complainants got allured with the lucrative offer and entered into a tripartite agreement on 28.07.2016 between the respondent and the complainants and India Bulls Housing Finance Limited and sanctioned a loan of Rs.70 lacs was approved by the India Bulls Housing Finance Limited and disbursal was of Rs.48lacs approx. As per conditions, the total loaned/disbursal amount interest would be paid to the respondent and the respondent shall assume the liability on account of interest payable by complainants to the IHFL during the period referred as liability period. The subvention period started from August,

2016 to February, 2019 (30 months) and the scheme was in February, 2019 meaning thereby, the builder has taken 75% of the total value of the unit booked by the complainants.

- h. That there were many occasions in between the respondent failed to make payment to the IHFL and the recovery agent used to visit home of the complainants and it was an embarrassing situation where the things were to be clarified that who is liable to pay the amount of EMI. The respondent is in habit to delaying and defaulting the EMIs.
- i. That the subvention shall be over in February, 2019 and the project is already delayed, where the possession was to be handed over after the grace period by January, 2018 and the tower booked by the complainants for the specific purpose being preferred location looking at the both side greener area closer to shopping centre and club house and away from the road but however, the present situation of the tower is that there is no structure even standing. Only the ground level construction is done. There is no likelihood that the project shall be completed within a year and it has already by a year. The purpose of buying the premises has failed now and complainants wants to withdraw the entire amount deposited by him along with interest.
- j. That the booking was done with the respondent on 13.10.2013, when it was not even capacity to take the booking amount and advertised the said project which was in violation to the town and country planning notification but they continued to cheat the complainants by taking the booking amount without having any legal sanctity to accept the booking amount which is in violation of rules and regulations of the town and country planning and complainants have been cheated with the fraudulent act of the respondent company.

- k. That the respondent had taken the entire amount and has failed to handover the possession in a stipulated time period as specified in the buyer's agreement. The complainants are left with no option but to seek the refund of the total amount.
- l. That the complainants cannot wait indefinite for seeking the possession of the unit booked by him and the entire transaction was in a fraudulent manner as the respondent were not in a capacity to even accept the booking amount. Therefore, the respondent has no right to defend themselves as fraud vitiates everything.
- m. That the buyer's agreement however does not specify anywhere that in case of failure to deliver the timely possession of the unit, the buyer has the right to seek refund of the entire amount without any forfeiture. The promoter has nowhere mentioned any remedial measures to be taken in case of deficiency or failure of service. Therefore, this agreement is totally unfair and one sided as per Section 18 Act 2016. Hence, the buyer's agreement violates this, law. The promoter has accepted that the project has to abide by RERA, but there is no evidence of his compliance on this matter even after of RERA enforcement in Haryana.
- n. That the agreement clearly mentions about the proportion of BSP to be paid as per construction linked plan floor wise construction and other charges like club house, school, PLC, covered car parking etc. which was to be paid at the time of offer of possession but the respondents deducted the same from the deposited amount of the complainants as per construction linked plan and further on seeking explanation, it was informed that the portion of amount was adjusted in other facilities like club house, school, PLC, covered car parking for the project as assured by the developers The respondent/builder adjusting the deposited amount in a secretive manner

and even as per payment demand letters there is no mention of the same. On the contrary there is no development/construction of clubhouse, schools etc. for the amount deposited by the complainants. The photographs are attached for ready reference and the E-mail is attached the manner in which amount stands deducted by the developer. The builder did not disclose this break-up from day one as evident from demand letters and the agreement is even silent about the same. Thus, the developer has acted in malafide intension and has violated the RERA Act and its Rules.

- o. That the buyer's agreement is unjustifiable and in violation to business ethics. It nowhere states anything about failure of services by the promoter, in case they fail to hand over the possession they shall continue to pay compensation for delayed period but the allottee cannot walk out of the project. Therefore, the buyer's agreement is totally one sided protecting the rights of the developers and in violation to RERA. Thus, this Act has naturally caused a huge financial loss and mental stress to me and my family The promoter/developer is liable to pay interest to the allottees as per Rule 15 of Rules 2017, as admittedly the developer has failed to give the possession of the flat booked by the complainants as per terms and condition. The promoter further failed to comply with the RERA Act and Haryana RERA rules.
- p. That the buyer's agreement also has an unfair clause, which states that any delay in paying installment to promoter would lead to 2% per month compensation to the promoter, and implies that this is irrespective of any long delay by the promoter to deliver flats. The complainants have already paid 85% of the total basic cost as per the constructions linked payment plan and there was no delay in the installments. The project is nowhere

near completion even after the booking of the flat, it's been more than 4½ years and the time to hand over the flat as per the buyer's agreement is over. Hence, the complainants shall be given back the hard-earned money along with interest, compensation and damages

- q. That the complainants sent the legal notice to the respondents for the refund of the deposited amount as they failed to timely deliver the possession of the flat as per buyers agreement.

C. Relief sought by the complainants: -

The complainants have sought following relief(s):

- I. Direct the respondent to refund the amount paid by the complainants along with prescribed rate of interest from the date of respective deposits till its actual realisation, in accordance with the provisions of the act.
4. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1

5. The respondent is contesting the complaint on the following grounds:-
- a. That the project "**Supertech 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. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project on or before the year 2021.
 - b. That the possession of the said premises is proposed to be delivered by the respondent to the apartment by April, 2017 with an extended grace period of 6 months which comes to by October 2017. The completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials and/ or water supply or electric power and/ or

slow down strike etc. which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be entitled to a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainants and respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. It is also pertinent to mention here that due to orders passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for few days due to high rise in Pollution in Delhi NCR.

- c. That due to stagnation, sluggishness, down fall in real estate market, due to demonetisation as well as coming into force of GST, the speed of work/ construction of every real estate sector market has been too slump which results in delay of delivery of possession. The plea of allottees in all the complaints for refund is not tenable in the eye of law. Thus, due to insufficient monetary fund as well as huge down fall in the Real Estate market, all the Allottees have planned to seek refund of the invested money.
- d. 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 sector market. Thus, the plea/ relief of refund claimed by every allottee is not sustainable in the eye of law rather is a pre-planned to get refund their money to get safe from breach of contract in future for making further instalments, by filing such frivolous complaints.
- e. That the respondent also undertakes to complete the project by the year December 2021 but will give offer of possession to the complainants. The

respondent also submit that if the complainants want an early possession, the complainants may be given an alternative inventory/ unit available either in project Araville which is completed or in the Project Hues Tower- A, B, E, F, where date of possession is June 2020 as per convenience of the complainants.

- f. 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.
- g. That the complainants are not entitled for any compensation claimed except for compensation for delayed possession as per clause 2 of the builder buyer agreement

E. Reply by the respondent no. 2

- 6. The respondent no. 2 implead as party vide order dated 27.05.2025 is contesting the complaint on the following grounds:-
 - a. That 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. 1, 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.
 - b. That the complainants along with many other allottees had approached the respondent no. 1, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book an apartment in the said project.
 - c. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainants executed the buyer developer agreement dated 19.06.2014 only with R1

for an apartment being number no. V/ 1004, 10th floor, having a super area of 1430 sq. ft. (approx.) for a total consideration of Rs. 1,06,27,240/-.

- d. That in the interim with the implementation of the 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 R1.
- e. That the Authority vide order dated 29.11.2019 passed in Suo Moto complaint no. 5802/ 2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "**Hues & Azalia**", to the answering 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 the 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, Superech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd./DSC and others fail to discharge its obligations towards the allottees.

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

- f. That thereafter the said JDA's were cancelled by the consent of both parties vide cancellation agreement dated 03.10.2019 and the answering respondent from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- g. That in terms of the said cancellation agreement the respondent and R1 had agreed that as R1 was not able to complete and develop the project as per the timeline given by the Authority and DTCP, therefore the parties had decided to cancel the JDA's vide the said cancellation agreement.
- h. 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 complainants.
- i. That the possession date was much before the passing of the Suo Moto Order, further the alleged MoU or loan documents have been executed between the complainants and R1 and R2 only and the party has no privity of contract with either of the parties qua the subject unit. The respondent cannot be burdened with any liability w.r.t to any Pre-Emi's or any liability arising out of any contract which it was admittedly not privy to.
- j. 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.

- k. That the present Complaint deems to be dismissed sine-die or dismissed as the R1 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.
- l. That even the application seeking impleadment had been wrongly allowed, as once the sole respondent, M/s. Supertech Ltd. was undergoing insolvency proceedings since 25.03.2022, thus, no proceedings in the present matter could have continued after the said date. However, the Authority has wrongly allowed the said application in contravention of the provisions of section 14 IBC, 2016.
- m. The present case deems to be prima facie dismissed as there is no privity of contract between the complainants and the respondent. Furthermore, despite filing its application for change in promoter, the same has not been allowed till date and the same is still pending adjudication before the Authority. Thus, no case can proceed against the respondent till the final decision of the said application.
- n. The present case is bad for non-joinder of necessary parties as the bank, HDFC limited has not been made a party despite the execution of the tri-partite agreement, wherein the complainants have subrogated his entire right for refund in favor of the Bank.
- o. That the present case also deems to be prima facie dismissed as admittedly the BBA was executed solely with M/s. Supertech Ltd., all sale consideration was also paid to M/s. Supertech Ltd., thus as no sale consideration as paid to the respondent neither any written agreement was signed between the complainants and respondent, the respondent

cannot be ordered to refund any amounts, if any, by the Authority. It is reiterated that M/s. Supertech Ltd is jointly liable as per the Suo Moto order.

- p. The present case also deems to be dismissed against the respondent as there is no pleading in the main complaint against the respondent, neither any relief is sought from the respondent. It is established law that the court cannot grant relief which is over and above the relief claimed by the complainants in his complaint.
- q. That as M/s. Supertech Ltd. and the respondent are jointly and severally liable in terms of the Suo Moto Order passed by Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between both the respondent's. The respondent in lieu of the CIRP proceedings ongoing against R1 company, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Ltd.
- r. That the complaint filed by the complainants are 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 complainants and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- s. That the delay if at all, has been beyond the control of the respondent and as such extraneous circumstances would be categorised as 'force majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.
- t. That the delay in construction was on account of reasons that cannot be attributed to the respondent. The buyer's agreements provide that in case the developer/respondent delays in delivery of unit for reasons not

attributable to the developer/respondent, then the developer/respondent shall be entitled to proportionate extension of time for completion of said project. The relevant clause, i.e. "clause 43 under the heading "General terms and conditions" of the "agreement". The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.

- u. 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 present agreement, the time stipulated for delivering the possession of the unit was on or before June, 2019. However, the buyers' agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around December, 2019. However, the said date was subject to the force majeure clause, i.e. "Clause 43".
- w. That despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainants, 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 complainants 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.
 - 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. The respondent cannot be held solely responsible for things that are not in control of the respondent.
- x. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially

adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.

- a. 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.
- b. 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.
- c. 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 complainants at the time final settlement on slab of offer of possession.

- d. 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.
- e. 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.
- y. 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.
- z. 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
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1.	National Green Tribunal- 08.11.2016 10.11.2016	Vardhman Kaushik vs Union of India	08.11.2016 to 16.11.2016
2.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
3.	Press Note by EPCA- Environment Pollution (Prevention and Control) Authority	Press Note- 31.10.2018	01.11.2018 to 10.11.2018
4.	Supreme Court-23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
5.	EPCA/ Bhure lal Committee Order-31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
6.	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
7.	Government of India	Lockdown due to Covid- 19	24.03.2020 to 03.05.2020
8.	Government of India	Lockdown due to Covid- 19	8 weeks in 2021
Total		37 weeks (approximately)	

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

F.1 Objections regarding force majeure.

7. 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 19.06.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be October, 2017, 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."

8. 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.

9. During the course of hearing the 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.1 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.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.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the entire deposited amount of the complainants, amounting to Rs.76,00,000/- with an interest in accordance with Section 18 of the Real Estate Regulation Act, 2016 as the Respondent is in violation of Clause 1 of Possession of the said Unit of the Buyer Agreement dated 19.06.2014 and also the respondent has cheated/ defrauded the complainants;

10. On 21.01.2025, the counsel for the complainant informed that the original allottee, Sh. Mohal Lal, had passed away during the pendency of the complaint. Consequently, the rights and obligations of the original allottee have devolved

upon his legal heirs. The counsel also sought liberty to file the legal heir certificate and an amended memo of parties, which was subsequently filed on 15.04.2025.

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

"Section 18: - Return of amount and compensation

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

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

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

12. 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 unit shall be given to the buyer in 42 months i.e. by April 2017. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months*

.....

[Emphasis Supplied]

13. **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 April, 2017 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for

grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be October, 2017.

14. **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.

15. 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.
16. 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., 27.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
17. 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;"*

18. 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 19.06.2014, the due date of possession is calculated from the date of Execution of Agreement. 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 October, 2017.
19. It is pertinent to mention over here that even after a passage of approx. 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 complainants have paid more than 60% 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.

20. 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....."

21. 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."

22. 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 no.1 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.

23. 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 no.1 is established. As such, the complainants are 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

24. 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., SARV Realtors Pvt. Ltd. is directed to refund the amount received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

- ii. Out of total amount so assessed, the amount paid by the bank be refunded first to the bank and the balance amount along with interest will be refunded to the complainants. Further, the respondent no. 3 is directed to get the NOC from the bank and give it to the complainants within a period of 30 days of this order.
- iii. A period of 90 days is given to the respondent no.2 to comply with the directions given in this order and failing which legal consequences would follow.
- iv. The respondent no. 2 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/complainants.
- v. No directions are being passed in the matter qua respondent nos. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.
25. Complaint as well as applications, if any, stands disposed of accordingly.
26. Files be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025