

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

Complaint no. : 1745 of 2019
First date of hearing: 03.09.2019
Date of decision : 27.05.2025

Vikram Bhatia

R/o: - A-118 Sushant Lok-3, Sector-57, Gurgaon,
Haryana-122017

Complainant

Versus

M/s Supertech Limited

M/s Sarv Realtors Pvt. Ltd.

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

Respondent no.1

Respondent no. 2

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. Harshit Batra

Sh. Bhirgu Dhami

Sh. Dushyant Tewatia

Counsel for Complainant

Counsel for Respondent no.1

Counsel for Respondent no.2

ORDER

1. The present complaint dated 03.05.2019 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the

promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No	Particulars	Details
1.	Name of the project	Supertech Hues, Sector-68, Gurugram-122101
2.	Project area	55.5294 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017
	Validity Status	31.12.2021
5.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013
	Validity status	25.12.2017
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.
5.	Unit no.	2101, tower M
6.	Unit tentatively measuring	1430 sq. ft. super area
7.	Date of Booking	29.11.2013
8.	Date of buyer developer agreement	16.09.2014 (page 38 of complaint)
9.	Possession clause as per buyer developer agreement	The possession of the allotted unit shall be given to the allottee /s by the company by May 2017. However, this period can be extended for a further grace period of 6 months

10	Due date of possession	May 2017 + 6 months = Nov 2017
11	Basic sale consideration	Rs.1,17,54,080/-
12	Total amount paid by the complainant	Rs. 1,09,86,817/- (including bank payment)
13	Occupation certificate	Not obtained
14	Offer of possession	Not offered
15	Tripartite agreement	Undated (signed by both the parties)

B. Facts of the complaint

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

- I. That relying on such representation along with other representations made by the respondent which were also quite widely circulated in newspapers and in other media, the complainant was lured to purchase an apartment admeasuring approx. 1430 sq.ft. in the project at a consideration of Rs. 1,17,54,080/- on the assurance that the construction would be completed in a time-bound manner and that the possession of the apartment would be handed over to the complainant in time i.e., May 2016. It was further conveyed to the complainant that the respondent would proceed to obtain occupation certificate/completion certificate for the project from the concerned statutory authority on or before November 2016 and accordingly, the complainant paid the booking amount of Rs. 6,00,000/- +
- II. on 29.11.2013 and was at a later stage allotted the apartment no. 2101 on the 21st floor, tower M of the project. The original allotment was for a different unit no. L-1101, 1375 sq.ft. which was changed unilaterally by Supertech and the complainant was compelled to accept an apartment on 21st floor with more alleged carpet area. The fraud of the developer can be ascertained by a simple fact that the developer has not issued the allotment

letter till date for the present apartment and the BBA was also signed after a lot of follow ups with the developer.

- III. That the complainant was later informed that the super area of the said apartment would be 1430 sq.ft. The complainant had asked the respondents about the calculation arrived at in calculating the super area. The complainant was informed that the respondent's office would satisfy his genuine query within a period of one month. Further, respondent's staff confirmed complainant that the apartment would be handed over on or before May 2016. At the stage of confirming the deal respondent's staff even represented that being a company of repute and ethical business, the respondents would adequately compensate complaint in case the project is delayed for any reason. It was further conveyed that the respondent would proceed to obtain Occupation Certificate/Completion Certificate from concerned statutory authority on or before November 2016 by all means.
- IV. That after long follows ups and months of taking place of the transactions, an extremely one sided buyer developer agreement for the apartment was handed over to the complainant for execution after the complainant having paid considerable sums per the attached annexure and there was precious little he could do to confront the respondents about the one sided BBA on which, the complainant had raised his concerns as regards several unconscionable and unreasonable provisions and clauses of the BBA that placed him in a considerably unfair and disadvantageous position vis-à-vis the dominant position of the respondents. However, instead of addressing his genuine concerns regarding the lop-sided BBA, the complainant was laconically and brusquely brushed aside. It was further strange to note that the respondents had changed many terms and conditions which were earlier agreed upon by the respondents as May 2016. Be that as it may, even going

the date in the said BBA, the possession was to be given on/before May 2017 with a grace period of six months i.e., by November 2017 by all means. The said also gone by long ago, there stands no hopes from the developer that it would hand over the possession of unit.

- V. That finally, without any bargaining power at his disposal and under threat of losing his hard-earned money through forfeiture of monies he had already paid as threatened by the respondents, the BBA dated 16.09.2014 which was completely one-sided was signed by the complainant.
- VI. After having paid a substantial sum of Rs. 1,09,86,817/- towards the sale consideration, the complainant had kept on asking the respondents about the fate of the apartment and about the exact time when its possession would be handed over and also about the details as to when further documents would be executed by respondent in favour of complainant in regard to said apartment. However, the respondents always avoided the issue and kept on delaying the matter on false and bogus pleas and excuses. The BBA mentions the date of possession as May 2017 and a grace period of six months i.e., by Nov 2017. The said period has long gone by.
- VII. Further, a tripartite agreement is signed the same day which is blank and the sign of complainants is obtained on the same by the developer and HDFC Limited. The same amounts to fraudulent activity by the developer as well as HDFC Limited. The said document clearly shows that the borrower and the builder have jointly approached HDFC Limited for a loan towards payment of the said unit. As a matter of fact, the bank and developer in connivance have defrauded hundreds of customers and the bank has released the monies to the developer without taking consent of the complainant.
- VIII. Further an agreement is signed by the developer and complainant wherein it is clarified by the developer that "No pre EMI till possession scheme" shall be

payable by the complainant. It is clearly mentioned in the agreement that the tenure of subvention would be March 2014 to February 2017 and thereafter the developer shall pay EMI every month to the buyer for housing loan taken by Buyer till the offer of possession is made by the developer to the buyer. Thus it is only on the promises of the developer that the developer would keep paying the EMI's till actual physical possession, the complainants purchased the unit in question. Had there been clarification that the developer would not pay till actual physical possession, the complainants would not have purchased the unit. The developer was obligated to pay the EMI for the housing loan till the offer of possession.

- IX. That the complainant kept on enquiring about the possession of his apartment. Sometime in August -November 2018 and again in February 2019, the complainant visited the office of the respondent and demanded the possession of apartment as was promised when he paid the booking amount on 29/11/2013. To the utter shock of the complainant, he was given to understand by officials of the respondent that the project was far from completion. The complainant came to understand that completely contrary to the representations made by the respondents, they were not even able to undertake the implementation of the project for a very long time after accepting the booking amount from him on 29.11.2013. It would not be out of place to mention that the complainant has paid nearly 94% of the sale consideration and completion of construction seemed nowhere on the horizon.
- X. To a glaring and contemptuous disregard of complainant, the respondents did not honour the commitments made to him and have failed to give him possession of the apartment till date. They were duty-bound to handover the possession of the apartment in May 2016 as earlier promised. Even going as

per the one-sided BBA, they were duty bound to handover possession of the apartment in November 2017 but have failed to do so till the date of the present complaint.

- XI. That since November 2013, the complaint has suffered inexplicable ignominy, scorn and disdainful ridicule at the hands of the respondents and his various requests, reminders and entreaties at relevant times have failed to evoke any positive response from the respondents. The complainant visited the office of the respondents several times only to face dejection, contempt and unmitigated disparaging and offensive abuse and snide remarks made by the Respondents who questioned why he "was in a hurry etc." Since then, the complainant has only demanded what is due to him and when he was told that the possession cannot be given per the representations made earlier by the respondents, he has also demanded the delayed penalty calculated @ 18% of the amounts taken by the respondent till date as well as damages for the loss, suffering, harassment, mental agony and frustration caused to him by the various acts of commission and omission on the part of the respondents.
- XII. That therefore, in November 2013 when the complainant paid the booking about for allotment of the apartment, no sale of any unit in the project could have been lawfully made by the respondents as they did not possess the necessary license as well as approvals that alone could legally empower respondents to sell units in the project. The booking of the apartment made by respondents in favour of the present complainant is in utter violation of statutory provisions as well as the terms of license for the project. In fact, a specific prohibition had been imposed on respondents in the license itself in terms of which they were prohibited from even advertising for the sale of any shop/office/floor area in the said project prior to sanction and approval of

the layout plans/building plans for the project which were still pending with DTCP when the said apartment was sold to the complainant and the booking amount collected from him in November, 2013.

- XIII. Further, the respondent No. 1 has arbitrarily calculated the super area of the apartment without any rhyme or reason. Such revision in the area imposes hitherto unplanned and unforeseen additional financial demands upon the complainant. In fact the respondent has manipulated the area of the apartment at its own whims and fancies and areas of the individual units have been arbitrarily and whimsically computed and the same has absolutely no nexus with the actual areas including but not limited to confined and open areas of the project and other common areas. The respondent has further sold the car parking illegally to the present complainant as well as many other similarly-placed innocent customers of the project. The respondent was also selling/offering car parking separately during relevant times at varying prices.
- XIV. Thus the present complainant alongwith another 500 customers has been a victim of well calculated economic crime committed by the above named respondents.
- XV. That further it transpires that under the garb of the connotation "super area", the areas of the individual apartment has been arbitrarily, whimsically and atrociously computed and the same has absolutely no nexus with the actual areas in existence at the spot including but not confined to open areas of the project and other common areas. The complainant had repeatedly called upon respondents to furnish detailed calculations pertaining to computation of super area of the residential apartment referred to above. However, the aforesaid legitimate and bonafied requests of complainant were disregarded

and ignored with impunity by respondents. The super area of 1430 sq. ft. of the apartment could not be calculated without any basis by the respondents.

- XVI. That the complainant was further utterly shocked and dismayed when he received the email letter dated 29.11.2018 wherein respondents have conveniently tried to shrug off its responsibility of EMI's as per contractual obligations. The same act of developer is absolutely coercive, intimidatory, arbitrary, illegal, whimsical and contrary to law. The said email was replied by the respondent just the following day i.e., 30.11.2018.
- XVII. That the complainant visited the office of the respondent and tried his level best to meet the senior officials but CRM did not allow him to meet. The complainant demanded interest for delayed possession. However the respondent didn't bother to pay heed to the genuine demands of the complainant and hence, this complainant to the Haryana Real Estate Regulatory Authority at Gurugram on the grounds which are raised in issues to decided.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
1. To direct refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation.
 1. 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.
 2. No reply has been submitted by the respondent no.1 i.e., M/s Supertech Ltd. However, the counsel for respondent no. 1 has stated that the respondent no.1 is under CIRP vide order dated 25.03.2022 passed by the Hon'ble New Delhi in case no. IB-204/ND/2021 titled as *Union Bank of India Versus M/s Supertech*

Limited and moratorium has been imposed against the respondent no. 1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against the respondent no. 1.

D. Reply by the respondent no.2.

3. The respondent is contesting the complaint on the following grounds:-

- i. That the respondent was issued license bearing no's 106 and 107 dated 26.12.2013 and license no's. 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent and respondent no. 2, i.e. M/s. Supertech Ltd. had entered into two Joint Development Agreement's dated 25.04.2014 and dated 26.08.2014 respectively. In terms of the said JDA's the respondent no. 2 was to develop and market the said project.
- ii. That the complainants along with many other allottees had approached the respondent no. 1, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book a unit in the said project.
- iii. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said unit, the complainants executed the buyer developer agreement dated 06.10.2016 a unit bearing number no. A/1901, 19th floor, having a super area of 1180 sq. ft. for a total consideration of Rs.31,18,061/-.
- iv. That in the interim with the implementation of the Real Estate (Regulation & Development) Act, 2016 the project was registered with the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula vide registration no. "182 of 2017", dated 04.09.2017 upon application filed and in the name of R2.

- v. That the Hon'ble Authority vide order dated 29.11.2019 passed in Suo Moto Complaint No. 5802/ 2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "**Hues & Azalia**", to the respondent (**M/s SARV Realtors Pvt.) Ltd.** and M/s. DSC Estate Developer Pvt. Ltd. respectively. The Authority had further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the project instead of M/s. Supertech Ltd. certain important directions as passed by this Hon'ble Authority are as under;

(i)The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./DSC and others, as the case may be, be registered as promoters.

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

That in lieu of the said directions passed by this Authority all asset and liabilities have been since transferred in the name of the respondent no. 2. However, in terms of the said Order, M/s. Supertech Ltd. still remains jointly and severally liable towards the booking/ allotment undertaken by it before the passing of the said Suo Moto Order.

- vi. That thereafter the JDA's were cancelled by the consent of the respondent no. 2 and M/s Supertech Limited vide cancellation agreement dated 03.10.2019 and the respondent no. 2 from there on took responsibly to

develop the project and started marketing and allotting new units under its name.

- vii. That in terms of the said cancellation agreement the respondent no. 2 and M/s Supertech Limited had agreed that as M/s Supertech Ltd. was not able to complete and develop the project as per the timeline given by this Hon'ble Authority and DTCP, therefore the parties had decided to cancel the JDA's vide cancellation agreement.
- viii. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- ix. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.
- x. That the present complaint deems to be dismissed sine-die or dismissed as the 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..
- i. That as M/s. Supertech Ltd. and the respondent no.2 are jointly and severally liable in terms of the Suo Moto Order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between the respondent no.2 and M/s. Supertech Ltd. The respondent no. 2 cannot be made wholly

liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.

- ii. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent no. 2 with this frivolous complaint.
- iii. The delay in construction was on account of reasons that cannot be attributed to the respondent herein. The flat buyers' agreements provide that in case the developer/respondent delays in delivery of unit for reasons not attributable to the developer/respondent, then the developer/respondent shall be entitled to proportionate extension of time for completion of project.
- iv. In view of the force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent, Covid-19, shortage of labour, shortage of raw materials, stoppage of works due to court orders, etc. for completion of the project is not a delay on account of the respondent for completion of the project.
- v. That with respect to the agreement, the time stipulated for delivering the possession of the unit was on or before June, 2019. However, the buyer's agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around January, 2019. However, the said date was subject to the force majeure clause, i.e. "Clause 43". The delivery of a project is a dynamic process and heavily dependent on various

circumstances and contingencies. In the present case also, the respondent had endeavored to deliver the property within the stipulated time.

- vi. The timeline stipulated under the flat buyer's agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- vii. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. Apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances like:
- Implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including that of the Respondent herein, fell behind on their construction schedules for this reason amongst others. The said fact can be substantiated by newspaper articles elaborating on the above mentioned issue of shortage of labour which was hampering the construction projects in

the NCR region. This certainly was an unforeseen one that could neither have been anticipated nor prepared for by the respondent while scheduling their construction activities. Due to paucity of labour and vast difference between demand and supply, the respondent faced several difficulties including but not limited to labour disputes. All of these factors contributed in delay that reshuffled, resulting into delay of the Project.

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

- viii. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. The delay in construction, if any, is attributed to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the agreement.
- ix. That the project "**HUES**" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021.
- x. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by May, 2017 with an extended grace period of 6 months which comes to an end by November, 2017. The completion of the building is delayed by reason of Covid-19 outbreak, non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow

down strike as well as insufficiency of labour force which is beyond the control of respondent.

- xi. That the enactment of the Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before the Authority. According to the terms of builder buyer's agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time final settlement on slab of offer of possession.
- xii. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Hues' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.
- xiii. That, graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on

waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.

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

S. No.	Court/Authority & Order Date	Title	Duration
1.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
2.	Press Note by EPCA- Environment Pollution (Prevention and Control) Authority	Press Note-31.10.2018	01.11.2018 to 10.11.2018
3.	Supreme Court-23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
4.	EPCA/ Bhure Lal Committee Order-31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
5.	Hon'ble Supreme Court 04.11.2019-14.02.2020	M.C Mehta v. Union of India Writ Petition (c) no. 13029/1985	04.11.2019 to 14.02.2020
6.	Government of India	Lockdown due to Covid - 19	24.03.2020 to 03.05.2020
7.	Government of India	Lockdown due to Covid-19	8 weeks in 2021
Total		37 weeks (approximately)	

- xv. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed

lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the respondent were forced to return to their home towns, leaving a severe paucity of labour. That the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

xvi. That the complainant is not entitled for any refund claimed.

4. 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

5. 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

6. 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

7. 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.

8. 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.
9. 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.

10. 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

D.I Objections regarding force majeure.

11. 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 16.09.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be November 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."

12. 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.

13. 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.1 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint, **HARERA/GGM/5802/2019**. Respondent no.2 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.1 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.1 Direct the respondent to refund along with interest@24% per annum from the date of payment till its actual realization.

14. That the complainants booked a unit bearing no. 2101, tower M, in the project of the respondent namely, "HUES" admeasuring super area of 1430 sq.ft. for an agreed sale consideration of Rs. 1,17,54,080/- against which complainants have paid an amount of Rs. 1,09,86,817/- and the respondent has failed to handover the physical possession till date. That 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)

15. 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 May,2017. 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."*

16. **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 May 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 November 2017.

17. **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.

18. 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.

19. 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%**.
20. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 1 of the agreement executed between the parties on 16.09.2014, the due date of possession May 2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is November 2017.

22. 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 93% (approx...) of total consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for Occupation Certificate/Part Occupation Certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

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

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

24. Moreover, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of***

India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. observed as under: -

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

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the 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.
26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 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

27. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent no.2 i.e., M/s Sarv Realtors Pvt. Ltd. is directed to refund the amount received by it i.e., Rs. 1,09,86,817/- from the complainant 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. 2 is directed to get the NOC from bank and give it to the complainants within a period of 30 days of this order.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
 - iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.



HARERA
GURUGRAM

Complaint No. 1745 of 2019

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

28. Complaint stands disposed of.

29. 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

HARERA
GURUGRAM