



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

Complaint no. : 430 of 2022
Date of filing : 05.03.2022
Date of decision : 27.05.2025

1. Ms. Naina Raheja
2. Mr. Jatin Raheja

Both RR: 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. Indiabulls Infoline Housing Finance Limited
Regd. office: M 62 & 63, First Floor, Connaught
Place, New Delhi-110001
3. M/S Sarv Realtors Pvt. Ltd
Regd. office: 114, 11th floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi-110019

Respondent no.1

Respondent no.2

Respondent no. 3

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. Harshit Batra (Advocate)
Sh. Bhrigu Dhami (Advocate)
None
Sh. Isha Dang (Advocate)

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

ORDER

- That the present complaint has been filed by the complainants/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

- 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.	2104 (Page no. 19 of complaint)
6.	Unit measuring	1430 sq. ft. super area (Page no. 19 of complaint)
7.	Date of Booking	15.06.2016 (Page no. 19 of complaint)

8.	Date of execution of Buyer developer agreement	16.06.2016 (Page 18 of complaint)
9.	Possession clause	E. POSSESSION OF THE UNIT:- ".The Possession of the Unit shall be given by Feb, 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @Rs.5.00/- (Five rupees Only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier. ..." (Emphasis supplied) (Page 20 of the complaint)
10.	Due date of possession	Feb, 2019 + 6 months = Aug 2019 (Page 20 of the complaint)
11.	Total sale consideration	Rs.1,17,74,000/- (Page 20 of the complaint)
12.	Total amount paid by the complainants	Rs.13,37,500 (Page 12 of the complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered
15.	Tripartite agreement	25.06.2016 (page 42 of complaint)
16.	Request for cancellation	05.12.2017 (page 68 of complaint)

B. Facts of the complaint

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

- That the complainants booked an apartment no. 2104, tower M, 21st floor admeasuring 1430 sq. ft. in the project "Supertech Hues", Revenue Estate, Village- Badshahpur, Sector-68, Gurugram-122006, Haryana and hence is an allottee under Section 2(d) of the Act, 2016 scheme or no pre-EMI till possession scheme. In lieu of subvention scheme, the complainants took



- financial assistance from respondent no.2 i.e. IHFL for an amount of Rs. 71,00,000/-.
- b. That the project came to the knowledge of the complainants by the shrewd marketing gimmick of the respondent no.1. The complainants were given representations of the high-class aesthetic apartment and the timely delivery of their project. The complainants being simple people were caught into the trap and believed the respondents on the representations, assurances and warranties made, which were subsequently proved to be false. The complainants booked an apartment in the project for a total sale consideration of Rs. 1,17,74,000/- on 15.06.2016.
- c. That the complainants' dream of living in a peaceful possession has been shattered by the respondent no. 1 in the most unlawful and illegal manner. It is anticipated that the project was launched with an intention to cheat and harm the innocent complainants.
- d. That in respect of such allotment, a memorandum of understanding was executed between the complainants and the respondent no. 1 on 16.06.2016 according to which the complainants opted for no Pre-EMI scheme, the tenure of which is *"36 months or offer of possession whichever is earlier"*, as per clause (b) of the MoU.
- e. That consequently, a buyer developer agreement was executed on 16.06.2016 between the complainants and the respondent no. 1, according to clause 24 of which, the respondent no. 1 was obligated to deliver the possession of the unit by February 2019.
- f. That in lieu of subvention scheme, the complainants took financial assistance from respondent no.2 i.e., IIFL for an amount of Rs. 80,00,000/- which was sanctioned on 25.06.2016 and a tri partite agreement was

- executed on 25.06.2016. As per the TPA, the liability period for the payment of interest assumed by the builder extends from 30.06.2016 to 30.05.2018.
- g. That the respondent no. 1 miserably failed in offering the possession of the Unit and in fulfilling the payments under the said liability period. The structural work of the project has not been developed ever since the complainants booked the unit and the project is nowhere near completion.
- h. That the complainants have paid an amount of Rs. 73,72,443/- till date which is approximately 65% of the total sale price.
- i. That as per clause 5 of the TPA, the obligation to disburse the loan as per the stage of the construction of the project was upon the respondent no 2. The respondent no.2 had failed to perform its due diligence. Under RBI regulations, it is a duty entrusted upon all the bank/financial institution to carry on due diligence investigation prior to disbursement of loan. As per the recent circular dated 13.08.2019 passed by the National Housing Bank, now even the Housing Finance Companies would be subject to RBI regulations which would provide more security to the homebuyers taking loan from these HFCs. However, in violation to the same, the respondent no. 2 disbursed the loan to respondent no. 1, without prior investigations. In ***Bikram Chatterji & Ors V/s Union of India, CWP No.940/2017*** the Apex court held that the bankers by failing to comply with their legal duty have colluded with the developers and have breached the public trust. The Supreme Court while pointing out the negligence done by the bankers found that according to Section 4(2)(1)(D) of Rera Act 2016, it is the duty of the bank which extends loan for the construction of the project to ensure from time to time that the money is used meticulously, for which the



accounts have to be audited in every six months. Also, a chartered accountant has to certify that the amount collected for a particular project has been utilized for that project and the withdrawal has been in compliance with the proportion of the percentage of the completion of the project.

- j. That the respondents have colluded with each other in taking monies under the garb of the payments to be made against the unit, when in fact, there is no development of the unit and the project.
- k. That unable to bear the financial burden, the complainants requested the respondent no. 1 to refund the amounts paid vide letter dated 05.12.2017. Thereafter, multiple emails and letters were written seeking refund of the deposited amounts, however, the respondent no. 1 has never paid heed to the requests of the complainants. The lackadaisical conduct of the respondent no. 1 has caused mental agony and harassment to the complainants.
- l. That consequently, the respondent no. 2 was informed vide letter dated 17.11.2018, of the cancellation being made.
- m. That the complainants cannot be compelled either to pay loan amount, interest or EMI to the bank for the fraud which has been committed by their own derelict behaviour. That the non-payment of such Pre-EMIs is gravely impacting the complainants' CIBIL score.
- n. Furthermore, the complainants have always been proactive in knowing the stage of the project and development work in the same; however, they have always Face elusive replies from respondents. The Respondent No 1, in furtherance of its unlawful conduct and acting in breach of all of its contractual obligations as set under the BBA, the TPA, and the MOU stands in violation of Sections 11(4)(a), 18(1) and 18(3) of the Act. Here, it is

pertinent to note that all such agreements executed between the Builder and the Buyer are to be read as a part and parcel of the Agreement to sale which is obligated to be adhered to and considered under the Act. It has been observed in **Ashrita Singh and Ors. vs. Landmark Apartments Pvt. Ltd. (16.10.2020 - RERA Haryana): MANU/RR/0148/2020** that an MoU is considered as an agreement for sale interpreting the definition of agreement for sale under Section 2(c) broadly by taking into consideration the objects of RERA.

- o. That the complainants had been unnecessarily burdened, first, with the payment of instalments, then with the cancellation of the same, all due to the non-adherence of its obligations by the respondent. Under such circumstances, the complainants, not foreseeing the delivery of possession and having waited for a substantial amount of time, have lost faith in the bonafide conduct of the respondent. The complainants stand within their rights in claiming refund in the present facts and circumstances as they cannot be expected to wait indefinitely for the delivery of possession as was held in **Fortune Infrastructure v. Trevor d' lima (2018) 5 scc 442 : (2018) 3 scc (civ)** was reiterated in **Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) sc 725**. The inordinate delay in handing over possession of the Unit clearly amounts to deficiency of service on account of the Respondent No. 1 and the complainants had rightly claimed to withdraw from the project and claimed total refund of amount along with other interest as per the Act, 2016, along with other compensation.
- p. That the tactics of the respondent no. 1 to dupe and retain the Complainants in the project is crystal clear by their act of non-refunding

the paid amount despite of various request of cancellation of allotment by the complainants.

- q. The Respondent No. 1 has utterly failed to fulfil his obligation to deliver the possession in time or compensate or refund the money along with interest and has caused mental agony, harassment and huge losses to the complainants, hence the present complaint.

C. Relief sought by the complainants: -

The complainants have sought following relief(s):

- I. Direct the respondent no. 1 to refund the entire amount of Rs. 13,37,500/- paid by the complainants and Rs. 60,34,943/- paid by respondent no. 1 along with prescribed rate of interest from date of respective deposits till its actual realisation, in accordance with the provisions of the act.
 - II. Direct the respondent no. 1 to pay compensation of Rs.10,00,000/- for causing mental agony, harassment to the complainants, and for violation of the obligations conferred by the act, as per section 18(3).
 - III. Direct the respondent no. 1 to pay the compensation of Rs. 1,00,000/- for the litigation costs.
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.
5. That the complainants has filed an application for impleadment of M/s Sarv Realtors Pvt. Ltd. and the same was allowed by the Authority on 03.12.2024.
6. 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. 3 i.e., M/s Sarv Realtors Pvt. Ltd

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

- a. That the respondent was issued license bearing no's 106 and 107 dated 26.12.2013 and license no's. 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent and M/s. Supertech Ltd. had entered into two joint development agreement's dated 25.04.2014.
- b. That the complainants along with many other allottees had approached M/s. Supertech Ltd., making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book an apartment(s)/ unit(s) 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 16.06.2016 for an apartment being number no. 2104, tower – M, 21st floor, having a super area of 1430 sq. ft. (approx.) for a total consideration of Rs. 1,17,74,000/- exclusive of applicable charges and taxes.
- d. That in the interim with the implementation of the RERA Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide registration no. 182 of 2017 dated 04.09.2017 upon application filed and in the name of Supertech Ltd.
- e. That the Authority vide order dated 29.11.2019 passed in Suo Moto complaint no. 5802 of 2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues &

Azalia", to the respondent no. 3 and M/S SARV Realtors 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 respective projects 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 other, 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 others fails to discharge its obligations towards the allottees.

In lieu of the said directions passed by the Authority all asset and liabilities have been since transferred in the name of the answering. 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 the said MDA were cancelled by the consent of the respondent no. 3 and Supertech vide cancellation agreement dated 03.10.2019 and the respondent no. 3 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- g. That in terms of cancellation agreement the respondent no. 3 and Supertech had agreed that in terms of the mutual understanding between both the

companies, both companies had decided to cancel the JDA's vade the said cancellation agreement.

- h. That 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 'force majeure' condition, which automatically extends the timeline of handing over the possession of the apartment to the complainants.
- i. That the complaint deems to be dismissed sine-die or dismissed as the R1 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.
- j. That even the application seeking impleadment had been wrongly allowed, as once the sole respondent, M/s Supertech Ltd. was undergoing insolvency proceedings 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.
- k. The present complaint further also deems to be prima facie dismissed for non-joinder of necessary parties. It is reiterated that in terms of the own admission of the complainants the BBA was executed solely with M/s. Supertech Ltd. and furthermore, all payments qua the booking were also made to M/s. Supertech Ltd. Thus, the present complaint deems to be dismissed for non-joinder of M/s. Supertech Ltd.

- l. That as M/s. Supertech Ltd. and the respondent no.3 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.3 and M/s. Supertech Ltd. The respondent no.3 cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.
- m. That the complaint filed by the complainants 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 complainants and the present complaint has been filed with malafide intention to blackmail the respondent no. 3 with this frivolous complaint.
- n. 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.
- o. 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.
- p. That with respect to the agreement, the time stipulated for delivering the possession of the unit was on or before February, 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".

- q. 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.
- r. 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:
 - i. Implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including that of the 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.
- ii. That such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex.
- s. 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.
- t. 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.
- u. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by February, 2019 with an extended grace period of 6 months which comes to an end by

August, 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.

- v. 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.
- w. 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.

- x. 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:-

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)	

- z. 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. The complainants is not entitled for any compensation or refund claimed except for delayed charges, if applicable as per clause 2 read with 24 of the builder buyer agreement.
8. 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**
9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E.I Territorial jurisdiction**
10. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this

authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction.

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (Civil) 357* and 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* wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount

F. Findings on the objections raised by the respondents during hearing.
F.1 Objections regarding force majeure

15. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 16.06.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.08.2019, which was prior to the effect of Covid-19 on above project could happen. The Authority put reliance judgment of Hon'ble Delhi High Court in

case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that—

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

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

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

17. Respondent no.1 during the course of hearing has submitted 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. 3 is no

longer the assets of respondent no. 1 and admittedly, respondent no.3 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.3 has stated that the MDA was cancelled by consent of respondent no.3 and respondent no.1 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.3 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.3 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., respondent no.1 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 3 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 no. 1 to refund the entire amount of Rs. 13,37,500/- paid by the complainants and Rs. 60,34,943/- paid by respondent no. 1 along with prescribed rate of interest from date of respective deposits till its actual realisation, in accordance with the provisions of the act;

18. That the complainants booked a unit bearing no. 2104, tower M, 21st floor, in the project of the respondent namely, "HUES" admeasuring super area of 1430 sq.ft. for an agreed sale consideration of Rs. 1,7,74,000/- against which complainants have paid an amount of Rs. Rs.13,37,500/- 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)

19. As per clause E (24) of the buyer's developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduce as under :-

"E. POSSESSION OF UNIT: -

24. The possession of the unit shall be given by Feb,2019 or extended period as permitted by the agreement. However, Developer hereby agrees to compensate the Buyer(s) @Rs.5.00/- per sq.ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and upto the offer letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances....."
[Emphasis Supplied]

20. **Due date of handing over of possession and admissibility of grace period:**

As per clause E (24) of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the February, 2019 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the

promoter being unqualified. Therefore, the due date of possession comes out to be 30.08.2019.

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

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

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

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

22. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
23. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 27.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
24. The definition of term 'interest' as defined under section 2(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.*

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause E (24) of the agreement executed between the parties on 16.06.2016, the due date of possession is Feb 2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is August 2019.
26. It is pertinent to mention over here that even after a passage of more than 5 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 has paid more than the total consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw

from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

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

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

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

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

29. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants 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*.
- G.II Direct the respondent no. 1 to pay compensation of Rs.10,00,000/- for causing mental agony, harassment to the complainants, and for violation of the obligations conferred by the act, as per section 18(3).**
- G.III Direct the respondent no. 1 to pay the compensation of Rs. 1,00,000/- for the litigation costs.**
31. The complainants is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the

adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority

32. 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.3 i.e., SARV Realtors Pvt. Ltd. is directed to refund the amount received by it i.e., Rs. 13,37,500/- from each of the complainant(s) along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. Out of total amount so assessed, the amount paid by the bank i.e., respondent no.2 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 respondent no.2 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. 3 to comply with the directions given in this order and failing which legal consequences would follow.
- iv. The respondent no. 3 is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along



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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.

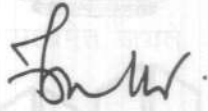
- v. No directions are being passed in the matter qua respondent no. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.

29. Complaint as well as applications, if any, stands disposed of accordingly.

30. Files be consigned to registry.

(Ashok Sangwan)
Member

V.I. 3
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025

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