



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

Complaint no. : 744 of 2024
Date of filing: 26.02.2024
Date of decision : 28.05.2025

Rekha Kumari and Pankaj Kumar
Resident of: G-901, Monsoon Breeze,
Naurangpur, Sector 78, Gurugram, Haryana

Complainants

Versus

M/S Sarv Realtors Pvt. Ltd
Regd. office: 1114, 11th floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi-
110019

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Nipun Rao (Advocate)
Mr. Dushyant Tewatia (Advocate)

Counsel for Complainants
Counsel for Respondent

ORDER

1. That the present complaint has been filed by the complainant-allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se parties.



A. Project and unit related details

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

| Sr. No. | Particulars | Details |
|---------|--|--|
| 1. | Name of the project | "Supertech Hues", Sector 68, Gurgaon |
| 2. | Nature of the project | Residential |
| 3. | DTCP license no. | 106 and 107 of 2013 dated 26.10.2013 valid up to 25.12.2017 for 13.74 acres 89 of 2014 dated 08.08.2014 valid up to 07.08.2024 for 10.25 acres 134-136 of 2014 dated 26.08.2014 valid up to 25.08.2024 for 4.85 acres |
| 4. | HRERA Registered or not registered | Registered Registration no. 182 of 2017 dated 04.09.2017 valid up to 31.12.2021 [Hues towers A, B, E, F, G, H, M, N, K, T, V, V, W, O, P, C and D] |
| 5. | Unit no. | R1410H00602/Flat#0602, 6 th floor, Tower-H-H (page 28 of complaint) |
| 6. | Unit admeasuring | 1180 sq. ft. (super area) (page 28 of complaint) |
| 7. | Date of execution of Buyer's agreement | 12.08.2021 (page 27 of complaint) |
| 8. | Possession clause | 23. "The possession of the unit shall be given by June 2022 or extended period as permitted by the agreement. However, the company 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 up to the offer letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances..... " (page 35 of complaint) |
| 9. | Due date of possession | 30.12.2022 |



| | | |
|-----|--------------------------------|---|
| | | (As per possession clause-30.06.2022 + unqualified grace period of 6 months) |
| 10. | Basic sale consideration | Rs.66,49,700/- (BBA at page 28 of complaint) |
| 11. | Amount paid by the complainant | Rs.43,14,296/- (as per receipts issued by respondent at page 55-59 of complaint) |
| 12. | Occupation certificate | Not obtained |
| 13. | Offer of possession | Not offered |

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
- a) That the respondent gave advertisement in various print as well as electronic media about their forthcoming project named "Supertech Azalia" Sector - 68, Golf Course Extension Road, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the complainants booked a unit in the aforesaid project of the respondent. The respondent allotted unit No. T3/203 (Scarlet Corporates Suites) to the complainants.
 - b) That the builder buyer agreement against the said unit was executed between Supertech Limited and the complainants on 27.11.2017 for a total sale consideration of Rs. 39,89,250/-. The due date of possession as per the said BBA was December 2021 with an extension of 6 months i.e., June 2022. The respondent also assured the complainants to give the assured returns amounting to Rs. 3,989/- per month till offer of possession for which a MOU was registered. But inadvertently no such assured returns were given by the respondent even after 3 months from



the date of agreement. The respondent also assured the complainant not to pay any pre-EMI till the possession against the loan of the complainant. But no such promises were fulfilled by the respondent.

- c) That till April 2020 around 80% payment was made by the complainants, but the construction work of the said project was not as per the assured possession time. Thereafter the respondent forced the complainants to get their unit transferred in another adjacent project i.e., "Hues" located in the same locality. The complainants in order to save their hard-earned money and the respondent being on the dominant position made the said transfer. Another 7,50,000/- was paid by the complainants to M/s Sarv Realtors Pvt. Ltd. and again a builder buyer agreement was executed between the parties on 12.08.2021. A unit bearing no. 602, tower H, Hues, Sector-68, Gurugram, Haryana admeasuring 1180 Sq. Ft. was allotted to the complainants for Rs. 76,34,000/- and the respondent promised to give the possession by June 2022.
- d) That the respondent also assured to adjust all the payment made in respect of the earlier BBA under the said Supertech Hues unit. The complainants from 2017 till now had paid a total of Rs. 38,46,475/- against the said unit.
- e) That thereafter the complainant got shocked to know that the respondents had only transfer the receipts amounting to Rs. 24,67,821/- against the said unit despite the payments made by the complainants amounting to Rs. 38,46,475/-.
- f) That on personally visiting the office of the respondents the complaint was again told of a new story that these charges were deducted on account of transfer of the unit. The said charges were never discussed on or before such transfer and the respondent never mentioned anywhere

that why these charges are to be deducted. Upon repeated requests and pressure to adjust the balance amount to the account statements the respondents agreed to adjust this balance amount but till now no such adjustment has been made.

- g) That there is nothing on the ground and the project has not been conceived in between the period of the payments made in year 2017-till now. As such, the terms and conditions mentioned at the time of booking the said unit is only false and to engage the complainants in the false promises by the respondent.
- h) That the respondent has been retaining the entire amount without fulfilling their commitments even despite several oral and exchange of emails, despite that the respondent is not coming forward to make the payments of the complainant.
- i) That the complainants requested the respondent several times to refund the said amount of the said commercial retail unit, but the interactions and altercations advanced from the side of the respondents clearly portrays that the respondent has turned malafide and having no intentions to make payments.
- j) That the respondent has not obtained the license in its name and collecting the money from the complainants without having a registered license for development of the said property nor the respondent has shown any documents regarding any other license or other NOC or permission from the concerned department to the complainants.
- k) That the complainants requested the respondent several times on making telephonic calls and also personally visiting the office of the respondent either to deliver possession of the unit in question or to refund the amount along with interest on the amount deposited by the



complainant, but respondent refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard-earned huge amount and wrongfully gained himself and caused wrongful loss to the complainants.

C. Relief sought by the complainant: -

4. The complainants have sought following relief(s):

- I. Direct the respondent to refund the entire amount paid by the complainants to the respondent along with interest at prescribed rate from the date of deposit till the date of realization of refund.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested 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 and dated 26.08.2014 respectively.
- b) That the complainant along with many other allottees had approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book a unit(s) in the said project. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said unit, the complainant executed the buyer developer agreement dated 27.11.2017 with M/s. Supertech Ltd. for a unit bearing number A/0203, 2nd floor, having a super area of 600 sq. ft. (approx.) for a total consideration of Rs. 39,89,250/-.





- c) That as per clause 1 of the agreement, timely payment of the instalments was the essence of the agreement. As per clause 23 of the agreement, the possession of the unit was to be given by December 2021 with an additional grace period of 6 months.
- d) That the Authority vide order dated 29.11.2019 passed in Suo-Moto complaint no. 5802/ 2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "**Hues & Azalia**", to the 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.
 - ii. All the assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. However, even after the rectification, Superech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd. / DSC and others fail to discharge its obligations towards the allottees.
- e) That in lieu of the said directions passed by the Authority all asset and liabilities have been since transferred in the name of the respondent company. However, in terms of the said order, M/s. Supertech Ltd. still



remains jointly and severally liable towards the booking/ allotment undertaken by it before the passing of the said Suo Moto order.

- f) That thereafter the said JDA's were cancelled by the consent of both parties vide cancellation agreement dated 03.10.2019 and the respondent from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- g) That in terms of the said cancellation agreement the respondent and M/s. Supertech Ltd. had agreed that as M/s. Supertech Ltd. was not able to complete and develop the project as per the timeline given by the Authority and DTCP, therefore the parties had decided to cancel the JDA's vide the said Cancellation agreement.
- h) In the interregnum, the pandemic of covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- i) It would be apposite to note 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.
- j) The complaint further deems to be prima facie dismissed qua the respondent as in terms of the own admission of the complainant 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, there is no privity of contract nor any payment made to the respondent, thus the complaint deems to be dismissed on this ground alone.





- k) That as M/s. Supertech Ltd. and the respondent are jointly and severally liable in terms of the Suo Moto Order passed by the 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 and M/s. Supertech Ltd.
- l) That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- m) The delay in construction was on account of reasons that cannot be attributed to the respondent. The buyers' agreements provide that in case the respondent delays in delivery of unit for reasons not attributable to the respondent, then the respondent shall be entitled to proportionate extension of time for completion of said project. The relevant clause, i.e. "clause 43 under the heading "general terms and conditions" of the "agreement". The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.
- n) That 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.
- o) That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before April, 2017.



However, the buyers agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around October, 2017. However, the said date was subject to the force majeure clause, i.e. "Clause 43". It is a known fact that the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavoured to deliver the property within the stipulated time. The respondent earnestly has endeavoured to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.

- p) That the timeline stipulated under the buyers 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.
- q) That 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, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent.

- i. Due to active implementation of social schemes like National Rural Employment Guarantee Act and Jawaharlal Nehru National Urban Renewal Mission, 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 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, fell behind on their construction schedules for the reason amount 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 the respondent that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the project. The respondent cannot be held solely responsible for things that are not in control of the respondent.

r) That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract which are reproduced herein under:

- i. The event must be beyond the control of the parties.
- ii. The event either precludes or postpones performance under the contract.
- iii. The triggering event makes performance under the contract more problematic or more expensive.
- iv. The claiming party wasn't at fault or negligent.
- v. The party wanting to trigger the force majeure clause has acted diligently to try to mitigate the event from occurring.

In light of the aforementioned prerequisites read with the force majeure events reproduced in the aforementioned paragraphs, it is prima facie evident that the present case attracts the force majeure clause.

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. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. 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 allotment letter.

t) Anent to the above, it is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the



demonetisation of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months.

u) That the complainants have not come with clean hands before the forum and have suppressed the true and material facts from the Forum. It would be apposite to note that the complainants are a mere speculative investor who has no interest in taking possession of the apartment. In view thereof, this complaint is liable to be dismissed at the threshold.

7. 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

8. 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

9. 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

10. 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.

11. 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.

F. Findings on objections raised by the respondent:

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

12. The respondent has submitted that in the matter as 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 against M/s Supertech Limited and imposed moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent is no longer the assets of M/s Supertech Limited and admittedly, respondent 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. The respondent has stated in the reply that the MDA was cancelled by consent of respondent and M/s Supertech Limited vide cancellation agreement dated 03.10.2019. Thereon, respondent 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 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 and 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., M/s Supertech Limited remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent and M/s Supertech Limited were jointly and severally liable for the project, no orders can be passed against M/s Supertech Limited in the matter at this stage.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the entire amount paid by the complainants to the respondent along with interest at prescribed rate from the date of deposit till the date of realization of refund.

13. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest. Section 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)

14. Clause 23 of the buyer's agreement talks about handing over the possession of the unit to the complainants, the relevant portion is reproduced as under:-

"POSSESSION OF UNIT: -

*23. The possession of the unit shall be given by June 2022 or extended period as permitted by the agreement. However, the company 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 up to the offer letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances....."*

[Emphasis Supplied]

15. **Due date of handing over of possession and admissibility of grace period:** As per clause 23 of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the 30.06.2022 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 30.12.2022.

16. **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 allottees 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, *ibid*. 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.

17. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.
18. 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., 28.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
19. 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;"

20. 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 23 of the agreement executed between the parties on 12.08.2021, the due date of handing over possession is 30.12.2022.
21. It is pertinent to mention that neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainants have paid almost 65% of the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained 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 allottees intend 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.
22. 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....."

23. 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."

24. 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 and give possession of the unit in accordance with the terms of agreement for sale. Accordingly, since the allottees wish to withdraw from the project, the

respondent is liable 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 under the provisions of Section 18(1) of the Act of 2016.

25. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent no.2 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

26. 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 is directed to refund the amount received by it i.e., Rs.43,14,296/- from the complainants along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

III. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

27. Complaint stands disposed of accordingly.

28. Files be consigned to registry.

Dated: 28.05.2025



Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM