

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

Complaint no. : 1206 of 2021
Date of filing: 04.03.2021
Date of decision : 11.03.2025

Ms. Nilima Joshi

Regd. Address: P-3, Narkeldanga Main Road, CIT
Scheme Vi M, Kolkata, West Bengal-700054

Complainant

Versus

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

Respondents

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. Saumyen Das (Advocate)

Sh. Bhriugu Dhami (Advocate)

Sh. Rohit Arora (Advocate)

Counsel for Complainant

Counsel for Respondent no. 1

Counsel for Respondent no. 2

ORDER

1. That the present complaint has been filed by the complainant/allottee 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:

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	231.12.2021
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.	1803, Tower G (Page no. 17 of complaint)
6.	Unit measuring	1180 sq. ft. super area (Page no. 17 of complaint)
7.	Date of Booking	13.10.2013 (Page no.14 of complaint)
8.	Date of execution of Builder developer agreement	30.07.2014 (Page 16 of complaint)
9.	Possession clause	POSSESSION OF UNIT: - <i>I. The possession of the allotted unit shall be given to the Buyer(s) by the Developer in 42 months i.e. by April 2017. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (Page 18 of the complaint)</i>
10.	Due date of possession	30.04.2017 + 6 months = 30.10.2017 (inadvertently mentioned as Oct 2018 in proceeding dated 11.03.2025)



11.	Total sale consideration	Rs. 90,16,000/- (page 17 of complaint)
12.	Total amount paid by the complainant	Rs. 55,56,447/- (annexure C3, page 31 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

A. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- a. That the complainant is one such buyer who was lured by the promoter/developer/respondent in purchasing a unit no.1803, on 18th floor at tower G, having a super area of 1180.00 square feet, in the complex known as "Supertech Hues", located at Sector - 68, Gurugram, Haryana (the said 'Unit'). At the time of the application, the respondent showed a very rosy picture of their project promising several amenities.
- b. That the complainant booked the said unit with the respondent and initially paid an amount of Rs. 7,00,000/- on 13.10.2013 vide cheque bearing no. 829298 dated 10.10.2013 for Rs. 4,00,000/- drawn on Yes Bank and cheque bearing no. 00298 dated 10.10.2013 for Rs. 3,00,000/- drawn on Kotak Mahindra Bank.
- c. That after a gap of 8 months from the date of booking of the said unit, the promoter/developer offers to provide the buyer developer agreement. The buyer developer agreement was executed on 30.07.2014 between the respondent and complainant for the said unit for a total sale consideration of Rs. 90,60,000/- inclusive of club membership, development charges, PLC, IFMS and covered car parking .
- d. That as per clause 1 of possession of the unit of the said buyer's agreement, the promoter/developer was required to deliver the possession of the said unit within 42 months (i.e. by April 2017). A grace period of 6 months was



given in case of delay; therefore possession was to be given not beyond 48 months. The respondent has miserably failed to deliver the possession of the said unit within the promised time frame despite several requests of the complainant. The respondent has failed to deliver possession of the said unit till date without citing any reason for delay in handing possession of the said unit.

- e. That the complainant duly complied with the payment plan and had already made a payment of Rs.55,56,4473/- to the respondent out of total sale consideration of Rs.90,16,000/-, but despite of the same, the respondent has failed to deliver the possession of the said unit till date.
- f. That the complainant is suffering on the ground of economic hardship, mental and physical agony and due to which she is not able to lead normal life. The said agreement is one sided agreement and arbitrary. The agreement entitled the respondent to collect exorbitant amount from the complainant @2% per month in case default, but it only offered a paltry sum of money as compensation in case of delay on the part of the respondent in delivering the said unit. The buyer's agreement does not specify anywhere that in case of failure to deliver the timely possession of the said unit, the buyer has the right to seek refund of the entire amount without any forfeiture. The promoter has nowhere mentioned any remedial steps that the complainant can take in case of deficiency or failure of services. Therefore, this agreement is totally unfair and one sided as per Section 18 of the Act, 2016.
- g. That the respondent has never ever informed the reasons for the delay on their part in completing the project despite several requests from the complainant personally and otherwise. The respondent is also guilty of never informing the complainant regarding progress of the project. Each



time the complainant requested the respondent to provide the update and she was informed that the said unit would be delivered soon. The said unit was supposed to be delivered latest by April 2017 and there is a delay of more than three years now.

- h. That instead of informing the complainant regarding progress of the project, the respondent arbitrarily raised a demand of Rs.6,66,121/- against the said unit vide its emails dated 13.12.2019 and 02.01.2020 and also sent an outstanding statement dated 07.12.2019 with the said emails.
- i. That the complainant visited the site of the project and was shocked to know that the project is far from completion and the work was stopped at the project site. The complainant at that time lost all the hope in the ability of the respondent in completing the project. The complainant was devastated since despite the obvious delay of more than three years in completing the project, the respondent till date as not furnished the project and the same is far from completion. The complainant therefore decided to withdraw from the project and seek refund. As per the buyer's agreement, the respondent/developer was to offer possession of the said unit followed by handing over possession of the said unit by April 2017 after completion of building consisting of 21st floor roof slab, top floor roof slab and MEP (Mechanical, Electrical and Plumbing) services. But, as per website of the "Supertech Hues" project under project status, only work of 19th floor in progress for tower-G where the said unit is located and therefore, it is admitted position that the respondent till date has not finished the project and the same is far from completion even after lapse of more than three years from the due date of delivery of possession.



- j. That since the promoter/developer/respondent failed to deliver possession of the said unit even after lapse of more than three years from the due date of delivery of possession, the complainant issued a legal notice dated 06.01.2020 through her lawyer to the respondent for refund of the said amount of Rs.55,56,447/- along with interest. But the respondent neither refunded the said amount to the complainant nor replied to the said legal notice despite receipt of the legal notice by the respondent on 07.01.2020.
- k. That since the respondent neither replied to the legal notice nor refunded the amount along with interest despite receipt of the legal notice, the complainant again sent a reminder to the respondent vide her email dated 10.07.2020, but the complainant has not received any revert/ confirmation from the respondent.
- l. That the respondent has cheated and defrauded the complainant which is clear from the fact that the complainant had booked the said unit on 13.10.2013 and as per clause of the buyer's agreement, the license no.106 & 107 for the said project was granted by the Director General of Town & Country Planning (DGTCP), Haryana to the respondent on 26.12.2013. Therefore, at the time of receiving the booking amount from the complainant, the respondent/ builder had no valid licence for development of the said Project.
- m. That a substantial payment of Rs. 55,56,447/- was made by the complainant without delivery of the said unit has caused immense financial stress and loss and mental Agony to the complainant.

B. Relief sought by the complainant: -

The complainant has sought following relief(s):



- I. Direct the respondent to refund the entire deposited amount of the complainant, amounting to Rs.55,56,447/- with an interest @18% compounding quarterly till its actual realization of complete amount in accordance with Section 18 of the Act, 2016 as the respondent is in violation of Clause 1 of Possession of the said Unit of the Buyer Developer Agreement dated 30.07.2014 and also the respondent has cheated/defrauded the complainant.
- II. Direct the respondent to pay Rs.25,00,000/- to the Complaint towards compensation for mental and physical agony caused to the Complainant due to delay on the part of respondent in completing the project even after lapse of three years from the due date of handing over possession of the said Unit
- III. Cost of litigation be also awarded in favor of the Complainant and against the Respondent.

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.

C. Reply by the respondent no. 1

5. The respondent is contesting the complaint on the following grounds:-
 - a. That the instant complaint is untenable both on facts and in law and is liable to be rejected on this ground alone.
 - b. That the matter with respect to jurisdiction of the Authority or the Adjudicating officer is still pending adjudication before the Apex Court, thus no statutory vested jurisdiction being available with either the Hon'ble Authority or the Hon'ble Adjudicating officer, present complaint ought to be adjourned sine die till the final decision on the subject matter by the Hon'ble Apex Court, vesting jurisdiction to adjudicate upon refund matter either upon the Authority or the Hon'ble Adjudicating officer.



- c. Further, the Hon'ble Apex court has vide order dated 05.11.2020 issued a stay on the judgment and law as decided/declared by the Hon'ble Punjab and Haryana High Court vide judgment being CWP no. 34271/2019.
- d. 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.
- e. That the complainant after entering into agreements which clearly specify the rights and obligations of parties cannot wriggle out of its obligations merely on its whim and fancies and more over merely on the ground of financial difficulties without substantiating the said averment.
- f. Without prejudice to the afore-said, the delay if at all, has been beyond the control of the respondents and as such extraneous circumstances would be categorised as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.
- g. That the delay in construction was on account of reasons that cannot be attributed to the respondent. The 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 clauses which relate to the time for completion, offering possession extension to the said period is "clause 24 under the heading "possession of unit" of the agreement.
- h. In view of the force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the



respondent for completion of the project is not a delay on account of the respondent for completion of the project.

- i. 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 agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the agreement was to be handed over in and around November, 2017.
- j. That the project got inadvertently delayed owing to the above noted force majeure events. Further, since March, 2020, as owing to the nationwide Govt. imposed lockdown, no construction/development could take place at site. However, the respondent has dedicated itself to delivering the projects at the earliest.
- k. Due to the Covid condition and the its devastating effect on the Indian economy specially the real-estate sector arranging of funds for completion of projects has become an impossible task as the banks and NBFC's have made it difficult for builders to apply for loans for completion of pending projects. However, the respondent undertakes to handover possession of the subject unit at the earliest.
- l. 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.
- m. That the timeline stipulated under the agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required.



Evidently, the respondent had availed all the licenses and permits in time before starting the construction.

- n. 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 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 and Jawaharlal Nehru Natinal Urban Renewal Mission, leadinf significant shortage of labour/workforce in the real estate market. 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.
- o. 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.



- p. 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 4.9.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project by December, 2021.
- q. That the possession of the said premises was proposed to be delivered by the respondent to the complainant by April, 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, non-availability of steel or cement or other building materials or water supply or electric power or slow down strike as well as insufficiency of labour force which is beyond the control of the respondent.
- r. That the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before the HRERA Authority. According to the terms of agreement also it is mentioned that all the amount of delay possession would be completely paid/ adjusted to the complainant at the time of final settlement on slab of offer of possession.
- s. The Central Government announced Rs. 25,000 Crore to help the bonafide builders for completing the stalled/ unconstructed projects and deliver the homes to the homebuyers. The Rrespondent/promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.



- t. That the said project is a continuance business of the respondent and it would be completed by as per time line provided under the registration certificate and applicable extension as per law.
- u. That the project is an ongoing project and orders of refund at a time when the real-estate sector is at its lowest point, would severally prejudice the development of the project which in turn would lead to transfer of funds which are necessary for timely completion of the project. It is most humbly submitted that any refund order at this stage would severally prejudice the interest of the other allottees of the project as the diversion of funds would severally impact the project development. Thus, no order of refund may be passed by this Hon'ble forum in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.
- v. That the complainant cannot unilaterally cancel/ withdraw from the project at such an advance stage as the same would fly in the face of numerous judicial pronouncements as well as the statutory scheme as proposed under the Act, 2016.
- w. That the Hon'ble Supreme Court in its judgment of ***Pioneer Urban Land and Infrastructure Limited & Anr. V. Union of India & Anr.***, the Supreme Court has nuanced a balanced approach in dealing with legitimate builders. Furthermore, the court has laid emphasis on the concept of "legitimate/bonafide buyers" whereby one cannot be considered a homebuyer if the he/she is not willing to see the project to its end or is investing in the project with a speculative mindset, to withdraw his/her money before giving credence to the project.
- x. 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.

- y. 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. 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 view of the same, it is most humbly submitted that the pandemic is clearly a "Force Majeure event, which automatically extends the timeline for handing over possession of the Apartment. Hence, the complainant is not entitled for any compensation or refund claimed except for delayed charges as per clause 25 of the agreement.

D. Reply by the respondent no. 2

6. 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.
7. That the complainant 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 a unit(s) in the said project. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said uniy, the

complainant executed the buyer developer sgreement dated 30.07.2014 with M/s. Supertech Ltd. for a unit bearing number G/ 1803, tower – G, 18th floor, having a super area of 1180 sq. ft. (approx.) for a total consideration of Rs. 90,60,000/- exclusive of applicable charges and taxes.

8. 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.

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 booing/ allotment undertaken by it before the passing of the said Suo Moto order.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. That the complaint deems to be dismissed sine-die or dismissed as the R2 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.

15. 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. The respondent cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.
16. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds.
17. 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.
18. 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.
19. 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". 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.

20. That the timeline stipulated under the buyers agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent.
21. The respondent has also just reiterated the reasons for delay and force majeure as stated in the reply of respondent no. 1
22. 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

23. 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

24. 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

25. 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.

26. 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 no. 1

F.I Objections regarding force majeure.

27. 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 30.07.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.10.2017, which was much 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."

28. 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. 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.

29. Respondent no. 2 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 respondent no.1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 2 is no longer the assets of respondent no. 1 and admittedly, respondent no.2 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/ 5802/2019**. Respondent no.2 has stated in the reply that the MDA was cancelled by consent of respondent no.2 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.2 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., respondent no.1 remains under moratorium. Therefore, even

though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 2 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the entire deposited amount of the complainant, amounting to Rs.55,56,447/- with an interest @18% compounding quarterly till its actual realization of complete amount in accordance with Section 18 of the Real Estate Regulation Act, 2016 as the Respondent is in violation of Clause 1 of Possession of the said Unit of the Buyer Developer Agreement dated 30.07.2014 and also the respondent has cheated/defrauded the complainant;

30. In the present complaint, the complainant intends 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)

31. As per clause 1 of the buyer's developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

"POSSESSION OF UNIT: -

1 The possession of the unit shall be given in 42 months i.e. by December 2017 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]

32. 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 30.04.2017 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 30.10.2017.

33. Admissibility of refund along with prescribed rate of interest: The complainant is 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.

34. 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.

35. 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., 11.03.2025 is

9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%.**

36. 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;"*

37. 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 no.2 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 30.07.2014, the due date of possession is calculated from the date of Execution of Agreement. The period of 42 months expired on 30.04.2017. 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 30.10.2017.
38. 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 no.2. 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 61% 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 no. 2 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.

39. 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....."

40. 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."

41. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter no.2 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.
42. 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

43. 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., Sarv Realtors Pvt. Ltd. is directed to refund the amount received by it i.e., Rs. 55,56,447/- from 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. A period of 90 days is given to the respondent no.2 to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. The respondent no. 2 is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.
 - iv. No directions are being passed in the matter qua respondent nos. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.
44. Complaint as well as applications, if any, stands disposed of accordingly.
45. Files be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:11.03.2025