



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

Complaint no. : 160 of 2024  
Date of filing : 24.01.2024  
Date of decision: 11.03.2025

1. Mr. Rohit Patney  
2. Aradhana Patney  
Both RR/o: - 1105, block 17, Heritage City, DLF-2,  
Gurugram-122018

**Complainants**

**Versus**

M/s SARV Realtors Pvt. Ltd  
M/s Supertech Ltd.  
**Regd. Office at:** E square, plot no. C2, 21<sup>st</sup> to 25<sup>th</sup> floor,  
Sector 96, NOIDA, UP-201303, India-201303

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Garv Malhotra  
Sh. Rohit Arora  
SH. Bhriugu Bhami

Complainants  
Respondent no.1  
Respondent no.2

**ORDER**

1. The present complaint dated 24.01.2024 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities

and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the 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	231.12.2021
4.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013
	Validity status	25.12.2017
	Name of licensee	Sarv Realtors Pvt. Ltd. & Ors.
5.	Unit no.	1003, tower N, floor 10 <sup>th</sup> (Page no. 22 of complaint)
6.	Unit measuring	1430 sq. ft. super area (Page no. 22 of complaint)
7.	Date of Booking	27.01.2015 (Page no.14 of complaint)
8.	Date of execution of Builder developer agreement	20.02.2015 (Page 16 of complaint)
9.	Possession clause	<b>POSSESSION OF UNIT: -</b> <i>I. The possession of the allotted unit shall be given to the Allottee/s by the company by July 2018. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the allottee/s and</i>

		<i>the allottee/s agrees to strictly abide by the same in this regard.</i> (Page 23 of the complaint)
10.	Due date of possession	July 2018 + 6 months = 30.01.2019
11.	Total sale consideration	Rs. 1,0801,950/- (page 23 of complaint)
12.	Total amount paid by the complainant	Rs. 1,00,94,260/- (page 12 of complaint)
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

## B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the respondent no. 1 & 2 being sister concerns are companies incorporated under the companies Act, 1956 having its registered office at 1114, Hemkunt Chambers 89, Nehru Place, South Delhi, New Delhi, Delhi, India, 110019 and corporate office at E square, plot no. C2, 21st to 25th floor Sec 96 Noida, Uttar Pradesh-201303, India, 201303. The respondent no. 1 & 2 entered into an unregistered joint developer agreement dated 25.04.2014, for the development of a group housing colony under the name of "Supertech Hues & Azalia" situated in the Sector 68, Gurugram, Haryana. The respondent no. 1 is the deemed promoter of the said project and also the holding the license no. 106 of 2013 dated 26.12.2013 and license no. 107 of 2014 of the project. This important fact and information were purposely and malfidely hidden by the respondents so as to evade their liability and came to the knowledge of the complainants at the last stages of the execution i.e. after moratorium of respondent no 2.

- II. That on 22.01.2015, the complainant being interested in the project of the respondents, paid a booking price of Rs. 5,00,000/-in favor of the respondents. Vide the booking amount of Rs. 5,00,000/-, the complainants booked a flat bearing no. 1003, in tower N, admeasuring 1430 sq fts. in the respondent builders project namely "Supertech Hues," situated in the revenue estate, village Badshahpur, Sector 68, Gurugram, Haryana- 122001 and a builder buyer agreement between the complainant and respondent no 2 was signed on 20.02.2015. Astonishingly the respondent no. 1 was not made party to the agreement.
- III. That as per the clause E (24) of the builder buyer agreement entered between the parties dated 20.02.2015, the due date for the delivery of possession of the said project was by July, 2018. The respondents have failed to provide the valid offer of possession of the said unit to the complainant on the due date.
- IV. That the complainant and the respondent no. 2 entered into a subvention scheme, dated 21.02.2015 for a period of 36 months starting from March, 2015 till February, 2018. As per the subvention scheme entered between the complainant and the respondent no. 2, the respondent no. 2 agreed to pay the pre-EMI payment directly to the HDFC bank. As per the clause C of the said agreement, it was specifically agreed between the parties that from March, 2018 onwards the respondent no. 2 shall pay the EMI directly to the complainant till the offer of possession is made to the complainant by the respondents. The EMIs were paid directly to the complainant till

09.02.2019 and thereafter no EMIs have been paid till date despite several reminders.

- V. That the complaint filed by the complainant bearing complaint no. RERA-GRG-2821 of 2019, was decided by the Authority on 26.02.2020. The Authority, while deciding the complaint on merits passed an order in favor of the complainant granting the complainant delayed possession charges, which were to be paid by the respondent no. 2, @10.15 % per annum.
- VI. That further, the respondent no. 2 did not comply with the order dated 26.02.2020, of the Authority within the time period given by the Authority to comply with the order i.e., 90 days and hence the complainant, filed before the adjudicating authority, Gurugram an execution application bearing case no. RERA-GRG-1596-2021, wherein the decree holder/ complainant prayed for the enforcement of the order dated 26.02.2020.
- VII. That during the adjudication of the execution application, vide order dated 12.10.2021, the Adjudicating Officer referred the matter to the CA of the Authority for the assessment of the books of accounts. Further vide order dated 28.10.2021, the Adjudicating Officer admitted the calculation presented by the CA of the Authority, as per which an amount of Rs. 18,15,699/- was to be paid by the judgment debtor i.e., respondent no. 2, to the decree holder. The Judgment debtor did not comply with the consequent orders of the Adjudicating Officer and has failed to comply with the orders of the Hon'ble Authority.
- VIII. Thereafter, during the hearing on 15.03.2022 wherein Mr Anil Kumar Jain, Director of Supertech Limited, appeared before the Authority and the JD



was directed to deposit the post-dated cheques as per recalculation of the decretal amount on 31.03.2022. The decretal amount was calculated by the CA of the Authority to be Rs 26,79,124/- and monthly accrual of interest of Rs 85,380/- as on 16.03.2022 and the matter was disposed of and file was consigned to the registry.

- IX. That further on 25.03.2022 the respondent no. 2 i.e., M/s Supertech Limited was admitted into the corporate insolvency resolution process, vide order of NCLT, Delhi in the case of Union Bank of India Versus M/s Supertech Limited, Case No. IB-204/ (ND)/2021, u/s 7 of the IB Code. Due to being admitted into insolvency, all the pending cases against the respondent no. 2 were stayed and hence as a consequence the execution application of the decree holder/complainant was adjourned sine-die by the Adjudicating Officer and the complainant was advised to approach the IRP.
- X. That the complainants filed their claim before the IRP on 27.07.2023 the IRP informed that the project hues does not file under the projects of corporate debtor and we were advised to contact the designated CRM of the project. Accordingly, the complainant approached the CRM several times without any success.
- XI. That the complainants filed their claim before the IRP on 27.07.2023 the IRP informed that the project hues does not file under the projects of corporate debtor and we were advised to contact the designated CRM of the project. Accordingly, the complainant approached the CRM several times without any success.



- XII. That the Hon'ble RERA, Gurugram suo moto took cognizance of a matter in complaint no. HARERA/GGM/5802/2019 suo moto complaints dated 23.11.2019, upon which the decision was made on 29.11.2019. That the hon'ble RERA, Gurugram observed in the suo moto proceedings, that the license for the project namely "Supertech Hues and Aralia", was given to the respondent no. 1 and other land-owning entities. The respondent no. 2 had mischievously, promoted the said project by entering into a unauthorized development agreement with the respondent no. 1 and other land owning entities. This fact was hidden from the complainant by both the respondents.
- XIII. That the Authority in the said Suo Moto matter, conclusively in the interest of the allottees decided, by transferring the registration and all related liabilities of the completion of the project in the favor of the respondent no. 1, from the respondent no. 2. That the Authority, directed the respondent no. 1 to step into the shoes of the respondent no. 2 in all the builder buyer agreements with the allottees pertaining to the mentioned projects, namely "Supertech Hues And Azalia". The Authority had further transferred all the assets and liabilities pertaining to these two projects in favor of the respondent no. 1 instead of the respondent no. 2.
- XIV. That the IRP, i.e., Mr. Hitesh Goel of the respondent no. 2, has also vide its affidavit submitted to the Authority dated 27.09.2023, also clarified the status of the ownership of the projects "**Supertech Hues And Azalia**", hence it is clear that the Respondent no. 1, had stepped into the shoes of the developer and promoter of the project namely "**Supertech Hues**", in which



the complainant had booked its unit. Hence, the respondent no. 1 becomes liable to pay the complainant the delayed possession charges, and compensation for the loss borne by the complainant, due to the delay in the possession by the respondents.

- XV. That the complainants have complied with all the terms and conditions of the various documents executed but the respondents have failed to meet up with their part of the contractual obligations and thus are liable for DPC and interest for every month of delay at prevailing rate of interest from the due date of possession till valid offer of possession and physical possession. Till date no amount has been paid back to the complainants and the respondents are enjoying the hard-earned money of the complainants for past five year approximately.
- XVI. That the complainants had approached the respondents time and again seeking the information and status of the project and date of offer of possession of the said premises. After repeated reminders the respondents assured that they will handover of possession soon. Yet no such offer has been made till now.
- XVII. That it is again pertinent to mention here that the respondent has yet to register their project, "Supertech Hues" with the RERA authority. The registration of the project is mandatory under Section 3 of Real Estate (Regulation and Development) Act, 2016 within the stipulated time period, which the respondent has failed to do.
- XVIII. That as respondent has not registered its project, with the concerned authority within the stipulated time period prescribed under the central



Act. Therefore, under section 59 of the Act, 2016, for non-compliance with the said Act and for such violation, penalty must be imposed on respondent.

- XIX. That the respondents are misusing their position on the complainant and have committed an unfair trade practice. Respondent and their employees are attempting to cheat and defraud the complainant, out of his hard-earned money by engaging in dishonest conduct and unfair trade practices.
- XX. That for the purpose of the clarity it is stated herein that in the column of registered mobile no and registered email id, the complainants give their express consent so as to specify/state the email id and mobile no of the lawyer who has been engaged by the present complainants and any communication made to such email id/mobile number will be deemed to be an express communication to the complainants themselves as the complainants wants to shorten the process of communication.
- XXI. That the complainants have suffered great loss in terms of loss of rental income, opportunity to own and enjoy a property in Gurugram, as majority of their life's hard-earned money is stuck in this project. The respondent is liable to compensate the complainants for its above acts and deeds causing loss of time, opportunity and resources of the complainants due to the malpractices of the respondents, the complainants suffered greatly on account of mental & physical agony, harassment and litigation charges burden of EMIs. Thus, due to such hardship faced by the complainants by the act and misconduct of the respondents, the complainants are also reserving their rights to be adequately compensated by the learned Adjudicating officer.

**C. Relief sought by the complainant:**

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

- I. Direct the respondent to delay possession charges interest for every month of delay at prevailing rate of interest from the due date of possession till actual handing over of complete and valid physical possession.
- II. Direct the respondent to reimburse litigation cost of Rs. 1,50,000/- to the complainant.

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: -

1. 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.
2. 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 unit, the complainant executed the buyer developer agreement dated 26.08.2014 with M/s. Supertech Ltd. for a unit bearing number N/ 1003, tower - N, 10<sup>th</sup> floor, having a super area of 1430 sq. ft. (approx.) for a total consideration of Rs. 1,08,01,950/- exclusive of applicable charges and taxes.

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

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.

4. 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.

5. 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.
6. 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.
7. 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.
8. 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.
9. That the complaint deems to be adjourned 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.
10. 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.

11. 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.
12. 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.
13. 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.
14. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before July, 2018. 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". 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.

15. 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 endeavor 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.
16. 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 Natinal 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.

17. 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.
18. 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.
19. 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.
20. 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. Unfortunately, the real estate sector is still reeling

from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'force majeure', thereby extending the time period for completion of the project.

21. That the complainant has not come with clean hands before the form and have suppressed the true and material facts from the Forum. It would be apposite to note that the complainant is 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. All other averments made in the complaint were denied in toto.
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.

**G. Maintainability of complaint**

13. The respondent had objected to the maintainability of the present complaint as the complainant herein had earlier filed a complaint bearing no. 2821 of 2019 in respect of the subject unit seeking delay possession charges and other reliefs and the same was disposed of by the Authority on 26.02.2020. Being aggrieved by the order passed by the Authority on 26.02.2020, an execution bearing no. 1596 of 2021 was filed, wherein the decree holder/complainant prayed for the enforcement of the order dated



26.02.2020. During the pendency of the execution petition, the Adjudicating Officer referred the matter to CA for assessment of account and as per calculation, Rs.18,15,699/- was to be paid by the respondent. But further the respondent yet to comply with the said execution orders passed in said complaint. Meanwhile the Supertech Ltd was gone to insolvency and the execution petition stand adjourned sine-die.

14. The Authority observes that it is not disputed that prior to filing of the present complaint before the Authority on 24.01.2024, the complainant had already filed a complaint before the Authority bearing no. 2821 of 2019 in respect to the same subject unit. The said complaint was disposed of by the Authority vide order dated 26.02.2020 directing the respondent to pay interest at the prescribed rate i.e., 10.15% per annum till offer of possession after obtaining of OC by the respondent on the rest of the amount which he had paid from the pocket on account of raising of loan, as per provisions of Section 18(1) of the RERA Act, 2016. Thereafter, an execution filed by the complainant before the Adjudicating Officer. The execution petition was adjourned sine-die as insolvency proceedings were pending against M/s Supertech Ltd.
15. After consideration of all the facts and circumstance, Authority is of view that the present complaint seeking delay possession charges is not maintainable in light of the fact that the complainant had already exercised the same remedy of seeking delay possession charge under Section 18(1)(a) of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") which was granted on 26.02.2020. Section 18(1) of the RERA Act provides that

where the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale, the allottee shall have the option to either withdraw from the project and claim refund of the amount paid along with interest and compensation, or to continue in the project and claim interest for the period of delay, the same 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)*

16. Further, this Authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and finally decided by this Authority in the former complaint bearing CR.No. 2821 of 2019. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under

Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 CPC is reproduced as under for ready reference:

*"11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

**Explanation I.**—*The expression "former suit" shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*

**Explanation II.**—*For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

**Explanation III.**—*The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.*

**Explanation IV.**—*Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.*

**Explanation V.**—*Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.*

**Explanation VI.**—*Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.*

**1[Explanation VII.**—*The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.*

**Explanation VIII.** —*An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited*



*jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”*

17. The Authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the Authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.
18. Complaint stands disposed of.
19. File be consigned to registry.

(Ashok Sangwan)  
Member

(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 11.03.2025**