

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

Order reserved on: 18.02.2025
Order pronounced on: 22.04.2025

NAME OF THE BUILDER		M/s SARV Realtors Pvt. Ltd.
PROJECT NAME		"Supertech Hues", Sector- 68, Gurugram, Haryana
S. No.	Case No.	Case title
1.	CR/2822/2023	Aekta Sharma V/S Sarv Realtor Private Limited (Respondent no. 1), Supertech Limited (Respondent no. 2) & Supertech through IRP (Respondent no. 3)
2.	CR/3079/2023	Shailja Bhayana V/S Sarv Realtor Private Limited (Respondent no. 1), Supertech Limited (Respondent no. 2) & Supertech through IRP (Respondent no. 3)
3.	CR/3143/2023	Ritu Gupta and Rohit Aggarwal V/S Sarv Realtor Private Limited (Respondent no. 1), Supertech Limited (Respondent no. 2) & Supertech through IRP (Respondent no. 3)
4.	CR/3897/2023	Sahil Khurana and Mukesh Khurana V/S Sarv Realtor Private Limited (Respondent no. 1), Supertech Limited (Respondent no. 2) & Supertech through IRP (Respondent no. 3)
5.	CR/3525/2023	Varun Chadha and Rajender Chadha V/S

		Sarv Realtor Private Limited (Respondent no. 1), Supertech Limited (Respondent no. 2) & Supertech through IRP (Respondent no. 3)
6.	CR/3532/2023	Mohit Mittal V/S Sarv Realtor Private Limited (Respondent no. 1), Supertech Limited (Respondent no. 2) & Supertech through IRP (Respondent no. 3)
7.	CR/3583/2023	Nand Kishore Avantsa and Udbhav Avantsa V/S Sarv Realtor Private Limited (Respondent no. 1), Supertech Limited (Respondent no. 2) & Supertech through IRP (Respondent no. 3)

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE

Complainant (Advocate)
Respondent no. 1 (Advocate)
Respondent no. 2 & 3 (Advocate)

Shri Harshit Batra
Dushyant Tewatia
Shri Bhrigu Dhami

ORDER

1. This order shall dispose of 7 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules")

for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Supertech Hues", Sector- 68, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s SARV Realtors Pvt. Ltd. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of refund of the entire paid up amount along with interest and other reliefs.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	“Supertech Hues” at Sector 68, Gurugram.		
Project area	55.5294 acres		
Registrable area	32.83 acres		
Nature of the project	Group housing colony		
DTCP license no. and other details			
DTCP License No.	Valid up to	Area admeasuring	Name of licensee Holder
89 of 2014 dated 08.08.2014	07.08.2024	10.25 acres	Om Parkash, Jai Bhagwan Ss/o Amarchand and Suresh Kumar, Rajesh Kumar, Mukesh Kumar, Sanjay Kumar Ss/o Jeevan Lal and 2 others
106 of 2013 dated 26.12.2013	25.12.2017	13.74 acres	Sarv Realtors Pvt. Ltd.
107 of 2013 dated 26.12.2013	25.12.2017	13.75 acres	Sarv Realtors Pvt. Ltd.
134 of 2014 dated 26.08.2014	25.08.2024	4.85 acres	Smt. Aruna Lohia W/o Om Parkash Lohia, Smt. Savitri W/o Jai Bhagwan, DSC Estate Developers Pvt. Ltd. and 2 others



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Complaint No. 2822 of 2023
and 7 others

135 of 2014 dated 26.08.2014	25.08.2019	7.71 acres	Attractive Implex Pvt. Ltd. and 2 others
136 of 2014 dated 26.08.2014	25.08.2019	5.84 acres	ASP Sarin Realty Pvt. Ltd. and 2 others
RERA Registered/ not registered	Registered bearing no. 182 of 2017 dated 04.09.2017 Valid up to 31.12.2021 (Hues Tower- A, B, E, F, G, H, M, N, K, T, V, W, O, P, C and D, and Azalia Tower- T1, T2, T3, T4, T5, T6 and T7)		
Occupation certificate	Not yet obtained		
Possession clause as per buyer's agreement	"1. POSSESSION OF UNIT: - <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,</i>		

S.No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter And BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.
1.	CR/2822/2023 Aekta Sharma Vs. Sarv Realtors Private Limited & Supertech Limited DOF: 23.06.2023 Reply by R1: 17.04.2025	A/0101, on 1st floor 1180 sq. ft. (Super area) (page 24 of complaint)	BBA 20.06.2014 (page 22 of complaint)	Oct 2017 (As per clause 1 of the buyer's developer agreement)	TC: Rs.87,63,480/- [As per payment plan at page 25 of complaint] AP: Rs. 65,61,708/- (page 10 of complaint)
2.	CR/3079/2023 title Shailja Bhayana Vs. Sarv Realtors Private Limited & Supertech Limited DOF: 18.07.2023 Reply by R1: 09.08.2024	2202, on 22nd floor 1180 sq. ft. (Super area) (page 21 of complaint)	BBA 10.10.2016 (page 20 of complaint)	Dec 2019 (As per clause 1 of the buyer's developer agreement)	TC: Rs.41,44,692 [As per payment plan at page 22 of complaint] AP: Rs.41,14,642/- (page 14 of complaint)
3.	CR/3143/2023 title Ritu Gupta & Rohit Aggarwal Vs. Sarv Realtors Private Limited & Supertech Limited	0905, on 9th floor 1225 sq. ft. (Super area) (page 24 of complaint)	BBA 20.05.2016 (page 23 of complaint)	June 2020 (As per clause 1 of the buyer's developer agreement)	TC: 84,69,025/- [As per payment plan at page 22 of complaint] AP:



	DOF: 07.07.2023 Reply by R1: 31.05.2024 Reply by R1: 31.05.2024				52,89,642/- (page 14 of complaint)
4.	CR/3897/2023 title Sahil Khurana & Mukesh Khurana Vs. Sarv Realtors Private Limited & Supertech Limited DOF: 18.08.2023 Reply by R1: 31.05.2024	0404, on 4th floor 1180 sq. ft. (Super area) (page 25 of complaint)	BBA 30.05.2015 (page 24 of complaint)	Feb 2019 (As per clause 1 of the buyer's developer agreement)	TC: 76,13,880/- [As per payment plan at page 26 of complaint] AP: 57,90,350/- (page 15 of complaint)
5.	CR/3525/2023 title Varun Chadha & Rajendra Chadha Vs. Sarv Realtors Private Limited & Supertech Limited DOF: 28.07.2023 Reply by R1: 24.06.2024	1104, tower-W on 11th floor 1430 sq. ft. (Super area) (page 21 of complaint)	BBA 18.06.2014 (page 20 of complaint)	Oct 2017 (As per clause 1 of the buyer's developer agreement)	TC: Rs.1,05,09,980/- [As per payment plan at page 22 of complaint] AP: Rs.38,32,577/- (page 14 of complaint)
6.	CR/3532/2023 title Mohit Mittal Vs. Sarv Realtors Private Limited & Supertech Limited DOF: 28.07.2023 Reply by R1: 24.06.2024	1104, tower 76 CANVAS, 11th floor, 1180 sq. ft. (Super area) (page 22 of complaint)	BBA 02.06.2015 (page 20 of complaint)	Feb 2019 (As per clause 1 of the buyer's developer agreement)	TC: Rs.71,56,040/- (page 22 of complaint) AP: Rs.23,31,798/- (page 16 of complaint)
7.	CR/3583/2023 title Nand Kishore Avantsa and udbhav Avantsa Vs. Sarv Realtors Private Limited & Supertech Limited DOF: 01.08.2023 Reply by R1: 31.05.2024	0802, on 8th floor 1180 sq. ft. (Super area) (page 20 of complaint)	BBA 11.04.2017 (page 19 of complaint)	March 2019 (As per clause 1 of the buyer's developer agreement)	TC: Rs. 93,11,000/- (page 21 of complaint) AP: Rs. 80,72,117/- (page 14 of complaint)

Relief sought by the complainant(s):-

- That the respondents are jointly and severally liable as per the order dated 29.11.2019 in suo-moto complaint no. HARERA/GGM/5802/2019/Suo-Motu (complaints) dated 29.11.2019;
- Direct the respondents refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation;
- To settle the claims and obligations as per the memorandum of undertaking dated 23.12.2017 and the tri-partite agreement dated 03.12.2017;
- Direct the respondents to not sell/create third party right till complete realisation/refund;
- To grant leave to the Complainant to file a complaint under section 71 and 72 of the Act for violation of the Agreement dated 31.07.2017, MOU dated 23.12.2017 and various provisions of the Act, 2016 and the rules of 2017 and regulations thereunder;
- To take suo-moto action against the respondents for non-submission of BIP and violation of section 59, 63 and other sections of the Act 2016.

- The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/2822/2023** titled as **Aekta Sharma V/s Sarv Realtors Pvt. Ltd. and others.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

- 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:

CR/2822/2023 titled as Aekta Sharma V/s Sarv Realtors Pvt. Ltd. and others

S.No.	Particulars	Details
1.	Name of the project	Supertech Hues, Sector-68, Gurugram-122101
2.	Project area	55.5294 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017
	Validity Status	31.12.2021
5.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013
	Validity status	25.12.2017

	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.
6.	Unit no.	A/0101 (Page no. 24 of complaint)
7.	Unit tentatively measuring	1180 sq. ft. super area (Page no. 24 of complaint)
8.	Unit type	2bhk + 2 Toil (page 24 of complaint)
9.	Date of Booking	13.10.2013 (Page no. 24 of complaint)
10.	Date of execution of Builder developer agreement	20.06.2014 (Page 23 of the complaint) (duly signed by all the parties)
11.	Possession clause as per buyer developer agreement	1. POSSESSION OF THE UNIT:- <i>1. The possession of the allotted unit shall be given to the byer(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. (Emphasis supplied) (Page 25 of the complaint)</i>
12.	Due date of possession	April, 2017 + 6 months = OCT 2017 (Page 25 of the complaint)
13.	Total sale consideration	Rs.87,63,480/- (Page 25 of the complaint)
14.	Total amount paid by the complainant	Rs.65,61,708/- (as alleged by the complainant, page 16 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

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



- I. That that respondent no. 1 i.e., M/s Sarv Realtors Private Limited is the licensee and co-promoter of the project and had obtained license number 106 & 107 of 2013 dated 26.10.2013, license no. 89 of 2014 dated 08.08.2014, and license no. 134 to 136 of 2014 dated 26.08.2014 for the development of the group housing colony on the land falling in sector 68 which included the project land. The said licenses that the respondent no. 1 was authorized to develop the project by the Department of Town Country and Planning.
 - II. That the respondent no. 2 had initially advertised the project and assured through its advertisements, assurances, and warranties that it has the complete authority to develop the said project. The respondent no. 2 had further assured the timely completion of the project and the handover of the units to the prospective buyers. The respondent no. 2 represented himself to the developer of the project and hence falls within the meaning of section 2(zk) of the Act. The respondent no. 2 went into insolvency when an application was filed under section 7 of the Insolvency and Bankruptcy Code, 2016 and was admitted vide order dated 25.03.2022 in IB-204/(ND)/2021, however, the same is not in respect to the project in question and Mr. Hitesh Goel was appointed as the IRP and is currently responsible for the functioning of the company, hereby as respondent no. 3.
 - III. That it has come to the knowledge of the Complainant that respondent no. 2 had never attained permission for the development of the project and had grossly misrepresented the Complainant, not only with respect to the authority of development of the project but also the completion of the pre-requisite formalities/compliances of DTCP and HARERA.
- **Misrepresentation by Supertech Limited and SARV Realtors Pvt. Ltd.**

- IV. That the permission for development of the project was given to respondent no. 1, however, the advertisement of the project and the development was assured, represented, and warranted to have been done by respondent no. 2. The complainant were made to believe that the respondent no. 2 has the complete authority to develop the project.
- V. That certain ongoing proceedings before the DTCP in respect to the land on which the group housing colony is being developed, show that the permission for transfer of the development rights, i.e., the Beneficiary Interest Permission (the "BIP") has not been made in favour of the respondent no. 2. As such, the respondent no. 1 is still the developing authority of the project and is a promoter within the meaning of section 2(zk) of the Act.
- **Respondent no. 1 and 2 are jointly and severally liable:**
- VI. That the respondent no. 2 had assured the Complainant of its developing authority and had also communicated that it is undergoing the compliances required under the Act. It was categorically communicated to the Complainant that the registration certificate of the project will soon be granted in favour of the respondent no. 2. That relying on the representations, assurances, and warranties of the respondent no. 2, a booking was made for a 2 BHK residential apartment bearing no. A/0101, 1st floor having its super area 1180 sq. ft., and consequently, a buyer development agreement dated 20.06.2014 was executed between the parties herein.
- VII. That on the basis of the representations given by respondent no. 2, the registration certificate number 182 of 2017 dated 04.09.2017 was granted by this Authority vide memo number HARERA-279/2017/873.

- VIII. That later in 2019, when the fact of the no permission for development with the Respondent no. 2 was brought to light, this Authority took cognizance of the matter in suo-moto complaint no. **HARERA/GGM/5802/2019/Suo-Motu(complaints) dated 29.11.2019**, wherein, this Authority passed an **order dated 29.11.2019**, taking cognizance of the matter, the Authority passed an order dated 29.11.2019, wherein it was directed that the registration of the project shall be amended to the extent of recognizing Sarv Realtor Pvt. Ltd. as the promoter. The Authority noted "Sarv Realtor Pvt. Ltd. being the licensee is responsible for development, marketing and sale of the project admeasuring 32.84 acreas and Sarv Realtor Pvt. Ltd was noted to be a promoter under the meaning of 2(zk) of the Act of 2016 for the development in regard to the License No. 106 and 107 of 2013 dated 26.10.2023, i.e., the project in question.
- IX. That the same was also noted in a similar case titled as **Anurag Chugh v Supertech limited in complaint no. 425 of 2022**, where this Authority has already taken cognizance of such a matter and issued notices to Sarv Realtors. Hence, on the basis of the above, it becomes amply clear that the liability of the respondents in respect to the development of the project is joint and several.
- **The project "Supertech Hues" is not a part of the insolvency proceedings of Supertech limited which are only limited to project ECO Village-II, hence, there is no bar to the present complaint**
- X. That proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 were initiated against the respondent no. 2, vide order dated order dated 25.03.2022 of the NCLT an IRP, Mr Hitesh Goel was appointed. That after the initiation of the said proceedings, it was clarified that the name of the project "**Hues** was noted not to be a part of the CIRP and was confirmed by the respondent no. 2 and the IRP, Mr. Hitesh Goel, to the allottees of the



project. The same was also confirmed by the IRP to Haryana RERA, Gurugram bench, as is evident from the following:-

- Email dated 12.05.2022 from Supertech providing the list of projects that do not fall under the purview of IRP, which clearly mentions the name of "Hues".
- The email dated 01.06.2022 from IRP, Hitesh Goel to Haryana RERA noting that "all assets and liabilities of the project were transferred from Supertech Limited to M/s Sarv Realtor Pvt. Ltd."

Moreover, respondent no. 2 issued notices showing the list of projects affected by the NCLT Order dated 25.03.2022. That these, *ex facie* show that "Hues" is not a part of the Insolvency proceedings.

- XI. That without prejudice to the contentions of the Complainant, it is also additionally submitted that the further course of events in the insolvency proceedings of the respondent no. 2 show that CIRP and CoC is restricted to only project Eco-Village II and not any other project. In an appeal against the said order dated 25.03.2022, the NCLAT passed an order dated 10.06.2022, wherein the NCLAT has issued a slew of directions that practically have the effect of converting the corporate insolvency resolution process into a "project-wise insolvency resolution process" in as much as the constitution of a committee of creditors has been restricted only to one project named "Eco Village-II".
- XII. That this order had the effect of adoption of a reverse CIRP thereby freeing all other projects of respondent no. 2 from the embargo of the Insolvency Resolution process and restricting the said process only to the project Eco-Village II. The financial creditors of the respondent no. 2 were aggrieved by the said order and hence a challenge against the said order of NCLAT dated 10.06.2022 was made before the Hon'ble Supreme Court of India under Civil Appeal Number 1925 of 2023. The grievance and contention of the



Appellant was with respect to the fact that the other projects of the Respondent No. 2 were freed from the CIRP.

- XIII. The concept of balance of convenience was noted by the Hon'ble Supreme Court and it was categorically noted that the course which has a lower risk of injustice has to be adopted. In light of the same, the Hon'ble Supreme Court had agreed with the order with the NCLAT and noted that it is in the best interest of the other projects if the same are kept as "ongoing" and not under the state of uncertainty.
- XIV. That the above-mentioned facts and circumstances categorically show that the project "Hues" does not fall within the ambit of insolvency proceedings of respondent no. 2 and even otherwise, without prejudice to the Complainant, the insolvency proceedings are restricted to only Eco Village II and not any other project and hence, there is no bar to the present proceedings.
- **Inordinate delay in handing over of possession of the unit and the unabridged right of the Complainant to seek refund**
- XV. The respondent no. 2 was completely engrossed with its blazoning gimmick through various authorized representatives. The complainant was made to believe that the proposed development of the respondents was reserving fast owing to the gigantic future benefits being perceived by the many allottees and that the respondents had attained all the sanctioned plans and permission for development of the project.
- XVI. That as per clause 1, page 4 of BBA and clause 24, page 9 of BBA, the possession of the unit had to be delivered by April, 2017, however, the respondents miserably failed in living up to their obligations of delivering the same. Till date, a substantial sum of Rs.65,61,708/- has been paid till date. However, no corresponding development has been made by the



respondents. Till date, with a delay of 6 years, the development of the project is nowhere near completion and it is anticipated that the respondents would be unable to refund amount paid by the complainant. Upon the visit of the complainant, she inquired from the authorized representative at site of the development status of the project and were again given false promises assuring that the same be completed in a few months. The respondents have miserably failed to stand up to the duties and obligations casted upon them by the Act, the rules and regulations thereunder, and the agreement. Till date, no occupancy certificate has been obtained by the respondent and the possession of the unit has not been given, till date, even in almost 6 years of booking.

- XVII. That the complainant cannot, in any manner, foresee the delivery of possession and having waited for a substantial amount of time, has lost faith in the bonafide conduct of the respondents. The complainant stands well within his rights in claiming the refund as they cannot be expected to wait indefinitely for the delivery of possession as was held in ***Fortune Infrastructure v. Trevor d' lima (2018) 5 scc 442 : (2018) 3 scc (civ) 1*** and was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725*** - "a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by im, along with compensation"
- XVIII. Moreover, it is the right of the complainant to claim refund of the deposited amounts as has been recently observed by the Hon'ble SC in ***Newtech Promoters and Developers Pvt. Ltd. vs. State of UP & Ors. etc. CIVIL APPEAL NO(S) 6745-6749 of 2021***
- XIX. Accordingly, the complainant should be directed to refund the complete deposited amount along with interest.

C. Relief sought by the complainant: -

7. The complainant has sought following relief(s):
- I. That the respondents are jointly and severally liable as per the order dated 29.11.2019 in suo-moto complaint no. HARERA/GGM/5802/2019/Suo-Motu (complaints) dated 29.11.2019;
 - II. Direct the respondents refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation;
 - III. To settle the claims and obligations as per the memorandum of undertaking dated 23.12.2017 and the tri-partite agreement dated 03.12.2017;
 - IV. Direct the respondents to not sell/create third party right till complete realisation/refund;
 - V. To grant leave to the complainant to file a complaint under section 71 and 72 of the Act for violation of the Agreement dated 31.07.2017, MOU dated 23.12.2017 and various provisions of the Act, 2016 and the rules of 2017 and regulations thereunder;
 - VI. To take suo-moto action against the respondents for non-submission of BIP and violation of section 59, 63 and other sections of the Act 2016.
8. 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 no. 1

9. The respondent is contesting the complaint on the following grounds:-
- i. That the respondent was issued license bearing no's 106 and 107 dated 26.12.2013 and license no's 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent and respondent no. 2 i.e., M/s Supertech Ltd. had entered into two joint development agreement dated 25.04.2014. In terms of joint development agreement the respondent no. 2 was to develop and market the said project.
 - ii. Consequently, after fully understanding, the various contractual stipulations and payment plans for the said apartment, the complainant execute the buyers agreement dated 20.06.2014 an apartment being no.



A/0101, 1st floor, having a super area of 1180 sq.ft. for a total consideration of Rs. 87,63,480/-.

- iii. That in the interim with the implementation of the Act, 2016 the project was registered with the HRERA, Panchkula vide registration no. "182 of 2017", dated 04.09.2017 upon application filed and in the name of M/s Supertech Ltd. the said registration still stands in the name of M/s Supertech Ltd.
- iv. 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** & M/s DSC Estate Developer Pvt. Ltd. respectively. This Authority had further directed that M/s Sarv Realtors Pvt. Ltd. and M/s DSC Estates Developers Pvt. Ltd. be brought on as the promoter in the project instead of M/s Supertech Ltd. certain important directions passed by the Authority are as under:
 - a. (i) The registration of the project "**Hues**" & "**Azalia**" be rectified and SARV Realtors Pvt. Ltd./DSC and others, as the case may be, be registered as promoter.
 - b. (v) All the assets and liabilities including customer receipts and project loans of whatsoever nature, the project Hues and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd./DSC and others. However, even after the rectification, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd./DSC and others fail to discharge its obligations towards the allottees.
- v. It is submitted that in lieu of the said directions passed by the Authority all assets and liabilities have been since transferred in the name of the



respondent. However, in terms of the said order, M/s Supertech Ltd. still remains jointly and severally liable towards the allotment undertaken by it before the passing of the said Suo Moto order.

- vi. That thereafter the said joint development agreement 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.
- vii. That in terms of the said cancellation agreement the respondent and R2 had agreed that as R2 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.
- viii. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a "force majeure" conditions, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- ix. That admittedly the complainant till date has only made a meagre payment out of the total sale consideration of Rs. 87,63,480/-. Thus, a defaulter cannot be awarded for its own wrong.

Preliminary Objections

- x. Admittedly respondent no. 2 i.e., M/s Supertech Limited is admitted to insolvency proceedings and IRP appointed for R2, therefore the present matters deems to be adjourned sine die till the finalization of the CIR process against the Supertech Limited.
- xi. That as M/s. Supertech Ltd. and the respondent are jointly and severally liable in terms of the Suo-Moto order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between both the



respondent's. The respondent no. 1 in lieu of the CIRP proceedings ongoing against Supertech Limited, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Limited.

- xii. The delay if at all, has been beyond the control of the respondent herein and as such extraneous circumstances would be categorized as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.
- xiii. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by April, 2017 with an extended grace period of 6 months which comes to an end by October 2017, which was much before the passing of the Suo Moto Order. The completion of the building is delayed by reason of Covid-19 outbreak, non-availability of steel or cement or other building materials and water supply or electricity power and slow down strike as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. Due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.
- xiv. That as the registration of the project still stands in the name of M/s Supertech Ltd. the present proceedings cannot be continued. The

Respondent has already applied for change in registration which till date is pending adjudication before the Authority.

- xv. That 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 opposite 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. Similar stay orders have been passed during winter period in the proceeding years as well i.e., 2017-2018 and 2018-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labor is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.
- xvi. The table concluding the time period for which the construction activities in the Project was restrained by the orders of competent Authority/Court are produced herein below as follows:-

S. No.	Court/Authority & Order Date	Title	Duration
1.	National Green Tribunal- 08.11.2016 10.11.2016	Vardhman Kaushik v/s Union of India	08.11.2016 to 16.11.2016
2.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
3.	Press Note by EPCA- Environment Pollution (Prevention and Control) Authority	Press Note-31.10.2018	01.11.2018 to 10.11.2018

4.	Supreme Court-23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
5.	EPCA/ Bhure lal Committee Order-31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
6.	Hon'ble Supreme Court 04.11.2019-14.02.2020	M.C Mehta v. Union of India Writ Petition (c) no. 13029/1985	04.11.2019 to 14.02.2020
7.	Government of India	Lockdown due to Covid-19	24.03.2020 to 03.05.2020
8.	Government of India	Lockdown due to Covid-19	8 weeks in 2021
	Total	37 weeks (approximately)	

xvii. Thus, it is therefore prayed that in the interest of justice, the complaint may kindly be dismissed with cost.

10. No reply has been submitted by respondent nos. 2 & 3. However, counsel for respondent no 2 has stated that respondent no. 2 is under CIRP vide order dated 25.03.2022 passed by Hon'ble NCLT New Delhi Bench in case no. IB-204/ND/2021 titled as **Union Bank of India Versus M/s Supertech Limited** and moratorium has been imposed against respondent no.2 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against respondent no.2.

11. 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

12. 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

13. 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

14. 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.

15. 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.

16. 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 20.06.2014 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."

17. 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. 2 and consequent moratorium against proceedings against respondent no.2.

18. Respondent no. 1 has filed an application dated 10.04.2024 for staying the proceedings 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.2 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 1 is no longer the assets of respondent no. 2 and admittedly, respondent no.1 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/5802/2019**. Respondent no.1 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.1 i.e., SARV Realtors Pvt. Ltd. admittedly took responsibility to develop the project and started marketing and allotting new units under its name. In view of the above, respondent no.1 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., respondent no.2 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 2 were jointly and severally liable for the project, no orders can be passed against respondent no.2 in the matter at this stage.

G. Findings on the relief sought by the Complainant.

- G.I That the respondents are jointly and severally liable as per the order dated 29.11.2019 in suo-moto complaint no. HARERA/GGM/5802/2019/Suo-Motu (complaints) dated 29.11.2019;**
- G.II Direct the respondents refund of the total amount along-with interest @ MCLR + 2% from the date of payment till date of realisation;**
- G.III To settle the claims and obligations as per the memorandum of undertaking dated 23.12.2017 and the tri-partite agreement dated 03.12.2017;**

G.IV Direct the respondents to not sell/create third party right till complete realisation/refund;

19. The above-mentioned reliefs sought by the complainant, are being taken together as the findings in one relief will definitely affect the result of the other reliefs. Thus, the same being interconnected.
20. 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)

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

"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."

22. **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 April 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 October 2017.

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

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

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

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

24. 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.
25. 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., 22.04.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
26. The definition of term 'interest' as defined under section 2(z) 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;"*

27. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 1 of the agreement executed between the parties on 20.06.2014, the due date of possession is October 2017.
28. It is pertinent to mention over here that even after a passage of more than 4 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 60% of total consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

29. 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....."

30. 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."

31. 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.

32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority

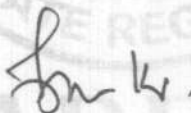
33. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent no.1 i.e., Sary Realtors Pvt. Ltd. is directed to refund the amount received by it from each of the complainant(s) along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. 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 Complainant, 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. 2 & 3 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.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid up amount is mentioned in each of the complaints.
35. Complaint as well as applications, if any, stands disposed of accordingly.
36. Files be consigned to registry.

(Ashok Sangwan)
Member

v.l
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.04.2025