

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

Complaint No: 2913 of 2020
Date of decision: 07.04.2025

NAME OF THE BUILDER		M/s SARV Realtors Pvt. Ltd	
PROJECT NAME		"Supertech Hues", Sector- 68, Gurugram, Haryana	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/2913/2020	Mr. Bibhuti Prasad & Priti Kumari V/s M/s Supertech Limited (R:1) And SARV Realtors Pvt. Ltd (R:2)	Sh. Kapil Dev Sharma proxy (complaint) Sh. Bhrigu Dhami for R-1 Ms. Isha Dang (AR) for R-2
2.	CR/2951/2021	Mr. Mrinal Sharma & Ms. Madhusmita Sarma V/s M/s Supertech Limited (R:1) And SARV Realtors Pvt. Ltd (R:2)	Sh. Harshit Batra (complaint) Sh. Bhrigu Dhami for R-1 Ms. Isha Dang (AR) for R-2
3.	CR/6968/2022	Mrs. Arum Lata Sharma and Mrs. Keshvi Vatsa V/s Supertech Limited (R:1) And SARV Realtors Pvt. Ltd (R:2)	Sh. Tapaswar Vats (complaint) Sh. Bhrigu Dhami for R-1 Ms. Isha Dang (AR) for R-2
4.	CR/7509/2022	Mr. Mohit Kumar Singh & Ms. Pooja Rani V/s M/s Supertech Limited (R:1) And SARV Realtors Pvt. Ltd (R:2)	Sh. Kapil Dev Sharma proxy (complaint) Sh. Bhrigu Dhami for R-1 Ms. Isha Dang (AR) for R-2

5.	CR/1730/2023	Ms. Santosh Dhawan & Mr. Hitesh Dhawan V/s Supertech Limited (R:1) And SARV Realtors Pvt. Ltd (R:2)	Sh. Harshit Batra (complaint) Sh. Bhrigu Dhami for R-1 Ms. Isha Dang (AR) for R-2
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CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

ORDER

1. This order shall dispose of all the complaints titled as above filed before this authority in form CRA 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 between 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" (group housing colony) being developed by the same respondent/promoter i.e., M/s Supertech Limited. The terms and conditions of the 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 delay possession charges along with interest.

3. The details of the complaints, reply to status, 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", Sector-68, Gurugram-122101			
		Occupation certificate: - Not obtained			
		Offer of possession: Not offered			
CR No.	Unit	BBA	Possession clause	Due date	TSC AP
CR/2913/ 2020	P/0404 , 4 th floor, tower O, 01701 765 sq.ft. (P-41 of compla int)	15.06.2017 (page 39 of complaint)	The possession of the allotted unit shall be given to the allottee/s by the company by January 2018. However, this period can be extended for a further grace period of 6 months.	July 2018	Rs.1,33,17,410/ (page 42 of complaint) Rs.78,15,095/- (page 93 of complaint)
CR/2951/ 2021	0608, T1, 600 sq.ft. (P-15 of compla int)	24.05.2018 (MOU)	The possession of the allotted unit shall be given to the allottee /s by the company by June 2019. However, this period can be extended for a further grace period of 6 months (Taken from another file of the same project)	December 2019	Rs.41,28,000/- (P-15 of complaint) Rs.18,94,840/- (P-15 of complaint)
CR/6968/ 2022	1403, T A, 14 th floor	24.06.2014 (page 31 of complaint)	The possession of the allotted unit shall be given to the allottee/s by the company by APR 2017. However, this period can be extended for a further grace period of 6 months	Oct, 2017	Rs.89,19,240 (P-32 of complaint) Rs.77,41,882/-
CR/7509/ 2022	1504, T , 15 th floor, 1430 sq.ft.	07.02.2018 (page 29 of complaint)	The possession of the allotted unit shall be given to the allottee /s by the company by June 2019. However,	Dec, 2019	Rs.82,75,290/- (P-31 of complaint) Rs.67,30,000/-

			this period can be extended for a further grace period of 6 months		
CR/1730/2022	0902, T- V	Not executed Date of booking : 18.10.2013 (page 15 of complaint)	The possession of the allotted unit shall be given to the allottee/s by the company by APR 2017. However, this period can be extended for a further grace period of 6 months (taken from another file of same project)	Oct 2017	Rs. 1,05,32,860/- Rs. 34,39,953/- (page 16 of complaint)
Relief sought by the complainant(s):-					
1. Refund					

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/2913/2020 Bibhuti Prasad & Priti Kumari V/s M/s Supertech Limited & SARV Relators Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

5. 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
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.	0404, 4 th floor, tower O (page 56 of complaint)
7.	Unit tentatively measuring	1765 sq. ft. super area (page 41 of complaint)
8.	Date of Booking	05.07.2014 (page 41 of complaint)
9.	Date of buyer developer agreement	15.06.2017 (page 39 of complaint)
10	Possession clause as per buyer developer agreement	The possession of the allotted unit shall be given to the allottee /s by the company by January 2018. However, this period can be extended for a further grace period of 6 months
11	Due date of possession	January 2018 + 6 months = July 2018 (inadvertently mentioned March 2020 in proceeding dated 07.04.2025)
12	Basic sale consideration	Rs.1,33,17,410/- (page 42 of complaint)
13	Total amount paid by the complainant	Rs.78,15,095/- (page 93 of complaint)
14	Occupation certificate	Not obtained
15	Offer of possession	Not offered

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -
- That in the month of June, 2014, a real estate firm namely "Axiom Landbase Pvt. Ltd.", through its marketing staff, who represented itself as an

authorized agent of the respondent, approached the, for booking a residential apartment in the project of the respondent, namely "Hues, situated at Sector - 68, Gurugram. The complainants along with real estate agent, visited the project site and local office of the respondent. There, they interacted with marketing staff and office bearers of the respondent. The marketing staff of the respondent showed rosy picture of the project through glitzy advertisements and colourful brochures, proposing to develop and construct an integrated residential project at prime location of Sector - 68, Sohna Road, Gurugram, claiming the same to be an oasis of convenience, space and luxury and perfect example of modern day residential complexes par excellence. Vide the said colourful brochures and advertisements, the respondent proposed to construct apartment along with modern amenities on 70 acres of land situated at Sector - 68, Sohna Road, Gurugram. Undeniably, the respondent, vide the said glitzy advertisements and colourful brochures claimed to provide luxurious features including but not limited to entrance through a marvellously designed atrium, world class landscaping, multilevel car parking at stilt and ample surface parking for the visitors, 100% power back-up, CCTV's at entry point and lifts, 24 hours manned surveillance and access barriers, etc. The representative of the respondent gave a pre-printed application form and brochure.

- b. That lured by assurances, promises and representations made by the respondent, the complainants booked a 3BHK, apartment bearing no. P - 0804, on 8th floor, tower - P at "Hues", Sector - 68, Gurugram, measuring 1765 sq. ft. under the possession linked payment plan at basic sale price of Rs. 1,33,17,410/- on 05.07.2014.

- c. That at the time of accepting application money, the respondent has assured about having all requisite approval and sanctioned plans to develop the project and showed licence and sanctioned plans to the complainants. Moreover, the respondent represented that apartment would be handed over by January, 2018.
- d. That on 15.07.2014, a pre-printed, arbitrary, unilateral and ex-facie allotment letter cum buyer developer agreement was executed inter-se the respondent and the complainants. As per clause no. 1 of buyer developer agreement, the respondent has to give the possession of apartment by January, 2018.
- e. That the complainants kept visiting the marketing office and project site of the respondent to know the construction status of the project, when the complainants observed that construction of tower P is creeping and the respondent would not be able to handover the possession of apartment by January, 2018, they raised the issue before higher management of the respondent. The respondent requested to swipe the unit to tower - O, which was constructed till 2nd floor in June, 2017.
- f. That keeping in view the construction stage of tower P and O, the complainants were agreed upon to swipe the unit from tower P - 0804 to Tower - O - 0404, therefore a new pre-printed buyer developer agreement was executed inter-se the parties on 15.06.2017.
- g. That the complainants exchanged several emails with the respondent with regard to unit handover date i.e. January, 2018 as per last agreement and timely payment rebate etc. On 26.09.2017, the respondent issued a letter,



subjecting, clarification regarding possession date of unit no. O – 0404 that it would be read as January, 2018 instead of September, 2019.

- h. That on 31.01.2018 respondent issued a letter to the complainants regarding early payment discount scheme for Unit No O-0404 in which they stated that complainants have opted for EPD (Early payment discount scheme). Further many emails were exchanged between complainants and respondent regarding delayed possession & early payment rebate.
- i. That on 23.01.2020, the respondent sent an email to the complainants and apprise that the project "Hues" is transferred in its entirety to M/s. Sarv Realtors Private limited. There is no privity of contract between the complainants and M/s. Sarv Realtors Private limited, moreover the project is yet not completed even after 6 year of booking. It is germane to mention here that the respondent never taken consent of the complainants prior to transfer the project to another firm.
- j. That as per statement of account dated 14.03.2020, the complainants has paid Rs. 78,15,095/-i.e. 58% of the basic cost of apartment till 15.01.2018.
- k. That on 14.03.2020, the complainants visited the project site and found that construction of tower O and P, has been abandoned and construction was raised only upto 6th floor.
- l. That since September, 2019, the complainants are regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted apartment, but all in vain, in spite of several visits by the complainants. They never been able to understand/know the actual status of construction. The respondent failed to raise the construction of

tower in which unit of complainants situated. The office bearers of respondent always gave new excuses for delay in raising the construction.

- m. That the main grievance of the complainants in the present complaint is that in spite of the complainants paid more than 58% i.e. Rs. 78,15,095/- of the actual amounts of apartment and ready and willing to pay the remaining amount (if any amount become due), the respondent party has miserably failed to deliver the possession of unit.
- n. That the complainants had purchased the apartment with intention that after purchase, their family will live in their own apartment. It was promised by the respondent party at the time of receiving payment for the apartment that the possession of fully constructed apartment along like basement and surface parking, landscaped lawns, club/ pool etc. as shown in brochure at the time of sale, would be handed over to the complainants as soon as construction work is complete i.e. by January, 2018.
- o. That it is more than 6 years from the date of booking and even the construction of tower is yet not completed, it clearly shows the negligence towards the builder.
- p. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others is prima facie clear on the part of the respondent which makes them liable to answer the Authority.
- q. That there is an apprehension in the mind of the complainants that the respondent has been playing fraud and there is something fishy which respondent is not disclosing to the complainants just to embezzle the hard-

earned money of the complainants and other co-owners. It is highly pertinent to mention here that now a day's many builders are being prosecuted by court of law for siphon off the funds and scraping the project mischievously. A probe needs to initiate to find out the financial and structural status of project.

- r. That for the first time cause of action for the present complaint arose **in July, 2014**, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose **in January, 2018**, when the respondent failed to handover the possession of the apartment as per the buyer agreement. Further the cause of action again arose on various occasions, including on: a) November, 2018; b) Feb. 2019, c) March, 2019 (d) November 2019, (e) January 2020, and on many time till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this Hon'ble Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants: -

7. The complainants have sought following relief(s):
1. Direct the respondent to refund the paid up amount along with interest at the prescribed rate from date of booking till final realization of payment.
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:-

- a. At the outset, it is submitted 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 Hon'ble Authority or the Hon'ble Adjudicating officer is still pending adjudication before the Apex Court, thus no statutory vested jurisdiction being available with either the Authority or the 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 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 no. 1 with this frivolous complaint.
- e. The delay in construction was on account of reasons that cannot be attributed to the respondent. It is most pertinent to state that 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 respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.



- f. 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.
- g. 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 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 January 2019.
- h. 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.
- i. 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 by December 2021.
- j. 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.



- k. 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.
- l. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant herein, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. That 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 ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission leading 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. Such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex.

iii. That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract, it is prima facie evident that the present case attracts the force.

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. Thus, in light of the aforementioned it is most respectfully submitted that 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.

- m. That the possession of the said unit was proposed to be delivered by the respondent to the complainant by July, 2018 with an extended grace period of 6 months which comes to an end by January, 2019. The completion of the building is delayed by reason of Covid - 19, non-availability of steel and/or cement or other building materials and/ or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent.
- n. 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.
- o. 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. It is submitted that the respondent/promoter, being a bonafide builder has also applied for Realty Stress Funds for its Gurgaon based projects.

- p. 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 Authority in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.
- q. 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 Real Estate (Regulation and Development) Act, 2016.
- r. 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.
- s. 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 "Supertech 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.

- t. 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. That the pandemic is clearly a "Force Majeure event, which automatically extends the timeline for handing over possession of the Apartment.

E. Reply by the respondent no. 2

10. The respondent no. 2 implead as party vide order dated 11.03.2025 and contesting the complaint on the following grounds:-
11. 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.
12. 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 15.06.2017 with M/s. Supertech Ltd. for a unit bearing number o/ 0404, tower – B, having a super area of 1765 sq.ft. (approx.) for a total consideration of Rs. 1,33,17,410/-.

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

14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. That the present case deems to be prima facie dismissed as there is no privity of contract between the complainant and the respondent. Furthermore, despite filing its application for change in promoter, the same has not been allowed till

date and the same is still pending adjudication before the Authority. Thus, no case can proceed against the respondent till the final decision of the said application.

20. That the present case also deems to be prima facie dismissed as admittedly the BBA was executed solely with M/s Supertech Ltd., all sale consideration was also paid to M/s Supertech Ltd., thus as no sale consideration as paid to the respondent neither any written agreement was signed between the complainant and respondent, the respondent cannot be ordered to refund any amounts, if any, by the Authority. It is reiterated that M/s Supertech Ltd. is jointly liable as per the Suo-Moto order.
21. 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.
22. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds.
23. 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.
24. 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.
25. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before May, 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".
26. That the timeline stipulated under the buyers agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent.
27. The respondent no. 2 has also just reiterated the reasons for delay and force majeure as stated in the reply of respondent no. 1
28. 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.

F. Jurisdiction of the Authority

29. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

30. 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.

F.II Subject matter jurisdiction

31. 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.

32. 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.

G. Findings on objections raised by the respondent no. 1

F.I Objections regarding force majeure.

33. 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 15.06.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.07.2018, which was prior to the effect of Covid-19 on above project could happen. The Authority put reliance judgment of Hon'ble Delhi High Court in

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

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

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

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

35. Respondent no. 1 has stated that vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as Union Bank of India Versus M/s Supertech Limited, the Hon'ble NCLT has initiated CIRP respondent no.1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes

that the project of respondent no. 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.1 and respondent no.2 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.1 Direct the respondent to refund i.e. Rs.78,15,095/- along with interest at the prescribed rate from date of booking till final realization of payment;

36. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference :-

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

37. 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:-

"1. The possession of the allotted unit shall be given to the Buyer(s) by the Developer in 42 months i.e., by January 2018. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months"

[Emphasis Supplied]

38. **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 January 2018. 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 30.07.2018.

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

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

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

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

40. 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.
41. 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., 07.04.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
42. 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;"*

43. 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 15.06.2017, the due date of possession is January 2018. 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 30.07.2018.
44. It is pertinent to mention over here that even after a passage of more than 9 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 58% 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.
45. 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....."

46. 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."

47. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy

available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

48. 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

49. 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 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 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.

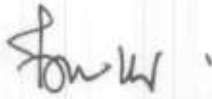
50. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid up amount is mentioned in each of the complaints.

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

52. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2025