BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order reserved on: 11.03.2025
Order pronounced on: 07.04.2025

NAME OF THE BUILDER		M/s SARV Realtors Private Limited.	
PROJECT NAME		"Supertech Hues", Sector- 68, Gurugram, Haryana	
S. No.	Case No.	Case title	Appearance
1.	CR/5847/2022	Rajinder Mohan Dhar & Usha Nehru V/s M/s Supertech Limited (R:1), M/s SARV Realtors Private Limited (R:2)	Sh. Himanshu Gautam (Complainants) Sh. Bhrigu Dhami (Respondent no.1) Ms. Isha Dang (Respondent no. 2)
2.	CR/7260/2022	Devesh Dubey & Anubha Upadhay V/s M/s Supertech Limited (R:1), M/s SARV Realtors Private Limited (R:2)	Sh. Ajay kumar Singh (Complainants) Sh. Bhrigu Dhami (Respondent no.1) Ms. Isha Dang (Respondent no. 2)
3.	CR/1372/2024	Ajay Jalali & Priyanka Jalali V/s M/s Supertech Limited (R:1), M/s SARV Realtors Private Limited (R:2)	Sh. Himanshu Gautam (Complainants) Sh. Bhrigu Dhami (Respondent no.1) Ms. Isha Dang (Respondent no. 2)

CORAM:

Shri Arun Kumar — **Chairman**
Shri Vijay Kumar Goyal — **Member**
Shri Ashok Sangwan — **Member**

ORDER

1. This order shall dispose of 3 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. Private Limited. 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	DSC Estate Developer Pvt. Ltd.
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	DSC Estate Developer Pvt. Ltd.
135 of 2014 dated 26.08.2014	25.08.2024	7.71 acres	DSC Estate Developer Pvt. Ltd.
136 of 2014 dated 26.08.2014	25.08.2024	5.84 acres	DSC Estate Developer Pvt. Ltd.

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	Cr No. 5847-2022	***1.*** *Possession of the Unit: The possession of the allotted unit shall be given to the Allottee/s by the Company by* ***July 2018****. However, this period can be extended for a further* ***grace period of 6 months.***
	Cr No-7260-2022	***1.*** *Possession of the Unit: The possession of the allotted unit shall be given to the Allottee/s by the Company by* ***April, 2017****. However, this period can be extended for a further* ***grace period of 6 months.***
	Cr No-1372-2024	***E(25):*** *The possession of the unit shall be given in 42 months i.e., by* ***November 2017*** *or extended period as permitted by the agreement. However, the developer hereby agrees to compensate the Buyer(s)@Rs.5/- per sq.ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the* ***grace period of 6 months*** *and upto the offer letter of possession or actual physical possession whichever is earlier.*

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/5847/2022 Rajinder Mohan Dhar & Usha Nehru V/s Supertech Limited And M/s SARV Realtors Private Limited **DOF:** 12.09.2022	**1701, 17th floor, Tower O** 1765 sq. ft. (Super area) [Page 17 of complaint]	**BBA** **27.01.2016** [Page 16 of complaint]	**January, 2019** (As per clause 1 of the buyer's developer agreement: by July 2018 plus 6 Month grace period)	**TC:** **1,04,65,218/-** [As per payment plan at page 18 of complaint] **AP:** **87,20,128/-** [As per receipt information at

	Reply by R2 (SARV): 23.12.2024				annexure P/4, page 45 of complaint]
2.	**CR/7260/2022** Devesh Dubey & Anubha Upadhay V/s Supertech Limited And M/s SARV Realtors Private Limited **DOF:** 14.11.2022 **Reply by R1(SARV):** 02.04.2025	**1501, 15th floor, Tower F** 1180 sq. ft. (Super area) [Page 24 of complaint]	**BBA** **20.08.2014** [Page 23 of complaint]	**October,2017** (As per clause 1 of the buyer's developer agreement: by April 2017 plus 6 Month grace period)	**TC: 87,45,780/-** [As per payment plan at page 25 of complaint] **AP: 77,31,676/-** [At page 39 of complaint]
3.	**CR/1372/2024** Ajay Jalali & Priyanka Jalali V/s M/s Supertech Limited And M/s SARV Realtors Private Limited **DOF:** 09.04.2024 **Reply by R1(SARV):** 27.09.2024	**0201, 2nd floor, Tower P** 1765 sq. ft. (Super area) [Page 19 of complaint]	**BBA** **25.07.2014** [Page 18 of complaint]	**31.05.2018** (As per clause 25 of the buyer's developer agreement: by November 2017 plus 6 Month grace period)	**TC: 1,36,43,935/-** [As per payment plan at page 20 of complaint] **AP: 84,34,617/-** [As per statement of account on page 33 of complaint]
Relief sought 1. **Refund** 2. **Litigation Charges**					

4. 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/5847/2022*** titled as ***Rajinder Mohan Dhar and Usha Nehru V/s M/s Supertech limited And M/s SARV Realtors Private Limited*** are being taken into consideration for determining the rights of the allottee(s).

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:

CR/5847/2022** titled as **Rajinder Mohan Dhar and Usha Nehru V/s M/s Supertech limited And M/s SARV Realtors Private Limited.

S. No.	Particulars	Details
1.	Name of the project	Supertech Hues, Sector-68, Gurgurgram
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.	**1701, 17th floor, Tower O** (Page no. 17 of complaint)
7.	Unit measuring	1765 sq. ft. (Super area) (Page no. 17 of complaint)
8.	Date of Booking	27.01.2016 (Page no.12 of complaint)
9.	Date of execution of Builder developer agreement	27.01.2016 (Page 16 of complaint)
10.	Possession clause	*1. The possession of the allotted unit shall be given to the allottee /s by the company by July 2018. However, this period can be extended for a further grace period of 6 months.* (Page 18 of the complaint)
11.	Due date of possession	July 2018 + 6 months = January 2019
12.	Total sale consideration	Rs. 1,04,65,218 /- (page 18 of complaint)
13.	Total amount paid by the complainant	Rs.87,20,128/- (page 36 to 44 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: -

I. That on 26.12.2013 DGTCP, Haryana has granted License Number 106 & 107 to the Respondent No. 2 i.e. Sarv Realtors Pvt Ltd (100% subsidiary of Supertech Ltd) for Group Housing Scheme on 27.493 acres.

II. That on 27.01.2016, the complainants Mr. Rajinder Mohan Dhar and Mrs. Usha Nehru booked a residential flat bearing unit no. R0380O01701/ Flat 1701 in Tower - O admeasuring 1765 sq. ft. in the project named "Supertech Hues" situated in Sector 68, Gurugram.

III. That on 27.01.2016, builder buyer agreement was entered into between the parties wherein as per clause 24, the developer should offer possession of unit by July, 2018 with a grace period of 6 months.

IV. That the respondent no. 1 demanded Rs. 87,20,128/- from the complainant at the time of booking out of the total consideration amount of Rs.1,03,56,074/-.

V. That out of the total cost of the said unit a sum of Rs. 87,20,128/- has already been paid by the complainant till date but the construction of the flat is still incomplete. Even the tower containing the flat has not been constructed yet and there is no hope of offering the possession even after a delay of almost 3.5 years.

VI. That the undue delay by the respondent no. 1 in offering the possession to complainant caused great monetary loss to the complainants in terms of the interest payable on the above said amount.

VII. That even after payment of more than 84% of the total consideration amount, the builder raised another demand of the amount of Rs. 16,35,946/- vide letter dated 04.04.2018.

VIII. That the demand of complete consideration amount without even constructing the flat as per construction plan is arbitrary, illegal, unjustified, mischievous, fraudulent, against the principle of natural justice and against the interests of the complainants.

IX. That despite repeated calls, meetings and emails sent to the respondents, no definite commitment was shown for timely offering the possession of the flat and no appropriate action was taken to address the concerns and grievances of the complainant. Thus, the respondents not only breached the builder buyer agreement but also cheated the complainants and as a result of this misconduct of the respondents, the complainants lost their faith on him and no longer want to continue with this project and want refund of the amount paid by them till the present date along with the interest as per provision of Section 12 and Section 18 of the RERA Act, 2016.

X. That both the complainants are senior citizens and repeated calls, meetings and correspondences with the respondent no. 1 and multiple visits to know the actual construction status not only caused loss to the complainants in terms of time, money and energy but also caused mental agony to them.

XI. That the cause of action arose in favour of the complainants and against the respondents from the date of booking of the said units and it further arose when respondents failed/neglected to deliver the flat within a stipulated time period. The cause of action further arose when the respondents have not completed the project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondents have not fulfilled their obligations as per the buyer's agreement.

C. Relief sought by the complainant: -

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

I. To direct the respondent to refund the whole amount paid by the complainants to the respondent along with the interest @ 24% per annum (rate at which respondent charges interest from the complainant) counted from the date of deposit to the date of realisation of refund.

II. To direct the respondent to pay Rs. 1,50,000/- cost of litigation.

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.

9. No reply has been submitted by the respondent no.1 i.e., M/s Supertech Ltd. However, the counsel for respondent no. 1 has stated that the respondent no.1 is under CIRP vide order dated 25.03.2022 passed by the Hon'ble New Delhi in case no. IB-204/ND/2021 titled as ***Union Bank of India Versus M/s Supertech Limited*** and moratorium has been imposed against the respondent no. 1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against the respondent no. 1

D. Reply by the respondent no. 2

10. The respondent is contesting the complaint on the following grounds:-

i. The respondent no. 2 is one of the leading real estate developers in the State of Haryana and NCR. It has several projects across the state, and as such has built a great reputation for having the highest quality of real estate developments. The respondent no. 2 has been represented in the instant proceedings by its authorized representative, Ms. Isha Dang. One of its marquee projects is the Azalia, located in Sector 68, Gurugram, and Haryana.

ii. That the respondent no. 2 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. That in furtherance of the same, the Answering Respondent and M/s. Supertech Ltd. had entered into two Joint Development Agreement's dated 25.04.2014 and 26.08.2014 respectively.

iii. That in terms of the said JDA's, M/s. Supertech Ltd. was to develop and market the project.

iv. 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 unit(s) in the project.

v. That, after fully understanding the various contractual stipulations and payment plans for the unit, the complainant executed the allotment letter dated 27.01.2016 for unit bearing number No. R0380001701/ 1701, tower – O, 17th floor, having a super area of 1765 sq. ft. (approx.) for a total consideration of Rs. 1,09,00,160/- exclusive of applicable charges and taxes.

vi. That in the interim with the implementation of the Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide Registration no. "182 of 2017", dated 04.09.2017 upon Application filed and in the name of Supertech Limited.

vii. That this Authority vide Order dated 29.11.2019 passed in Suo Moto complaint bearing 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 respondents no. 2 i.e. and **M/s. SARV Realtors Pvt. Ltd.** and M/s DSC Estate Developers Pvt. Ltd. respectively. This 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 respective projects

instead of M/s. Supertech Ltd. Certain important directions as passed by this Authority are as under;

A. (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.

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 other fail to discharge its obligations towards the alottees.***

That in lieu of the said directions passed by this Authority all asset and liabilities have been since transferred in the name of the respondent no. 2. 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.

viii. That thereafter the JDA's were cancelled by the consent of the respondent no. 2 and M/s Supertech Limited vide cancellation agreement dated 03.10.2019 and the respondent no. 2 from there on took responsibly to develop the project and started marketing and allotting new units under its name.

ix. That in terms of the said cancellation agreement the respondent no. 2 and M/s Supertech Limited had agreed that as M/s Supertech Ltd. was not able to complete and develop the project as per the timeline given by this Hon'ble Authority and DTCP, therefore the parties had decided to cancel the JDA's vide cancellation agreement.

x. 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.

xi. 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. Till date, there are several embargos qua construction at full operational level.

Preliminary Objections

i. That the present complaint further deems to be prima facie dismissed as in terms of the own admission of the complainants the BBA was executed solely with M/s. Supertech Ltd. and furtehmrore, all payments qua the booking were also made to M/s. Supertech Ltd. Thus, there is no privity of contract nor any payment made to the respondent no. 2, thus the present complaint deems to be dismissed on this ground alone.

ii. The present complaint further also deems to be prima facie dismissed for non-joinder of necessary parties. It is reiterated that in terms of the own admission of the complainant the BBA was executed solely with M/s. Supertech Ltd. and furtehmrore, all payments qua the booking were also made to M/s. Supertech Ltd. Thus, the present complaint deems to be dismissed for non-joinder of M/s. Supertech Ltd.

iii. That as M/s. Supertech Ltd. and the respondent no.2 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 allotees is not bifurcated between the respondent no.2 and M/s. Supertech Ltd. The respondent no. 2 cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.

iv. 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. 2 with this frivolous complaint.

v. The delay in construction was on account of reasons that cannot be attributed to the respondent herein. The flat buyers' agreements provide that in case the developer/respondent delays in delivery of unit for reasons not attributable to the developer/respondent, then the developer/ respondent shall be entitled to proportionate extension of time for completion of project.

vi. 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.

vii. That with respect to the agreement, the time stipulated for delivering the possession of the unit was on or before July, 2018. However, the buyer's agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around January, 2019. However, the said date was subject to the force majeure clause, i.e. "Clause 43". 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 endeavored to deliver the property within the stipulated time.

viii. The timeline stipulated under the flat buyer's agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.

ix. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. Apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances like:

i. Implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including that of the Respondent herein, fell behind on their construction schedules for this reason amongst others. The said fact can be substantiated by newspaper articles elaborating on the above mentioned issue of shortage of labour which was hampering the construction projects in the NCR region. This certainly was an unforeseen one that could neither have been anticipated

nor prepared for by the respondent while scheduling their construction activities. Due to paucity of labour and vast difference between demand and supply, the respondent faced several difficulties including but not limited to labour disputes. All of these factors contributed in delay that reshuffled, resulting into delay of the Project.

ii. That 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..

x. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. The delay in construction, if any, is attributed to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the agreement.

xi. That the project "**HUES**" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021.

xii. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee 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 outbreak, 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 .

xiii. That the enactment of the Act, 2016 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 Authority. According to the terms of builder buyer's agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time final settlement on slab of offer of possession.

xiv. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Hues' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that 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 in realized after long period of time.

xv. That, graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power

plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.

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 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days
2.	Press Note by EPCA-Environment Pollution (Prevention and Control) Authority	Press Note-31.10.2018	01.11.2018 to 10.11.2018
3.	Supreme Court-23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
4.	EPCA/ Bhure lal Committee Order-31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
5.	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
6.	Government of India	Lockdown due to Covid-19	24.03.2020 to 03.05.2020
7.	Government of India	Lockdown due to Covid-19	8 weeks in 2021
	Total	**37 weeks (approximately)**	

xvii. 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. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic.

The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the respondent were forced to return to their home towns, leaving a severe paucity of labour. That the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

xviii. That the complainant is not entitled for any compensation or refund claimed except for delayed charges, if applicable as per clause 2 read with 24 of the builder buyer agreement.

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 27.01.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.01.2019, 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."*

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. 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.

18. 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 JDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. 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.

G. Findings on the relief sought by the complainants.

G.I To direct the respondent to refund the whole amount paid by the complainants to the respondent along with the interest @ 24% per annum (rate at which respondent charges interest from the complainant) counted from the date of deposit to the date of realisation of refund.

19. 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)

20. 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 Allottee/s by the company by July 2018. However, this period can be extended for a further grace period of 6 months."*

21. **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 July 2018 with a grace period of 6(six) months. Since in the present matter the buyer developer agreement 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 January, 2019.

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

23. 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.

24. 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%**.

25. 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;"

26. 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 27.01.2016. The due date of possession is July 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 January 2019.

27. It is pertinent to mention over here that even after a passage of more than 6 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 87% 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.

28. 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....."

29. 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."*

30. 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 allottees, as they 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.

31. 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.

G.II To direct the respondent to pay Rs. 1,50,000/- cost of litigation.

32. The complainant are seeking above mentioned relief w.r.t. litigation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

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.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 no. 2 to comply with the directions given in this order and failing which legal consequences would follow.

iii. The respondent no. 2 is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.

iv. No directions are being passed in the matter qua respondent no. 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.

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

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.03.2025