

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 743 of 2022
First date of hearing: 21.04.2022
Date of decision : 07.04.2025

Mr. Rajesh Pandey & Ms. Manju Pandey
Regd. Address: P-3, Narkeldanga Main Road, CIT Scheme
Vi M, Kolkata, West Bengal-700054

Complainants

Versus

1. M/s Supertech Limited
2. M/S Sarv Realtors Pvt. Ltd

Regd. office: 114, 11th floor, Hemkunt Chambers, 89, Nehru
Place, New Delhi-110019

Respondent no.1
Respondent no.2

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh.Mukul Sawanria (Advocate)

Sh.Bhrigu Dhami (Advocate)

Ms.Isha Dang (AR)

Complainant
Respondent no. 1
Respondent no. 2

ORDER

1. That the present complaint has been filed by the complainants/allottees 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.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Supertech Hues, Sector-68, Gurugram-122101"
2.	Project area	55.5294 acres
3.	Nature of the project	Group Housing Colony
4.	DTPC License no. and validity	106 & 107 of 2013 dated 26.12.2013 Valid up to 25.12.2017
5.	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.
6.	RERA registration details	Registered 182 of 2017 dated 04.09.2017
7.	Builder Buyer Agreement	08.05.2018 (Page 61 of complaint)
8.	Unit no.	2504, 25 th floor, Tower-W/W (Page 62 of complaint)
9.	Unit area admeasuring	1430 sq. ft. Super Area (Page 62 of complaint)
10.	Date of Booking	19.03.2018 (Page 62 of complaint)
11.	Possession clause	1. Possession of the Unit <i>"1. The possession of the allotted unit shall be given to the Allottee/s by the Company by Sep, 2020. However, this period can be extended for a further grace period of 6 months.</i> [Emphasis Supplied] (Page 63 of complaint)
12.	Due date of possession	Sep 2020 + 6 months =March,2021
13.	Sale consideration	₹ 80,24,826/- (Page 63 of complaint)
14.	Amount paid by the complainant	₹ 44,89,613/-(page 27 of complaint)

15.	Occupation certificate	Not Obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

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

- a) That the respondent no. 1 and 2 are private limited Companies which is duly incorporated under the provisions of the Companies Act, 1956, respondent no. 2 are the land owners and license holders and both the respondents fully responsible for the acts, conduct business and carry on day to day affairs through its Managing Director or Chairman or Directors or karta or by them both and all responsible and caused the construction and development of the project.
- b) That the respondents are in the business of real estate development business, thus, in its usual course of business, purchase the land, enter into joint ventures, enter in collaboration agreement, enters into marketing and development agreements etc. with various stakeholders including but not limited to land owners.
- c) The "Supertech Hues" also known as "Jade Tower Hues" is a residential group housing project being developed by Supertech Limited situated in the revenue estate of village Badshapur, Sector - 68, Distt. Gurgaon - 122001. The Director, Town and Country Planning (DTCP), Haryana has granted licence to develop and construct the group housing colony in favour of the respondents vide licence No. 106 & 107 Of 2013 dated 26.12.2013.
- d) That initially the flat was booked by the complainants and an amount of Rs.7,83,333/- was paid by them to the respondent vide cheque dated 14.02.2018 the same was cleared on 21.03.2018. The respondent had allotted a unit bearing no. W - 2504 on 25th floor having super area of 1430 sq. ft. vide provisional booking letter bearing no. 3881 on 50: 50 plan basis for a total sale

price of Rs.80,24,825/- (including basic sale price of Rs.78,33,325/-, EDC/ IDC, covered parking and club membership).

- e) That the respondent no. 1 and 2 entered into an agreement with regard to the project land. The project vide directions of HARERA was transferred solely to respondent no. 2.
- f) The respondent gave advertisement in newspapers as well as through their channel partners and showed a rosy picture about the project. The complainants relied upon the advertisements and visited the project site. The respondent representative's made promise and commitments at the time of site visit and solicit the complainants to invest their hard earned money in respondent's project.
- g) That as per the demand of the respondent a total amount of Rs. 44,89,613/- more than as per the agreed payment plan. The complainants also paid Rs.1,80,000/- as brokerage vide cheque on dated 21.04.2018.
- h) That the buyer developer agreement was executed between the complainants and the respondent on 08.05.2018. The unit details were provided as tower: unit no. 2504, floor 25th, super area 1430 sq. ft., type 2BHK + STD. As per clause 1 on page 4 of the agreement and article E clause 23 of the terms page 10 of the buyer developer agreement, respondents were supposed to give the possession within the month of September 2020 with a grace period of 6 months. So, as per the terms of agreement the date of offer of possession was latest by 30th September 2020 and after the extension of six months, the stipulated time expired on 31st March 2021. But till date the respondents are not even close to completing the project and offering possession Thus, the respondent has delayed the possession of the unit deliberately or for reasons known best to

them. That the terms and conditions mentioned in the buyer developer agreement are applicable to the complainants and the respondents as well.

- i) That the respondent no. 1 mailed to the complainants that project "Hues" has been transferred in entirety to respondent no. 2 i.e. M/s Sarv Realtors Private Limited being land owners and license holding entity as per the directions issued by HARERA.
- j) That the respondents instead of delivering possession to the complainants are sending mails to shift, swap or exchange their unit.
- k) That the agreement was time bound 50:50 payment linked plan so, strict time lines have to be observed by all the parties to fulfill their liabilities as per the terms and conditions as stipulated in the agreement. That the due date of possession excluding grace period of six months was latest by 30.09.2020 and including grace period of six months was 30.03.2021.
- l) That the complainants had suffered losses or damages by reasons false and incorrect statement or commitment made by the respondents for delivering the possession of unit within stipulated time. The project has been abandoned by the respondents. Thus, the respondents are liable to pay to the complainants delayed possession charges along with other losses and compensations under Sec. 12 RERA, Act, 2016.
- m) That the respondents had taken the consideration amount from the complainants on the basis of their impressive pictures and false promises due to which complainants have drained out from his hard-earned savings and by this way the addresses above cheated the complainants.

C. Relief sought by the complainant

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

- i. Direct the respondent to pay delayed possession charges for every month of delay at prevailing rate of interest for total delayed months.

ii. Direct the respondent to pay Rs. 8,00,000/- as cost of litigation.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1

6. 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.

E. Reply by the respondent no. 2

7. The respondent is contesting the complaint on the following grounds:-
- a) That the respondent no. 2 was issued license bearing no's 106 and 107 dated 26.12.2013 and license nos'. 135 and 136 of 2014 dated 26.08.2014 for developing the said land. That in furtherance of the same, the respondent no. 2 and respondent no. 1, i.e. M/s. Supertech Ltd. had entered into two Joint Development Agreement's dated 25.04.2014 and 26.08.2014 respectively.
- b) That in terms of the JDA's the respondent no. 1 was to develop and market the said project. The complainant along with many other allottees had approached the respondent no. 1, 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. Consequentially, after fully understanding the various contractual stipulations and payment plans for the unit, the complainants executed the buyer developer agreement dated 08.05.2018 for a unit bearing no.

W/ 2504, tower – W, 25th floor, having a super area of 1430 sq. ft. (approx.) for a total consideration of Rs. 80,24,826/-.

c) That this 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 projects namely, "**Hues & Azalia**", to the respondent no. 2 i.e. **M/s SARV Realtors Pvt. Ltd.** and M/s. DSC Estate Developer 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 project instead of M/s. Supertech Ltd. certain important directions as passed by this Authority are as under:-

(i) That 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.

(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 this Hon'ble Authority all asset and liabilities have been since transferred in the name of the Answering 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.

- d) That thereafter the JDA's were cancelled by the consent of both parties (respondent no. 1 and respondent no. 2) 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.
- e) That in terms of the cancellation agreement the respondent no. 2 and respondent no. 1 had agreed that as respondent no. 1 was not able to complete and develop the project as per the timeline given by this Authority and DTCP, therefore the parties had decided to cancel the JDA's vide the cancellation agreement.
- f) That 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 unit to the complainant.
- 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.
- g) That the present complaint deems to be adjourned sine-die or dismissed as the respondent no. 1, 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.
- h) 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 allottees is not bifurcated between both the respondents. The respondent no. 2 in lieu of the CIRP proceedings ongoing against respondent no. 2, cannot be

made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.

- i) That the complaint filed by the complainants 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.
- j) That the delay if at all, has been beyond the control of the respondent no. 2 and as such extraneous circumstances would be categorised as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.
- k) That the delay in construction was on account of reasons that cannot be attributed to the respondent herein. That the buyers developer 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 said project.
- l) That in view of the *forece 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.
- m) That the time stipulated for delivering the possession of the unit was on or before September, 2020. However, the buyer developer agreement duly provides for extension period of 6 months over and above the said date. Thus,



the possession in strict terms of the buyer developer agreement was to be handed over in and around March, 2021. However, the said date was subject to the Force Majeure clause, i.e. "**Clause 42**".

- n) That the timeline stipulated under the buyer developer 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.
- o) That 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 ("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 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.

- (ii) That the respondent herein 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.

That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.

- p) That several Courts and quasi-judicial forums have taken cognisance of the devastating impact of the Demonetisation of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of

demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

- q) That the project "**HUES**" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 4.9.2017 to 31.12.2021.
- r) That that the possession of the unit is proposed to be delivered by the respondent to the apartment allottee by September, 2020 with an extended grace period of 6 months which comes to an end by March, 2021. The completion of the building is delayed by reason of 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.
- s) 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 buyer developer 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.

- t) That the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be 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. 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 is realized after long period of time.
- u) That the 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.
- v) That 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)	

w) 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. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the unit.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the Authority

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

F.I Territorial jurisdiction

10. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes 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 a complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the objections raised by the respondent.

G.I Objection regarding delay due to force majeure circumstances.

13. 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 08.05.2018 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be March 2021.

14. The Authority observes that 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 stakeholder concerned with the said project cannot be put on hold due to fault of some of allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take care of unforeseen eventualities. Therefore, no further grace period is warranted on 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.

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

15. 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.

H. Findings on the relief sought by the complainant

H.I Direct the respondent to pay delayed possession charges for every month of delay at prevailing rate of interest for total delayed months.

16. The factual matrix of the case reveals that the complainant booked a unit in the affordable group housing colony project of the respondent known as "Supertech Hues," situated at sector 68, Gurugram, Haryana and was allotted unit no. 2504, in tower W for a sale consideration of Rs. 80,24,826/-. Further, the complainant is

always ready and willing to retain the allotted unit in question and has paid a sum of Rs.44,89,613/- towards the allotted unit.

17. The complainant intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to Section 18(1) of the Act, which reads as under:-

"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, —

.....

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."

18. Clause 1 of the buyer developer agreement provides for handing over of possession and is reproduced below:

*"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***

19. **Due date 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 September 2021 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 March 2021.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges till the date of delivery of possession to the complainant. Proviso to Section 18 provides 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 possession, at

such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. 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."

21. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.
22. 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%.
23. 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;"*

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent which is the same as is being granted to them in case of delayed possession charges.
25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 BBA, the possession of the subject unit was to be delivered within stipulated time i.e., by September 2020. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession was March 2021. The respondent no.2 has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter no.2 to fulfill its obligations and responsibilities as per the agreement to handover the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent no.2 to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyers developer agreement dated 08.05.2018 executed between the parties. Further no OC/part OC has been granted to the project.
26. 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/promoter no.2 is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., March 2021 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H.II Litigation cost.

27. The complainant is seeking above mentioned relief w.r.t. compensation. 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.

I. Directions of the authority

28. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

- I. The respondent no.2 i.e., SARV Realtors Pvt. Ltd. is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay from the due date of possession March, 2021 till valid offer of possession plus 2 months or actual handing over of possession whichever is earlier, as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per Rule 16(2) of the Rules, *ibid*.
- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter

shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
- VI. 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***.

29. The complaints stand disposed of.

30. Files be consigned to the registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
07.04.2025