

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

Complaint no. : 431 of 2022
Date of filing: 21.02.2022
Date of decision : 07.04.2025

1. Ms. Sudesh Kumari
 2. Mr. Ramesh Kumar Raheja
- Both RR:** House No. 139, Huda Sector-11,
Panipat, Haryana-132103

Complainants

Versus

1. M/S Supertech Limited
Regd. office: 114, 11th floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi-110019
2. Indiabulls Housing Finance Limited
Regd. office: M 62 & 63, First Floor, Connaught
Place, New Delhi-110001
3. 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

Respondent no.3

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. Harshit Batra (Advocate)

Sh. Bhrigu Dhami (Advocate)

Sh. Gaurav Dua (Advocate)

Sh. Isha Dang (Advocate)

Counsel for Complainant
Counsel for Respondent no. 1
Counsel for Respondent no. 2
Counsel for Respondent no. 3

ORDER

- 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

- The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Particulars | Details |
|--------|--|--|
| | Name of the project | Supertech Hues, Sector-68, Gurugram-122101 |
| 1. | Project area | 55.5294 acres |
| 2. | Nature of project | Group Housing Colony |
| 3. | RERA registered/not registered | Registered vide registration no. 182 of 2017 dated 04.09.2017 |
| | Validity Status | 31.12.2021 |
| 4. | DTPC License no. | 106 & 107 of 2013 dated 26.12.2013 |
| | Validity status | 25.12.2017 |
| | Name of licensee | Sarv Realtors Pvt. Ltd. & Ors. |
| 5. | Unit no. | F 1503, Tower F, 15 th floor (Page no. 25 of complaint) |
| 6. | Unit measuring | 1180 sq. ft. super area (Page no. 25 of complaint) |
| 7. | Date of Booking | 20.06.2016 (Page no.19 of complaint) |
| 8. | Date of execution of Buyer developer agreement | 15.07.2016 (Page 24 of complaint) |

| | | |
|-----|--------------------------------------|---|
| 9. | Possession clause | POSSESSION OF UNIT: - <i>I. The possession of the allotted unit shall be given to the allottee /s by the company by July 2018. However, this period can be extended for a further grace period of 6 months.</i> (Page 26 of the complaint) |
| 10. | Due date of possession | July 2018 + 6 months = January 2019 |
| 11. | Total sale consideration | Rs. 87,03,000/- (page 26 of complaint) |
| 12. | Total amount paid by the complainant | Rs. 9,00,000/- paid by the complainant. Rs. 71,00,000/- paid by the bank. (annexure C6, page 90-102 of complaint) |
| 13. | Occupation certificate | Not obtained |
| 14. | Offer of possession | Not offered |
| 15. | MoU | 15.07.2016 (page 43 of complaint) |
| 16. | Tripartite agreement | 27.07.2016 (page 47 of complaint) |
| 17. | Request for cancellation | 05.12.2017 (page 103 of complaint) |

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
 - a. That the complainants booked an apartment no. 1503, tower no. F, 15th floor and admeasuring 1180 sq. ft. in the project "Supertech Hues", for a total sale consideration of Rs.87,03,000/- on 20.06.2016. Consequently, a buyer development agreement was executed on 15.07.2016, according to clause 24 of which, the respondent no. 1 was obligated to deliver the possession by July 2018, however, had miserably failed in doing so.
 - b. That in respect of such allotment, a memorandum of understanding ("MoU") was executed between the complainants and the respondent no. 1 on 15.07.2016 according to which the complainants opted for the subvention scheme or No pre-EMI till possession scheme. In lieu of

- subvention scheme, the complainants took financial assistance from respondent no.2 i.e. IHFL for an amount of Rs. 71,00,000/-.
- c. That as per MOU, it was the responsibility of the respondent no.1 to pay the Pre-EMI to India bulls housing finance until the delivery of possession of the unit is made to the complainants. However, instead of obliging by the same, the respondent has, through its malafide and unlawful conduct defaulted in paying Pre-EMI to the respondent no. 2.
- d. That the default in paying the Pre-EMI by respondent no.1 began in June 2018 which is still continuing hence violated the terms of section 18(3) of the Act. Moreover, the complainants were being harassed by respondents by not paying the Pre-EMIs after that period.
- e. That the respondents have colluded with each other and wrongly burdened the complainants financially. Upon non-payment of pre-EMI by the respondent no. 1, the complainants were made to pay the same and accordingly, the complainants have paid a sum of Rs. 1,49,350/- on 23.05.2019.
- f. That the deductions of the Pre-EMIs, which was never the obligation of the complainants, has gravely affected the CIBIL score of the complainants, leading in the decrement of the same.
- g. That despite the unlawful conduct of the respondents, the complainants have always ensured their bona fide conduct and have paid a total amount of Rs. 80,00,000/- which is approximately 92% of the total sale price, as is evident from the customer statement and account statement of Indiabulls dated 24.04.2020.
- h. That an amount of Rs. 71,00,000/- has been disbursed by the respondent no. 2. As per clause 5 of the TPA, the obligation to disburse the loan as per the stage of the construction of the project was upon the respondent no. 2.



The respondent no.2 had failed to perform their due diligence. Although under RBI regulations, it is a duty entrusted upon all the bank/financial institution in general to carry on due diligence investigation prior to disbursement of loan. As per the recent circular dated 13.08.2019 passed by the National Housing Bank, now even the Housing Finance Companies ("HFC") will be subject to RBI regulations which will provide more security to the homebuyers taking loan from these HFCs.

- i. That despite the payments made by the complainants, the development of the unit is nowhere near completion. That distressed by the unlawful and malafide conduct of respondents and the immense financial burden wrongly put on the complainants, they had lost faith in the respondents and the project. Not intending to stand the breach of contract, the loss of profits, the financial burden and the mental agony, the complainants requested refund of their amount vide cancellation letter dated 05.12.2017. The requests of the complainants were not being paid heed to. The complainants again requested for cancellation of the unit vide requests dated 05.12.2018, 24.12.2018, 03.10.2019 and 14.10.2019.
- j. That the multiple requests of the complainants have not been paid heed to by the respondent no. 1 and despite such requests, the complainants are being harassed to make the payments against Pre-EMIs and are being served with monthly reminders when in fact there is no development of the unit. The respondent no. 1 has violated the terms of the allotment in making demands against the unit. It is apparent that the respondent no. 1 has misappropriated the funds of the complainants. The complainants sent a notice dated 30.12.2019 addressing their grievances.
- k. That through the entire course of relationship between the parties, the complainants have always been proactive in knowing the stage of the

project and development work in the same; however, they have always faced elusive replies from respondent no. 1. The respondent no. 1, in furtherance of its unlawful conduct and acting in breach of all of its contractual obligations as set under the BBA, the TPA, and the MOU stands in violation of Sections 11(4)(a), 18(1) and 18(3) of the Act. All such agreements executed between the builder and the buyer are to be read as a part and parcel of the agreement to sale which is obligated to be adhered to and considered under the Act.

- l. That the complainants had been unnecessarily burdened, first, with the payment of instalments, then with the cancellation of the same, all due to the non-adherence of its obligations by the respondent. Under such circumstances, the complainants, also not foreseeing the delivery of possession and having waited for a substantial amount of time, have lost faith in the bonafide conduct of the respondent. The complainants were not wrong in claiming the refund as they cannot be expected to wait indefinitely for the delivery of possession.
- m. That the respondent no. 1 failed to deliver the unit of the complainants even after almost 6 years of agreement and taking advantage of dominant position, unilaterally had ignored the request of the complainants to withdraw their allotment and had malafidely restored to unfair trade practices by harassing the complainants by way of delaying the project by diversion of the money from the innocent and gullible buyers
- n. That the tactics of the respondent no. 1 to dupe and retain the complainant in the project is crystal clear by their act of non-refunding the paid amount despite of various request of cancellation of allotment by the complainant.
- o. The respondent no. 1 has utterly failed to fulfil his obligation to deliver the possession in time or compensate or refund the money along with interest

and has caused mental agony, harassment and huge losses to the complainants, hence the present complaint

- p. That the inordinate delay in handing over possession of the unit clearly amounts to deficiency of service on account of the respondent no. 1 and the complainants had rightly claimed to withdraw from the project and claimed total refund of amount along with other interest as per the Act, 2016, along with other compensation.
- q. That the Occupancy Certificate has not been issued to the complainants and the complainants cannot, in any way whatsoever, anticipate the delivery of the possession of the property.
- r. That even after an inordinate delay of almost 3 years, the project has not yet received the OC and is not anticipated to receive the same. The complainants cannot be allowed to be left in the lurch for a long period of time, hence, the complainants seek refund of their amounts along with interest and compensation.

C. Relief sought by the complainants: -

The complainants have sought the following relief(s):

- I. Direct the respondent no. 1 to refund the amount of Rs.9,00,000/- paid by the complainants along with prescribed rate of interest from the date of respective deposits till its actual realisation, in accordance with the provisions of the act.
- II. Direct the respondent no. 1 to refund the amount of Rs. 1,49,350/- paid by the complainant in lieu of Pre-EMIs.
- III. Direct the respondent to repay of Rs. 71,00,000/- to the respondent no. 2.
- IV. Direct the respondent to pay the compensation of Rs.10,00,000/- for mental agony, harassment to the Complainants, for violation of the obligations conferred by the Act, as per section 18(3).
- V. Direct the respondent no. 1 to pay the compensation of Rs. 1,50,000/- for the litigation costs.

4. 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.
 5. That the complainant has filed an application for impleadment of M/s Sarv Realtors Pvt. Ltd. as the necessary party and the same was allowed by the Authority on 10.12.2024.
 6. That present complaint was filed on 21.02.2022 and registered as complaint no. 431/2022. As per the registry, the complainants sent a copy of the complaint along with annexures via speed post as well as email. The tracking report for the same was submitted by the complainants along with the complaint. On 25.03.2022, the respondent no.1 was directed to file a reply within the stipulated time period. On 10.10.2022, Advocate Bhrigu Dhami appeared on behalf of the respondent. Moreover, after the application for impleadment was allowed, respondent no. 3, i.e., SARV Realtors Pvt. Ltd., was directed to file a reply within a stipulated time. However, the reply was still not filed by the respondent no.1 & respondent no.3. Despite specific directions, the respondents failed to file a written reply and did not comply with the order of the Authority. This indicates that the respondent no.1 & 3 are intentionally delaying the proceedings of the Authority by not filing written reply. Therefore, the defense of the respondent no.1 & 2 was struck off for non-filing of the reply vide order dated 07.04.2025, and the matter is being decided based on the facts and documents submitted with the complaint, which remain undisputed.
- D. Reply by the respondent no. 2**
7. The respondent no.2 is contesting the complaint on the following grounds:-
 - a. That the complaint is not maintainable qua the respondent no. 2 being the financial institution registered under the provisions of the National Housing Bank Act, 1987, and presently governed by the Reserve Bank of



India. The respondent no. 2 also submitted that the Real Estate (Regulation & Development) Act, 2016 has been brought into force to address grievances against the Developers/builders and not against the banks/financial institutions, as the respondent no. 2 state that the Authority is not appropriate forum to adjudicate or raise any dispute against the respondent no. 2. The present complaint is liable to be dismissed qua the respondent no. 2 on this ground alone.

- b. That without prejudice, the present complaint is not maintainable qua the respondent no. 2 as the same is totally false, frivolous and devoid of any merits against the respondent no. 2. The main dispute as apparent from the contents of the complaint is only between the complainant and respondent no. 1 regarding delay in construction, delay in possession of the unit booked by them in regarding payment of Pre-EMI by the respondent no. 1 to the respondent no. 2 in respect of the loan availed by the complainants. Hence the complaint ought to be and is liable to be dismissed qua the respondent no. 2 on this ground alone.
- c. That the respondent no. 2 is neither necessary party as no relief is sought against respondent no. 2 nor a party in the present case that without whom no appropriate order could be passed. That the complaint does not disclose any cause of action against the respondent no. 2.
- d. That it is the complainants who firstly approached the respondent no. 2 to avail a home loan against the unit in question and request to sanction and disburse the loan to the respondent no.1. Based upon the representations, assurances and documents furnished, the respondent no. 2 sanctioned the loan amount of Rs. 71,00,000/- pursuant to execution of the loan agreement between the complainants and respondent no. 2 and a

tripartite agreement dated 27.06.2016 executed amongst the complainants, respondent no. 1 and respondent no. 2.

- e. That the parties entered into the tripartite agreement, whereby it has been agreed that there would no repayment on the default of the loan amount for any reason whatsoever including but not limited to any concern/issues by and between the complainants and respondent no. 1. The complainant's obligation to repay the loan shall be distinct and independent of any issues/concern/dispute of whatsoever nature between the complainants and respondent no. 1.
- f. That the complainants also declared and confirmed in the tripartite agreement that the respondent no. 1 is of their choice, and they are confident of the builder's capability for quality construction and timely completion of the said project. Not only this, the complainants also declared and confirmed that they have agreed and contested to the terms of the payment plan upon understanding the nature of risks and consequences associated with the payment plan opted by them. The complainants further declared that they shall be solely responsible and shall continue to repay the loan amount in terms of the loan agreement and tripartite agreement irrespective of the stage of construction/delay or failure to develop/construct the said project by builder within stipulated period.
- g. That the respondent no. 2 is a non-banking financial institution and the debt being a secured debt, respondent no. 2 is entitled to recover its lawful dues and interest, if any, as per law. It is well settled law that recovery by non-banking financial institutions is of paramount interest. That the respondent no. 2 has acted within the four corners of the loan agreement

and tripartite agreement executed between /amid respective parties towards the lawful recovery of their dues a per law.

h. That in the event the Authority allows the relief sought by the complainants whereby granting refund to the complainants, then in the terms of clause 13 of the tripartite agreement, the respondent no. 1 be directed to first refund the loan amount directly to the respondent no. 2 to pay off the debts of the respondent no. 2 as also prayed by the complainants in the facts and circumstances of the present case in the interest of justice.

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

E. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

10. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction.

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) R.C.R. (Civil) 357 and 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*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon

under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refundable amount

F. Findings on the objections raised by the respondents during hearing.
F.I Objection regarding CIRP against respondent no. 1 and consequent moratorium against proceedings against respondent no.1.

15. Respondent no.1 during the course of hearing has submitted 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. 3 is no longer the asset of respondent no. 1 and admittedly, respondent no.3 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.3 has stated that the MDA was cancelled by consent of respondent no.3 and respondent no.1 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.3 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.3 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 & 3 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage.

F. Findings on the relief sought by the complainants.

G.I Direct the respondent to refund the entire deposited amount of the complainant, amounting to Rs.80,00,000/- with an interest @18% compounding quarterly till its actual realization of complete amount in accordance with Section 18 of the Real Estate Regulation Act, 2016 as the Respondent is in violation of Clause 1 of Possession of the said Unit of the Buyer Developer Agreement dated 15.07.2016 and also the respondent has cheated/defrauded the complainant;

16. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them 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)

17. The complainants are claiming refund of amount paid to the respondent-promoter under the provision 18(1) of the Act, 2016. Although the complainants requested for cancellation of the unit and full refund of the amount paid by them through a letter dated 05.12.2017, the respondent failed to refund the said amount. As a result, the complainant-allottees filed the present complaint and are now seeking a refund along with interest.
18. The complainants vide buyer's agreement dated 15.07.2016 were allotted an apartment bearing no. 1503, tower F, 15th floor, admeasuring 1180 sq.ft. super area in project "Supertech Hues" being developed by "R-1 M/s Supertech Limited". The complainants have paid Rs. 80,00,000/(Rs. 9,00,000/- paid by the complainant, Rs. 71,00,000 IHFL) against the total sale consideration of Rs. 87,03,000/-. As per clause 1 of the agreement, the respondent was required to complete the construction of tower/building within 2.6 years from the date of execution of buyer's agreement. The date of buyer's agreement is 15.07.2016 and the due date of possession is 15.01.2019. There is a delay of 3 years 1 month 6 days on the date of filing of the complaint i.e., 21.02.2022.
19. In the instant case, the buyer's agreement was executed between the parties on 15.07.2016. The due date of possession was 15.01.2019. The Occupation Certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The complainant vide letter dated 05.12.2017 requested the respondent for cancellation of unit even before the due date. Thereafter they filed the present complaint seeking withdrawal from the project. In this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of Earnest Money by the builder) Regulations, 11(5) of 2018.
20. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and***

Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in *CC/438/2019 Ramesh Malhotra VS. Emaar MGF Land Limited (decided on 29.06.2020)* and *Mr. Saurav Sanyal VS. M/s IREO Private Limited (decided on 12.04.2022)* and followed in *CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

21. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent-promoter can't retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So,

the respondent-promoter is directed to refund the amount received against the allotted unit after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 11.10% (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 of each payment till the actual date of refund of the deposited amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*. Out of refundable amount, the loan amount with interest be cleared first and only the remaining amount is to be disbursed to the complainants/allottees alongwith no dues certificate of the financial institution.


G. Directions of the Authority

22. 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.3 (*inadvertently mentioned as respondent no.2 in proceeding dated 07.04.2025*) i.e., Sarv Realtors Pvt. Ltd. is directed to refund the paid-up amount of Rs.80,00,000/- after deduction of 10% of the sale consideration as earnest money along with interest on such balance amount at the rate of 11.10% p.a. as prescribed under rule 15 of the Rules, 2017, from the of each payment till the actual date of refund of the deposited amount.
 - ii. Out of refundable amount, the loan amount with interest be cleared first and only the remaining amount is to be disbursed to the complainants/allottees alongwith no dues certificate of the financial institution.

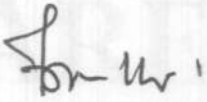
- iii. A period of 90 days is given to the respondent no. 3 to comply with the directions given in this order and failing which legal consequences would follow.
- iv. The respondent no. 3 is further directed not to create any third-party rights against the subject unit before full realization of the 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 allottees/complainants.
- v. 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.
23. Complaint as well as applications, if any, stands disposed of accordingly.
24. Files be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Dated 07.04.2025

Haryana Real Estate Regulatory Authority, Gurugram