

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

Complaint no. : 5757 of 2022
Date of filing: 26.08.2022
Date of decision : 07.04.2025

Mani Ram Saini

Regd. Address: H.No. 135/15, Sector-15,
Sonipat, Haryana-131001

Complainant

Versus

1. M/s Supertech Limited

Regd. office: 1114, 11th floor Hemkunt
Chambers, 89, Nehru Place new Delhi -110019

Respondent no.1

2. M/s SARV Realtors Pvt. Ltd.

Regd. office: 1114, 11th floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi-110019

Respondent no.2

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

**Chairman
Member
Member**

APPEARANCE:

Sh. Gaurav Rawat (Advocate)
Sh. Bhrigu Dhami (Advocate)
Sh. Isha Dang (AR)

**complainant
Respondent no. 1
Respondent no. 2**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, 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 obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Project name and location	Supertech Hues, Sector-68, Gurugram-122101
2.	Project area	55.5294 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017
	Validity Status	31.12.2021
5.	DTPC license no.	106 & 107 of 2013 dated 26.10.2013
	Validity status	25.12.2017
	Name of Licensee	Sarv Realtors Pvt. Ltd. & Ors.
6.	Unit No.	0302 [pg. 21 of complaint]
7.	Unit area admeasuring	1180 sq. ft. Super Area [pg. 21 of complaint]
8.	Date of Booking	24.10.2016[page 21 of complaint]
9.	Date of buyer developer agreement	24.10.2016[page 20 of complaint]
10.	Possession clause	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.

11.	Due date of Possession	June 2019 + 6 months = Dec 2019
12.	Sale consideration	Rs. 33,58,841/- [pg. 22 of complaint]
13.	Total amount paid by the complainant	Rs. 31,72,373/- [As alleged at pg. 17 of complaint]
14.	Offer of Possession	Not obtained
15.	Occupation Certificate	Not offered

B. Facts of the complaint

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

- a. That in 2013, the respondent issued an advertisement announcing a group housing colony project "Supertech Hues" situated in the Sector 68, Sohna Road, Haryana, , under the license no. 106 and 107 of 2013 dated 26.12.2013, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the project. The respondent confirmed that the projects had got building plan approval from the Authority.
- b. That the complainants while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a flat in their project namely Supertech Hues. The respondent talked about the moonshine reputation of the company and the representative of the respondent made huge presentations about the project and also assured that they have delivered several such projects in the National Capital Region. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.

- c. That relying on various representations and assurances given by the respondent and on belief of such assurances, complainant, booked a unit in the project by paying an amount of Rs.3,35,884/- dated 24.10.2016, the booking of the unit bearing no. 0302, third floor, tower-K, in Sector 68, having super area measuring 1180 sq. ft. to the respondent dated 24.10.2016 and the same was acknowledged by the respondent.
- d. That the respondent confirmed the booking of the unit dated 24.10.2016, allotting a unit no. 0302, third floor, tower-K, measuring 1180 Sq. Ft in the aforesaid project of the developer for a total sale consideration of the unit i.e., Rs.33,58,841/-, which includes basic price, plus EDC and IDC, and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- e. That a buyer's agreement was executed between complainant and respondent on 24.10.2016. As per clause 1 of the buyer's agreement the respondent had to deliver the possession on or before June, 2019. Hence, the due date of possession comes out to be June, 2019.
- f. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.31,72,373/- towards the unit against the total sale consideration of Rs. 33,58,841/-.
- g. That though the payment to be made by the complainant was to be made based on the payment plan but unfortunately the

demands being raised were not corresponding to the factual construction situation on ground.

- h. That the payment plan was designed in such a way to extract maximum payment from the buyers. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. Such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/demands/etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- i. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by him.
- j. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to the complainants regarding the status of the construction and were

never definite about the delivery of the possession. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when would they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc.

- k. That in terms of clause 1 of the said buyer's agreement, respondent was under dutiful obligation to complete the construction and to offer the possession on or before June, 2019. That complainant approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainant that the construction will get completed soon.
- l. That complainant requested the respondent to show/inspect the unit before complainant pay any further amount and requesting to provide the car parking space no but respondent failed to reply.
- m. That the respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottee.
- n. That the respondent has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, buyer's agreement and the different advertisements released from time to time. Further, such acts of

the respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

- o. That the fact is that the complainant has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA.
- p. That the allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- q. That the purpose of quoting this example is that not only the BBA is one sided heavily loaded in favour of the respondent but even the settlement-cum-amendment agreement is also heavily loaded in favour of the respondent. Needless to mention that such one sided agreements have been held to be unconstitutional and hence in valid by the Honourable Supreme Court and the Honourable High Courts in number of cases.
- r. That the respondents have played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the BBA executed with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.

- s. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Real Estate (Regulation and Development) Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- t. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their unit and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent point of view may be unique and innovative but from the allottee point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the allottee, be it either through not implementing the services/utilities as promised in the brochure or through not delivering the project in time.
- u. That the complainant is the one who has invested their life savings in the said project and are dreaming of a unit for themselves and the respondent has not only cheated and betrayed them but also used their hard-earned money for their enjoyment.
- v. That such clauses of BBA are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case

titled as *Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)* as also in the judgment of Hon'ble Supreme Court in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)*.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
 - b. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainants by the respondent in spite of the fact that the complainants desires to take the possession.
 - c. Direct the respondent to pay the balance amount due to the complainants from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before signing the conveyance deed/sale deed.
 - d. Direct the respondent not to charge anything which not the part of the payment plan as agreed upon.
 - e. Direct the respondent to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.
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.

6. The complainant has filed an application for impleadment of M/s Sarv Realtors Pvt. Ltd. and the same was allowed by the Authority on 10.12.2024.
7. That present complaint was filed on 26.08.2022 and registered as complaint no. 5757 of 2022. As per the registry, the complainant 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 complainant along with the complaint. On 07.02.2024, the respondent no.2 was directed to file a reply within the stipulated time period. On 06.03.2025, Advocate Rahul Raghav appeared as a proxy on behalf of the respondent no.1. Moreover, after the application for impleadment was allowed, respondent no. 2, i.e., SARV Realtors Pvt. Ltd., was also directed to file a reply within the stipulated time. However, the reply was still not filed by the respondent no.1 & respondent no.2. 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 respondents are intentionally delaying the proceedings of the Authority by failing to file a written reply. Therefore, the defence of the respondents were struck off for non-filing of the reply, and the matter is being decided based on the facts and documents submitted with the complaint, which remain undisputed.
8. Copies of all the relevant documents have been filed and placed on 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.

D. Jurisdiction of the Authority

9. The Authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 complainants at a later stage.

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.

13. Respondent no.1 during the course of hearing has submitted that in the matter as vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as ***Union Bank of India Versus M/s Supertech Limited***, the Hon'ble NCLT has initiated CIRP respondent no.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 that the MDA was cancelled by consent of respondent no.2 and respondent no.1 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.2 i.e., Sarv Realtors Pvt. Ltd. admittedly took responsibility to develop the project and started marketing and allotting new units under its name. In view of the above, respondent no.2 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded

from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., respondent no.1 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 2 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage.

F. Findings on the relief sought by the complainants.

- F.I. Direct the respondent to pay interest for every month of delay at prevailing rate of interest from 24.12.2019 till actual handing of the possession.**
- F.II. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.**
- F.III. Direct the respondent to handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit**

- 14. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected.
- 15. In the present matter the complainant was allotted unit no. 302, admeasuring 1180 sq. ft. in the project "Supertech Hues" Sector 68 by the respondent-builder for a sale consideration of Rs.33,58,841/- and he has paid a sum of Rs.31,72,373/-.
- 16. 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."

(Emphasis

supplied)

17. 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**."*

18. **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 June 2019 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 December, 2019.

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intends 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. 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]

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.

20. 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.
21. 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%**.
22. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(z) "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—

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 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;"

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **11.10%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. 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 June, 2019. 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 December 2019. 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 24.10.2016 executed between the parties. Further no OC/part OC has been granted to the project.
25. 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., December 2019 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.

26. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the said respondent has applied for Occupation Certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent no.2 is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent authority.

G. Directions of the Authority

27. 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 respondents/promoters no.2 i.e., SARV Realtors PVT. Ltd. is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 23.12.2019 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.
- ii. The respondents are directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate
- iii. The rate of interest chargeable from the allottees 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 allottees, 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, and other reliefs as per above 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 respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.

- vi. The respondent shall not charge anything which is not the part of BBA.
- vii. 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.***

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

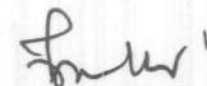
29. File be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2025