

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

Complaint No: 4322 of 2021
Date of decision: 07.04.2025

NAME OF THE BUILDER		M/s SARV Realtors Pvt. Ltd	
PROJECT NAME		"Supertech Hues", Sector- 68, Gurugram, Haryana	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4322/2021	Jawahar Lal Gupta & Ors. V/s (R1) M/s Supertech Limited (R2) ICICI Bank Ltd. (R3) SARV Realtors Pvt. Ltd.	Sh. Harshit Batra (Complaint) Sh. Bhrigu Dhama (Respondent no. 1) None(Respondent no.2) Ms. Isha Dang, AR (Respondent no.3)
2.	CR/1924/2023	Ms. Jyotsna Mirpuri V/s (R1) M/s Supertech Limited (R2) L & T Housing Finance Limited (R3) M/s SARV Realtors Pvt. Ltd.	None (Complaint) Sh. Bhrigu Dhama (Respondent no. 1) None(Respondent no.2) Ms. Isha Dang, AR (Respondent no.3)

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

ORDER

- This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017

(hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "**Supertech Azalia**" (group housing colony) being developed by the same respondent/promoter i.e., **M/s Supertech Limited**. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Supertech Hues", Sector-68, Gurugram-122101			
		Occupation certificate: - Not obtained			
		Offer of possession: Not offered			
CR No.	Unit	BBA	Possession clause	Due date	TSC AP
CR/4322/2 021	0902, T-B, 9 th floor (page 30 of complaint)	25.09.2014 (P-29 of complaint)	<i>E. POSSESSION OF THE UNIT:- 24. The Possession of the Unit shall be given by JULY, 2018 or extended period as permitted by the agreement. However, Developer hereby agrees to compensate the Buyer(s) @Rs.5.00/- (Five rupees Only) per sq. ft. of super area of</i>	January, 2019 (Page 47 of the complaint)	Rs. 94,76,200/- (Page 31 of the complaint). Rs.1,03,66,742/- - (As alleged by the complainant at pg. 7 of complaint collectively along with receipts acknowledged by the respondents and loan amount sanctioned by the bank) Rs.1,03,66,742/-



			the unit per month for any delay in handling over possession of the unit beyond the given period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances (Emphasis supplied) (Page 37 of the complaint)		(including the interest accrued on EMIs which was payable by the respondent to the ICICI Bank).
CR/1924/2 023	1002, 10 th floor	07.12.2015 (70 of complaint)	1 Possession of the unit: The possession of the allotted unit shall be given to the buyer(s) by the developer by Dec, 2019. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months. (page 22 of complaint)	June 2020	Rs. 85,74,444/- (page 73 of complaint) Rs. 86,42,908/- (i.e., Rs. 22,32,355/- being the direct payments made by the complainant and Rs. 64,10,553/- being the amount disbursed to the respondent no.1 by respondent no.2 on behalf of the complainant)
Relief sought by the complainant(s):- 1. Refund					

4. The aforesaid complaints were filed by the complainant-allottee(s) against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date, seeking refund.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4322/2021 Mr. Jawahar Lal Gupta V/s Supertech Limited And ICICI Bank Ltd. And M/s SARV Realtors Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

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

S.No.	Particulars	Details		
1.	Name of the project	Supertech Hues, Sector-68, Gurugram-122101		
2.	Project area	55.5294 acres		
3.	Nature of project	Group Housing Colony		
4.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017		
	Validity Status	31.12.2021		
6.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013	89 of 2014 dated 08.08.2014	134-136 of 2014 dated 26.08.2014
	Validity status	25.12.2017	Renewed on 31.03.2023 upto 07.08.2024	Renewed on 27.03.2023 upto 25.08.2024
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.
7.	Unit no.	0902, tower-B on 9 th floor, (Page no. 30 of complaint)		
8.	Unit tentatively measuring	1180 sq. ft. super area (Page no.30 of complaint)		
9.	Unit type	2BHK +2TOI		



10.	Date of Booking	02.04.2014(Page no. 30 of complaint)
11.	Date of execution of Builder developer agreement in favour of the Bank	25.09.2014 (Page 29 of the complaint) (duly signed by all the parties)
12.	Possession clause as per buyer developer agreement	E. POSSESSION OF THE UNIT:- 24. The Possession of the Unit shall be given by JULY, 2018 or extended period as permitted by the agreement. However, Developer hereby agrees to compensate the Buyer(s) @Rs.5.00/- (Five rupees Only) per sq. ft. of super area of the unit per month for any delay in handling over possession of the unit beyond the given period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances. (Emphasis supplied) (Page 37 of the complaint)
13.	Due date of possession	July, 2018+ 6 months =January 2019 (Page 47 of the complaint)
14.	Rejection of Building Plan for license no.	29.06.2021 As per data available on DTCP website
15.	Total sale consideration	Rs.94,76,200/- (Page 31 of the complaint)
16.	Total amount paid by the complainant	Rs.92,80,494/- (As alleged by the complainant at pg. 7 of complaint collectively along with receipts acknowledged by the respondents and loan amount sanctioned by the bank) Rs.1,03,66,742/- (including the interest accrued on EMIs which was payable by the respondent to the ICICI Bank)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Loan sanctioned by ICICI bank limited	Rs.71,99,805/-
20.	Tri-partite Agreement	Rs.71,99,805/-
21.	Interest paid by the complainant towards the loan to bank	Rs.25,02,589/-

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -

- a. That lured by the said advertisement, representations and location of the project and base upon the assurances of respondent for providing luxurious living facilities, complainants jointly booked a unit on 02.04.2014 bearing no. 0902, tower B, 9th floor admeasuring 1180 sq.ft. in the said project for a total sale consideration of Rs. 94,76,200/- including all charges and opted for "Subvention Payment Plan. Complainant made an initial payment of Rs. 6,00,000/- in favour of the respondent on 24.09.2014 and executed a buyer developer agreement dated 25.09.2014 jointly in favour of the complainants detailing all the terms and conditions of booking.
- b. That respondent at the time of booking the aforesaid unit in question in favour of the complainants represented the complainant that the aforesaid project is approved in all respects and possession of the project would be timely delivered to the complainants. As such complainants were anxiously waiting for the completion of the project.
- c. That the complainant had opted to pay as per "Subvention Payment Plant) as per payment schedule laid down in the agreement dated 25.09.2014. It was further agreed that the total sale consideration of the said unit would be Rs.94,76,200/- as laid down in the agreement dated 25.09.2014.
- d. That vide agreement dated 25.09.2014 it was specifically agreed by the respondent that it would deliver to the complainant the said unit by July 2018.
- e. That the complainant further paid an amount of Rs.2,30,000/- on 04.10.2024 and thereafter an amount of Rs.6,00,000/- as on 07.10.2014 to



the respondent which was duly accepted and acknowledge by the respondent.

- f. That as and when the demands were raised by the respondent to the complainants, the instalment were paid which was duly acknowledged and receipt was issued by the respondent. The issuance of the receipts confirms the due payments made on due date as per demand.
- g. That the respondent issued a letter dated 25.09.2014 to ICICI as no objection towards mortgaging the unit under SPP plan and further the complainants, respondent and ICICI bank further enter into a tripartite agreement as per the SPP Plan for an amount of Rs.71,99,806/- by mortgaging the unit bearing no. 0902, tower B admeasuring 1180 sq.ft. in favour of the ICICI bank under the SPP plan as agreed by the respondent. It was further agreement under the said tripartite agreement wherein the respondent would pay all the EMIs on the loan amount of Rs.71,99,806/- to the ICICI bank from September 2014 till the possession of the unit is given but the respondent to the complainants. However, t utter shock, the respondent had only paid the interest of the said unit up to September 2017 without even giving the possession of the said unit to the complainants. The complainants are paying the EMIs and the interest on the unit by themselves from October 2017 without any default and had not even received the possession of the unit, rather the said liability was of the respondent.
- h. That due to non-payment of the said EMIs by the respondent, the complainants are paying the EMIs from October 2017 and as on September 2021 the complaints had paid a sum of Rs. 25,02,589/-.



- i. That the complainants as on date have paid a total sum of Rs. 1,03,66,742/- which includes the interest accrued on EMIs which was payable by the respondent to the ICICI Bank.
- j. That the complainants had been contacting the officials of the respondent and had been regularly visiting their offices to enquire about the project, as the complaints were not receiving any demand letters or communication from respondent. However, no positive response was given by the respondent to the complainants and it was only assured that the booking of the complainants with the respondent is safe and said unit would be delivered in the near future.
- k. That even till October, 2021, no further progress was made by the respondent in the said project and on visiting the site in question it was found that only partial construction was erected and when the complainant contacted the respondent, respondent told the complainant that due to various reasons including financial hardships as well as various other factors the construction and handing over of the project has got further delayed, and the respondent further requested the complainant to continue the deposit in the said project as the same would be completed soon and also assured that respondent shall start the construction in full swing and would deliver the possession of the project at the earliest.
- l. That the complainants have performed their part of contract and paid the required amount as and when demanded from them by the respondent. The complainants trusted respondent who being a reputed builder and only on their representation paid the amount of a sum of Rs.1,03,66,742/- on the pretext that they would construct the unit and the project for the complainant within the agreed stipulated time period. Whereas, the



respondent for all this period kept the entire money, paid by the complainants without spending the same for the completion of the building, for which it was taken, and used the same for their own use. The complainant is suffering great loss of non-utilization of their money which is stuck up for last seven years and also of not acquiring a residential unit, thus there is a loss of opportunities whereas the respondent gained illegal gain out of the aforesaid deal.

- m. That from the aforesaid conduct of the respondent it is clearly evident that respondent is playing fraud upon the general public in order to extract as much money as possible and is further a classic example of deficiency in service on the part of respondent with its allottees.
- n. That due to wrong advertisements and false promises, the complainants deposited Rs.1,03,66,742/- with the respondent in the hope that they would get a residential unit for themselves and their family. But, respondent neither developed the project as agreed nor is in a position to give possession of the unit to the complainant till date. Further, due to inflation in the property market during past five years, the complainants cannot get any other unit at old price. As per the terms and conditions of the allotment of the unit, respondent charges interest @24% per annum for any delay in payment on behalf of the unit buyers' and the principles of natural justice warrants respondent to pay the same rate of interest to the unit buyers on their deposited amount. The respondent is liable to pay to the complainants' simple interest@24% on the deposited money till the filing of the present complainant.
- o. That the complainants are regularly paying the EMIs of ICICI Bank from October, 2017 as per the tripartite agreement as stated above under the



SPP Plan of agreement dated 25.09.2014 for which the respondent was liable to pay from September 2014 till the possession of the unit.

- p. That the ill-intention of the respondent is very well clear from the fact that the respondent not only have grabbed hard earned money of innocent people like the complainants but have time and again given false assurances to the general public at larger that respondent are a reputed builders and have large experience in real estate infrastructure and have delivered timely possession to all its projects. Rather, the truth is that respondent have illegally extorted huge amount of money of the general public in the name of developing properties, rather used the said amount for its own personal needs.
- q. That first cause of action in filing the present complaint arose on 02.04.2014, when the complainant got booked a residential unit with the respondent. The cause of action again arose on 25.09.2014 when the respondent entered into a buyer development agreement in respect of the said unit with the complainant. The cause of action again arose on various dated till July 2018 as and when the respondent demanded payments against the sale consideration of the unit and the complainant had been paying the same against acknowledged. The cause of action further arose in July 2018 when the respondent was not in a position to complete the project in question and hand over fully developed and constructed possession of the unit in question. Further, the cause of action again arose in favour of the complainant and against the respondent on 03.03.2017 when the complainants further paid the required instalments. The cause of action further arose on October 2017 when the respondent started neglecting the payment to be made to ICICI bank as per the tripartite



agreement under the SPP Plan. The cause of action again arose in favour of the complainant and against the respondent on 30.10.2018 when the complainants further paid the required instalments as per the demands of the respondent. Cause of action again arose on 30.11.2018 when the respondent admitted not having completed the project and induced the complainants to pay the PRE-EMI installments which was rather the liabilities of the respondent. The cause of action is still continuing as the respondent has still not fully developed unit as agreed nor has refunded the deposited amount with interest till date.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s):
 - I. Direct the respondent to refund the amount of Rs. 20,80,689/- being the principal amount paid by the complainant to the respondent.
 - II. Direct the respondent to refund the amount of Rs. 23,57,533/- being the principal amount paid by the complainant to the ICIC Bank against Pre-EMI instalments on its own accord against the subvention scheme.
 - III. Direct the respondent to refund the amount of Rs. 71,99,805/- being the loan amount disbursed by ICICI Bank to respondent.
 - IV. Direct the compensation of Rs.1,00,000/- for the mental agony and financial loss suffered by the complainant.
 - V. Direct the respondent to pay Rs.1,00,000/- to the complainants on account of deficiency in the services of the respondent and also towards the litigation charges.
10. 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.
11. No reply has been submitted by the respondent no.1 i.e., M/s Supertech Ltd. However, the counsel for respondent no. 1 has stated that the respondent no.1 is under CIRP vide order dated 25.03.2022 passed by the Hon'ble New Delhi in case no. IB-204/ND/2021 titled as **Union Bank of India Versus M/s Supertech**

Limited and moratorium has been imposed against the respondent no. 1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against the respondent no. 1.

D. Reply by the respondent no. 3

12. The respondent no. 3 implead as party vide order dated 10.12.2024 is contesting the complaint on the following grounds:-

- a. That respondent no. 3 was issued license bearing nos. 89 of 2014 dated 11.08.2014 for developing the said land. The respondent no. 3 and respondent no. 2 had entered into a master development agreement dated 29.10.2013.
- b. That in terms of the said MDA, Supertech was to develop and market the said project.
- c. That the complainants along with many other allottees had approached M/S Supertech Ltd., making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book unit in the said project.
- d. That after fully understand the various contractual stipulations and payments plans for the unit, the complainant executed the buyer develop agreement dated 25.09.2014 with respondent no. 1 only and unit being number No. 0902, 9th floor having super area as 1180 sq. ft. for a total consideration of Rs.94,76,200/-.
- e. That in the interim with the implementation of the RERA Act, 2016 the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula vide registration no. 182 of 2017 dated 04.09.2017 upon application filed and in the name of Supertech Ltd.
- f. That the Authority vide order dated 29.11.2019 passed in Suo Moto complaint no. 5802 of 2019, had passed certain directions with respect to



the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the respondent no. 3 and M/S SARV Realtors Pvt. Ltd. respectively. The Authority had further directed that M/S Sarv Realtors Pvt. Ltd. and M/S DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the respective projects instead of M/S Supertech Ltd. certain important directions as passed by the Authority are as under:

- i. (i) The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./DSC and other, as the case may be registered as promoters.
- ii. (v) All the assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and AZALIA, in the name of Supertech Ltd. be shifted to SARV Realtors Pvt. Ltd./DSC and others. However, even after the rectification, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd./DSC and others fails to discharge its obligations towards the allottees.

In lieu of the said directions passed by the Authority all asset and liabilities have been since transferred in the name of the answering. 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.

- g. That the said MDA were cancelled by the consent of the respondent no. 3 and Supertech vide cancellation agreement dated 03.10.2019 and the respondent no. 3 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- h. That in terms of cancellation agreement the respondent no. 3 and Supertech had agreed that in terms of the mutual understanding between



both the companies, both companies had decided to cancel the JDA's vote the said cancellation agreement.

- i. That in the interregnum, the pandemic of covid -19 has gripped the entire nation since March of 2020. The government of India has itself categorized the said event as 'force majeure' condition, which automatically extends the timeline of handing over the possession of the apartment to the complainant.
- j. 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 consideration activity.
- k. That the complaint deems to be dismissed sine-die or dismissed as the R1 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.
- l. That even the application seeking impleadment had been wrongly allowed, as once the sole respondent, M/s Supertech Ltd. was undergoing insolvency proceedings M/s Supertech Ltd. was undergoing insolvency proceedings since 25.03.2022, thus, no proceedings in the present matter could have continued after the said date. However, the Authority has wrongly allowed the said application in contravention of the provisions of Section 14 IBC, 2016.
- m. The present complaint further also deems to be prima facie dismissed for non-joinder of necessary parties. It is reiterated that in terms of the own admission of the complainant the BBA was executed solely with M/s. Supertech Ltd. and furthermore, all payments qua the booking were also



made to M/s. Supertech Ltd. Thus, the present complaint deems to be dismissed for non-joinder of M/s. Supertech Ltd.

- n. That as M/s. Supertech Ltd. and the respondent no.3 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 the respondent no.3 and M/s. Supertech Ltd. The respondent no.3 cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.
- o. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent no. 3 with this frivolous complaint.
- p. The delay in construction was on account of reasons that cannot be attributed to the respondent herein. The flat buyers' agreements provide that in case the developer/respondent delays in delivery of unit for reasons not attributable to the developer/respondent, then the developer/respondent shall be entitled to proportionate extension of time for completion of project.
- q. In view of the force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent, Covid-19, shortage of labour, shortage of raw materials, stoppage of works due to court orders, etc. for completion of the project is not a delay on account of the respondent for completion of the project.



- r. That with respect to the agreement, the time stipulated for delivering the possession of the unit was on or before June, 2019. However, the buyer's agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around January, 2019. However, the said date was subject to the force majeure clause, i.e. "Clause 43". The delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavoured to deliver the property within the stipulated time.
- s. The timeline stipulated under the flat buyer's agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- t. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. Apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances like:
- i. Implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labour/workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the



Central/State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including that of the Respondent herein, fell behind on their construction schedules for this reason amongst others. The said fact can be substantiated by newspaper articles elaborating on the above mentioned issue of shortage of labour which was hampering the construction projects in the NCR region. This certainly was an unforeseen one that could neither have been anticipated nor prepared for by the respondent while scheduling their construction activities. Due to paucity of labour and vast difference between demand and supply, the respondent faced several difficulties including but not limited to labour disputes. All of these factors contributed in delay that reshuffled, resulting into delay of the Project.

- ii. That such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex.
- u. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. The delay in construction, if any, is attributed to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the agreement.
- v. That the project "**HUES**" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021.



- w. That the possession of the said premises under the said BBA was proposed to be delivered by the respondent to the apartment allottee by June, 2019 with an extended grace period of 6 months which comes to an end by December, 2019. The completion of the building is delayed by reason of Covid-19 outbreak, non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent.
- x. That the enactment of the Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the respondent is just to complete the project within stipulated time submitted before the Authority. According to the terms of builder buyer's agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time final settlement on slab of offer of possession.
- y. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Hues' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned Labor is let off and the said travel to their native villages or look for work in other



states, the resumption of work at site becomes a slow process and a steady pace of construction is realized after long period of time.

- z. That, graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.

- aa. 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)
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bb. Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the respondent were forced to return to their home towns, leaving a severe paucity of labour. That the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

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

13. 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

14. 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

15. 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

16. 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.

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

F. Findings on objections raised by the respondent no. 2

E.I Objections regarding force majeure.

18. 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 25.09.2014 and as per terms and conditions of the said agreement

the due date of handing over of possession comes out to be January 2019, which was prior to the effect of Covid-19 on above project could happen. The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

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

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

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

20. 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.3 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 3 is no longer the assets 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.1 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.3 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.1 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.2 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.

G. Findings on the relief sought by the complainants.

- F.I Direct the respondent to refund the amount of Rs. 20,80,689/- being the principal amount paid by the complainant to the respondent.**
- F.II Direct the respondent to refund the amount of Rs. 23,57,533/- being the principal amount paid by the complainant to the ICIC Bank against Pre-EMI instalments on its own accord against the subvention scheme.**
- F.III Direct the respondent to refund the amount of Rs. 71,99,805/- being the loan amount disbursed by ICICI Bank to respondent.**

21. 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 reliefs. Thus, the same being interconnected.
22. That the complainants booked a unit bearing no. 0902, tower B, 9th floor, in the project of the respondent namely, "HUES" admeasuring super area of 1180 sq.ft. for an agreed sale consideration of Rs. 94,76,200/- against which complainants have paid an amount of Rs. 1,03,66,742/- and the respondent has failed to handover the physical possession till date. That the complainants intend to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:-

"Section 18: - Return of amount and compensation

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

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

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

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

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

(Emphasis supplied)

23. As per clause E (24) of the buyer's developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

"E. POSSESSION OF UNIT: -

24. *The possession of the unit shall be given by July 2018 or extended period as permitted by the agreement. However, Developer hereby*



agrees to compensate the Buyer(s) @Rs.5.00/- per sq.ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and upto the offer letter of possession or actual physical possession whichever is earlier, to cover any unforeseen circumstances....."

[Emphasis Supplied]

24. Due date of handing over of possession and admissibility of grace period:

As per clause E (24) of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the July 2018 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be 30.01.2019.

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

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

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

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

26. 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.

27. 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%**.
28. 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;"*

29. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause E (24) of the agreement executed between the parties on 25.09.2014, the due date of possession is July 2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is January 2019.
30. It is pertinent to mention over here that even after a passage of more than 5 years neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is

of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid more than the total consideration. Further, the Authority observes that there is no document placed on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.

31. Further, the Occupation Certificate/Completion Certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

32. Moreover, the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under: -

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent



on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

33. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.IV Direct the compensation of Rs.1,00,000/- for the mental agony and financial loss suffered by the complainant.



G.V Direct the respondent to pay Rs.1,00,000/- to the complainants on account of deficiency in the services of the respondent and also towards the litigation charges.

35. 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.

H. Directions of the authority

36. 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:
- The respondent no.2 i.e., SARV Realtors Pvt. Ltd. is directed to refund the amount received by it from each of the complainant(s) along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - Out of total amount so assessed, the amount paid by the bank i.e., respondent no.2 be refunded first to the bank and the balance amount along with interest will be refunded to the complainants. Further, the respondent no. 3 is directed to get the NOC from respondent no.2 and give it to the complainants within a period of 30 days of this order.



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- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainant.
- v. No directions are being passed in the matter qua respondent nos. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.
37. Complaint as well as applications, if any, stands disposed of accordingly.
38. Files be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2025