



HARERA
GURUGRAM

Complaint No. 3234 of 2024

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

Complaint no. : 3234 of 2024
Complaint filed on : 12.07.2024
Complaint disposed on: 09.05.2025

Anuj Katyal
Des Raj Nijhawan
R/o: 1250, Sector 7, Urban Estate,
Kurukshetra-136118, Haryana.

Complainants

Versus

1. M/s Sarv Realtors Pvt. Ltd.
Address: 1114, 11th Floor, Hemkunt Chambers,
89, Nehru Place, New Delhi.
2. M/s Supertech Ltd.
Address: 1114, 11th Floor, Hemkunt Chambers,
89, Nehru Place, New Delhi.

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Himanshu Gautam
Shri Dushyant Tewatia
Shri Bhrigu Dhani

Counsel for the complainant
Counsel for respondent no. 1
Counsel for 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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. 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. N | Particulars | Details | | |
|------|--|---|-----------------------------|----------------------------------|
| 1. | Name of the project | Supertech Hues, Sector 68, Gurugram, Haryana | | |
| 2. | Nature of the project | Group housing project | | |
| 3. | DTCP 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 of license | 25.12.2017 | 07.08.2024 | 25.08.2024 |
| | Licensed area | 13.74 acres | 10.25 acres | 4.85 acres |
| 4. | HRERA Registered or not registered | 182 of 2017 dated 04.09.2017 [Hues towers A, B, E, F, G, H, M, N, K, T, V, W, O, P, C & D] | | |
| | Registration valid till | 31.12.2021 | | |
| 5. | Booking date | 12.10.2013 [Page 18 of complaint] | | |
| 6. | Allotment letter | Not placed on record | | |
| 7. | Old unit no. and area | 0802, 8 th floor, tower L admeasuring 1375 sq. ft. [Page 24 of complaint] | | |
| 8. | Letter by the respondent stating change in the unit due to change in lay-out plans | 25.07.2014 [Offering new unit bearing no. 0802, 8 th floor, tower W admeasuring 1430 sq. ft. at Page 64 of complaint] | | |



| | | |
|-----|---|---|
| 9. | Date on buyer developer agreement w.r.t the unit bearing no. L-0802 | 12.04.2014 (Unexecuted) [Page 23 of complaint] |
| 10. | Possession clause | <i>The Possession of the allotted unit shall be given to the Buyer(s) by the Developer in 42 months i.e. by April 2017. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months.....</i> (Emphasis supplied) [Page 25 of complaint] |
| 11. | Due date of possession | 31.10.2017 [Note: July 2018 + Grace period of 6 months is included being unconditional and unqualified] |
| 12. | Total sale consideration as per buyer developer agreement | Rs. 1,02,63,250/- [Page 24 of complaint] |
| 13. | Amount paid by the complainants | Rs. 18,70,889/- [As alleged by the complainant on page 16 of complaint] |
| 14. | Occupation certificate | Not obtained |
| 15. | Offer of possession | Not offered |

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
 - i. That on 12.10.2013, one of the complainants, Mrs. Anju Katyal booked a residential flat in the project named "Supertech Hues" situated at Sector 68, Gurugram by making a payment of Rs. 6,00,000/- vide cheque dated 10.10.2013. Accordingly, on 26.03.2014, the complainant was allotted a flat

bearing unit no. 0802 in Tower L admeasuring 1375 sq. ft. in the said project.

- ii. That on 26.12.2013, the respondent no. 1 obtained licence bearing no. 106 and 107 of 2013 from Director General of Town and Country Planning (DGTCP), Haryana for development of Group Housing Project. It is pertinent to mention here that at the time of booking, the respondents had not even obtained licence and other necessary approvals from the concerned authorities for development of the said project and they had fraudulently and unlawfully concealed the facts and induced the complainants to book the said flat without even having necessary approvals for the development of the said project. Thus, the respondent no. 2 marketed the above said flat under pre-launch concealing important facts from the complainants, which is not only unethical but also illegal and is clear violation of the Act.
- iii. That the respondent No. 2 provided two copies of Builder Buyer Agreement (BBA) dated 12.04.2014 to the complainants and asked them to sign and return these copies to them and they would get it signed from their authorised signatory and then would keep one copy with them and return the other one copy to the complainants. Accordingly, complainant signed and submitted both the copies of draft BBA to the Respondent No. 2. But instead of executing the BBA, the Respondent No. 2 misused his dominant position and vide letter dated 25.07.2014 informed the complainants that due to some technical reasons layout plan of the said project has been changed and complainants had been reallocated another flat in the same project bearing unit no. **0802 in Tower W** admeasuring 1430 sq. ft. and further informed that all documents issued against the old unit stand revoked and fresh documents would be issued against the new unit allotted



to the complainants. Thus, the Respondent No. 2 imposed re-allotment of flat on the complainants against their will.

- iv. That again the Respondent No. 2 provided two more copies of draft Builder Buyer Agreement (BBA) dated 21.11.2014 against the reallocated flat to the complainants and again asked them to sign and then return these copies to him to get the BBA executed. As per the Possession Clause of the new draft BBA dated 21.11.2014, the developer should offer possession of unit by July, 2018 with a grace period of 6 months. It is pertinent to mention here that as per the previously drafted BBA which was provided earlier to the complainants, the possession was to be given by April 2017 but in new BBA, the Respondent No. 2 further extended possession time by 1 Year and 3 Months in an unlawful and arbitrary manner. Also, area of the flat re-allotted to the complainant is 55 sq. ft. more than area of the flat allotted earlier, due to which total cost of the unit increased and additional financial burden has been caused to the complainants without their consent, which cannot be justified. That the Respondent No. 2 also created two forged payment receipts with new unit number and new date mentioned over these to cover his wrongful act of pre-launch sale and to justify re-allotment of the said flat.
- v. That the complainants asked the respondent no. 2 to add the name of Mr. Des Raj Nijhawan as co-allottee in reallocated unit. They also protested to unilateral and unlawful clauses in the new BBA and through multiple emails the complainants raised their concerns over increased area and increased cost of reallocated unit, arbitrary revision of date of possession, approved project plans/drawings, escalation clause and many other unlawful terms

and conditions of new Builder Buyer Agreement. But complainants haven't received any satisfactory reply from the Respondent No. 2.

- vi. That when even after multiple efforts, concerns of the complainants had not been addressed and losing their hopes they requested the Respondent No. 2 to either remove defects of the new BBA or refund the monies paid by them but instead of addressing concerns of the complainants and removing defects of the newly drafted BBA, the Respondent No. 2 keep on raising further demands of monies without following the construction-linked payment plan and threatened to the complainants to impose penalty or cancel the allotment of the said flat if his demands were not fulfilled by the complainants.
- vii. That vide letter dated 18.07.2017, the respondent no. 2 mischievously sent an unlawful and arbitrary final demand cum cancellation notice to the complainants and asked the complainants to visit his office to clear outstanding dues against the said flat within 7 days to avoid penalty or cancellation of allotment.
- viii. That vide email dated 27.07.2017, the complainants replied to the final demand cum cancellation notice of respondent no. 2 dated 18.07.2017 and made it clear to him that they had opted for construction linked plan and according to that plan, demands were to be raised as per status of construction but as construction is not happening in their tower so there is no point of raising demand for further payment and reiterated their concerns over re-allotment of flat and arbitrary and unilateral provisions of the new BBA. But unfortunately, the Respondent No. 2 didn't bother to address concerns of the complainants.



- ix. That surprisingly, vide letter dated 30.03.2018, Respondent No. 2 informed the complainants that allotment of their flat had been cancelled and complete amount paid by them had been forfeited in an arbitrary and unlawful manner. It is pertinent to mention here that from allotment till the cancellation, Respondent No. 2 acted arbitrarily and unlawfully without caring for any law of the land, firstly he sold the unit in pre-launch without even having approvals from the concerned government departments and then arbitrarily reallocated a different flat to the complainants without their consent and further raised unjustified demands for payments and then forfeited their hard-earned money by cancelling their allotment on entirely unlawful grounds.
- x. That when the complainants visited office of the Respondent No. 2 and raised their concerns over unlawful cancellation of their unit, CRM of Respondent No. 2 Mr. Amit Solanki informed them that the letter issued was just a system generated letter and their unit had not been cancelled indeed and amount paid by them is not forfeited. Same thing also reflects in the records of claims accepted by the IRP appointed under insolvency proceedings against Respondent No. 2. IRP had accepted the claim of the complainants against unit allotted to them and this acceptance of Complainant's claim by IRP is implied withdrawal of the cancellation letter sent to them earlier.
- xi. That it is not out of context to mention here that at the time of booking, the Respondent No. 2 Supertech Limited falsely and fraudulently claimed to be the sole developer of the project but later the complainants came to know that original licensee of the project is Respondent No. 1 company, who obtained License bearing no. 106 & 107 on 26.12.2013 from DGTCP,



Haryana for Group Housing Scheme on 27.493 acres falling under Sector 68, Gurgaon, which was valid till December 2017 and expired long back, never renewed and also the TCP has cancelled the said licence. Moreover, their RERA registration was valid till 31.12.2021, which also lapsed and never renewed till the present date.

- xii. That further Respondent No. 2 namely Supertech Ltd. has entered into an unregistered joint development agreement dated 25.04.2014 with Respondent No. 1 namely M/s Sarv Realtors Pvt. Ltd. without approval of DTCP, Haryana and wrongfully applied for registration on behalf of Respondent No. 1 namely M/s Sarv Realtors Pvt. Ltd. & others without itself being the licensee. Respondent No. 2 don't even have any valid transfer of license permission/development right permission from DTCP. Further, the Builder Buyer Agreement has also been entered by Supertech Ltd. which is violation of the condition of the license and provisions of Haryana Urban Areas Development and Regulation Act, 1975.
- xiii. That vide order dated 29.11.2019 in matter bearing complaint no. 5802 of 2019, the **Hon'ble Haryana Real Estate Regulatory Authority** took suo-motu cognizance on a complaint filed by PNB Housing Finance Ltd. against Supertech Limited, for violating the provisions of the Act, 2016 and directed that *the Respondent No. 1 namely Sarv Realtors Pvt. Ltd. be registered as promoter and further directed the Respondent No. 2 namely **Supertech Limited to transfer all assets and liabilities of the said projects to the Respondent No. 1 namely Sarv Realtors Pvt. Ltd. and also directed Respondent No. 1 namely Sarv Realtors Pvt. Ltd. to step into the shoes of Respondent No. 2 namely Supertech Limited in all buyer agreements in the project within two months, without in any manner diluting the buyers'***



interest or affecting the obligations of the promoter towards the allottees and shall submit the compliance report in the authority.

- xiv. That vide an email, the Respondent No. 2 informed the complainants that in compliance of the above said orders of the Hon'ble Authority dated 29.11.2019, all the assets and liabilities with respect to the said project had already been transferred to the Respondent No. 1 on 31.03.2020 and pursuant to the orders of the Hon'ble Authority, the project is no longer an asset of the Respondent No. 2 namely Supertech Limited.
- xv. That the complainants are also co-complainant in the FIR bearing no. 119 of 2023 filed against erstwhile owner and Respondent No. 1 and it is pertinent to mention here that the Respondent No. 1 has filed a petition before the Hon'ble High Court of Punjab and Haryana, Chandigarh for quashing of the said FIR and the matter is subjudice, which substantiate that Respondent No. 1 is responsible & liable for Hues Project in all respect.
- xvi. That out of the total cost of the said unit, a sum of Rs. 18,70,889/- has already been paid by the complainants till the present date but Builder Buyer Agreement has not been executed yet, which is a clear violation of Section 13 of the Act.
- xvii. That the construction of the said flat has not yet completed and even after a delay of almost 5 Years and 10 Months and there is still no hope of completion and handing over of the possession of the said flat to the complainants and an undue delay by the respondents in handing over the possession to complainant caused great monetary loss to the complainant in terms of the interest payable on the above said amount and rental losses.
- xviii. That further Respondent No. 2 namely Supertech limited has not only concealed the facts that original licensee of the project is Respondent No. 1



namely Sarv Realtors Pvt. Ltd. but also misrepresented himself as the sole developer of the project and on the basis of false and incorrect information induced the innocent complainants to invest their hard-earned money in the said project. Thus, the respondents not only breached the Builder Buyer Agreement by delaying possession handover but also cheated the complainants and as a result of this misconduct of the respondents, the complainants lost faith on them and no longer want to continue with this project and are seeking refund of the total amount paid by them till date along with interest as per provisions of section 12 & section 18 of the Act.

- xix. That the cause of action arose in favour of the complainants and against the respondents from the date of booking of the said units and it further arose when respondents failed/neglected to deliver the said units within a stipulated time period. The cause of action further arose when the respondents re-allotted a different unit to the complainants against their will. The cause of action further arose when the respondents have not completed the said project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondents have not fulfilled their obligations. Hence the present complaint is being filed.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
- I. Direct the respondent to refund the entire amount paid by the complainants to the respondent along with interest @24% p.a. from the date of deposit till the date of realization of refund;
 - II. Direct the respondent not to create any third-party rights in the said flat till the realization of the refund along with interest;
 - III. Any other relief as the authority may deem fit in the interest of justice.

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

D. Reply by the respondent no. 1

6. The respondent is contesting the complaint on the following grounds:-
- i. That the respondent was issued license bearing no.'s 106 and 107 dated 26.12.2013 and license no.'s 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent and respondent no. 2 i.e., M/s Supertech Ltd. had entered into two joint development agreement dated 25.04.2014. In terms of joint development agreement the respondent no. 2 was to develop and market the said project.
 - ii. That consequently, after fully understanding, the various contractual stipulations and payment plans for the said apartment, the complainant & the respondent no.2 executed the BBA dated 12.04.2014 in respect of an apartment being no. L/0802, 8th floor for a total consideration of Rs. 1,02,63,250/-. Subsequently, it seems from the documents placed on record by the complainant that the respondent no.2 and the complainant executed another BBA wherein the new allotted unit was 0802, tower W for a sale consideration of Rs.1,05,09,980/-. The possession as per the said agreement was to be handed over till July 2018 with a grace period of 6 months i.e., by January 2019. However, the said date was subject to the force majeure clause i.e., clause 43 of BBA.
 - iii. That with the implementation of the Act, 2016, the project was registered with the interim HRERA, Panchkula vide registration no. "182 of 2017", dated 04.09.2017 upon application filed and in the name of M/s Supertech Ltd. i.e. respondent no.1.



- iv. That the Authority vide order dated 29.11.2019 passed in Suo Moto complaint no. 5802/2019 had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, “**Hues**” & “**Azalia**”, to the respondents, **M/s Sarv Realtors Pvt. Ltd** & M/s DSC Estate Developer Pvt. Ltd. respectively. This Authority had further directed that M/s Sarv Relators Pvt. Ltd. and M/s DSC Estates Developers Pvt. Ltd. be brought on as the promoter in the project instead of M/s Supertech Ltd. Certain important directions passed by the Authority are as under:
- “(i) The registration of the project “Hues” & “Azalia” be rectified and SARV Realtors Pvt. Ltd./DSC and others, as the case may be, be registered as promoter.
- (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 fail to discharge its obligations towards the allottees.”
- v. That in lieu of the said directions passed by the Authority all assets and liabilities have been since transferred in the name of the respondent no.1. However, in terms of the said order, M/s Supertech Ltd. still remains jointly and severally liable towards the allotment undertaken by it before the passing of the said Suo Moto order.
- vi. That thereafter the said joint development agreement were cancelled by the consent of both parties vide cancellation agreement dated 03.10.2019 and the respondent no.1 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- vii. That in terms of the said cancellation agreement, the respondent no.1 and R2 had agreed that as R2 was not able to complete and develop the project as per the timeline given by the Authority and DTCP, therefore the parties had decided to cancel the JDA's vide the said cancellation agreement.



- viii. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a “force majeure” conditions, which automatically extends the timeline of handing over possession of the apartment to the complainants.

Preliminary Objections

- ix. That as M/s. Supertech Ltd. and the respondent no.1 are jointly and severally liable in terms of the Suo-Moto order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between both the respondents. The respondent no. 1 in lieu of the CIRP proceedings ongoing against Supertech Limited, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s Supertech Ltd.
- x. The delay in construction of the project, if any, was on account of reasons that cannot be attributed to the respondent herein. Furthermore, before passing of the suo moto order, it was Supertech Ltd. who had the liability to develop the project and had also received the sale consideration from the allottees for the same. The change in promoter by suo moto order was well after the possession date, thus, answering respondent no.1 cannot be made liable for the said period. Even after passing of the suo moto order, the application for change in promoter is still pending before the Hon'ble Authority. Thus, all the said peculiar circumstances have led to the delay in the development of the project.
- xi. That in view of the *force majeure* clause, it is clear that the occurrence of delay is 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. That apart from the defaults on the part of the allottees, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the Respondent:

- 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;
- 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. The Respondent cannot be held solely responsible for things that are not in control of the Respondent;
- several Courts and quasi-judicial forums have taken cognisance of the devastating impact of the Demonetisation of the Indian economy, on the real estate sector. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the Respondent could not effectively undertake construction of the project for a period of 4-6 months;
- due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for a considerable period day due to high rise in Pollution in Delhi NCR;
- 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. 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.
- 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 was a complete stoppage on all construction activities in



the NCR Area till July, 2020. In fact, the entire labour force employed by the Respondent were forced to return to their home towns, leaving a severe paucity of labour. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the Apartment.

- xii. 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- 08.11.2016 10.11.2016 | Vardhman Kaushik v/s Union of India | 08.11.2016 to 16.11.2016 |
| 2. | National Green Tribunal 09.11.2017 | Vardhman Kaushik vs Union of India | Ban was lifted after 10 days |
| 3. | Press Note by EPCA- Environment Pollution (Prevention and Control) Authority | Press Note-31.10.2018 | 01.11.2018 to 10.11.2018 |
| 4. | Supreme Court-23.12.2018 | Three-day ban on industrial activities in pollution hotspots and construction work | 23.12.2018 to 26.12.2018 |
| 5. | EPCA/ Bhure lal Committee Order-31.10.2018 | Complete Ban | 01.11.2019 to 05.11.2019 |
| 6. | 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 |
| 7. | Government of India | Lockdown due to Covid- 19 | 24.03.2020 to 03.05.2020 |
| 8. | Government of India | Lockdown due to Covid- 19 | 8 weeks in 2021 |
| | Total | 37 weeks (approximately) | |

- xiii. Thus, it is therefore prayed that in the interest of justice, the complaint may kindly be dismissed with cost.

7. No reply has been submitted by respondent nos. 2 . However, counsel for respondent no. 2 has stated that respondent no. 2 is under CIRP vide order dated 25.03.2022 passed by Hon'ble NCLT New Delhi Bench in case no. IB-204/ND/2021 titled as **Union Bank of India Versus M/s Supertech Limited** and moratorium has been imposed against respondent no.2 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against respondent no.2.
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.

F. Findings on objections raised by the respondent no. 1

F.I Objections regarding force majeure.

13. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement dated 12.04.2014 was shared by the respondent with the complainant, and as per terms and conditions of the said agreement, "*Possession of the allotted unit shall be given to the Buyer(s) by the Developer in 42 months i.e. by **April 2017** and this period can be extended due to unforeseen circumstances for a further **grace period of 6 months**". The grace period of 6 months is allowed to the respondents being unqualified and unconditional. Thus, the due date of possession comes out to be 31.10.2017 which was much prior to the effect of Covid-19.*

14. As far as delay in construction due to outbreak of Covid-19 is concerned, the Authority put reliance on 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 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."

15. The respondent was liable to handover the possession of the said unit by 31.10.2017 and is claiming benefit of lockdown which came into effect on 24.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that 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 and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.
16. Further, 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 care 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. 2 and consequent moratorium against proceedings against respondent no.2.

17. During the course of hearing the respondent no. 2 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 against respondent no.2 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 1 is no longer the assets of respondent no. 2 and admittedly, respondent no.1 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 no. **HARERA/GGM/ 5802/2019**. Respondent no.1 has stated in the reply that the JDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.1 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 & 2 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 Complainant.

- G.I Direct the respondent to refund the entire amount paid by the complainants to the respondent along with interest @24% p.a. from the date of deposit till the date of realization of refund;**

G.II Direct the respondent not to create any third-party rights in the said flat till the realization of the refund along with interest.

18. 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.
19. Briefly stated the facts of the present case are that the complainants were initially allotted a unit bearing no. 0802, 8th floor in tower L admeasuring 1375 sq. ft. and in respect of the said unit, the respondent no.2 had shared a builder buyer agreement dated 12.04.2014. Instead of executing the said agreement, the respondent no.2 shared a fresh agreement dated 21.11.2014 in respect of a new unit bearing no. 0802, 8th floor, tower W admeasuring 1430 sq. ft. The complainants objected to the aforesaid change and asked the respondent to redress their grievances. Thereafter, the respondent no.2 started raising demands in respect of the new unit and on account of non-payment, the respondent no.2 has allegedly cancelled the allotment in favour of the complainants. It is pertinent to note that no cancellation letter has been placed on record by either of the parties.
- In view of the factual matrix of the present case, the question posed before the authority is whether the cancellation is valid in the eyes of law?
20. On consideration of documents available on record and submissions made by both the parties, the authority observes that the change of the unit by the respondent without prior consent of the complainant is completely unilateral and arbitrary act on the part of the respondent no.2. Not only the unit was changed, but the area of the unit was increased which resulted in increase of the sale price of the unit also. Further, the time period of handing over possession was also changed by the respondent without giving any justification for the same. It is observed that as per the shared BBA dated 12.04.2014, the area of the

unit was 1375 sq. ft. for sale consideration of Rs. 1,02,63,250/- and the due date of handing over possession was 31.10.2017 (including grace period of 6 months). Whereas as per new BBA dated 21.11.2014, the area of the unit was 1430 sq. ft. for sale consideration of Rs. 1,05,09,980/- and the due date of handing over possession was 31.01.2019 (including grace period of 6 months). In this way the respondent has extended the due date of possession from 31.10.2017 to 31.01.2019, i.e., extending the due date by 1 year and 3 months which is totally unjustified on the part of the respondent.

21. Further, the complainants have objected to the said changes vide email dated 03.02.2015 raising all the concerns w.r.t. change in the unit, area of the unit, price of the unit, due date of possession, meagre amount of compensation in case of delay in handing over possession, alteration on the receipts issued by the respondent and has asked the respondent about the company's policy for refund of the amount paid by them. Thereafter, vide email dated 17.02.2015, the complainants have again raised their concern regarding the changes made by the respondent unilaterally and arbitrary. The authority observes that the respondents while ignoring the legitimate queries or concerns of the complainants, started demanding further instalments in respect of the subject unit. The authority observes that the complainants had never accepted the unilateral terms of the respondent and had even expressed its intention for withdrawing from the project. Instead of addressing to the grievances of the complainants, the respondent has cancelled the unit in an arbitrary and unlawful manner. Thus, keeping in view the aforesaid facts and circumstances involving the cancellation, the cancellation of the allotment is invalid and the cancellation made by the respondents is hereby set aside.

22. 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. Section 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. The following clause of the buyer's developer agreement talks about the possession of the unit to the Complainants, the relevant portion is reproduce as under:-

"The Possession of the allotted unit shall be given to the Buyer(s) by the Developer in 42 months i.e. by April 2017. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months....."

24. **Due date of handing over of possession and admissibility of grace period:**
As per the aforesaid clause of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the April 2017 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 and unconditional. Therefore, the due date of possession comes out to be 30.10.2017.

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

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

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

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

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., 09.05.2025 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 the agreement dated 12.04.2014, the due date of handing over possession was 31.10.2017. It is pertinent to mention over here that even after a delay of 7 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 complainants cannot be expected to wait endlessly for taking possession of the unit which is allotted to them. 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.

30. 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....."

31. 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."

32. 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 and give possession of the unit in accordance with the terms of agreement for sale. Accordingly, since the allottees wish to withdraw from the project, the respondent is liable 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 under the provisions of Section 18(1) of the Act of 2016.

33. 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 complainants are 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*.

H. Directions of the Authority

34. 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.1 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 Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - 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.
 - 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



HARERA
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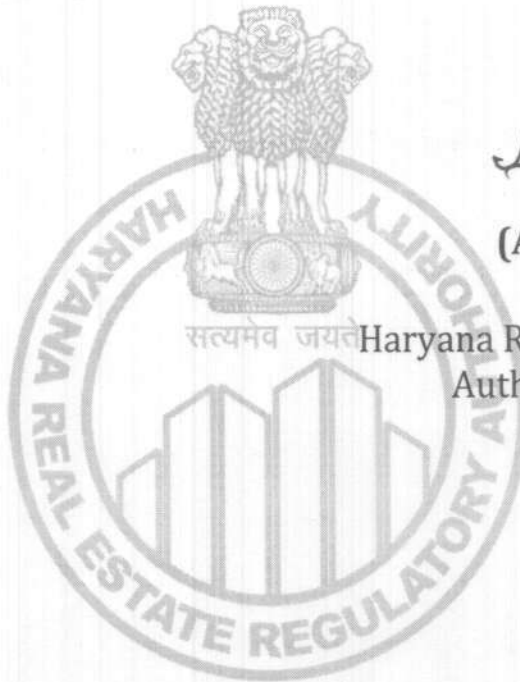
initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee/complainants.

- iv. No directions are being passed in the matter qua respondent nos. 2 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.

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

36. Files be consigned to registry.

Dated: 09.05.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram

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