

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

Complaint no. : 1348 of 2024
Complaint filed on : 02.04.2024
Complaint disposed on: 11.07.2025

Rajkumar Rajmohan Singh
Dr. L.Bidyarani Devi
R/o: Khagempalli Panthak,
Imphal, Manipur- 795001.

Complainants

Versus

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

Respondents

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Sushil Yadav
Shri Bhrigu Dhami
Shri Dushyant Tewatia

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	13.10.2013 [Page 15 of complaint]		
6.	Allotment letter	Not placed on record		
7.	Unit no.	V/0302, 3 rd floor, tower V [page 15 of complaint]		
8.	Unit area	1430 sq. ft. [page 15 of complaint]		

9.	Date of buyer developer agreement executed between complainants and the respondent	04.07.2014 [page 14 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 16 of complaint]
11.	Due date of possession	31.10.2017 [Note: April 2017 + Grace period of 6 months is included being unconditional and unqualified]
12.	Total sale consideration as per buyer developer agreement on page 15 of complaint	Rs. 1,06,98,740/-
13.	Amount paid by the complainants	Rs. 39,18,126/- [as per statement of account dated 04.05.2022 on page 28 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 the respondent gave advertisement in various leading newspapers and electronic media about their forthcoming project named "SUPERTECH HUES" Sector 68, Gurgaon, Haryana promising various advantages, like world class amenities and timely completion/execution of the project etc.



- The respondent initially allotted a flat to the complainant on 13.10.2013 a unit bearing No. V/0302, 2BHK+Study measuring super area of 1430 sq. ft. in aforesaid project of the respondent for total sale consideration of Rs 1,06,98,740/- which includes BSP, car parking, IFMS, PLC etc.
- ii. Out of the total sale consideration of amount Rs.1,06,98,740/-, the Complainants have made payment of Rs 39,18,126/- to the respondent vide different cheques on different dates. The buyer's agreement was executed inter se parties on 04.07.2014, and as per clause 25 of the respondent had agreed to deliver the possession of an apartment/flat by April 2017 including an extended period of six months.
 - iii. That complainants regularly visited the site but were surprised to see that construction work was not in progress and no one was present at the site to address the queries of the complainants. It appears that respondent has played fraud upon the complainants. The only intention of the respondent was to take payments for the tower without completing the work. The respondent mala-fide and dishonest motives and intention cheated and defrauded the complainants. Despite receiving all payment as demanded by the respondent and despite repeated requests and reminders over phone calls, emails and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted apartment/flat to the Complainants within stipulated period.
 - iv. That the construction of the block in which the Complainants' apartment/flat was booked with a promise by the respondent to deliver the apartment/flat by **April 2017** but was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior



motive of the respondent was to extract money from the innocent people fraudulently.

- v. That due to this omission on the part of the respondent, the complainants have been suffering from disruption on their arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the Flat on time. As per clause 25 of the buyer agreement, it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainants a compensation @ Rs.5/- per sq. ft. per month of the super area of the apartment/flat. It is however, pertinent to mention here that a clause of compensation at such of nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the Complainants by not providing the possession of the apartment/flat even after a delay from the agreed possession plan. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges 24% per annum interest on delayed payment. On the ground of parity and equity, the respondent also be subjected to pay the same rate of interest. Hence, the respondent is liable to pay interest on the amount paid by the complainants @24% per annum to be compounded from the promise date of possession till the flat is actually delivered to the complainants.

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. 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. 2

6. The respondent no.2 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 no.2 and respondent no. 1 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.1 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.1 executed the BBA dated 04.07.2014 in respect of an apartment being no. V/0302, 3rd floor for a total consideration of Rs. 1,06,98,740/-. The possession as per clause 24 the said agreement was to be handed over by April 2017 with a grace period of 6 months.
 - iii. That as per clause 24 of the Agreement, the compensation for delay in giving possession of the Apartment would not be given to the allottees akin to the complainant who have booked their unit under any special scheme such as 'No EMI till offer of possession, under a subvention scheme'. Further, it also categorically stipulated that any delay in offering possession due 'force majeure' conditions would be excluded from the aforesaid possession period.
 - iv. That the complainants elected 'Construction Linked Payment Plan' whereby construction of the Apartment was premised on the timely payments made

by the Complainants as per the payment schedule provided in the agreement. Non-compliance with the payment schedule would consequentially cause a delay in handing over possession of the Apartment.

- v. That with the implementation of the Act, 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.
- vi. 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 Devloper 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."
- vii. 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.2. 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.



- viii. That thereafter the said joint development agreements were cancelled by the consent of both parties vide cancellation agreement dated 03.10.2019 and the respondent no.2 from there on took responsibility to develop the project and started marketing and allotting new units under its name.
- ix. That in terms of the said cancellation agreement, the respondent no.1 and respondent no.2 had agreed that as respondent no.1 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.
- x. 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

- xi. That as M/s. Supertech Ltd. and the respondent no.2 are jointly and severally liable in terms of the Suo-Moto order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between both the respondents. The respondent no. 2 in lieu of the CIRP proceedings ongoing against Supertech Limited, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s Supertech Ltd.
- xii. 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.2 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.

xiii. 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.

xiv. 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)	

xv. 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 no. 1. However, counsel for respondent no. 1 has stated that respondent no. 1 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.1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against respondent no.1.

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. 2

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 04.07.2014 was shared by the respondent with the complainants, 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 on account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

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

17. During the course of hearing the 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 against respondent no.1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 2 is no longer the assets of respondent no. 1 and admittedly, respondent no.2 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint no. **HARERA/GGM/ 5802/2019**. Respondent no.2 has stated in the reply that the JDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.2 i.e., SARV Realtors Pvt. Ltd. admittedly took responsibility to develop the project and started marketing and allotting new units under its name. In view of the above, respondent no.2 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate

debtor i.e., respondent no.1 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 2 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage.

G. Findings on the relief sought by the Complainants.

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.

18. Briefly stated the facts of the present case are that the complainants were initially allotted a unit bearing no. 0302, 3rd floor in tower V admeasuring 1430 sq. ft. and in respect of the said unit, the builder buyer agreement was executed inter se parties on 04.07.2014.
19. 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)

20. 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.....**"*

21. **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.

22. **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.

23. 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.

24. 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., 11.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

25. 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;"

26. 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 no.2 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 04.07.2014, 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.

27. 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 they have 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....."

28. 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 has 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."

29. 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 them 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.
30. 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 no.2 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

31. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:



- i. The respondent no.2 i.e., Sarv Realtors Pvt. Ltd. is directed to refund the amount received by it from each of the complainants 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.
 - ii. A period of 90 days is given to the respondent no.2 to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. 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/complainants.
 - iv. No directions are being passed in the matter qua respondent no. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.
32. Complaint as well as applications, if any, stands disposed of accordingly.
33. Files be consigned to registry.

Dated: 11.07.2025


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory
Authority, Gurugram