

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

Complaint no. : 2961 of 2020
First date of hearing: 21.10.2020
Date of decision : 09.09.2025

1. Anirudh Gowalkar
2. Manali Gowalkar
R/o: - House no. 529, 1st floor, Orchid Island,
Sector 51, Gurugram.

Complainants

Versus

M/s Supertech Limited
M/s Sarv Realtors Pvt. Ltd.
Registered Office: 1114, 11th Floor, Hemkunt
Chambers, 89, Nehru Place, New Delhi - 110019

Respondent no.1
Respondent no.2

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

APPEARANCE:

Sh. Sukhbir Yadav
Sh. Charu Rastogi
Sh. Dushyant Tewatia

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

ORDER

1. The present complaint dated 05.10.2020 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions

under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No	Particulars	Details		
1.	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
	Area for which license was granted	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	30.06.2014 [Page 37 of complaint]		
7.	Unit no.	1004, 10 th floor (page 37 of complaint)		
8.	Unit area	1765 sq. ft.[Page 37 of complaint]		
9.	Date of buyer developer agreement executed between parties	15.07.2014 [Page 36 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 December 2017. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months.....</i>		

		(Emphasis supplied) [Page 38 of complaint]
11.	Due date of possession	Dec 2017 + 6 months = June 2018
12.	Total sale consideration as per buyer developer agreement	Rs. 1,32,29,160/- [Page 38 of complaint]
13.	Amount paid by the complainants	Rs. 41,60,423/- [as per statement of payment received, page 102, annexure P-8 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 lured by assurances, promises and representations made by the respondent, the complainants booked a 3BHK, unit bearing no. P - 1004, on 10th floor, tower - P at "Hues", Sector - 68, Gurugram, admeasuring 1765 sq. ft. under the possession linked payment plan at basic sale price of Rs. 1,32,29,160/- on 28.06.2014.
- II. That at the time of accepting application money, the respondent has assured about having all requisite approval and sanctioned plans to develop the project and showed licence and sanctioned plans to the complainants. Moreover, the respondent represented that unit would be handed over by December, 2017.
- III. That on 15.07.2014, a pre-printed, arbitrary, unilateral and ex-facie allotment letter cum buyer developer agreement/agreement to sell was executed inter-se the respondent and the complainants. As per clause no. 1

of buyer developer agreement, the respondent has to give the possession of unit by December, 2017.

- IV. That on 21.07.2014, the complainants sent an email to the respondent and raised their concern that unit plan and specification are not included in the agreement. The respondent replied and informed that "Reference to your email, please be informed that signed brochure can be provided to you as a part of agreement". The complainants kept visiting the marketing office and project site of the respondent to know the construction status of the project, when the complainants observed that construction of tower P is creeping and the respondent would not be able to handover the possession of apartment by December, 2017, they raised the issue before higher management of the respondent. The respondent requested to swipe the unit to tower - O, which was constructed till 2nd floor in June, 2017.
- V. That keeping in view the construction stage of tower P and O, the complainants were agreed upon to swipe the unit from tower P - 1004 to tower - O - 1004, therefore a new pre-printed buyer developer agreement was executed inter-se the parties on 24.06.2017.
- VI. That the complainants exchanged several emails with the respondent with regard to unit handover date i.e., December, 2017 as per last agreement and timely payment rebate etc. On 26.09.2017, the respondent issued a letter, subjecting, clarification regarding possession date of unit no. O - 1004 that it would be read as December, 2017 instead of September, 2019.
- VII. That on 23.01.2020, the respondent sent an email to the complainants and apprise that the project "Hues" is transferred in its entirety to M/s. Sarv Realtors Private limited. There is no privity of contract between the complainants and M/s. Sarv Realtors Private limited, moreover the project is

yet not complete after 6 years of booking. The respondent never taken consent of the complainants prior to transfer the project to another firm.

- VIII. That since September, 2019, the complainants are regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted unit, but all in vain, in spite of several visits by the complainants. The complainants never been able to understand/know the actual status of construction. The respondent failed to raise the construction of tower in which unit of complainants situated. The office bearers of respondent always gave new excuses for delay in raising the construction.
- IX. That the main grievance of the complainants in the present complaint is that in spite of the complainants paid more than 35% i.e., Rs. 41,60,423/- of the actual amounts of unit and ready and willing to pay the remaining amount (if any amount become due), the respondent has miserably failed to deliver the possession of unit.
- X. That the complainants had purchased the unit with intention that after purchase, their family would live in their own apartment. It was promised by the respondent at the time of receiving payment for the unit that the possession of fully constructed unit along like basement and surface parking, landscaped lawns, club/ pool etc. as shown in brochure at the time of sale, would be handed over to the complainants as soon as construction work is complete i.e., by December, 2017.
- XI. That due to above acts of the respondent and of the terms and conditions of the builder buyer agreement, the complainants is being unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice. There is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of

playing fraud with the complainants and others is prima facie clear on the part of the respondent which makes them liable to answer the Authority.

- XII. That for the first-time cause of action for the present complaint arose in June, 2014, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose in December, 2017, when the respondent failed to handover the possession of the unit as per the buyer agreement. Further the cause of action again arose on various occasions, including on: a) November, 2018; b) Feb. 2019, c) March, 2019 (d) November 2019, (e) January 2020, and on many times till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as the Authority restrains the respondent by an order of injunction and passes the necessary orders.

D. Relief sought by the complainant: -

1. The complainant has sought following relief(s):
 - I. To direct the respondent to refund total amount of Rs.41,60,423/- along with interest @ 24% per annum from the date of payment till its actual realization.
2. 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.

C. Reply by the respondent no.1.

3. The respondent is contesting the complaint on the following grounds:-

- i. That the complainant approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided to him, sought to book an apartment in the said project. After fully understanding the various contractual stipulations and payment plans for the said unit, the complainant executed the buyers' agreement dated 24.06.2017. Consequently, the complainant was allotted a unit being number no. flat O-1004, at 10th floor, tower O admeasuring 1765 sq. ft. for a total consideration of Rs.1,32,29,160/-.
- ii. That the instant complaint is untenable both on facts and in law and is liable to be rejected on this ground alone.
- iii. That the matter with respect to jurisdiction of the Authority or the Hon'ble Adjudicating officer is still pending adjudication before the Apex Court, thus no statutory vested jurisdiction being available with either the present complaint deems to be adjourned sine die till the final decision on the subject matter by the Hon'ble Apex Court, vesting jurisdiction to adjudicate upon refund matter either upon the Authority or the Adjudicating officer.
- iv. Further, the Hon'ble Apex court has vide Order dated 05.11.2020 issued a stay on the judgment and law as decided/ declared by the Hon'ble Punjab and Haryana High Court vide judgment being CWP no. 34271 / 2019.
- v. 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 complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- vi. That the delay if at all, has been beyond the control of the respondents and as such extraneous circumstances would be categorized as "Force Majeure

and would extend the timeline of handing over the possession of the unit, and completion the project.

- vii. The delay in construction was on account of reasons that cannot be attributed to the respondent. The 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 would be entitled to proportionate extension of time for completion of said project. The relevant clauses which relate to the time for completion, offering possession extension to the said period is "clause 24 under the heading "possession of floor/ apartment" of the agreement. The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.
- viii. 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 for completion of the project is not a delay on account of the respondent for completion of the project.
- ix. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before January 2018. However, the agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the agreement was to be handed over in and July 2018.
- x. The project got inadvertently delayed owing to the above noted force majeure events. Further, since March, 2020, as owing to the nationwide Govt, imposed lockdown, no construction/ development could take place at site. Owing to the lockdown, the construction labour workers were forced to return to their native villages and thus, even at the unlocking stage no

conclusive construction/development could take place at site. Such a long break in construction has put the project many milestones back. However, the respondent has dedicated itself to delivering the projects at the earliest.

- xi. Due to the Covid condition and the its devastating effect on the Indian economy specially the real-estate sector arranging of funds for completion of projects has become an impossible task as the banks and NBFC's have made it difficult for builders to apply for loans for completion of pending projects. However, the respondent undertakes to handover possession of the subject unit by December 2021.
- xii. It is a known fact that 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 endeavored to deliver the property within the stipulated time. The respondent earnestly has endeavored to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.
- xiii. It is submitted that the timeline stipulated under the agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent endeavor 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.
- xiv. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant herein, 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 Answering 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.
- 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 project..

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. Thus, in light of the aforementioned it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the

control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.

- iii. Anent to the above, it is public knowledge, and several Courts and quasi-judicial forums have taken cognizance of the devastating impact of the demonetization of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetization led to systemic operational hindrances in the real estate sector, whereby the Answering Respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetization, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.
- iv. That the complainant has not come with clean hands before this Hon'ble Forum and have suppressed the true and material facts from this Hon'ble Forum. It would be apposite to note that the Complainant is a mere speculative investor who has no interest in taking possession of the apartment.
- v. That the project "HUES" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 04.09.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021. Thus, in view of the said registration certificate, the respondent hereby undertakes to complete the said project by December 2021.
- vi. That the possession of the said premises was proposed to be delivered by the respondent to the Complainant by January 2018 with an extended grace

period of 6 months which comes to an end by July, 2018. The completion of the building is delayed by reason of Covid - 19, 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 Answering Respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the Answering Respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the Respondent. The Answering Respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the Answering Respondent to get the delivery of project, delayed, to the allottees. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was I has been stopped for a considerable period of days due to high rise in Pollution in Delhi NCR.

- vii. That the enactment of RERA Act 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 Answering Respondent is just to complete the project within stipulated time submitted before the HRERA Authority. According to the terms of Agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time of final settlement on slab of offer of possession.
- viii. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs. 25,000 Crore to help the Bonafide Builders for completing the Stalled/

unconstructed projects and deliver the homes to the Homebuyers. It is submitted that the Answering Respondent/Promoter, being a bonafide Builder, has also applied for Realty Stress Funds for its Gurgaon based projects. The said news was also published in Daily News/Media.

- ix. That the project is an ongoing project and orders of refund at a time when the real-estate sector is at its lowest point, would severally prejudice the development of the project which in turn would lead to transfer of funds which are necessary for timely completion of the project. It is most humbly submitted that any refund order at this stage would severally prejudice the interest of the other allottees of the project as the diversion of funds would severally impact the project development. Thus, no order of refund may be passed by this Hon'ble forum in lieu of the present prevailing economic crisis and to safeguard the interest of the other allottees at large.
- x. That the complainant cannot unilaterally cancel/withdraw from the project at such an advance stage as the same would fly in the face of numerous judicial pronouncements as well as the statutory scheme as proposed under the Real Estate (Regulation and Development) Act, 2016.
- xi. That the Hon'ble Supreme Court in its judgment of ***Pioneer Urban Land and Infrastructure Limited & Anr. V. Union of India & Anr.***, the Supreme Court has nuanced a balanced approach in dealing with legitimate builders. Furthermore, the Court has laid emphasis on the concept of "legitimate/bonafide buyers" whereby one cannot be considered a homebuyer if he/she is not willing to see the project to its end or is investing in the project with a speculative mindset, to withdraw his/her money before giving credence to the project. The said reasoning has also been used by the Hon'ble National Company Law Appellate Tribunal in its judgment titled "***Navin Raheja v. Shilpi Jain and Ors.***". The Hon'ble NCLAT was even

more strenuous in its approach whereby it called these speculative investors as trigger-happy investors who ignite the flame which may very well lead the genuine developer company to its death.

- xii. That when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted.
- xiii. 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. 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.
- xiv. 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.
- xv. 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 was forced to return to their home towns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. v. UOI & Ors, has taken cognizance of the devastating conditions of the real estate sector, and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. 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. Hence, the complainant is not entitled for any compensation or refund claimed except for delayed charges as per clause 25 of the agreement.

4. The complainant has filed an application for revival of the complaint and impleadment of M/s Sarv Realtors Pvt. Ltd. as respondent no.2 on 25.04.2025. Both the application was allowed on 25.07.2025.
5. On 23.05.2025, the respondent no. 2 was directed to file a reply within the stipulated time period. Subsequently, on 25.07.2025, the respondent no.2 was again directed to file a reply to the main complaint within 15 days. However, despite specific directions, respondent no. 2 failed to file the written reply and has not complied with the order of the Authority. This indicates that the respondent no.2 is intentionally delaying the proceedings before the Authority by failing to submit the written reply. Thus, the defence of the respondent no.2

has been struck off for non-filing of the reply, and the matter is being decided on the basis of the facts and documents submitted with the complaint, which remain undisputed.

6. 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

7. 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

8. 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

9. 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.

10. 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.
11. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgment passed by the ***Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."* SCC Online SC 1044 decided on 11.11.2021** wherein it has been laid down as under:

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.

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

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 was executed between the parties on 15.07.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be June 2018, 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 IAs 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."

14. 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.

15. 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.1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 2 is no longer the assets of respondent no. 1 and admittedly, respondent no.2 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/5802/2019**. Respondent no.2 has stated in the reply that the MDA 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 total amount of Rs. 41,60,423/- along with interest@24% per annum from the date of payment till its actual realization.

16. In the present complaint, the complainants intend to withdraw from the project and are 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)

17. As per clause 1 of the buyer's developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

POSSESSION OF UNIT: -

1. The Possession of the allotted unit shall be given to the Allottee/s by the Company by December 2017. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the Allottee/s and the Allottee/s agrees to strictly abide by the same in this regard."

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

As per clause 1 of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the December 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. Therefore, the due date of possession comes out to be June 2018.

19. **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.

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 09.09.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
22. The definition of term 'interest' as defined under section 2(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;”*

23. 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 1 of the agreement executed between the parties on 15.07.2014, the due date of possession is December 2017. 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 June 2018.
24. It is pertinent to mention over here that even after a passage of more than 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 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 almost 37% of 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.

25. 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....."

26. 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."

27. 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.
28. 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*.

H. Directions of the authority

29. 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., M/s Sarv Realtors Pvt. Ltd. is directed to refund the amount i.e., Rs. 41,60,423/- 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.

- ii. 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.
 - 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/complainant.
 - 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.
30. Complaint stands disposed of.
31. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.09.2025