

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

Complaint no. : 5717 of 2023
Date of filing : 15.12.2023
Date of decision : 12.11.2025

**Kapil Gandhi, Meenu Gandhi and Suresh
Kumari Gandhi**
R/o: - B-514, Sushant Lok- 1, Gurugram,
Haryana- 122001

Complainants

Versus

1. M/s Supertech Limited
2. M/s Sarv Realtors Pvt. Ltd.
3. DSC Estates Pvt. Ltd.

**All having their Registered Office at: 1114,
11th Floor, Hemkunt Chambers, 89, Nehru
Place, New Delhi- 110019**

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Kuldeep Kumar Kohli
Sh. Bhrigu Dhami
Sh. Dushyant Tewatia

Counsel for Complainants
Counsel for Respondent no.1
Counsel for Respondent no.2 and 3

**HARERA
GURUGRAM
ORDER**

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



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

A. Unit and project related details

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

Sr. 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	Renewed on 31.03.2023 upto 07.08.2024	Renewed on 27.03.2023 upto 25.08.2024
	Area for which license was granted	13.74 acres	10.25 acres	4.85 acres
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.
4.	HRERA Registered or not registered	Registered Registration no. 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	27.04.2016 (Page 50 of complaint)		
6.	Provisional Allotment letter	07.01.2015		
7.	Unit no.	0402, 4 th floor, Block B (page 57 of complaint)		
8.	Unit area	1180 sq. ft.		



9.	Date of buyer developer agreement executed between parties	(page 57 of complaint) 15.09.2016 (Page 52 of complaint)
10.	Possession clause	<i>"The Possession of the allotted unit shall be given to the Allottee/s by the Developer by Aug 2018. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months....."</i> (Emphasis supplied) (Page 54 of complaint)
11.	Due date of possession	Aug 2018 + 6 months = Feb 2019 (Note: Aug 2018 + Grace period of 6 months is included being unconditional and unqualified)
12.	Total sale consideration as per buyer developer agreement	Rs.78,47,000/- (Page 54 of complaint)
13.	Amount paid by the complainant	Rs.22,75,525/- (As alleged by the complainant on page 43 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 Initially a booking was made with M/s Parasnath Developers Ltd. in the name of Mr. Surender Kumar Gandhi in the year 2012 when he had paid a sum of Rs. 20,00,000.00 on 11.05.2012 for plot in M/s Parasnath Developers Ltd.
 - II. That Parasnath Developers Ltd. project was taken over by Supertech Ltd. and we were given approximate area of 299.00 sq. yds. bearing provisional plot no.RO4500BK0139 at "Hill Town" situated at Sector-2 Sohna Road, Gurgaon. When this project didn't go well the complainant had asked them to shift in any project of M/s Supertech Ltd. in Gurugram.

III. That Supertech then shifted the complainants to Supertech Hues, Sector 68 and booked a unit against the plot. Unfortunately, Mr. Surender Kumar expired on 07.09.2013 and Mrs. Suresh Kumari Gandhi became the legal heir of the property.

IV. That on 07.01.2015 Supertech took over the projects and sent us a letter confirming the allotment of a plot no. R04500BOK0139. On 04.07.2015 M/s Supertech issued a statement which contained the details of the amount to be paid by complainants and amount already collected from Mr. Surender Kumar Gandhi was also shown as received from the complainants.

V. That since the said project was not coming up well hence Supertech Ltd. offered the complainants a residential unit no. R0380B00402 vide Provisional booking form dated 27.04.2016 and a buyer's agreement was signed on 15.09.2016 for a residential unit measuring 1180 sq. ft. on the 4th floor in their project namely "Supertech Hues" at Revenue Estate, Village - Badshahpur, Sector 68, Gurugram - 122001 and this property was purchased in the name of all the complainants.

VI. That total cost of the said Unit was 78, 47,000.00. An amount of Rs. 20,000,00.00 was paid to M/s Parsvnath Developers Ltd. On 11.05.2012 and which got transferred to Supertech Ltd. was acknowledged by the Supertech Ltd. on 04.07.2015 together with an additional sum of Rs. 1,00,000.00 paid on 23.04.2016 and Rs. 1,75,525.00 paid on 26.10.2016 hence a total amount of Rs 22,75,525.00 stands deposited with Supertech Ltd. as on date.

VII. That in 2015 Supertech Limited the respondent company by a letter dated 07.01.2015 with the subject: "Offer of provisional allotment of a Plot in "Hill Town" situated at Sector -2 Sohna Road, Gurugram" allotted plot no. R04500BOK0139 in the said project in the name of the allottee.

VIII. That since the said project was not coming up well Supertech Ltd. offered us a residential unit in the project named "SUPERTECH HUES" at Revenue Estate, village Badshahpur, sector-68 bearing unit No. R0380B00402 vide Provisional booking form dated 27.04.2016.

IX. That a pre-printed, arbitrary, and ex-facie shop buyer agreement was executed between the complainants and respondent. As per clause no. E 24 of the agreement, respondent has agreed to give possession of the unit "till August, 2018 plus a grace period of a maximum of 180 days" for issuing the possession notice (grace period included). In the said agreement, there was a change in the basic sales price and the same got reduced from Rs.80,24,000/- to Rs.62,24,000/-.

X. That the complainant intends to continue with the project and is seeking possession as well as delay possession charges as provided under the proviso to Section 18(1) of the Act.

XI. That the respondent raised the payment demands from the complainants, from time to time, and the payment was made accordingly. The complainants paid a total sum of Rs.22,75,525/- against a total sale consideration of Rs.78,47,000/- (all inclusive) towards the said unit which was initially made to M/s Parsvnath Developers Ltd. from whom it got transferred to M/s Supertech Ltd. Hence it would not be out of place to mention that the initial amount is held by Parsvnath Developers Ltd. of Rs. 20,00,000/- which ultimately got transferred to M/s Supertech Ltd. for their project namely "HILL TOWN" and this further got transferred for the present unit through a BBA on 15.09.2016, which means the respondents are enjoying the interest on this huge amount for last four years.

XII. That the promoter has proposed to hand over the possession of the apartment till August, 2018 promoter shall be entitled to a grace period of

180 days for issuing the possession notice ("Grace"). As a matter of fact, neither the promoter has applied for issuance of occupation certificate, nor it has initiated the process of issuing the possession notice within the time limit prescribed in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter at this stage.

XIII. That the respondent raised a demand for the amount of Rs. 29,93,064/- vide letter dated 04.06.2018 which had to be raised on completion of superstructure and subsequently a reminder was sent through and mail on 8th June 2018 to which the complainant replied vide e mail dated 08.06.2018 stating no update has been provided on the construction. The Respondent then sent an email dated 09.06.2023 stating that the possession of the Unit would be offered by second quarter of 2019.

XIV. That demands through a letter reminding of outstanding payment dated 06.09.2019, 18.09.2019, 05.11.2019 from the Respondent, but the complainants did not wish to pay as there was no corresponding progress on the site and the delivery of the unit had to be made by August 2018 whereas on site the construction status was very bad with no man power working on the site.

XV. That the respondent then sends an e mail dated 11.11.2020 wherein a lie is told to the complainants that the finishing work at site is in full swing, and possession is also expected to commence in couple of months' time. Unfortunately, even in 2018 the respondent had stated that they would hand over the possession in second quarter of 2019. Unfortunately, the photographs attached with this e mail are same as those attached earlier on September 6, 2019. This speaks volumes of the lies being stated by the respondent repeatedly.

XVI. That the respondent sends another reminder asking for payment with no progress on the site. Even on date the status is same and no Occupation certificate has been received and no offer of possession has been made. After several telephonic conversations with the respondent company the complainant didn't get the possession letter from the respondent company. Since Aug. 2018, the complainants had been regularly visiting the office of the respondent as well as the construction site and making efforts to get the possession of allotted unit, but all in vain. The complainants had never been able to understand/know the actual status of construction. The towers seem to be built-up, but there was no progress observed on finishing and landscaping work.

XVII. That the complainants submits that the main grievance of filing the present complaint is that despite paying more than 30% of the actual amount and ready and willing to pay the remaining amount, the respondent has failed to deliver the possession as per specifications and amenities shown in brochure and Shop buyer agreement.

XVIII. That works on other amenities, like club, etc. are yet not complete. The complainants submits that the respondent has indulged in unfair trade practices and breach of contract and deficiency in the services. The booking of the unit was made in 2012 and subsequently in 2015 the respondent allotted a plot and when even that was not delivered, a residential unit was offered in April 2016 and since then it has been seven years and the respondent is only being given false hopes with no positive developments on the site.

XIX. That the complainant further submits that the club as assured and as charged is not yet ready and hence the complainant is being deprived of such an important facility. The complainant therefore deserves to be paid

interest for the amount towards the club held by the respondent from the due date of possession i.e., Aug. 2018.

XX. That the complainant had booked the unit in a complex and not as an individual stand-alone unit and had therefore to be provided with all the facilities as assured in the brochure but unfortunately all those facilities in the complex are missing and hence the offer of possession is a premature offer of possession.

XXI. That the respondent raised the payment demands from the complainants, from time to time, and the payment was made accordingly. The complainants paid a total sum of Rs. 22,75,525/- against a total sale consideration of Rs. 78,47,000/- towards the said unit.

XXII. That works on other amenities, like external, internal MEP (services) are yet not complete. Even after more than 11 years from the date of booking, the construction of towers is not complete and it clearly shows the negligence on the part of the builder. As per project site conditions, it seems that the project in question will take another couple of years for the construction to be completed in all respects, subject to the willingness of respondent to complete the project.

XXIII. That the complainant had booked the unit in a complex and not as an individual stand-alone unit and had therefore to be provided with all the facilities as assured in the brochure but unfortunately all those facilities in the complex are missing and hence the offer of possession is a premature offer of possession.

XXIV. That the cause of action accrued in favor of the complainants and against the respondent on the date when the respondent entered into their respective agreement, it also arose when the respondent inordinately and unjustifiably and with no proper and reasonable legal explanation or

recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the unit owner has not been delivered the unit and the infrastructure facilities in the project have not been provided till date and the cause of action is still continuing and subsisting on day-to-day basis.

D. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
 - I. Direct the respondent not to cancel the unit till the disposal of this matter.
 - II. Direct the respondent not to create third party rights till the disposal of the matter by the Authority.
 - III. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the actual handing over of possession in a habitable condition and the unit should be habitable as per the conditions laid down in the judgement of this Honorable Authority in "Varun Gupta & Ors. Versus Emaar India Ltd."
 - IV. Direct the respondent pay the arrears till the date of actual habitable handing over of possession within a period of 90 days from the date of the order.
 - V. Direct the respondent to handover the possession in a habitable condition immediately on obtaining occupation certificate and this may kindly be specifically mentioned in the order that the possession should be handed over as and when occupation certificate received.
 - VI. Direct the respondent to provide the calculations for the Super Area vis a vis Carpet Area.
 - VII. Direct the respondent to provide for third party audit to ascertain/measure accurate areas of the flat and facilities, more particularly as to the "super area" and "built-up area".



VIII. Direct the respondent to provide the details of the GST input credit and provide the input benefit to the complainants.

IX. Direct the respondent to raise the bills proportionate to the construction on the site and not on ad hoc basis, which the respondent has been doing so since 2018 by misrepresenting the status of construction and misleading the complainants.

X. Direct the respondent not to ask for anything which is not a part of the buyer's agreement and not demand any charges like HVAT, GST, holding charges, as has been held by this Honorable Authority in the judgement of "Varun Gupta & Ors Versus Emaar India Ltd."

XI. Direct the respondent to restrain from charging club charges till the time the club is fully functional and operational; fit to be put to use. The club charges have to be collected based on the construction of the club, stagewise and whatever has been collected extra and unproportionate to the actual construction on site is required to be refunded with interest to the complainants.

XII. Direct the respondent to restrain from charging maintenance charges till actual handing over the possession in a habitable condition.

XIII. Kindly order appointment of a Local Commissioner for a complete assessment of the project as on date more specifically for the purposes of confirming the status as to the habitability of the Unit as well as the calculation of the Super Area and the Carpet Area as the project is already delayed by more than 5 years.

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.

C. Reply by the respondent no.2.

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 no.2 and M/s Supertech Ltd. had entered into two joint development agreements dated 25.04.2014 and 26.08.2014.
- ii. That the complainant along with many other allottees had approached M/s Supertech Ltd., making enquiries about the project and after thorough due diligence and complete information being provided to them had sought to book an apartment in the said project.
- iii. Consequently, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 15.09.2016 for an apartment being no. 0402, tower B, 4th floor, having a super area of 1180 sq. ft. for a total consideration of Rs. 78,47,000/- exclusive of applicable charges and taxes.
- 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 respondent (**M/s SARV Realtors Pvt. Ltd.** and M/s. DSC Estate Developer Pvt. Ltd. respectively. The Authority had further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the project instead of M/s. Supertech Ltd. certain important directions as passed by this Hon'ble Authority are as under;



A(i) The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./DSC and others, as the case may be, be registered as promoters.

B(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 other fail to discharge its obligations towards the allottees.*

That in lieu of the said directions passed by this Authority all asset 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 booking/ allotment undertaken by it before the passing of the said Suo Moto Order.

- v. That thereafter the JDA's were cancelled by the consent of the respondent no. 2 and M/s Supertech Limited vide cancellation agreement dated 03.10.2019 and the respondent no. 2 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- vi. That in terms of the said cancellation agreement the respondent no. 2 and M/s Supertech Limited had agreed that as M/s Supertech Ltd. was not able to complete and develop the project as per the timeline given by this Hon'ble Authority and DTCP, therefore the parties had decided to cancel the JDA's vide cancellation agreement.
- vii. 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' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.

viii. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.

ix. That the present complaint further deems to be *prima facie* dismissed or adjourned sine die as respondent no.1, i.e., M/s Supertech Ltd. is undergoing corporate insolvency resolution process and thus, all the matters like the present one in which M/s. Supertech Ltd. is a party deem to adjourned sine die or dismissed in lieu of the moratorium imposed upon M/s. Supertech Ltd. under section 14 of the IBC, 2016.

x. 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 the respondent no.2 and M/s. Supertech Ltd. The respondent no. 2 cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Ltd.

xi. 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 favor of the complainant.

xii. 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.

xiii. 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.

xiv. 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.

xv. 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.

xvi. That the possession of the said premises was proposed to be delivered by the respondent to the Complainant by July 2018 with an extended grace period of 6 months which comes to an end by December, 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 labor force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the 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 respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the 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.

xvii. 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.

xviii. 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.

xix. 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.

xx. 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.

xxi. 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.

7. 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

8. 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

9. 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

10. 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.

11. 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 Objection regarding CIRP against respondent no.1 i.e., Supertech Ltd. and consequent moratorium against proceedings against Supertech Ltd.

12. 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 Supertech Limited 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 Supertech Limited 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.

HARERA/GGM/ 5802/2019. Respondent no.1 has stated that the MDA was cancelled by consent of Supertech Limited and respondent no.1 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., Supertech Limited remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that Supertech Limited & SARV Realtors Pvt. Ltd were jointly and severally liable for the project, no orders can be passed against Supertech Ltd. in the matter at this stage

F.II 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 15.09.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be February 2019, which was prior to the effect of Covid-19 on above project could happen. The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

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

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 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.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent not to cancel the unit till the disposal of this matter.

G.II Direct the respondent not to create third party rights till the disposal of the matter by the Authority.

G.III Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the actual handing over of possession in a habitable condition and the unit should be habitable as per the conditions laid down in the judgement of this Authority in "Varun Gupta & Ors. Versus Emaar India Ltd."

G.IV Direct the respondent to pay the arrears till the date of actual habitable handing over of possession within a period of 90 days from the date of the order.

G.V Direct the respondent to handover the possession in a habitable condition immediately on obtaining occupation certificate and this may kindly be specifically mentioned in the order that the possession should be handed over as and when occupation certificate received.

15. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected.

16. In the present matter the complainant was allotted unit no. 0402, 4th floor, Block B, admeasuring 1180 sq. ft. in the project "Supertech Hues" situated at Sector 68, Gurugram by the respondent-builder for a sale consideration of Rs.78,47,000/- and they have paid a sum of Rs.22,75,525/- against the allotment of the said unit.
17. The complainants intend to continue with the project and are seeking delay possession charges at a prescribed rate of interest on the amount already paid by them as provided under the proviso to Section 18(1) of the Act, which reads as under:

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

18. Clause 1 of the buyer's agreement (in short, the agreement) provides the time period for handing over possession and the same is reproduced below:

"POSSESSION OF UNIT: -

1. The Possession of the allotted unit shall be given to the Allottee/s by the Company by AUG, 2018. 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."

19. **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 August 2018 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being

unqualified. Therefore, the due date of possession comes out to be February 2019.

20. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, ibid. 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.

21. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid, 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.

22. 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., 12.11.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

23. 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;"***

24. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/ promoter which is the same as is being granted to them in case of delayed possession charges.
25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of BBA, the possession of the subject unit was to be delivered within stipulated time i.e., by August, 2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession was February 2019. The respondent no.2 has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent no.2 to fulfil its obligations and responsibilities as per the agreement to handover the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent no.2 to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated

15.09.2016 executed between the parties. Further no OC/part OC has been granted to the project.

26. 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 allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., February 2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

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

G.VI Direct the respondent to provide the calculations for the Super Area vis a vis Carpet Area.

G.VII Direct the respondent to provide for third party audit to ascertain/measure accurate areas of the flat and facilities, more particularly as to the "super area" and "built-up area".

28. The Authority is of the view that the project in question, i.e., "Supertech Hues" is an ongoing project, and the provisions of the RERA Act, 2016 are applicable to it. The allottees have a right to know as to how much the carpet area of the unit is and how much loading has been done on it along with components of the super area as per the builder buyer's agreement. Although, the agreements entered into prior to coming into force of the Act are treated as sacrosanct and the promoter is well within his right to charge on the basis of the super area but under this garb, allottees cannot be allowed to be cheated and they are to be informed as what is being charged from them in the name of super area. Accordingly, the respondent no.2 is obligated to make available the details of the super area to the complainants.

G.VIII Direct the respondent to provide the details of the GST input credit and provide the input benefit to the complainants.

29. The complainants have sought the relief with regard to directing the respondent to give input tax credit to the complainants and charge the GST as per rules and regulations. The attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below.

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

30. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. In the event, the respondent/promoter has not passed the benefit of

ITC to the buyers of the unit in contravention to the provisions of Section 171(1) of the HGST Act, 2017. The allottees are at liberty to approach the State Screening Committee Haryana for initiating proceedings under Section 171 of the HGST Act against the respondents.

G.IX Direct the respondent to raise the bills proportionate to the construction on the site and not on ad hoc basis, which the respondent has been doing so since 2018 by misrepresenting the status of construction and misleading the complainants.

31. The Authority herein observes that the builder buyer agreement dated 15.09.2016 executed inter-se parties consist of possession linked payment plan. Hereby, both the parties are bound to adhere to the contractual obligations agreed between the parties vide the said agreement. Therefore, the respondent no.2 shall raise demands only in accordance with the agreed payment plan and the complainants are also bound to make payment of demands raised.

G.X Direct the respondent not to ask for anything which is not a part of the buyer's agreement and not demand any charges like HVAT, GST, holding charges, as has been held by this Honorable Authority in the judgement of "Varun Gupta & Ors Versus Emaar India Ltd."

32. The authority vide order dated 09.12.2022, passed in case bearing no. **4147 of 2021** titled as "**Vineet Choube V/s Pareena Infrastructure Private Limited**" and also in the complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V/s Emaar MGF Land Limited**", has already decided that the promoter cannot charge anything which is not part of the buyer's agreement subject to the condition that the same are in accordance with the prevailing law. Therefore, the respondent no.2 shall not charge anything from the complainants which is not the part of the buyer's agreement and is directed to charge the demands relying on the above said orders.



33. Further, as far as HVAT is concerned, the Authority is of view that the promoter shall charge VAT from the allottees where the same was leviable, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is leviable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainants vis- à-vis the total area of the particular project. However, the complainants would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

34. The Authority further observes that the due date of possession in present case is February, 2019 i.e., post the date of coming into force of GST i.e., 01.07.2017. Therefore, the respondent no.2 is entitled for charging GST from the complainants at the applicable rate. However, the complainants are well within their right to obtain bifurcation/justification from the respondent regarding the amount so charged from them under the head of GST and would also be entitled to proof of such payments to the concerned departments.

35. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee, but the flat/unit is lying vacant even when it is in a ready-to-move condition.

36. In the case of *Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021*, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer

agreement as per law settled by the **Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020**. The relevant part of same is reiterated as under-

"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

37. Therefore, in view of the above the respondent no.2 is directed not to levy any holding charges upon the complainants.

G.XI Direct the respondent to restrain from charging club charges till the time the club is fully functional and operational; fit to be put to use. The club charges have to be collected based on the construction of the club, stagewise and whatever has been collected extra and unproportionate to the actual construction on site is required to be refunded with interest to the complainants.

38. Perusal of case file itself reveals that club membership charges amounting to Rs. 1,50,000/- were payable by the complainants. This understanding was explicitly agreed upon between the parties as specified on page no.3 of the buyer's agreement executed between the parties on 15.09.2016.

39. Further, Section 2(n) of RERA Act, 2016 defines "common areas" to include community and commercial facilities provided in the real estate project. A club, being a part of such community facilities, falls under this category.

40. However, in complaint case no. 4031 of 2019 titled as "**Varun Gupta vs Emaar MGF Land Limited**", decided on 12.08.2021, the Hon'ble Authority had already decided that if the club has come into existence and the same is operational or is likely to become operational soon, i.e., within reasonable period of around 6 months, the demand raised by the respondent for the said amenity shall be

discharged by the complainants as per the terms and conditions stipulated in the builder buyer agreement. However, if the club building is yet to be constructed, the respondent should prepare a plan for completion of the club and demand money regarding club charges and its membership from the allottees only after completion of the club.

41. Therefore, the Authority is of the view that if such facility is not completed and operational, the promoter cannot impose charges for the same. The charges towards the club facility are premature, arbitrary, and unenforceable unless and until the said facility is fully constructed, completed, and made operational in all respects. Therefore, the respondent no.2 is not entitled to demand or collect such charges until the club is made available for the actual use of allottees.

G.XII Direct the respondent to restrain from charging maintenance charges till actual handing over the possession in a habitable condition.

42. The complainants have raised an objection for maintenance charges as no offer of possession was made by the respondent no.2. After considering the documents available on record as well as submissions made by the parties, it is determined that the occupation certificate for the project in question had not been obtained by the respondent no.2 till date whereas, the subject unit was allotted to the complainants vide buyer's agreement dated 15.09.2016. Moreover, the possession of the unit has not been offered to them till date. Therefore, the demand on account of maintenance charges is not justified at this stage and the same can only be demanded at the time of offer of possession of unit to the complainants.

G.XIII Kindly order appointment of a Local Commissioner for a complete assessment of the project as on date more specifically for the purposes of confirming the status as to the habitability of the Unit as well as the calculation of the Super Area and the Carpet Area as the project is already delayed by more than 5 years.

43. The Authority finds no ground to appoint a Local Commissioner in the present matter. Compliance relating to construction, adherence to approved building plans, issuance of occupation certificate, and structural safety fall under the jurisdiction of the Directorate of Town and Country Planning (DTCP), to whom the complainants may approach in case of any grievance.

H. Directions of the authority

44. 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 pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., February 2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; as per proviso to Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. The respondent no.2 is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate from the competent authority.
- III. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

IV. The respondent no.2 is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

V. The respondent no.2 is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per Rule 16(2) of the Rules, ibid.

VI. The respondent no.2 is directed to make available the details of the super area to the complainants.

VII. The respondent no.2 is directed to raise demands only in accordance with the agreed payment plan and the complainants are also bound to make payment of demands raised.

VIII. The respondent no.2 is directed to charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the unit allotted to the complainants vis- à-vis the total area of the particular project. The complainants may obtain bifurcation/justification from the respondent no.2 regarding proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

IX. The respondent no.2 can charge GST from the complainants at the applicable rate. The complainants may obtain bifurcation/justification from the respondent no.2 regarding the

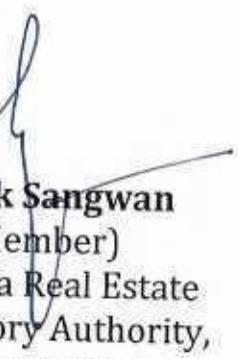
amount so charged from them under the head of GST and would also be entitled to proof of such payments to the concerned departments.

- X. The respondent no.2 is directed not to levy any holding charges upon the complainants.
- XI. The respondent no.2 is not entitled to demand or collect such charges until the club is made available for the actual use of allottees.
- XII. The demand on account of maintenance charges is not justified at this stage and the same can only be demanded at the time of offer of possession of unit to the complainants.
- XIII. The respondent no.2 is directed to execute conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent authority.
- XIV. The respondent no.2 shall not charge anything from the complainants which is not the part of BBA.
- XV. No directions are being issued in the matter qua respondent no. 1 i.e., "M/s Supertech Limited" 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."
- XVI. No directions are being issued in the matter qua respondent no. 3, i.e., "DSC Estates Private Limited", in view of the Suo-Motu proceedings dated 29.11.2019 in Complaint No. HARERA/GGM/5802/2019, wherein "DSC Estates Pvt. Ltd." expressly admitted its responsibility for the development of the sole project 'Azalia' and commenced marketing and allotment of new

units under its own name. Since the present complaint concerns the project 'Hues', respondent no. 3 bears no liability in this matter.

45. Complaint stands disposed of as well as applications, if any, stands disposed of accordingly.
46. Files be consigned to registry.

Dated: 12.11.2025


Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM