

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 2713 of 2021
First date of hearing: 14.07.2021
Date of decision : 05.08.2025

Mr. Vipin Kapoor

R/o: P-3, Narkeldanga Main Road, CIT Scheme Vi M, Kolkata,
West Bengal-700054

Complainant

Versus

1. M/s Supertech Limited
2. M/S Sarv Realtors Pvt. Ltd

Regd. office: 114, 11th floor, Hemkunt Chambers, 89, Nehru
Place, New Delhi-110019

Respondent no.1
Respondent no.2

CORAM:

Shri Arun Kumar

Shri Ashok Sangwan

Chairman

Member

APPEARANCE:

Sh.Shubham Tiwari (Advocate)

Sh.Bhrigu Dhami (Advocate)

Sh.Dushyant Tewatia (Advocate)

Complainant
Respondent no. 1
Respondent no. 2

ORDER

1. That the present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

A. Project and unit related details

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

S.No.	Particulars	Details
1.	Name of the project	Supertech Hues, Sector-68, Gurugram-122101
2.	Project area	55.5294 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017
	Validity Status	31.12.2021
5.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013
	Validity status	25.12.2017
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.
6.	Unit no.	0101, V, 1 st floor (page 21 of complaint)
7.	Unit tentatively measuring	1430 sq. ft. super area 9 (page 21 of complaint)
8.	Date of Booking	12.10.2013
9.	Date of buyer developer agreement	05.03.2016
10.	Possession clause as per buyer developer agreement	The possession of the allotted unit shall be given to the allottee /s by the company by July 2018 . However, this period can be extended for a further grace period of 6 months
11.	Due date of possession	July 2018 + 6 months = January 2019
12.	Basic sale consideration	Rs.1,09,99,040/-
13.	Total amount paid by the complainant	Rs. 33,68,222/-
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:

- i. That considering the various advertisements and overwhelming representation of the respondent, complainants have decided to book a residential unit vide its application and accordingly made the payment of Rs. 6,00,000 as booking charges on 12.10.2013.
- ii. That pursuant to booking, a unit of approximately 1430 sq. ft. super area in Tower V tentatively numbered flat 101 in the project 'Supertech Hues' at Revenue Estate, Badshahpur, Sector 68, Gurugram-122001 was allotted to the complainant.
- iii. That flat buyer agreement incorporated unilateral terms and conditions favouring respondent. According to the terms and conditions being unjustly incorporated, the entire sale consideration of the flat including all other charges under multiple heads was thus calculated to be Rs. 1,09,99,040/-.
- iv. That the flat buyer agreement further stipulated the various plan schemes to be opted by the complainant according to its convenience and financial capacity. According to the terms and conditions of the flat buyer agreement, the possession of the unit is to be provided by July 2018 with a grace period of 6 months making the possession date latest by January 2019.
- v. That the respondent had raised several demand letters for the payment of the part of the consideration amount, and in bonafide belief, the complainant had made more than 30% payment towards the cost of the flat on various dates and as per the demands raised by the respondent.
- vi. That despite of the payment of the 30% of the complete cost of the flat, construction has not begun. Even the basement of the tower is not constructed, where the complainant has booked the first floor.

- vii. That the complainant had aimed to buy the unit as his daughter's residence and was to constitute her stridhan at the time of her marriage. Now that the marriage has taken place and alternative arrangements have been made, the purpose of buying this unit is frustrated. The complainant therefore seeks refund.
- viii. That according to the terms and conditions of the flat buyer agreement, failure in making the payment of the instalment on time, the complainants were cast with a penalty/duty to pay interest@2% per month from the due date till the final settlement of amount payable. Therefore, by the same principle, in case of default by the respondent in defaulting the agreement, the respondent is also liable to pay interest at the rate of 2% per month as since the date of payment till the date of offer of possession or obtaining of OC whichever is later.
- ix. That according to the terms and conditions of the flat buyer agreement, the possession was to be provided by 05.01.2019 including grace period of 6 months. However, the respondent is only interest in grabbing payment from the gullible customers. Since there was hardly any significant construction update by the respondent when the date of possession approached, the complainant deliberately stopped making any payment to the respondent. As such there is delay of approximately 42 months, which is continuing due to misrepresentations and deliberate default of the respondent. Aggrieved by the continuous omissions and default committed by the respondent in providing handing over the possession to the complainant as per the agreed date, the present complaint is being preferred. Therefore, the complainant most respectfully prays to allow the present complaint for providing refund along with interest from the date of committed date of possession.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - a. Direct the respondent to refund the entire amount paid by the complainant.
 - b. Direct the respondent to provide mental agony of Rs. 10,00,000/- and also litigation cost.
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.
6. The complainant has filed an application for impleadment of M/s Sarv Realtors Pvt. Ltd. and the same was allowed by the Authority on 01.07.2025.
7. That present complaint was filed on 14.07.2021 and registered as complaint no. 2713 of 2021. As per the registry, the complainant sent a copy of the complaint along with annexures via speed post as well as email. The tracking report for the same was submitted by the complainant along with the complaint. On 01.07.2025, the respondent no.2 was directed to file a reply within the stipulated time period. On 01.03.2023, 25.08.2023, 06.10.2023, 12.01.2024, 19.04.2024, 27.05.2024, 01.07.2024, 08.07.2024, 12.08.2024, 02.09.2024, 10.12.2024, 11.03.2025, 07.04.2025, 01.07.2025, 05.08.2025, Advocate Bhrigu Dhami appeared on behalf of the respondent no.1. Moreover, after the application for impleadment was allowed, respondent no. 2, i.e., SARV Realtors Pvt. Ltd., was also directed to file a reply within the stipulated time. However, the reply was still not filed by the respondent no.1 & respondent no.2. Despite specific directions, the respondents failed to file a written reply and did not comply with the order of the Authority. This indicates that the respondents are intentionally delaying the proceedings of the Authority by failing to file a written reply. Therefore, the defence of the

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

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

D. Jurisdiction of the Authority

9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

10. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes 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 a complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

E. Findings on the objections raised by the respondent

D.I1. Objection regarding CIRP against respondent no. 1 and consequent moratorium against proceedings against respondent no.1.

13. During hearing the respondent no. 1 has stated that vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as Union Bank of India Versus M/s Supertech Limited, the Hon'ble NCLT has initiated CIRP 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 JDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. 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.

F. Findings on the relief sought by the complainant

E.I Direct the respondent to refund the entire amount paid by the complainant.

14. That the complainant booked a unit bearing no. 101, tower V, in the project of the respondent namely, "HUES" admeasuring super area of 1430 sq.ft. for an agreed sale consideration of Rs. 1,09,99,040/- against which complainants have paid an amount of Rs. 33,68,222/- and the respondent has failed to handover the physical possession till date. That the complainants intend to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along with interest. Sec. 18(1) of the Act is reproduced below for ready reference:-

"Section 18: - Return of amount and compensation

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

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

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

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

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

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

*"The Possession of the allotted unit shall be given to the Allottee/s by the Company by **July, 2018**. However, this period can be extended for a further **grace period of 6 months***

16. Due date 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 July 2018 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be January 2019.

17. Admissibility of delay possession charges at prescribed rate of interest: The complainant is seeking delay possession charges till the date of delivery of possession to the complainant. 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."

18. 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, determined by the legislature, is reasonable and if the said rule is followed to award interest, it will ensure uniform practice in all cases.

19. 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., 05.08.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

20. 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;"***

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent which is the same as is being granted to them in case of delayed possession charges.

22. 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 05.03.2016, the due

date of possession July 2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is January 2019.

23. It is pertinent to mention over here that even after a passage of more than 8 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. 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.

24. 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....."

25. 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."

26. 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.

27. 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.II Litigation cost.

28. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)***, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. Directions of the authority

29. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):
- I. The respondent no.2 i.e., M/s Sarv Realtors Pvt. Ltd. is directed to refund the amount received by it i.e., Rs. 33,68,222/- from 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. The complaints stand disposed of.

31. Files be consigned to the registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
05.08.2025

HARERA
GURUGRAM