

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

Complaint no. : 4342 of 2023  
First date of hearing: 19.09.2023  
Date of decision : 05.08.2025

**Vishal Bansal**

**R/o:** - Kishan Kunj, Hat Talla, District  
Bardhaman, West Bengal- 713324

**Complainant****Versus**

1. M/s Supertech Limited
  2. M/s Sarv Realtors Pvt. Ltd.
  3. Resolution Professional of Supertech Limited
- Registered Office:** 1114, 11<sup>th</sup> Floor, Hemkunt  
Chambers, 89, Nehru Place, New Delhi - 110019

**Respondents****CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Vishal Gautam  
Sh. Bhirgu Dhami  
Sh. Rohit Arora

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

**ORDER**

1. The present complaint dated 19.09.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions

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

#### A. Unit and project related details

- 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-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.                                                               | 1001, tower-G on 10 <sup>th</sup> floor,<br>(Page no. 65 of complaint)                                                                                                                                                                                                   |
| 7.   | Unit tentatively measuring                                             | 1180 sq. ft. super area<br>(Page no.65 of complaint)                                                                                                                                                                                                                     |
| 8.   | Unit type                                                              | 2BHK +2TOI (page 65 of complaint)                                                                                                                                                                                                                                        |
| 9.   | Date of Booking                                                        | 22.10.2013 (Page no. 65 of complaint)                                                                                                                                                                                                                                    |
| 10.  | Date of execution of Builder developer agreement in favour of the Bank | 16.08.2014 (Page 64 of the complaint)<br>(duly signed by all the parties)                                                                                                                                                                                                |
| 11.  | Possession clause as per buyer developer agreement                     | <b>1. POSSESSION OF THE UNIT:-</b><br><b>1. The possession of the allotted unit shall be given to the Buyer(s) by the Developer in 42 months i.e., by Apr, 2017. However, this period can be extended due to unforeseen circumstance for a further grace period of 6</b> |

|     |                                      |                                                                      |
|-----|--------------------------------------|----------------------------------------------------------------------|
|     |                                      | <i>months. (Emphasis supplied)</i> (Page 68 of the complaint)        |
| 12. | Due date of possession               | Apr, 2017 + 6 months = Oct 2017<br>(Page 68 of the complaint)        |
| 13. | Total sale consideration             | Rs.90,77,360/-<br>(Page 67 of the complaint)                         |
| 14. | Total amount paid by the complainant | Rs.44,08,806/- (as alleged by the complainant, page 22 of complaint) |
| 15. | Occupation certificate               | Not obtained                                                         |

## B. Facts of the complaint

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

- I. That based on their tall claims, advertisements and boasting representations made, alluring assurances, etc., complainant fell in their trap and got persuaded by their representatives to apply for and make a booking in then stated proposed upcoming complex/project; Hues situated at Sector-68, Gurgaon, Haryana.
- II. That relying on respondent's assurance advanced and representation made, complainant, for his bona-fide residential use and living purpose, opted to buy a 2 BHK+ 2TOI residential flat, under the 'construction link plan' with instalments payable on demand and in accordance with the completion of timely development works at Site.
- III. That respondent then had assured complainant regarding the immediate commencement and speedy completion of works assuring that positively that the possession of apartment shall be handed over to complainant by respondent by April 2017. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months.
- IV. That while inducing complainant to make booking and part with the booking amounts etc., he was solemnly assured that the company had made all requisite arrangement and soon going to obtain all due licenses/ sanctions/

approvals/ NOC's/ completion certificate from the govt. departments and authorities, including as that from the fire/pollution etc., for the proposed said project. It was also confirmed and assured that there would be no delay in the commencement of construction works and thereafter timely delivery of possession and further that all applicants/allottees, including complainant, shall have the option and opportunity to opt out of the project, in case of any delay or default of the company qua any such obligation, the applicants shall be entitled to seek refund of their entire paid amounts, more over it was assured that the "exit route" can be exercised at any time. It was also categorically assured that in such case, the company shall refund the entire paid amounts to the applicants/allottees together with nominal interest @ 2% per month (i.e. 24% Per annum) without any excuse or other pretext, whatsoever.

- V. That several other assuring representations also stood advanced at that time on respondents' part in order to attract the booking from complainant and in the process, garner one or the other substantial amounts there from. Several efforts were made to convince complainant giving tall claims about financial viability of the project and security of amounts paid thereto.
- VI. That complainant was then made to sign and execute some cyclostyle printed application form of the respondent, towards booking being made under pre-launch scheme around August, 2013. Accordingly, he was made to submit/sign an application to the company, showing his expression of interest along with tendering of application/booking money of Rs 6,00,000/-.
- VII. That respondent then offered to complainant the allotment of 2 bhk + 2TOI residential flat unit admeasuring super area 1180 Sq ft. and at the agreed basic sale price of Rs 75,54,360/-excluding the other charges. The total amount including other charges is Rs 90,77,360/-.

- VIII. That accordingly, one flat was booked by respondent for complainant, which deal was finalized through respondent's authorized Sales agent and in pursuance thereto, complainant was allotted unit no. 1001 situated at 10th floor, in tower "G" in project "Hues", Sector 68, Gurgaon, Haryana.
- IX. That buyer developer agreement dated 16.08.2014 was made to be executed between the respondent no 1 and complainant, whereby complainant was allotted the captioned flat, and with certain shrewdly and minutely typed terms and conditions mentioned hereto, some of which though oblivious and contra/inconsistent to the originally stated and agreed terms and conditions, while getting the booking made from complainant. However, being in a fix then, complainant at that stage, had no opportunity to categorically rebut the same or to raise any objections, since he was assured not to worry and not to go into much technicalities, taking plea that it being standard perform of the company and that company shall stick to its commitments made earlier (as above said too). Thus, complainant was made to sign on dotted lines of the standard flat buyers agreement, despite the fact that it was containing clause and covenants, being unfair, arbitrary, one sided and harsh, perverse, prejudicial to public interest and opposed to public policy and principles of equity and natural justice and as such, not being valid or binding/enforceable against complainant.
- X. That shockingly buyer developer agreement dated 16.08.2014 does not include the "exit route" clause in the agreement even if there was any delay of handing over the possession to the buyer by company. It is highly unfair and arbitrary on respondent's part that they had altogether removed the "exit route" from the agreement despite giving assurance to complainant at the time of booking. Respondent had very shrewdly entrapped complainant into their project. The deceptive, deficient and unfair trade practice

employed by respondent are not only against the public policy but also against law of the land.

- XI. That complainant was also cajoled into to execute a tripartite loan agreement dated 02.09.2016 for a loan amount of Rs 62,00,000/- with Axis Bank. Respondent had misrepresented and entrapped complainant in their economically unviable and incomplete project. Complainant feel cheated and very frustrated since, the project is nowhere near completion and he has to continuously pay the principal as well as interest on the borrowed loan amount to the bank. The complainant had paid as high interest on borrowed amount.
- XII. That the respondent through their various demand letter raised the demand of money from the complainant. The complainant duly paid the amount as and when the demand is raised by the respondents. However, the status of the project is never communicated to the complainant.
- XIII. That complainant always rested on respondent given assurances and words of commitments and based on same, he was making all due payments as and when demanded by company and intimation received by him.
- XIV. That complainant through various communication requested the respondents to tell the status of the project. However, his pleading fell on the deaf ears of the respondents. He received no reply from the respondents regarding the status of Project.
- XV. That complainant through his counsel served a legal notice dated 14.11.2017 to the respondent and requested them to refund the amount deposited by the complainant along with the interest. However, respondent did not comply by the terms and condition of the legal notice. Instead, respondent vide their reply dated 28.12.2017 sought more time from the complainant and offered to give the possession in the month of July, 2018.

- XVI. That on 18.08.2022, the complainant again visited the project Hues situated at Sector 68, Gurgaon, Haryana. The project has been stalled by the respondents and the building is in dilapidated and ruined condition. Moreover, the building will not be completed in the near future.
- XVII. It is now July, 2023 and the project is still not completed. It is also being learnt that respondent have not yet obtained all clearances from the authorities as well and there is no hope of obtaining Occupancy Certificate and Completion Certificate and/or of complete the project and delivering actual physical possession to the allottees in promised finished condition till date. Moreover, the status of the project on the RERA website is showing lapsed project.
- XVIII. It is settled position of law that unfair and unjust/oppressive and arbitrary terms cannot be imposed on gullible consumers like complainant. The company cannot take any unfair advantage of its own drafted one-sided terms and conditions, which are against public policy or opposed to the principles of good conscience.
- XIX. There is no fault, delay or lapse which could be attributed to complainant regarding any delay in payment.
- XX. That due to respondent such unfair dealing and deficient services, complainant has suffered immense loss and injury, besides agony, pain, tension, mental trauma and harassment. Company have played mischief with complainant and duped him, taking unfair advantage of him by adopting deceptive and misrepresentation acts. For all same, respondents and its erring principal officials and directors are liable to compensate him in all monetary and other terms.
- XXI. That as such, besides refund of complainant's entire paid amounts, with interest, he is also entitled for appropriate compensation from respondents, jointly and severally. The complainant reserved his right to claim the

compensation before the Adjudicating Officer. The present complaint is regarding the refund of the deposited amount with interest.

- XXII. That the complainant had earlier filed complaint before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi. The said complaint has been withdrawn by the complainant with liberty. Therefore, No complaint is pending in any other forum/commission/ court of law and even in Hon'ble Supreme Court against respondents in respect of the present cause & subject matter of his refund etc. and the complaint has been made in bona fide and in the interest of justice.

**D. Relief sought by the complainant: -**

1. The complainant has sought following relief(s):
  - I. To direct respondents, jointly and severally, to refund and pay unto complainant the entire deposited sum of Rs 44,08,806/- along with interest, pendente-lite and future period interest from date of deposit to till actual realization of all said sum to Complainant.
  - II. To direct the respondents to refund the amount along with the interest to complainant without deducting any TDS, earnest money, cancellation charges, holding over charges or any other charges.
  - III. To direct respondents, jointly and severally, to pay a sum of Rs 75,000/- to the Complainant towards the litigation cost of present case.
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. No reply has been submitted by the respondent no.1 i.e., M/s Supertech Ltd. However, the counsel for respondent no. 1 has stated that the respondent no.1 is under CIRP vide order dated 25.03.2022 passed by the Hon'ble New Delhi in

case no. IB-204/ND/2021 titled as ***Union Bank of India Versus M/s Supertech Limited*** and moratorium has been imposed against the respondent no. 1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against the respondent no. 1.

**D. Reply by the respondent no.2.**

The respondent no. 2 implead as party vide order dated 07.04.2025 is contesting the complaint on the following grounds:

- a. That the respondent was issued license bearing no's 106 and 107 dated 26.12.2013 and license no's. 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent and respondent no. 1, i.e. M/s. Supertech Ltd. had entered into two joint development agreement's dated 25.04.2014 and dated 26.08.2014 respectively. In terms of the said JDA's the respondent no.2 was to develop and market the said project.
- b. That the complainant along with many other allottees had approached the respondent no. 1, making enquiries about the complainant along with many other allottees had approached the respondent no. 1, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book an apartment(s)/ unit(s) in the said project.
- c. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 16.08.2014 for an apartment being number no. G/ 1001, 10<sup>th</sup> floor, having a super area of 1180 sq. ft. (approx.) for a total consideration of Rs. 90,77,360/-.
- d. 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;

*(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.*

*(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, Superech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd. / DSC and others fail to discharge its obligations towards the Allottees.***

That in lieu of the said directions passed by the Authority all asset and liabilities have been since transferred in the name of the respondent. However, in terms of the said Order, M/s. Supertech Ltd. still remains jointly and severally laible towards the booing/ allotment undertaken by it before the passing of the said suo-moto order.

- e. That thereafter the said JDA’s were cancelled by the consent of both parties (respondent and R2) vide cancellation agreement dated 03.10.2019 and the respondent from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- f. That in terms of the said cancellation agreement the respondent and R1 had agreed that as R1 was not able to complete and develop the project as per the timeline given by the Authority and DTCP, therefore the parties had decided to cancel the JDA’s vide the said cancellation agreement.
- g. 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.
- h. 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.
  - i. That the complaint deems to be dismissed sine-die or dismissed as the R1 company, i.e., M/s. Supertech Ltd. is undergoing corporate insolvency resolution process and therefore all matters like the present one in which Supertech Ltd. is a party deem to be adjourned sine-die or dismissed in lieu of the moratorium imposed upon M/s. Supertech Ltd. U/s 14 of the IBC, 2016.
  - j. That as M/s. Supertech Ltd. and the respondent are jointly and severally liable in terms of the Suo Moto Order passed by the Authority for the project in question, thus the present matter cannot proceed further untill the said liability qua the allottees is not bifurcated between both the respondent's. The respondent in lieu of the CIRP proceedings ongoing against R1 company, cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Ltd.
  - k. 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 present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
  - l. The delay if at all, has been beyond the control of the respondent and as such extraneous circumstances would be categorised as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.

- m. That the delay in construction was on account of reasons that cannot be attributed to the respondent. The flat buyer's 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 clause, i.e. "clause 43 under the heading "GENERAL TERMS AND CONDITIONS" of the "agreement". The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.
- n. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before April, 2017. However, the buyers' agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around October 2017. However, the said date was subject to the force majeure clause, i.e. "**Clause 43**". 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 endeavoured to deliver the property within the stipulated time. The respondent earnestly has endeavoured to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.
- o. The timeline stipulated under the flat buyers' agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour 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.

- p. That despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant, 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, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent:

- i. Due to active 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 respondent, 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. Due to paucity of labour and vast difference between demand and supply, the respondent faced several difficulties including but not limited to labour disputes. All of these factors contributed in delay that reshuffled, resulting into delay of the project;
- ii. It is submitted by the respondent herein 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 complex. The

respondent cannot be held solely responsible for things that are not in control of the respondent

In light of the aforementioned prerequisites read with the force majeure events reproduced in the aforementioned paragraphs, it is prima facie evident that the present case attracts the force majeure clause.

- q. 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. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. 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.
- r. Anent to the above, it is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, 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.
- s. That the complainant has not come with clean hands before this forum and have suppressed the true and material facts from this 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. In view thereof, this complaint is liable to be dismissed at the threshold.
- t. That the project "**HUES**" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017. That the possession of the said premises was proposed to be delivered by the respondent to the apartment allottee by April, 2017 with an extended grace period of 6 months which comes to an end by October 2017. The completion of the building is delayed by reason of 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 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. Due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for a considerable period day due to high rise in Pollution in Delhi NCR.
- u. 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 respondent is just to complete the project within stipulated time submitted before the HRERA Authority. According to the terms of builder buyers agreement also it is mentioned that all the amount of delay possession, if any, will be completely paid/ adjusted to the complainant at the time final settlement on slab of offer of possession. The project is ongoing project and construction is going on.
- v. 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. The 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, copy is attached herewith.
- w. That the said project is a continuance business of the respondent and it will be completed by the year 2025. When the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted.
- x. 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.

- y. 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.

| S. No. | Court/Authority & Order Date                                                       | Title                                                                              | Duration                     |
|--------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|------------------------------|
| 1.     | National Green Tribunal-<br>08.11.2016<br>10.11.2016                               | Vardhman Kaushik vs Union of India                                                 | 08.11.2016 to 16.11.2016     |
| 2.     | National Green Tribunal<br>09.11.2017                                              | Vardhman Kaushik vs Union of India                                                 | Ban was lifted after 10 days |
| 3.     | Press Note by EPCA-<br>Environment Pollution<br>(Prevention and Control) Authority | Press Note-<br>31.10.2018                                                          | 01.11.2018 to 10.11.2018     |
| 4.     | Supreme Court-<br>23.12.2018                                                       | Three-day ban on industrial activities in pollution hotspots and construction work | 23.12.2018 to 26.12.2018     |
| 5.     | EPCA/ Bhure Lal Committee Order-<br>31.10.2018                                     | Complete Ban                                                                       | 01.11.2019 to 05.11.2019     |

|    |                                                |                                                                    |                             |
|----|------------------------------------------------|--------------------------------------------------------------------|-----------------------------|
| 6. | Hon'ble Supreme Court<br>04.11.2019-14.02.2020 | M.C Mehta v. Union of<br>India Writ Petition (c)<br>no. 13029/1985 | 04.11.2019 to<br>14.02.2020 |
| 7. | Government of India                            | Lockdown due to<br>Covid-19                                        | 24.03.2020 to<br>03.05.2020 |
| 8. | Government of India                            | Lockdown due to<br>Covid-19                                        | 8 weeks in 2021             |
|    | <b>Total</b>                                   | <b>37 weeks (approximately)</b>                                    |                             |

z. The table concluding the time period for which the construction activities in the Project was restrained by the orders of competent Authority/Court are produced herein below as follows:

4. 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 were forced to return to their home towns, leaving a severe paucity of labour. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment. Hence, the complainant is not entitled for any refund as claimed except for delayed charges, if any applicable as per clause 2 read with 24 of the builder buyer agreement.
5. 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**

6. 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**

7. 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**

8. 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.

9. 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.
10. 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 laud 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.*

11. 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.1 Objections regarding force majeure.**

12. 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 16.08.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to

be Oct 2017, 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."*

13. 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.**

14. 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. 44,08,806/- along with interest@24% per annum from the date of payment till its actual realization.**

15. That the complainants booked a unit bearing no. 1001, tower G, 10<sup>th</sup> floor, in the project of the respondent namely, "HUES" admeasuring super area of 1180 sq.ft. for an agreed sale consideration of Rs. 90,77,360/- against which complainants have paid an amount of Rs. 44,08,806/- 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."*

*(Emphasis supplied)*

16. 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 buyers by the Developer in 42 months i.e., April 2017. However, this period can be extended for a further grace period of 6 months....."*

17. **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 Apr, 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 Oct 2017.

18. **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.*

19. 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.
20. 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%**.
21. The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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;"*

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 16.08.2014, the due date of possession is April 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 Oct 2017.
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 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.
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. Directions of the authority**

28. 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 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. Out of refundable amount, the loan amount with interest be cleared first and only the remaining amount is to be disbursed to the complainant/allottee along with no dues certificate of the financial institution.
  - iii. 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.
  - iv. 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.

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

29. Complaint stands disposed of.

30. Files be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2025

**HARERA**  
**GURUGRAM**