

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

Complaint no. : 429 of 2022
Date of filing: 21.02.2022
Date of decision : 05.08.2025

1. Ms. Naina Raheja
2. Mr. Jatin Raheja
Both RR: House No. 139, Huda Sector-11, Panipat,
Haryana-132103

Complainants**Versus**

1. M/S Supertech Limited
Regd. office: 114, 11th floor, Hemkunt Chambers,
89, Nehru Place, New Delhi-110019
2. Indiabulls Housing Finance Limited
Regd. office: M 62 & 63, First Floor, Connaught
Place, New Delhi-110001
3. 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****Respondent no. 3****CORAM:**

Shri Arun Kumar
Shri Ashok Sangwan

Chairman**Member**

Ms. Shikha (Advocate)
Sh. Bhrigu Dhami (Advocate)
None
Sh. Dushyan Tewatia (Advocate)

Complainant
Respondent no. 1
Respondent no.2
Respondent no. 3

ORDER

1. That the present complaint has been filed by the complainants/allottees 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, 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, Golf Course Extn. Road, Gurgurgram-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	89 of 2014 dated 08.08.2014	134-136 of 2014 dated 26.08.2014
	Validity status	25.12.2017	Renewed on 31.03.2023 upto 07.08.2024	Renewed on 27.03.2023 upto 25.08.2024
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.
6.	Unit no.	1404, tower M, 14 th floor (Page no. 19 of complaint)		
7.	Unit measuring	1430 sq. ft. super area (Page no. 19 of complaint)		
8.	Date of Booking	16.06.2016 (Page no. 19 of complaint)		
9.	Date of execution of Builder-developer agreement	23.06.2016 (Page 18 of complaint)		

10.	Possession clause	1. POSSESSION OF THE UNIT:- <i>"The Possession of the Unit shall be given to the allottee/s by the company by FEB, 2019 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @Rs.5.00/- (Five rupees Only) per sq. ft. of super area of the unit per month for any delay in handling over possession of the unit beyond the given period plus the grace period of 6 months and upto the Offer Letter of possession or actual physical possession whichever is earlier. ..." (Emphasis supplied)</i>
11.	Due date of possession	Feb, 2019+ 6 months = Aug 2019
12.	Total sale consideration	Rs.1,18,45,500 /-(page 20 of the complaint)
13.	Total amount paid by the complainant	Rs.13,00,000/- paid by the complainant Rs. 79,00,000/- finance through Indiabulls Housing Finance Ltd.
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - a. That relying on the assurances, warranties and representations of the respondent no. 1, the complainants booked an apartment a unit no. 1404, tower "M", 14th floor, admeasuring 1430 sq. ft. super area in the project on 16.06.2016 and accordingly executed a buyer developer agreement on 23.06.2016 for the sale of the Unit for a total sale consideration of Rs.1,18,45,500/- and chose a subvention payment plan.
 - b. Upon an understanding between the complainants and the respondent no 1, a MOU dated 15.07.2016 was executed, according to which, the complainants had opted for no Pre-EMI till possession scheme. A tripartite agreement was also executed amongst respondent no. 1, respondent no 2,

and the complainants. Thereafter, with dream of owning a house which was advertised to be a progressive and aesthetic property, the complainants took a housing loan for Rs.79,00,000 from the India Bulls Housing Finance Limited.

- c. That the complainants have paid an amount of Rs. 86,53,486/- (Rs. 67,53,486/- is the loan amount disbursed by the bank and Rs. 19,00,000/- by the complainants) against the unit as is evident from the customer statement of the complainants statement along with HDFC account statement from 01.04.2016 to 31.03.2017 & PNB account statement from 01.04.2016 to 31.03.2017 and India Bulls statement of account dated 24.04.2020. The obligation to pay the Pre-Emi till possession scheme for the subvention period was upon the respondent no.1. Moreover, the tenure of the subvention scheme as set by the MoU is 30 months or offer of possession, whichever is earlier, as is evident from clause b of the MoU. In case of delay in delivery of possession, the developer respondent no. 1 undertakes to pay Pre-EMI till offer of possession.
- d. That the respondent no. 1 was obligated to deliver the possession of the unit by February 2019, however, has miserably failed in living up to its obligations. Even after more than 2 years 9 months of delay, the respondent no.1 has not handed over the possession of the Unit, till date. The respondent no. 1 has instead always been vague and ambiguous in the speaking about the status of development in the project. It must be noted that the project is still not in a position to be completed any time soon and the respondent no. 1 has been delaying the construction by giving frivolous excuses.



- e. That the respondent no. 1 has also gravely defaulted in its obligation of payment of pre-EMI, due to which the complainants had to pay Pre-Emi of Rs.1,38,448/- to respondent no. 2 as is evident from and India Bulls statement of account dated 24.04.2020 annexed herewith. The respondent no. 1 defaulted in its obligation of payment of Pre-Emi, which resulted into tremendous financial burden upon the complainants. The complainants being law abiding citizens intended to adhere and follow as per the agreed terms and conditions and have, in fact, not defaulted in fulfilment of any obligation at their own cause. This additional burden had put the complainants in mental agony.
- f. That the respondent no. 2, without noting any appreciable progress in the development of the unit had disbursed a substantial amount to the respondent no. 1. As per clause 5 of the TPA, the obligation to disburse the loan as per the stage of the construction of the project was upon the respondent no 2. The respondent no.2 had failed to perform its due diligence. Although under RBI regulations, it is a duty entrusted upon all the bank/financial institution in general to carry on due diligence investigation prior to disbursement of loan. As per the recent circular dated 13.08.2019 passed by the national housing bank, now even the Housing finance companies will be subject to RBI regulations which will provide more security to the Homebuyers taking loan from these HFCs.
- g. That the non-payment of pre-EMIs by the respondent no. 1 and no development in the project has caused huge mental agony to the complainants. The non-payment of Pre-EMIs by the respondent no. 1 led to debit of the amounts towards pre-EMIs from the bank accounts of the complainants and in cases of insufficient balance, an additional burden of



dishonour of cheque was also levied on the complainants, when in fact, it was never the obligation of the complainants to pay the Pre-EMI. That such payments are gravely impacting the CIBIL of the complainants. The complainants cannot be compelled either to pay loan amount, interest or EMI to the bank for the fraud which has been committed by their own derelict behaviour.

- h. That the complainants sent an email to the respondent no. 1 on dated 27.07.2020 in respect of reimbursement of Pre EMI's of the unit in accordance with the MOU. The respondent no. 1, with malicious intention to cheat and dupe the innocent complainants, did not provide any satisfactory reply. The tactics of the respondent no. 1 of harassing the complainants by delaying the refund of the payment made by them and not responding to their concern has caused huge financial losses, harassment and mental agony to the complainants.
- i. That having not even an iota of faith in the project and the respondents, the complainants sent a cancellation letter on dated 05.12.2017 to the respondent no. 1 to refund the amount paid towards the total sales consideration of the unit and to pay the outstanding loan dues to respondent no. 2 to foreclosure of loan immediately. In addition, it must be noted that the respondent no. 1 cannot be rightly allowed to veil behind the advent of the pandemic. The duty of the respondent of completion of the unit and offer of possession stands way before the advent of the corona virus and under any circumstance.
- j. That the respondent no. 1, in furtherance of its unlawful conduct and acting in breach of all of its contractual obligations as set under the BBA, the TPA, and the MOU stands in violation of Sections 11(4)(a), 18(1) and 18(3) of

the Act. All such agreements executed between the builder and the buyer are to be read as a part and parcel of the agreement to sale which is obligated to be adhered to and considered under the Act.

- k. That the respondent no. 1 failed to deliver the unit of the complainant even after almost 6 years of agreement and taking advantage of dominant position, unilaterally had ignored the request of the complainants to withdraw their allotment and had malafidely restored to unfair trade practices by harassing the complainants by way of delaying the project by diversion of the money from the innocent and gullible buyers.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
- I. Direct the respondent no. 2 to refund the amount of Rs. 19,00,000/- paid by the complainants along with prescribed rate of interest from the date of respective deposits till its actual realisation, in accordance with the provisions of the Act.
 - II. Direct the respondent no. 2 to refund the amount of Rs. 1,38,448/ paid by the complainant in lieu of Pre-Emi.
 - III. Direct the respondent no. 2 to pay the compensation of Rs. 10,00,000/- for causing mental agony, harassment to the complainants, and for violation of the obligations conferred by the act, as per section 18(3).
 - IV. Direct the respondent no. 2 to pay the compensation of Rs. 1,50,000/- for the litigation costs.
5. On the date of hearing, the Authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1

6. 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.

E. Reply by the respondent no.3

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 23.06.2016 for an apartment being number no. M/ 1404, 14th floor, having a super area of 1430 sq. ft. (approx.) for a total consideration of Rs. 1,18,45,500/-.
- 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 until 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 February, 2019. 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 August 2019. 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 form 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 February 2019 with an extended grace period of 6 months which comes to an end by August 2019. 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.
- z. 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

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.

F. 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.

F.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.

F.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.

G. Findings on objections raised by the respondent no. 2

G.I 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 23.06.2016 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be Aug 2019.
13. The Authority observes that 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 stakeholder concerned with the said project cannot be put on hold due to fault of some of allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take care of unforeseen eventualities. Therefore, no further grace period is warranted on account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advance in this regard is untenable.

G.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. 1 is no longer the assets of respondent no.2 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.3 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.3 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.3 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., 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 & 3 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage.

H. Findings on the relief sought by the complainants.

H.I Direct the respondent no. 3 to refund the amount of Rs. 19,00,000/- paid by the complainants along with prescribed rate of interest from the date of respective deposits till its actual realisation, in accordance with the provisions of the Act.

H.II Direct the respondent no. 3 to refund the amount of Rs. 1,38,448/ paid by the complainant in lieu of Pre-Emi.

15. That the complainants booked a unit bearing no. 1404, tower M, 14th floor, in the project of the respondent namely, "HUES" admeasuring super area of 1430 sq.ft. for an agreed sale consideration of Rs. 1,18,45,500/- against which complainants have paid an amount of Rs. 92,00,000/- 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 :-

"1 POSSESSION OF UNIT: -

The possession of the allotted unit shall be given to the allottee/s by the company by Feb 2019. 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 and the allottee/s agrees to strictly abide by the same in this regard[Emphasis Supplied]

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 February, 2019 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 30.08.2019.

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(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.*

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 23.06.2016, the due date of possession is Feb 2019. 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 August 2019.
23. It is pertinent to mention over here that even after a passage of more than 5 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 more than the 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.III Direct the compensation of Rs.1,00,000/- for the mental agony and financial loss suffered by the complainant.

H.IV Direct the respondent no. 2 to pay the compensation of Rs. 1,50,000/- for the litigation costs

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.

I. Directions of the Authority

29. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The respondent no.3 i.e., SARV Realtors Pvt. Ltd. is directed to refund the amount received by it i.e., Rs. 92,00,000/- 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 no.3 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 no. 1 in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.

30. Complaint as well as applications, if any, stands disposed of accordingly.

31. Files be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.08.2024

HARERA
GURUGRAM