

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

Complaint no. : 3524 of 2024
Date of filing : 26.07.2024
Date of decision : 19.08.2025

Priyanka Sharma

R/o: - Flat-1, Salasar, Residency, Belanganj,
Yamuna Kinara Road, Agre-282003.

Complainant**Versus**

M/s Sarv Realtors Pvt. Ltd.

Registered Office: 1114, 11th floor, Hemkunt
Chamber-89, Nehru Place, New Delhi-110019.

PNB Housing Finance Limited

Registered Office: 9th floor, Antriksh Bhawan-22,
KG Marg, New Delhi-110001

Respondent no.1**Respondent no.2****CORAM:**

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member****APPEARANCE:**

Sh. Sukhbir Yadav
Sh. Dhruv Dargon
Sh. Krishna Saroff

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

ORDER

1. The present complaint 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 allottee as per the agreement for sale executed *inter-se*.

A. Unit and project related details

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

S. N	Particulars	Details		
1.	Name of the project	Supertech Hues, Sector 68, Gurugram, Haryana		
2.	Nature of the project	Group housing project		
3.	DTCP license no.	106 & 107 of 2013 dated 26.10.2013	89 of 2014 dated 08.08.2014	134-136 of 2014 dated 26.08.2014
	Validity of license	25.12.2017	07.08.2024	25.08.2024
	Area for which license was granted	13.74 acres	10.25 acres	4.85 acres
4.	HRERA Registered or not registered	182 of 2017 dated 04.09.2017 [Hues towers A, B, E, F, G, H, M, N, K, T, V, W, O, P, C & D]		
	Registration valid till	31.12.2021		
5.	Booking date	30.05.2017 [Page 57 of complaint]		
6.	Allotment letter	Not placed on record		
7.	Unit no.	1402, 14 th floor, T/76 CANVAS (page 57 of complaint)		
8.	Unit area	1180 sq. ft. [Page 57 of complaint]		
9.	Date of buyer developer agreement executed between parties	31.07.2017 [Page 56 of complaint]		
10.	Possession clause	<i>The Possession of the allotted unit shall be given to the Buyer(s) by the Developer in 42 months i.e., by Aug 2018. However, this</i>		

		<i>period can be extended due to unforeseen circumstances for a further grace period of 6 months..... (Emphasis supplied)</i> [Page 38 of complaint]
11.	Due date of possession	Aug 2018 + 6 months = Feb 2019 [Note: Aug 2018 + Grace period of 6 months is included being unconditional and unqualified]
12.	Total sale consideration as per buyer developer agreement	Rs. 65,39,200/- [Page 58 of complaint]
13.	Amount paid by the complainant	Rs. 35,98,484/- [As alleged by the complainant on page 28 of complaint]
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:

- I. That the project in question is known as "Supertech Hues", situated in Sector-68, Gurugram, Haryana. Prior to moving forward with the facts of the complaint, it is crucial to note here that initially at the time of booking, the complainant had booked a unit in the project "Supertech Hues" being developed by Supertech Limited, however, later on, after being order of Hon'ble Authority, The respondent No.1 i.e., Sarv Realtors Private Limited was replaced as promoter/developer/builder for "Supertech Hues" project in place of Supertech Limited by the Authority since the respondent no.1 is a license holder of the said project. Vide order dated 29.11.2019, the Hon'ble Authority took suo-moto cognizance in a complaint having CRN 5802/2019 against the Supertech Hues project that Sarv Realtors being a license and shareholder shall step into the shoes of Supertech Limited and all rights and liability of Supertech Limited pertaining to the development of projects,

timely completion of projects, etc were transferred to Sarv Realtors Private Limited.

- II. That the project known as 'Supertech Hues' is registered, and according to the license bearing number 106 of 2013, the license for the project was granted in the name of respondent no. 1. Therefore, respondent no. 1 is entirely responsible and liable for its self and on behalf of Supertech Limited. Furthermore, Mr. Mohit Arora, Director of respondent no. 1, Sarv Realtors Private Limited, has acknowledged in the proceedings of the day dated 19.04.2024 that they have taken over the "**project Hues**" of Sarv Realtors Private Limited from M/s Supertech Limited, including the running projects and bank accounts. Consequently, respondent no. 1 has full legal capacity to be named as a respondent in this complaint.
- III. That in the month of April-May 2017, the complainant received a phone call from a real estate agent, who represented himself as an authorized agent of the respondent no. 1 and approached the complainant/allottee, for booking a residential unit in the project of the respondent no. 1 namely Supertech Hues, situated at Sector - 68, Gurugram. The complainant along with her family and the real estate agent visited the project site and the local office of respondent no. 1. There, they interacted with marketing staff and office bearers of respondent no. 1. The marketing staff of the respondent showed a rosy picture of the project through glitzy advertisements and colourful brochures, proposing to develop and construct an integrated residential project at the prime location of Sector - 68, Sohna Road, Gurugram, claiming the same to be an oasis of convenience, space and luxury and a perfect example of modern-day residential complexes par excellence. Vide the said colourful brochures and advertisements, the respondent proposed to construct an apartment along with modern amenities on 32.83 acres of land

situated at Sector – 68, Sohna Road, Gurugram. Undeniably, the respondent, vide the said glitzy advertisements and colourful brochures claimed to provide luxurious features including but not limited to the entrance through a marvellously designed atrium, the world class landscaping, multilevel car parking at stilt and ample surface parking for the visitors, 100% power back-up, CCTVs at the entry point and lifts, 24 hours manned surveillance and access barriers, etc. The representative of the respondent gave a pre-printed application form and brochure to the complainant.

- IV. That being allured by respondent no. 1's representations, and believing in the assurances and their promises, the complainant booked a 2BHK+2TOI, unit no. R0380T01402/#1402, on 14th floor in tower-T/76 canvas of "Supertech Hues" project situated in Sector – 68, Gurugram, measuring 1180 sq. ft. under the possession linked interest subvention payment plan at basic sale price of Rs. 63,60,200/- on 30.05.2017 by submitting a booking form. The total sale consideration of the unit booked by the complainant as per the payment plan is Rs. 65,39,200/-. The complainant made 2 payments amounting to Rs. 5,00,000/- in total through cheques against the booking amount, and the respondent issued the payment receipts for the same on 01.06.2017.
- V. That at the time of accepting the application money, respondent no. 1 assured about having all requisite approval and sanctioned plans to develop the project and showed license and sanctioned plans to the complainant. Moreover, the respondent represented that the apartment would be handed over by August 2018 under the subvention payment plan.
- VI. That on 31.07.2017, a pre-printed, arbitrary, unilateral, and ex-facie buyer developer agreement was executed between the respondent no. 1 and the complainant. The total cost of the complainant's unit is Rs. 65,39,200/- as

mentioned on page no. 3 of the said BBA. As per clause no. 1 of the buyer developer agreement, the respondent was obligated to hand over possession of the complainant's unit by August 2018. Furthermore, Clause 27 of the said BBA also states that the due date of possession is August 2018.

- VII. That after the booking of the flat, the marketing staff of respondent no. 1 introduced an agent of PNB Housing Finance Ltd. to the complainant and informed that the project was sanctioned/approved by respondent no. 2 under the interest subvention scheme. It was further stated by respondent no.1 that the complainant can avail of a home loan from respondent no. 2 only. Thereafter, the complainant called the customer care of respondent no. 2 and enquired about the approval of the project of respondent no. 1, the customer care/call centre also confirmed that the project is sanctioned/approved by PNBHFL. Respondent no.1 gave an NOC / permission to mortgage to respondent no. 2 against the loan being availed by the complainant.
- VIII. Thereafter, the complainant expressed her willingness to avail of a home loan from respondent no. 2 and submitted all requisite KYC and income documents to the agent of respondent no. 2 for loan approval. Respondent no. 2 approved/sanctioned the loan of Rs. 51,36,160/- against the complainant's unit i.e., unit no. 1402 on 14th floor in tower-T/76 Canvas of "Supertech Hues" project situated in Sector - 68, Gurugram, admeasuring 1180 sq. ft. vide sanction letter dated 21.08.2017.
- IX. Thereafter, a pre-printed, arbitrary, unilateral, and ex-facie tripartite agreement was signed by the complainant with respondent no. 1 & 2. It is pertinent to mention here that the terms and conditions of this TPA were drafted by respondent no. 1 and 2 only. The said agreement is an integral part of loan documents. As per the said tripartite agreement, the builder

undertakes to pay the interest directly to PNBHFL for the loan disbursed to the borrower as per the subvention period. It was agreed by the builder that the builder would pay the Pre-EMI of the disbursed loan to the banker directly. "No Pre EMI" will be given by the borrower to the banker till the possession of the flat. It is germane that as per said TPA the builder i.e., respondent no. 2 was duty-bound to monitor the progress report of the project.

- X. That subsequent to the execution of the said tripartite agreement, respondent no. 1 kept raising the demands against the unit in question and the same were being paid by the complainant and respondent no. 2 as well. The respondent no. 1 issued 3 demand letters in favour of the complainant against her unit dated 05.08.2017, 18.08.2017, and 04.09.2017 of Rs. 15,49,243/-, Rs. 29,15,404/- and Rs. 38,53,810/- respectively.
- XI. Thereafter, on 18.12.2017, the complainant received a letter of intimation start of EMI from respondent no. 2. It is relevant to note here that via said letter, respondent no. 2 informed the complainant that the liability of the complainant towards payment of EMI commences from June 2019. As per the tripartite agreement also an integral part of loan documents, it was agreed between the parties that respondent no.1/builder shall pay the pre-EMIs till the offer of possession of the complainant's unit, however, respondent no. 1 has not offered the possession till now to the complainant.
- XII. That the complainant kept visiting the marketing office and project site of respondent no. 1 to know the construction status of the project, and she observed that the construction of the tower in which her unit is situated is creeping and the respondent no. 1 will not be able to handover the possession of apartment by August 2018, therefore, she raised the issue before higher management of the respondent's company but to no avail.

- XIII. That 23.06.2018, the respondent issued a statement of account or a payment schedule for the complainant's unit and the said payment schedule reflects that the complainant has paid a sum of Rs. 35,98,484/- till September 2017 much before the due date of possession i.e., August 2018. It is important to note here that a sum of Rs. 29,15,404/- from the total paid amount by the complainant was disbursed by the respondent no. 2 i.e., PNBHFL.
- XIV. That as per the statement of the PNBHFL account dated 22.06.2024, respondent no. 2 has disbursed an amount of Rs. 29,15,404/- out of Sanction loan amount i.e., Rs. 51,36,160/-. The complainant has availed housing loan under the subvention plan from PNBHFL, and her liability paying EMI / Pre-EMI of the loan commences after the possession of the flat. As per the said statement of loan account, the EMIs payable by respondent no. 1 have been due since November 2017.
- XV. That the due date of possession for the complainant's unit has lapsed, and no words regarding the possession were ever shared by respondent no. 1 with the complainant.
- XVI. That the respondent no. 2, has been asking the complainant to pay the EMIs for the home loan availed by the complainant, however, it is germane to highlight here that the liability of the complainant to pay the EMIs begins after the offer of possession and respondent no.1 has not offered the possession of the complainant's unit till today itself. Furthermore, respondent no. 2 was responsible for checking and evaluating the construction progress of respondent no.1's project since the disbursement of a home loan given to the complainant was linked to the progress of the construction, however, the respondent no. 2 (PNBHFL) disbursed the amount without due diligence of the construction site of the project in question.

- XVII. That on 03.09.2013, RBI issued a circular bearing no. RBI/2013-14/217 to All scheduled commercial banks for upfront disbursal of housing loans and advised that "disbursal of housing loans sanctioned to individuals should be closely linked to the stage of construction of the housing project/houses and upfront disbursal should not be made in cases of incomplete/under-construction/green field housing projects".
- XVIII. That on 19.07.2019, again NHB issued a detailed circular and advised to comply with the provision of RERA, 2016.
- XIX. That since beginning the complainant has been following up with respondent no. 1 and she made efforts to get the possession of allotted flat, but all in vain, in spite of repeated efforts of the complainant. The complainant has never been able to understand/know the actual status of construction. The respondent failed to raise the construction of the tower in which the unit of the complainant is situated. The office-bearers of respondents always gave new excuses for delay in raising the construction.
- XX. That the main grievance of the complainant in the present complaint is that despite the complainant paid more than 55% i.e., Rs. 3598484/- of the actual total cost of flat and was ready and willing to pay the remaining amount, the respondent has miserably failed to deliver the possession of unit.
- XXI. That the complainant had purchased the flat with the intention that after purchase, her family would live in their own apartment. It was promised by the respondent party at the time of receiving payment for the flat that the possession of a fully constructed flat along with basement and surface parking, landscaped lawns, club/ pool, etc. as shown in the brochure at the time of sale, would be handed over to the complainant as soon as construction work is complete i.e., by August 2018.

- XXII. That it is more than 5 years from the date of booking and even the construction of the tower is yet not completed, clearly shows the negligence towards the builder.
- XXIII. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, they are liable to be punished and compensate the complainant.
- XXIV. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondents and much more a smell of playing fraud with the complainant and others is prima facie clear on the part of the respondents which makes them liable to answer the Authority.
- XXV. That there is an apprehension in the mind of the complainant that the respondents have been playing fraud and there is something fishy which respondents are not disclosing to the complainant just to embezzle the hard-earned money of the complainant and other co-owners. Nowadays many builders are being prosecuted by a court of law for siphoning off the funds and scraping the project mischievously. A probe needs to initiate to find out the financial and structural status of the project.
- XXVI. That for the first-time cause of action for the present complaint arose in July 2017, when the builder buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose in August 2018, when the respondent failed to hand over the possession of the flat as per the buyer agreement. Further, the cause of action again arose on various occasions, including on a) November 2018; b) Feb. 2020, c) March 2021 (d) November 2022, (e) January 2023, and many times till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by them that the

possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as the Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

D. Relief sought by the complainant: -

1. The complainant has sought following relief(s):
 - I. To direct the respondent to pay delayed possession interest from the due date of possession interest from the due date of possession till the actual handover of the flat after obtaining OC.
 - II. To direct the respondent no.1 to pay EMI to respondent no.2 till the actual handover the flat and reimburse the Pre-EMI paid by the complainant to respondent no.2
 - III. To direct the respondent no.1. to handover the physical possession of her unit and to execute the conveyance deed for the complainant's unit.
2. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

C. Reply by the respondent no.1.

3. The respondent is contesting the complaint on the following grounds:-
 - i. That the 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 M/s Supertech Ltd. had entered into two joint development agreement's dated 25.04.2014 and dated 26.08.2014.
 - ii. That the complainant along with many other allottees had approached M/s Supertech Ltd., making enquiries about the project and after thorough due diligence and complete information being provided to them had sought to book an apartment in the said project.

- iii. Consequently, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 31.07.2017 with M/s Supertech Ltd. only for an apartment being no. 1402, tower T/26 Canvas, 14th floor, having a super area of 1180 sq.ft. for a total consideration of Rs. 65,39,200/- exclusive of applicable charges and taxes.
- iv. That the Authority vide order dated 29.11.2019 passed in Suo Moto complaint no 5802/2019 had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely "**Hues & Azalia**", to the respondent (**M/s SARV Realtors Pvt.) Ltd.** and M/s. DSC Estate Developer Pvt. Ltd. respectively. The Authority had further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the project instead of M/s. Supertech Ltd. certain important directions as passed by this Hon'ble Authority are as under;
- (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, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd./DSC And other fail to discharge its obligations towards the allottees.***

That in lieu of the said directions passed by this Authority all asset and liabilities have been since transferred in the name of the respondent no. 2.

However, in terms of the said Order, M/s. Supertech Ltd. still remains jointly and severally liable towards the booking/ allotment undertaken by it before the passing of the said Suo Moto Order.

- v. That thereafter the JDA's were cancelled by the consent of the respondent no. 2 and M/s Supertech Limited vide cancellation agreement dated 03.10.2019 and the respondent no. 2 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- vi. That in terms of the said cancellation agreement the respondent no. 2 and M/s Supertech Limited had agreed that as M/s Supertech Ltd. was not able to complete and develop the project as per the timeline given by this Hon'ble Authority and DTCP, therefore the parties had decided to cancel the JDA's vide cancellation agreement.
- vii. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- viii. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.
- ix. That the present complaint further deems to be prima facie dismissed as in terms of the own admission of the complainant the BBA was executed solely with M/s Supertech Ltd. and furthermore, all payments qua the booking were also made to M/s Supertech Ltd. thus, there is no privity of contract nor any payment made to the respondent, thus the present complaint deems to be dismissed on this ground alone.

- x. That as M/s. Supertech Ltd. and the respondent no.2 are jointly and severally liable in terms of the Suo Moto Order passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between the respondent no.2 and M/s. Supertech Ltd. The respondent no. 2 cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.
- xi. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- xii. That the complainant after entering into agreements which clearly specify the rights and obligations of parties cannot wriggle out of its obligations merely on its whim and fancies and more over merely on the ground of financial difficulties without substantiating the said averment. The complainant may be put to strict proof in this regard.
- xiii. As being the regular benefactor through means of wrongful gains, the complainant has strictly failed to abide by the terms of the clause F of the builder buyer's agreement which clearly defines the process of cancellation and loss it can cause to both the buyer and the developer.
- xiv. Without prejudice to the afore said, the delay if at all, has been beyond the control of the respondents and as such extraneous circumstances would be categorized as "Force Majeure and would extend the timeline of handing over the possession of the unit, and completion the project.
- xv. The delay in construction was on account of reasons that cannot be attributed to the respondent. The agreements provide that in case the

developer/respondent delays in delivery of Unit for reasons not attributable to the developer/respondent, then the developer/respondent would be entitled to proportionate extension of time for completion of said project. The relevant clauses which relate to the time for completion, offering possession extension to the said period is "clause 1 under the heading "possession of floor/ apartment" of the agreement. The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.

- xvi. In view of the force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by the respondent for completion of the project is not a delay on account of the respondent for completion of the project.
- xvii. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before August 2018. However, the agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the agreement was to be handed over in and around February 2019. However, the proposed possession date was subject to the force majeure clause.
- xviii. The project got inadvertently delayed owing to the above noted force majeure events. Further, since March, 2020, as owing to the nationwide Govt, imposed lockdown, no construction/ development could take place at site. Owing to the lockdown, the construction labour workers were forced to return to their native villages and thus, even at the unlocking stage no conclusive construction/development could take place at site. Such a long break in construction has put the project many milestones back. However, the respondent has dedicated itself to delivering the projects at the earliest.

- xix. Due to the Covid condition and the its devastating effect on the Indian economy specially the real-estate sector arranging of funds for completion of projects has become an impossible task as the banks and NBFC's have made it difficult for builders to apply for loans for completion of pending projects. However, the respondent undertakes to handover possession of the subject unit at the earliest.
- xx. It is a known fact that the delivery of a project is a dynamic process and heavily dependent on various circumstances and contingencies. In the present case also, the respondent had endeavored to deliver the property within the stipulated time. The respondent earnestly has endeavored to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.
- xxi. It is submitted that the timeline stipulated under the agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent endeavor to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- xxii. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant herein, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. Apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances like:
- i. Implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban

Renewal Mission ("JNNURM"), there was a significant shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/ State Government under NREGA and JNNURM Schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including that of the Answering Respondent herein, fell behind on their construction schedules for this reason amongst others. The said fact can be substantiated by newspaper articles elaborating on the above-mentioned issue of shortage of labour which was hampering the construction projects in the NCR region. This certainly was an unforeseen one that could neither have been anticipated nor prepared for by the Respondent while scheduling their construction activities.

- ii. That such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the project.

That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. Thus, in light of the aforementioned it is most respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.

- xxiii. Anent to the above, it is public knowledge, and several Courts and quasi-judicial forums have taken cognizance of the devastating impact of the

Demonetization of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetization led to systemic operational hindrances in the real estate sector, whereby the Answering Respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetization, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

- xxiv. That the complainant has not come with clean hands before this Hon'ble Forum and have suppressed the true and material facts from this Hon'ble Forum. It would be apposite to note that the Complainant is a mere speculative investor who has no interest in taking possession of the apartment.
- xxv. That the project "HUES" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 04.09.2017. The Authority had issued the said certificate which is valid for a period commencing from 04.09.2017 to 31.12.2021.
- xxvi. That the possession of the said premises was proposed to be delivered by the respondent to the Complainant by July 2018 with an extended grace period of 6 months which comes to an end by December, 2018. The completion of the building is delayed by reason of Covid - 19, non-availability of steel and/or cement or other building materials and/ or water supply or electric power and/ or slow down strike as well as insufficiency of 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. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction work has been stopped for a considerable period of days due to high rise in Pollution in Delhi NCR.

- xxvii. That the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the Answering Respondent is just to complete the project within stipulated time submitted before the HARERA Authority. According to the terms of agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time of final settlement on slab of offer of possession.
- xxviii. That when the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the same could not be granted.
- xxix. 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.

- xxx. 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.
- xxxi. 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 severely hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the respondent was forced to return to their home towns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of *Gajendra Sharma v. UOI & Ors*, as well *Credai MCHI & Anr. v. UOI & Ors*, has taken cognizance of the devastating conditions of the real estate sector, and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event,

which automatically extends the timeline for handing over possession of the apartment.

4. 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

5. 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

6. 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

7. 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.

8. 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.
9. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgment passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."** **SCC Online SC 1044 decided on 11.11.2021** wherein it has been laid down as under:

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

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

F. Findings on objections raised by the respondent no. 1

F.I Objections regarding force majeure.

11. 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 31.07.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be February 2019, which was prior to the effect of Covid-19 on above project could happen. The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and 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."

12. 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 Supertech Ltd. and consequent moratorium against proceedings against Supertech Ltd.

13. Respondent no. 1 has stated that vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as Union Bank of India Versus M/s Supertech Limited, the Hon'ble NCLT has initiated CIRP against Supertech Limited and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 1 is no longer the assets of Supertech Limited and admittedly, respondent no.1 has taken over all assets and liabilities of the project in question in compliance of the direction passed by this Authority vide detailed order dated 29.11.2019 in Suo-Moto complaint. **HARERA/GGM/ 5802/2019.** Respondent no.1 has stated that the MDA was cancelled by consent of Supertech Limited and respondent no.1 vide cancellation agreement dated 03.10.2019. Thereon, respondent no. 1 i.e., SARV Realtors Pvt. Ltd. admittedly took responsibility to develop the project and started marketing and allotting new units under its name. In view of the above, respondent no.1 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., Supertech Limited remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that Supertech Limited & SARV Realtors Pvt. Ltd were jointly and severally liable for the project, no orders can be passed against Supertech Ltd. in the matter at this stage

G. Findings on the relief sought by the complainant.

G.I To direct the respondent to pay delayed possession interest from the due date of possession interest from the due date of possession till the actual handover of the flat after obtaining OC.

G.II To direct the respondent no1. to handover the physical possession of her unit and to execute the conveyance deed for the complainant's unit.

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

15. In the present matter the complainant was allotted unit no. 1402, 14th floor, admeasuring 1180 sq. ft. in the project "Supertech Hues" Sector 68 by the respondent-builder for a sale consideration of Rs.65,39,200/- and he has paid a sum of Rs.35,98,484/-.

16. The complainant intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to Section 18(1) of the Act, which reads as under:

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

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

POSSESSION OF UNIT: -

1. The Possession of the allotted unit shall be given to the Allottee/s by the Company by AUG, 2018. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the Allottee/s and the Allottee/s agrees to strictly abide by the same in this regard."

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

As per clause 1 of the buyer developer agreement, the possession of the allotted

unit was supposed to be offered by the August 2018 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be February 2019.

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

The complainant is seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intends to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.08.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

22. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.85%** by the respondent/ promoter which is the same as is being granted to them in case of delayed possession charges.

24. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of BBA, the possession of the subject unit was to be delivered within stipulated time i.e., by AUG, 2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession was February 2019. The respondent no.1 has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter no.1 to fulfill its obligations and responsibilities as per the agreement to handover the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent no.1 to offer of possession of

the allotted unit to the complainant as per the terms and conditions of the buyers developer agreement dated 31.07.2017 executed between the parties. Further no OC/part OC has been granted to the project.

25. 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/promoter no.1 is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., February 2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
26. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the said respondent has applied for Occupation Certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent no.1 is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent authority.

H. Directions of the authority

27. 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 respondents/promoters no.1 i.e., SARV Realtors PVT. Ltd. is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., February 2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondents are directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining occupation certificate
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- v. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- vi. The respondent shall not charge anything which is not the part of BBA.



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- vii. No directions are being passed in the matter qua M/s Supertech Limited in view of the moratorium imposed under section 14 of the IBC in NCLT case IB-204/ND/2021 titled Union Bank of India versus M/s Supertech Limited.
28. Complaint stands disposed of as well as applications, if any, stands disposed of accordingly.
29. Files be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.08.2025

HARERA
GURUGRAM