

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

Complaint no. : 1755 of 2025
Date of filing : 01.04.2025
Date of First Hearing: 06.08.2025
Date of decision : 09.12.2025

Abhishek Tikmani and Pooja Tikmani

**Both R/o:- L-1002, Iscon Platinum,
Bopal Circle, Ahmedabad- 380058,
Gujarat, India**

Complainants

Versus

M/s Sarv Realtors Pvt. Ltd.

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

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Sh. Kuldeep Kumar Kohli (Advocate)
Sh. Dushyant Tewatia (Advocate)

**Complainants
Respondent**

ORDER

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

A. Unit and project related details

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

Sr. No.	Particulars	Details		
1.	Name of the project	"Supertech Hues", Sector 68, Gurugram, Haryana		
2.	Nature of the project	Group housing project		
3.	DTCP license no.	106 & 107 of 2013 dated 26.10.2013	89 of 2014 dated 08.08.2014	134-136 of 2014 dated 26.08.2014
	Validity of license	25.12.2017	Renewed on 31.03.2023 upto 07.08.2024	Renewed on 27.03.2023 upto 25.08.2024
	Area for which license was granted	13.74 acres	10.25 acres	4.85 acres
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.	DSC Estate Developer Pvt. Ltd.	DSC Estate Developer Pvt. Ltd.
4.	HRERA Registered or not registered	Registered Registration no. 182 of 2017 dated 04.09.2017 (Hues towers A, B, E, F, G, H, M, N, K, T, V, W, O, P, C & D)		
	Registration valid till	31.12.2021		
5.	Booking date	12.10.2013 (Page 33 of complaint)		
6.	Unit no.	1902, 19 th floor, Block G (page 33 of complaint)		
7.	Unit area	1180 sq. ft. (page 33 of complaint)		
8.	Date of buyer developer agreement	16.09.2014 (Page 32 of complaint)		



	executed parties	between
9.	Possession clause	<p><i>"1. The Possession of the allotted unit shall be given to the Buyer(s) by the Developer in 42 months i.e., by April 2017. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months....."</i></p> <p style="text-align: right;"><i>(Emphasis supplied)</i></p> <p>(Page 35 of complaint)</p>
10.	Due date of possession	<p>April 2017 + 6 months = October 2017 (Note: April 2017 + Grace period of 6 months is included being unconditional and unqualified)</p>
11.	Payment Plan	Construction Linked Payment Plan
12.	Total sale consideration as per buyer developer agreement	<p>Rs.88,43,720/-</p> <p>(Page 34 of complaint)</p>
13.	Amount paid by the complainant	<p>Rs.68,38,107/-</p> <p>(As alleged by the complainant on page 30 of complaint)</p>
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- That the complainants booked an apartment in the project of the respondent by submitting an application for provisional allotment of a unit. This was followed by a payment of Rs. 6,00,000/- through cheque Bearing No.- 613918 dated 10.10.2013 towards the booking of said apartment. The respondent thereafter issued an acknowledgement letter dated 12.10.2013 for the same. The complainants made a further payment of Rs. 3,90,000/- through cheque Bearing No.- 10928 dated 12.12.2013, as per the demand of the respondent, and the same was acknowledged on 17.12.2013 by the respondent company as shown in the statement of payment received from the complainants.



- b) That upon receipt of the booking and the subsequent amount from the complainants and on consistent request made by the complainant, the respondent issued an allotment letter bearing unit no.1902, in tower/block-g, 19th floor, admeasuring super area 1180 sq. ft. The unit was booked under the construction link payment plan for total sale consideration of Rs. 88,43,720/-.
- c) That the complainants made a further payment of Rs. 3,59,493/- on 11.09.2014 via RTGS to the respondent for the unit allotted. The respondent issued receipt no.5022653 acknowledging the payment. On the repeated requests of the complainants, almost a year later of booking of the unit, the builder developer agreement was finally executed between the complainants and the respondent on 16.09.2014.
- d) That as per clause 1 of 'possession of the unit' in the agreement, possession of the allotted unit was to be given to the complainants by the respondent within 42 months i.e. by April, 2017, of entering into the agreement. Same has been reiterated in clause 24 of the 'Terms and Conditions' of the agreement that possession is to be delivered by April 2017. However, no possession is delivered on the agreed date as mentioned in the agreement. It is submitted that there has been no event of unforeseen circumstances or force majeure which may have delayed delivery of possession.
- e) That the complainants abiding by the terms and conditions of the agreement, made timely payments of instalments and other dues as and whenever demand was raised by the respondent. Following the construction linked payment plan demand was raised by the respondent for the next instalment and the complainants having faith and trust on the Respondents, deposited Rs. 68,38,107/- against the total consideration

as per the demands raised by the respondents and the schedule of payment.

- f) That on 07.12.2019, the complainants received a demand letter from the respondent demanding Rs. 9,95,846/- which included taxes and all other payments due till completion of 18th floor roof slab. The respondent raised the demand without achieving the particular stage of development and on contesting the same and non-payment of demand by the complainants on the ground of non-completion of development as mentioned in the demand letter, the respondent arbitrarily started imposing the interest on that demand and pressurised the complainant to pay the same. The respondent again in January approached the complainants and threatened and pressurized them to make the payment towards the demands raised in order to save the unit from being cancelled. The respondent further mentioned that if the complainants make the advance payment for the instalment which will be due on completion of the 21st floor roof slab, then the interest imposed upon the complainants would be waived off.
- g) That due to the fear of dire consequences of non-payment of demand illegally and dishonestly raised by the respondent, the complainants made a payment of amount of Rs. 9,94,846/- as demanded by the respondent along with the advance payment of Rs. 6,33,960/- on 31.01.2020 for 21st roof slab. The complainants visited the project site only to find out the utter shocking state of the progress in construction of the unit. Though the date of actual delivery of possession was April 2017, even after more than eight years have lapsed the project is nowhere near completion and in all likelihood will not be completed anytime soon. The amount already paid is almost 74% of the total consideration.

h) That the respondent forcefully and arbitrarily sent an addendum to the allotment letter, whereby claiming that the payment scheduled as mentioned on the page no. 3 & 4 of the allotment letter shall be treated as cancelled and further claimed that any interest on the delay payments prior to the special payment plan be paid on the signing of the addendum to the allotment letter. It is further claimed by the respondent through the alleged addendum to the allotment letter that the possession shall be offered to the complainants on or before December 2025. That vide the said one sided addendum to the allotment letter the respondent in a dominant manner has changed the payment plan and forcing the complainants to pay more amounts despite of complainant having made the entire payment against the unit. The respondent through statement of dues attached to the addendum to the allotment letter dated 27.02.2025 is illegally raising a demand of Rs. 20,24,902.61/- which is illegal and invalid and is forceful tactics of the respondent in order to harass the complainant after already usurping huge amounts without even handing over of the possession at this stage.

i) That the complainants has not been compensated with even a penny till date by the respondent for the delay in delivery. As per clause 24, the respondent was supposed to compensate the buyer with a meagre rate of 5.00/- per sq. ft of super area of the unit per month for any delay in handing over the possession of the unit beyond the given period.

j) That the Buyer Developer Agreement is biased and one sided. It does not specify anywhere that in case the Respondent Company fails to deliver the timely possession of the unit, The Respondent has nowhere mentioned any remedial measures to be taken in case of deficiency or

failure of services. Therefore, this agreement is totally unfair and one sided as per section 18 of the Act, 2016.

k) That inordinate delay in handing over possession of the unit clearly amounts to deficiency of service on account of the respondent and the respondent is in violation of the above-mentioned provisions of the Rera Act. Hence, the complainants are seeking delay possession charges along with handing over of possession of the unit post obtaining the occupation certificate from the competent authority as the complainants have been unnecessarily subjected to mental and financial harassment by the respondent by illegally demanding money when the project is nowhere near completion. Hence the present relief is sought by the complainants as per section 18 of Real Estate (Regulation and Development) Act, 2016.

D. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
 - I. Direct the respondent to pay delay compensation charges to the complainants for the inordinate delay on the amount paid in handing over of the possession to the complainants in terms of the agreement.
 - II. Direct the respondent to handover the physical possession post obtaining the occupation certificate from the competent authority.
 - III. Direct the respondent to execute sale deed/conveyance deed post handing over the possession to the complainants.
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.
- E. Reply by the respondent.**
6. The respondent is contesting the complaint on the following grounds:-

- i. That the respondent was issued license bearing no's 106 and 107 dated 26.12.2013 and license no's 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent no.2 and M/s Supertech Ltd. had entered into two joint development agreements dated 25.04.2014 and 26.08.2014.
- ii. That the complainant along with many other allottees had approached M/s Supertech Ltd., making enquiries about the project and after thorough due diligence and complete information being provided to them had sought to book an apartment in the said project.
- iii. Consequently, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 16.09.2014 for an apartment being no. 1902, tower G, 19th floor, having a super area of 1180 sq. ft. for a total consideration of Rs.88,43,720/- 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 Authority are as under-

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

B(v) All the Assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. ***However, even after the rectification, Supertech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd./DSC And other fail to discharge its obligations towards the allottees.***

That in lieu of the said directions passed by this Authority all asset and liabilities have been since transferred in the name of the respondent no. 2. However, in terms of the said Order, M/s. Supertech Ltd. still remains jointly and severally liable towards the booking/ allotment undertaken by it before the passing of the said Suo Moto Order.

- v. That thereafter the JDA's were cancelled by the consent of the respondent no. 2 and M/s Supertech Limited vide cancellation agreement dated 03.10.2019 and the respondent no. 2 from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- vi. That in terms of the said cancellation agreement the respondent no. 2 and M/s Supertech Limited had agreed that as M/s Supertech Ltd. was not able to complete and develop the project as per the timeline given by this Hon'ble Authority and DTCP, therefore the parties had decided to cancel the JDA's vide cancellation agreement.
- vii. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition.

- viii. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.
- ix. That the present complaint further deems to be *prima facie* dismissed or adjourned *sine die* as respondent no.1, i.e., M/s Supertech Ltd. is undergoing corporate insolvency resolution process and thus, all matters like the present one in which M/s. Supertech Ltd. is a party deem to adjourned *sine die* or dismissed in lieu of the moratorium imposed upon M/s. Supertech Ltd. under section 14 of the IBC, 2016.
- x. That as M/s. Supertech Ltd. and the respondent no.2 are jointly and severally liable in terms of the *Suo Moto Order* passed by this Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between the respondent no.2 and M/s. Supertech Ltd. The respondent no.2 cannot be made wholly liable for allotments undertaken and monies/sale consideration received by M/s. Supertech Ltd.
- xi. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The bare reading of the complaint does not disclose any cause of action in favor of the complainant.
- xii. Despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant herein, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. Apart from the defaults on the part of the allottees, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances like:



- i. Implementation of social schemes like National Rural Employment Guarantee Act ("NREGA") and Jawaharlal Nehru National Urban Renewal Mission ("JNNURM"), there was a significant shortage of labor/ workforce in the real estate market as the available labor 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 labor 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 labor 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 labor, 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.
- xiii. 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.

xiv. 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 laborers 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.

xv. 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.

xvi. 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.

xvii. That the possession of the said premises was proposed to be delivered by the respondent to the Complainant by July 2018 with an extended grace period of 6 months which comes to an end by December 2018. The completion of the building is delayed by reason of Covid - 19, non-availability of steel and/or cement or other building materials and/ or water supply or electric power and/ or slow down strike as well as



insufficiency of labor force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project delayed, to the allottees. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority; the construction was I has been stopped for a considerable period of days due to high rise in Pollution in Delhi NCR.

- xviii. That the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the Answering Respondent is just to complete the project within stipulated time submitted before the HRERA Authority. According to the terms of agreement also it is mentioned that all the amount of delay possession will be completely paid/ adjusted to the complainant at the time of final settlement on slab of offer of possession.
- xix. 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.
- xx. 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.

xxi. 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.

xxii. 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 labor 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. 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

7. 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

8. 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

9. 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.

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

F. Findings on objections raised by the respondent

F.I Objection regarding CIRP against "Supertech Ltd." and consequent moratorium against proceedings against "Supertech Ltd."

11. The respondent 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 imposed moratorium under Section 14 of the IBC, 2016. The Authority observes that the said project in question is no longer the asset of "Supertech Limited" and admittedly, respondent 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 has stated that the MDA was cancelled by consent of "Supertech Limited" and respondent vide cancellation agreement dated 03.10.2019. Thereon, respondent 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 remains squarely responsible for the performance of the obligations of promoter in the present matter. So far as the issue of moratorium is concerned, the projects Hues & Azalia stand excluded from the CIRP in terms of affidavit dated 19.04.2024 filed by SH. Hitesh Goel, IRP for M/s Supertech Limited. However, it has been clarified that the corporate debtor i.e., Supertech Limited remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that Supertech Limited & SARV Realtors Pvt. Ltd were jointly and severally liable for the project, no orders can be passed against Supertech Ltd. in the matter at this stage.

F.II Objections regarding force majeure.

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

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

13. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottee may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take care of unforeseen eventualities. Therefore, no further grace period is warranted in account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to pay delay compensation charges to the complainants for the inordinate delay on the amount paid in handing over of the possession to the complainants in terms of the agreement.

G.II Direct the respondent to handover the physical possession post obtaining the occupation certificate from the competent authority.

G.III Direct the respondent to execute sale deed/conveyance deed post handing over the possession to the complainants.

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

15. In the present matter the complainants were allotted unit no. 1902, 19th floor, Block G, admeasuring 1180 sq. ft. in the project "Supertech Hues" situated at Sector 68, Gurugram by the respondent-builder for a sale consideration of Rs.88,43,720/- and they have paid a sum of Rs.68,38,107/- against the allotment of the said unit.

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

"Section 18: - Return of amount and compensation

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

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

(Emphasis supplied)

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

"POSSESSION OF UNIT: -

1. The Possession of the allotted unit shall be given to shall be given to the Buyer(s) by the Developer in 42 months i.e., by April

2017. 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 April 2017 with a grace period of 6(six) months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be October 2019.

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

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

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

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

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

20. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable

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

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., 09.12.2025 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 complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/ promoter which is the same as is being granted to them in case of delayed possession charges.
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 April, 2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession was October 2017. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent to fulfil its obligations and responsibilities as per the agreement to handover the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 16.09.2014 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 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., October 2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
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 favour of the complainants. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the said respondent has applied for Occupation Certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent no.2 is directed to handover possession of

the flat/unit and execute conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent authority.

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:

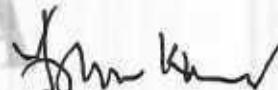
- I. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., October 2017 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing 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, 2017.
- II. The respondent is directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining occupation certificate from the competent authority.
- III. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as

per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

- V. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per Rule 16(2) of the Rules, *ibid*.
- VI. The respondent shall not charge anything from the complainants which is not the part of BBA.
- 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.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:09.12.2025