



Complaint No. 4017 of 2025

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM

Complaint no.: 4017 of 2025
Date of filing: 08.08.2025
Date of decision: 03.12.2025

Naresh Chander Datta

R/o: - 1390, Sector-D, Pocket-1, Vasant
Kunj, Delhi-110070

Complainant

Versus

1. M/s Supertech Limited
2. M/s Sarv Realtors Pvt. Ltd.
3. M/s DSC Estates Pvt. Ltd.

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

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Kuldeep Kumar Kohli
Sh. Bhrigu Dhami
Sh. Dushyant Tewatia

Counsel for Complainant
Counsel for Respondent no.1
Counsel for Respondent no.2 and 3

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	16.10.2013 (Page 37 of complaint)		
	Unit no.	G1103, 11 th floor, Block G (page 37 of complaint)		
	Unit area	1180 sq. ft. (page 37 of complaint)		
	Date of buyer developer agreement executed between parties	11.09.2015 (Page 37 of complaint)		

10.	Possession clause	<p>24.</p> <p><i>"The Possession of the unit shall be given by JULY 2018 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottees @ Rs.5.00/- per sq. ft. of super area of the unit per month for any delay in handing over of possession of the unit beyond the give period plus the grace period of 6 months and upto the offer letter of possession or actual physical possession whichever is earlier.....</i></p> <p><i>(Emphasis supplied)</i></p> <p>(Page 44 of complaint)</p>
11.	Due date of possession	July 2018
12.	Total sale consideration as per buyer developer agreement	Rs.88,29,560/- (Page 38 of complaint)
13.	Amount paid by the complainant	Rs.27,32,292/- (As per payment receipts page 29-34 of complainant)
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 Respondent no.1 planned and decided to develop a Group Housing Complex known as 'Supertech Hues' which claimed to comprise of multi-storied apartments, residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in the revenue estate of Village Badshahpur in Sector 68, Tehsil and District Gurugram, Haryana. Respondent no.1 also claimed that the DTCP, Haryana had granted license bearing no. 106 and 107 of 2013 dated 26.12.2013 for development of a group housing complex.
 - That the Complainant received a marketing call from the office of Respondent No.1 in the month of July, 2013 for booking in residential

project of the respondent, 'Supertech Hues' situated at Sector 68, Gurugram. The Complainant had also been attracted towards the aforesaid project on account of publicity given by the Respondent No.1 through various means like publishing various brochures, posters, advertisements etc. The Complainant visited the sales gallery and consulted with the marketing staff of the Respondent No.1. The marketing staff of the Respondent No.1 showed a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the Respondent No.1 in their project. The marketing staff of Respondent No.1 also assured timely delivery of the unit.

- III. That the Complainant induced by the assurances and representations made by the Respondent No.1, decided to book a residential unit in the project of Respondent No.1 as the Complainant required the same in a time bound manner for his own use. This fact was also specifically brought to the knowledge of the officials of Respondent No.1 who confirmed that the possession of the residential unit to be allotted to the complainant would be positively handed over within the agreed time frame. The Complainant signed several blank and printed papers at the instance of Respondent No.1 who obtained the same on the ground that the same were required for completing the booking formalities. The Complainant was not given chance to read or understand the said documents and he signed and completed the formalities as desired by Respondent No.1. Furthermore, it was assured by the Respondent No.1 at the time of booking that the total sale consideration of the unit to be allotted to the Complainant would be Rs.88,29,560/- . It was further represented by Respondent No.1 at the time of booking that the payment plan of the said unit would be 'Possession Link Payment plan'

- IV. That the Complainant continued to make the payment towards the sale consideration amount in accordance with the booking made by the Complainant as and when demanded by Respondent No.1. The Complainant, thus, made the payment of Rs.27,32,292/- out of the total sale consideration amount strictly as per the terms of the allotment and based on the demands raised by Respondent No.1.
- V. That Respondent No.1 vide the said receipts informed the Complainant about allotment of a unit bearing number G-1103 in Tower G ,11th Floor having a super area of 1190 sq. ft. in the said project of the Respondents.
- VI. That, Respondent No.1 failed to execute the Buyer's Agreement with the Complainant despite lapse of more than two years from the date of booking, the Complainant visited the office of Respondent No.1 numerous times to enquire about the construction status and execution of the Agreement in question. Respondent No.1 at each such visit continued to assure the Complainant that the execution of the Buyer's Agreement would take some more time and Respondent No.1 would share the copy of balanced Agreement with terms favouring the Complainant as well and that no illegality whatsoever would be committed by Respondent No.1 in its dealings with the Complainant. Since, the Complainant had made payment of a substantial amount, the Complainant had no other option but to believe the said representations of Respondent No.1.
- VII. That finally after a considerable delay, a copy of the Buyer Developer Agreement was sent to the Complainant, which was a wholly one-sided document containing totally unilateral, arbitrary, one sided and legally untenable terms favoring the Respondent No.1 and was totally against the interest of the purchaser, including the Complainant herein.

- VIII. That the complainant making the delay in the payment of instalments, respondent no.1 is shown to be entitled to charge interest @ 2% per month (24% per annum) to be compounded quarterly, the complainant is shown to be only entitled to a meagre amount of Rs.5/- per sq. ft. per month of the super area of the apartment for the first year of delay in offering the possession of the apartment beyond the period stated by the respondent.
- IX. That the above stated provisions of the buyer developer agreement besides other similar one-sided provisions are on the face of it highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The compensation to be offered to the complainant, in case of default on the part of respondent no.1, has deliberately been formulated to the detriment of the complainant and the same is illegal and unsustainable.
- X. That the complainant made vocal his objections to the arbitrary and unilateral clauses of the buyer developer agreement to respondent no.1. The complainant repeatedly requested respondent no.1 for execution of a buyer developer agreement with balanced terms. However, during such discussions, respondent no.1 summarily rejected the bonafide request of the complainant and stated that the agreement terms are non-negotiable and will remain as they are. respondent no.1/promoter refused to amend or change any term of the pre-printed Buyer Developer Agreement and further threatened the complainant to forfeit the previous amounts paid by him if further payments are not made. Since the complainant had already parted with a considerable amount, he was left with no other option but to accept the lopsided and one-sided terms of the buyer developer agreement. The complainant was made to sign the dotted line by adopting such tactics by respondent no.1. Hence the buyer developer agreement dated 11.09.2015 was executed.

- XI. That despite having made the buyer developer agreement dated 11.09.2015 containing terms very much favourable as per the wishes of respondent no.1, still respondent No.1 miserably failed to abide by its obligations thereunder. Respondent no.1/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the flat within the promised time frame, which in the present case has been delayed for an extremely long period of time. The failure of respondent no.1 and the fraud played by it is writ large. As per the terms and conditions of the buyer development agreement, the due date to handover the possession of the allotted unit has thus elapsed way back in July, 2018.
- XII. That the complainant kept on requesting respondent no.1 to update him about the status of the construction of the project and the time period within which it will offer the possession of the allotted unit to him. However, respondent no.1 failed to give any satisfactory response or provide any definite timeline to handover the possession of the unit to the complainant. Rather, respondent no.1 miserably failed to issue any payment demand for the period of six years from the date of issuance of last payment demand for the simple reason that respondent no.1 has not completed the construction within the agreed time frame. The payment demand raised 'within 60 days of booking' was complied with by the complainant and was paid by the complainant within the time period. The next payment demands at the stage of 'on completion of superstructure' and 'offer of possession' were to be issued by respondent no.1 strictly as per the mutually agreed payment plan and terms of the allotment. However, respondent no.1 in complete failure on its part has not even completed the construction of the superstructure

as otherwise the payment demand for the same would have been raised by respondent no.1 to the complainant.

- XIII. That the complainant had duly complied with all payment obligations under the buyer developer agreement and made timely payments as per the agreed upon payment schedule. The complainant had paid a sum of Rs.27,32,292/- out of the total sale consideration of Rs.88,29,560/- as evident from the receipts attached along with the complaint. The Complainant discharged each instalment in accordance with the milestones mentioned in the payment plan annexed to the Agreement. Moreover, the Complainant was at all times ready and willing to pay the next due instalment upon proper intimation and upon the construction reaching the requisite stage, as per the terms of the Agreement.
- XIV. That the Complainant visited the project site of Respondent no.1 in the month of January, 2019 to enquire about the construction status and handing over of the unit in question. The Complainant was finally allowed to inspect the project site and he was in complete shock to see that the assurances of Respondent No.1 were not at all corresponding to the actual ground reality. It was evident that Respondent No.1 had demanded the payment only to somehow illegally extract the amount from the Complainant when in reality, no such development had even taken place. It is very important and pertinent to mention herein that the Complainant always wanted to inspect the location of the allotted unit and had requested the representatives of Respondent No.1 several times in meetings and through telephonic conversations to allow him to do the same. However, Respondent No.1 kept on making excuses and did not allow the Complainant to inspect the location of the unit in question.

- XV. By the meantime, the Complainant understood that the representations made by Respondent No.1 at the time of booking of handing over the physical possession of the unit were nothing but misleading the construction of the unit was nowhere near completion. The Complainant made vocal his objections to the arbitrary and wrong acts of respondent no.1. The Complainant again visited the office of respondent No.1 and inquired about the construction status. respondent no.1/promoter has even failed to perform the most fundamental obligation of the agreement which was to hand over the possession of the said unit within the promised time frame, which in the present case has been delayed for an extremely long period of time. The failure of the respondents and the fraud played by them is writ large.
- XVI. That since the time period to handover the possession stated by respondent no.1 in the buyer developer agreement executed between the complainant and respondent no.1 had lapsed, and also on account of non-completion of the project, the Complainant requested the Respondent No.1 telephonically, and by visiting the office of the Respondent No.1 to update him about the date of handing over of the possession. The representatives of the Respondent No.1 assured the Complainant that the possession of the unit would be handed over to him very shortly as the construction was almost over. The Respondent No.1 has continuously been misleading the allottees including the Complainant by giving incorrect information and timelines within which it was to hand over the possession of the unit to the Complainant. At the time, respondent no.1 stated that on account of the order passed by the Authority in the suo-moto proceedings, the liabilities of the projects also stands transferred to respondents no.2 and 3. The Respondents/promoter had represented and warranted at the time of

booking that it would deliver the unit of the complainant to him in a timely manner. However, the failure of the respondent companies has resulted in serious consequences being borne by the complainant.

- XVII. There has been virtually no progress, and the construction activity are lying suspended since long. Possession has till date not been issued by respondents to the complainant because the respondents failed to complete the structure till that stage. The fact that no intimation regarding the application for the grant of the occupation certificate was given by the respondents to the complainant speaks about the volume of illegalities and deficiencies on the part of the respondents. There is inordinate delay in developing the project well beyond what was promised and assured to the complainant.
- XVIII. That the respondents have committed various acts of omission and commission by making incorrect and false statements at the time of booking. There is an inordinate delay of 7 years calculated up to August, 2025 and till date the possession of the allotted unit has not been offered by the respondents to the complainant. The non-completion of the project is not attributable to any circumstance except the deliberate lethargy, negligence and unfair trade practices adopted by the respondents/promoter. The respondents have been brushing aside all the requisite norms and stipulations and has accumulated huge amount of hard-earned money of various buyers in the project including the complainant and are unconcerned about the possession of the unit despite repeated assurances.
- XIX. That the respondents have misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the

respondents were least bothered about the timely finishing of the project and delivery of possession of the unit in question to the complainant as per the terms of the buyer developer agreement. The respondents have deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the Complainant. It is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. The high headedness of the Respondents is an illustration of how the respondents conducts its business which is only to maximize the profits with no concern to the buyers.

- XX. That the complainant has been duped of his hard-earned money paid to the respondents regarding the unit in question. The complainant is no longer interested in continuing with the allotment in the said project and seeks refund of the amount. The complainant requested the respondents to refund the hard-earned money of the complainant along with interest but the respondents have been dilly-dallying the matter. The complainant has been running from pillar to post and has been mentally and financially harassed by the conduct of the respondent.
- XXI. That the respondents have taken undue advantage of the helplessness of the Complainant and have further exploited its dominant position. It would not be out of place to mention that the Complainant was always ready and willing to perform their part of the contract. Therefore, it is evident from the entire sequence of events that no illegality or acts can be attributed to the Complainant. The Respondents cannot be permitted to take advantage of its own illegal acts.
- XXII. That respondents are enjoying the valuable amount of consideration paid by the complainant out of his hard-earned money and the complainant realizing the same demanded refund of the total amount along with interest

from the respondents/promoter. But a week ago, the Respondents have in complete defiance of its obligations refused to remit the refund of the principal amount along with interest leaving him with no other option but to file the present complaint. Since Respondents miserably failed in its obligations, hence the Complainant is entitled to refund of the amount paid along with interest at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017

D. Relief sought by the complainants: -

4. The complainants have sought following relief(s):
 - I. Refund the total amount paid by the Complainant along with the interest at the rate prescribed under RERA Act, 2016 and Haryana RERA Rules, 2017 to be calculated from the date of payment till the date of realization of the amount.
 - II. To not terminate the allotment or/and create third party rights till the time, the principal amount along with interest is paid to the Complainant.
 - III. Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the Complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the act to plead guilty or not to plead guilty.
6. During the course of proceedings dated 03.12.2025, the learned counsel for respondent no.3 i.e., "M/s DSC Estates Pvt. Ltd." prayed for deletion of its name from the array of parties since the present complaint concerns the project 'Hues', respondent no. 3 bears no liability in this matter. The Authority observes that the name of respondent no.3 is deleted from the array of parties

in view of the Suo-Motu proceedings dated 29.11.2019 in Complaint No. HARERA/GGM/5802/2019, wherein "DSC Estates Pvt. Ltd." expressly admitted its responsibility for the development of the sole project 'Azalia' and commenced marketing and allotment of new units under its own name.

C. Reply by the respondent no.2.

7. 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 respectively.
- ii. That the complainant along with many other allottees had approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book a unit(s) in the said project. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said unit, the complainant executed the buyer developer agreement dated 13.01.2017 with M/s. Supertech Ltd. for a unit bearing number G/1201, 12th floor, having a super area of 1180 sq. ft. (approx.) for a total consideration of Rs. 43,83,042/-.
- iii. That as per clause 1 of the agreement, timely payment of the instalments was the essence of the agreement. As per clause 24 of the agreement, the possession of the unit was to be given by March 2019 with an additional grace period of 6 months.
- 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:

- a. 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. All the assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. However, even after the rectification, Superech Ltd. will continue to remain jointly responsible for the units marketed and sold by it and shall be severally responsible if SARV Realtors Pvt. Ltd. / DSC and others fail to discharge its obligations towards the allottees
- v. That in lieu of the said directions passed by the Authority all asset and liabilities have been since transferred in the name of the respondent company. 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.
- vi. That thereafter the said JDA's were cancelled by the consent of both parties vide cancellation agreement dated 03.10.2019 and the respondent from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- vii. That in terms of the said cancellation agreement the respondent and M/s Supertech Ltd. had agreed that as M/s Supertech Ltd. was not able to

complete and develop the project as per the timeline given by the Authority and DTCP, therefore the parties had decided to cancel the JDA's vide the said Cancellation agreement.

- viii. 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.
- ix. It would be apposite to note 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.
- x. The complaint further deems to be *prima facie* dismissed qua the respondent 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 complaint deems to be dismissed on this ground alone.
- xi. That as M/s. Supertech Ltd. and the respondent are jointly and severally liable in terms of the *Suo Moto* Order passed by the Authority for the project in question, thus the present matter cannot proceed further until the said liability qua the allottees is not bifurcated between the respondent and M/s. Supertech Ltd.
- xii. 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.

- xiii. The delay in construction was on account of reasons that cannot be attributed to the respondent. The buyers' agreements provide that in case the respondent delays in delivery of unit for reasons not attributable to the respondent, then the respondent shall be entitled to proportionate extension of time for completion of said project. The relevant clause, i.e. "clause 43 under the heading "general terms and conditions" of the "agreement". The respondent seeks to rely on the relevant clauses of the agreement at the time of arguments in this regard.
- xiv. That 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, covid - 19, shortage of Labour, shortage of raw materials, stoppage of works due to court orders, etc. for completion of the project is not a delay on account of the respondent for completion of the project.
- xv. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before April, 2017. However, the buyers agreement duly provides for extension period of 6 months over and above the said date. Thus, the possession in strict terms of the buyer's agreement was to be handed over in and around October, 2017. However, the said date was subject to the force majeure clause, i.e. "Clause 43". 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 endeavoured to deliver the property within the stipulated time. The respondent earnestly has endeavoured to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.

- xvi. That the timeline stipulated under the buyers agreements was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- xvii. That despite the best efforts of the respondent to handover timely possession of the residential unit booked by the complainant, the respondent could not do so due to certain limitations, reasons and circumstances beyond the control of the respondent. Apart from the defaults on the part of the allottees, like the complainant, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondent
- a. Due to active implementation of social schemes like National Rural Employment Guarantee Act and Jawaharlal Nehru National Urban Renewal Mission, 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 government under NREGA and JNNURM schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including that of the respondent, fell behind on their construction schedules for the reason amount others. The said fact can be substantiated by newspaper articles elaborating on the above mentioned issue of shortage of labour which was hampering the construction projects in the NCR region. This certainly was an

unforeseen one that could neither have been anticipated nor prepared for by the respondent while scheduling their construction activities. Due to paucity of labour and vast difference between demand and supply, the respondent faced several difficulties including but not limited to labour disputes. All of these factors contributed in delay that reshuffled, resulting into delay of the project.

b. That the respondent 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. The respondent cannot be held solely responsible for things that are not in control of the respondent.

xviii. That there are several requirements that must be met in order for the force majeure clause to take effect in a construction contract which are reproduced herein under:

- a. The event must be beyond the control of the parties.
- b. The event either precludes or postpones performance under the contract.
- c. The triggering event makes performance under the contract more problematic or more expensive.
- d. The claiming party wasn't at fault or negligent.
- e. The party wanting to trigger the force majeure clause has acted diligently to try to mitigate the event from occurring

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

xx. That the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or

result of the negligence or malfeasance of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. The delay in construction, if any, is attributed to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.

- xxi. Anent to the above, it is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months.
 - xxii. That the complainants have not come with clean hands before the form and have suppressed the true and material facts from the Forum. It would be apposite to note that the complainants are a mere speculative investor who has no interest in taking possession of the apartment. In view thereof, this complaint is liable to be dismissed at the threshold
8. All other averments made in the complaint were denied in toto.
 9. 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

10. 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

11. 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

12. 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.

13. 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 no. 2

F.I Objection regarding CIRP against respondent no.1 i.e., Supertech Ltd. and consequent moratorium against proceedings against Supertech Ltd.

14. The respondent no. 1 has stated that vide order dated 25.03.2022 passed by the Hon'ble NCLT, New Delhi Bench in case titled as Union Bank of India Versus M/s Supertech Limited, the Hon'ble NCLT has initiated CIRP 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

F.II Objections regarding force majeure.

15. 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."

16. 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 Refund the total amount paid by the Complainant along with the interest at the rate prescribed under RERA Act, 2016 and Haryana RERA Rules, 2017 to be calculated from the date of payment till the date of realization of the amount.

G.II To not terminate the allotment or/and create third party rights till the time, the principal amount along with interest is paid to the Complainant.

G.III Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act, 2016 and the same be ordered to be paid to the Complainant.

17. 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.
18. In the present complaint, the complainant intend to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest. Section 18(1) of the Act is reproduced below for ready reference:-

"Section 18: - Return of amount and compensation

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

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

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

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

(Emphasis supplied)

19. Clause 24 of the buyer's agreement talks about handing over the possession of the unit to the complainant, the relevant portion is reproduced as under:-

"POSSESSION OF UNIT: -

24. The Possession of the unit shall be given by **JULY 2018 or extended period as permitted by the agreement**. However, the company hereby agrees to compensate the Allottees @ Rs.5.00/- per sq. ft. of super area of the unit per month for any delay in handing over of possession of the unit beyond the given period plus the grace period of 6 months and upto the offer letter of possession or actual physical possession whichever is earlier....."

[Emphasis Supplied]

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

As per clause 24 of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the 31.07.2018. Therefore, the due date of possession comes out to be 31.07.2018.

21. Admissibility of refund along with prescribed rate of interest: The complainant is seeking refund the amount paid by them along with interest prescribed rate of interest. The allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided 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.

22. 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.

23. 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., 03.12.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
24. 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;"*

25. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 24 of the agreement executed between the parties on 11.09.2015, the due date of handing over possession is 31.07.2018.
26. It is pertinent to mention that neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottees by the respondent. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainants have paid almost 65% of

the sale consideration. Further, the authority observes that there is no document placed on record from which it can be ascertained whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned facts, the allottees intends to withdraw from the project and are well within the right to do the same in view of Section 18(1) of the Act, 2016.

27. Further, the Occupation Certificate/Completion Certificate of the project where the unit is situated has still not been obtained by the respondent/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021**

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

28. Moreover, the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022. observed as under:

"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the

project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

29. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the respondent is liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
30. 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 no.2 is established. As such, the complainant is entitled to refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules, 2017 ibid.

H. Directions of the Authority.

31. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- I. The respondent no.2 is directed to refund the amount received by it i.e., Rs.27,32,292/- from the complainant along with interest at the rate of 10.85% p.a. as prescribed under Rule 15 of the Haryana

Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.

- II. A period of 90 days is given to the respondent no.2 to comply with the directions given in this order and failing which legal consequences would follow.
 - III. The respondent no.2 is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
 - IV. No directions are being issued in the matter qua respondent no. 1 i.e., "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."
32. Complaint stands disposed of as well as applications, if any, stands disposed of accordingly.
33. Files be consigned to registry.

Dated: 03.12.2025


Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram