

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

**Complaint no.:** 1926 of 2025  
**Date of filing of complaint:** 11.04.2025  
**Date of decision:** 22.01.2026

Shri Piyush Saggi through its Power of Attorney Holder  
Shri Suresh Saggi  
**Resident of:** 33A, Neelkanth apartments, 46 IP  
Extension, Patparganj, Delhi-110092

**Complainant**

Versus

M/s Sarv Realtors Pvt. Ltd.  
**Regd. office:** 1114, 11<sup>th</sup> floor, Hemkunt Chambers, 89,  
Nehru Place, New Delhi-110019

**Respondent**

**CORAM:**

Shri Phool Singh Saini

**Member**

**APPEARANCE:**

Shri Garvit Gupta (Advocate)  
Shri Dushyant Tewatia (Advocate)

**Complainant  
Respondent**

**ORDER**

1. That the present complaint has been filed by the complainant-allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se parties.
  - A. **Project and unit related details**
2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Supertech Hues" Sector-68, Gurugram
2.	Nature of the project	Residential
3.	DTCP license no.	106 and 107 of 2013 dated 26.10.2013 valid up to 25.12.2017 for 13.74 acres 89 of 2014 dated 08.08.2014 valid up to 07.08.2024 for 10.25 acres 134-136 of 2014 dated 26.08.2014 valid up to 25.08.2024 for 4.85 acres
4.	HRERA Registered or not registered	Registered Registration no. 182 of 2017 dated 04.09.2017 valid up to 31.12.2021 [Hues towers A, B, E, F, G, H, M, N, K, T, V, V, W, O, P, C and D]
5.	Unit no.	0201, 2 <sup>nd</sup> floor, in Tower- G/G (Page no. 102 of complaint)
	Area admeasuring	1258 sq. ft. (super area) (Page no. 102 of complaint)
6.	Date of builder buyer agreement	04.11.2023 (Page no. 101 of complaint)
7.	Possession clause	<b><i>E. 23. Possession of Unit</i></b> <b><i>The possession of the Unit shall be given by MAY, 2024 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @ Rs.5.00/- (Five rupees Only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the Offer Letter of possession or actual physical possession whichever is earlier. ....</i></b> <b><i>(Emphasis supplied)</i></b>
8.	Due date of possession	30.11.2024 (As per possession clause 30.05.2024 + unqualified grace period of 6 months)
9.	Total sale consideration	Rs.93,77,080/- (As per cost of unit mentioned in the BBA at page no. 103 of complaint)
10.	Total amount paid by the complainant	Rs.82,81,976/- (As per customer statement at page no. 119 of complaint)

11.	Occupation certificate	Not obtained
12.	Offer of possession	Not offered

**B. Facts of the complaint**

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

- a) That M/s Supertech Limited, offered for sale units in a Group Housing Project 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 at Revenue Estate, Village Badshahpur, Sector 68, Gurugram, Haryana. M/s Supertech Limited had also claimed that the DTCP, Haryana had granted license bearing no. 106 of 2013 and 107 of 2013 dated 26.12.2013 in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
- b) That the complainant received a marketing call from the office of M/s Supertech Limited in the month of July, 2013 for booking in the said group housing project of M/s Supertech Limited. The complainant had also been attracted towards the aforesaid project on account of publicity given by M/s Supertech Limited through various means like various brochures, posters, advertisements etc.
- c) That the complainant at the time of booking paid a sum of Rs.7,00,000/- vide cheque no. 000719 dated 10.10.2013 to M/s Supertech Limited. Another sum of Rs.4,64,240/- was paid by the complainant to M/s Supertech Limited vide cheque no. 000751 on 20.12.2013. The said payments were acknowledged by M/s Supertech Limited vide its receipts dated 27.01.2014. Vide the said receipts, a unit bearing no. R0380W00104/FLAT #0104 having super area of 1430 sq. ft for a total sale



consideration of Rs.1,16,11,080/- was allotted to the complainant in the said project of M/s Supertech Limited.

- d) Thereafter, a copy of the buyer developer agreement was shared with the complainant by M/s Supertech Limited which was wholly a one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favouring the said company and was totally against the interest of the purchaser, including the complainant herein. However, since the complainant had already paid a substantial sum towards the said unit, he had no other option but to accept the said agreement and thus the said agreement dated 20.11.2014 was executed between the complainant and M/s Supertech Limited. That as per clause 24 of the said executed agreement, the possession of the said allotted flat was to be handed over to the complainant by July, 2018. It is pertinent to mention herein that the agreement in question was executed for unit no. W-104 in the project 'Supertech Hues'.
- e) That M/s Supertech Limited also persuaded the complainant to avail a home loan specifically from HDFC bank under the subvention scheme in order to make timely payments for the unit in the project and on the basis of the collaboration between M/s Supertech Limited and HDFC Bank, the complainant availed the said Housing Loan Facility. The complainant availed the home loan facility from the HDFC Bank and a Tripartite agreement was shared by the HDFC Bank with the complainant. The terms of the said Tripartite agreement offered to the complainant were totally one sided, unjust, arbitrary and the same were offered to the complainant as standard form of contract since the complainant was supposed to sign on dotted lines without any scope of negotiation whatsoever. That the HDFC Bank entered into standard form of contract with all the allottees of project who applied for loan with HDFC Bank, thus except for change in date of



allotment and loan amount and other individual characteristics of units, all allottees of project were always required to sign on dotted lines of tripartite agreement, and the complainant and other allottees of project had no say in matter of contractual terms. Thus, terms of the said tripartite agreement were heavily inclined towards the M/s Supertech Limited to the detrimental of the complainant.

- f) The M/s Supertech Limited shared the copy of another agreement with the complainant detailing the terms and conditions of the subvention scheme as agreed between the parties to the agreement. It was informed by M/s Supertech Limited to the complainant that the tenure of the subvention scheme as approved by the HDFC Limited is 36 months starting from March, 2014 and closing on February, 2017. Furthermore, as per the terms of the said agreement, M/s Supertech Limited was obligated to pay the EMI every month to the complainant starting from February, 2017 till the offer of possession by M/s Supertech Limited. The complainant and M/s Supertech Limited signed the said agreement on 20.11.2014.
- g) That an amount of Rs.87,08,310/- was sanctioned by HDFC Limited to the complainant. The said amount was to be disbursed in favour of M/s Supertech Limited upon the requests of the complainant. An amount of Rs. 6,42,003/- was paid vide cheque no. 000001 on 21.11.2014 and Rs.33,51,806/- vide cheque no.348853 on 16.12.2014 was disbursed in favour of M/s Supertech Limited. The said payments were accordingly acknowledged by M/s Supertech Limited vide its receipts dated 21.11.2014 and 17.12.2014.
- h) That the M/s Supertech Limited, failed to make the payments towards the Pre-EMI amounts from February, 2017 despite numerous reminders sent by the complainant in this regard. On account of non-payment of Pre-EMI amount, an additional liability was casted upon the complainant to make

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payment towards the said amount to HDFC Bank. Furthermore, M/s Supertech Limited failed to handover the possession of the unit in question to the complainant in complete violation of the buyer developer's agreement. The complainant visited the office of M/s Supertech Limited in the month of August, 2018 to enquire about the handing over of possession and payments towards the Pre-EMI amounts as payable by M/s Supertech Limited. M/s Supertech Limited, in complete defiance of its assurances and the terms of the agreement dated 20.11.2014 represented that project is on the verge of completion and the developer requires the funds at that moment to assist the completion of the said project and thus requested the complainant to make the payments of Pre-EMIs till the delivery of the unit so that the said amounts can be invested in the completion of the project. Moreover, it was further assured by M/s Supertech Limited that the said Pre-EMI amount would be subsequently adjusted at the time of possession. M/s Supertech Limited through the said letter also promised certain other benefits to the complainant. The afore-stated facts were substantiated by M/s Supertech Limited vide its letter dated 30.11.2018.

- i) Since the due date to handover the possession of the said allotted unit had lapsed in July, 2018, the complainant vide several telephonic communications and by visiting the office of M/s Supertech Limited requested M/s Supertech Limited to handover the possession of the said allotted unit to the complainant. However, no satisfactory response was ever received by the complainant. Thus, the complainant was constrained to file a complaint before the Adjudicating Officer, Gurugram against M/s Supertech Limited seeking the relief of refund of the amount already paid by the complainant to M/s Supertech Limited towards the booking of the said allotted unit. The said complaint titled Piyush Saggi V M/S Supertech

Limited bearing case number 3624 of 2019 was filed by the complainant on 21.08.2019 before the Adjudicating Officer, Gurugram.

- j) The Adjudicating Officer while adjudicating the aforesaid matter observed that there was a delay on the part of M/s Supertech Limited in handing over the possession of the said allotted unit to the complainant and thus directed M/s Supertech Limited to refund the paid-up amount of Rs.65,65,517/- along with the interest @9.30% p.a. from the respective dates of payments vide its order dated 21.10.2021.
- k) However, suddenly, in 2022, the complainant was apprised of the fact that the Union Bank of India had preferred a Company Petition CP(IB) bearing No. 204/(ND) 2021 before NCLT under Section 7 of Insolvency and Bankruptcy Code 2016 against M/s Supertech Limited for non-payment of outstanding debt. The NCLT was pleased to admit the insolvency petition by its order dated 25.03.2022. Vide the said order the NCLT inter alia initiated CIRP against M/s Supertech Limited, and the Interim Resolution Professional for M/s Supertech Limited was appointed and accordingly moratorium was declared as per Section 14 of the IBC upon M/s Supertech Limited.
- l) This Authority took suo-moto cognizance of the matter against M/s Supertech Limited in suo moto complaint titled HARERA, Gurugram and PNB housing Finance Limited Vs Supertech Limited Anr. for violating the provisions of the Real Estate (Regulation and Development) Act, 2016. It was also observed by this Hon'ble Authority during the course of the hearing of the said matter that there is a delay on the part of M/s Supertech Limited in completing the project in which the unit of the complainant lies despite lapse of a substantial time period. Furthermore, this Hon'ble Authority vide its order dated 29.11.2019 passed in the said suo moto matter directed M/s Sarv Realtors Pvt Ltd i.e., the respondent in the present



matter to step into the shoes of M/s Supertech Limited. Thus, all the liabilities and the obligations of M/s Supertech Limited were transferred to the respondent including the liability to make the payments to the complainant in compliance of the order of the Hon'ble Adjudicating officer dated 21.10.2021.

- m) The complainant after being informed of the said developments approached the respondent and requested the respondent to refund the said paid up amount to the complainant. However, in place of making the payments towards the refundable amount, the respondent requested the complainant to enter into a settlement with the respondent with respect to a new unit to be allotted to the complainant in place of the previously allotted unit. The respondent further assured the complainant that the respondent would be making the payments towards the Pre-EMI as agreed upon between the complainant and M/s Supertech Limited. The complainant after being duly assured by the respondent accepted the terms of the said settlement.
- n) The respondent shared the copy of a settlement agreement with the complainant vide which a new unit bearing no. G-201 in the same project admeasuring super area of 1180 sq. ft was allotted to the complainant in the said project of the respondent. Since, the newly allotted unit was smaller in size compared to the previously allotted unit, the total sale consideration of the said unit was reduced to Rs.93,77,080/- from Rs.1,16,11,080/-. The respondent vide the said settlement agreement transferred the amount of Rs.60,13,205/- paid by the complainant towards the allotment of the said new unit and assured the complainant that an amount of Rs.19,32,590/- would be paid by the respondent to the complainant towards the Pre-EMI of the availed loan. It was assured by the respondent that it would continue to make the payment towards the Pre-EMI till the valid offer of possession is made to the complainant.



- o) Furthermore, an amount of Rs.1,03,533/- was promised to be paid to the complainant as an incentive for timely payment of the Pre-EMIs and while acknowledging the delay on the part of the respondent in offering the possession of the said unit to the complainant, the respondent assured the complainant that an amount of Rs.4,69,471/- would be paid by the respondent to the complainant as adjustment of the delayed possession charges. The said settlement agreement was executed between the complainant and the respondent on 12.09.2023 and the complainant accordingly withdrew the execution proceedings initiated by him before the Adjudicating Officer for execution of the order dated 21.10.2021.
- p) Thereafter, a copy of the buyer developer agreement for the new unit i.e., G-201 was shared with the complainant by respondent which was wholly a one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favouring the respondent and was totally against the interest of the purchaser, including the complainant herein.
- q) That in the case of the complainant making the delay in the payment of instalments, the respondent company is shown to be entitled to charge interest @ 2% per month on the remaining amount, the complainant is shown to be only entitled to an amount calculated at Rs.5/- per sq. ft. of super area per month for the period of delay in offering the possession of the unit beyond the period stated by the respondent.
- r) The above stated provisions of the buyer developer's agreement besides other similar one-sided provisions are on the face of it highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The legislature has promulgated the Real Estate (Regulation and Development) Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement and the



abuse of dominant position is all pervasive in the terms and conditions of the agreement executed by the respondent vide various clauses imposing all the liabilities on the complainant, while conveniently relieving itself from all obligations on its part.

- s) That despite having made the buyer developer's agreement dated 04.11.2023 containing terms very much favorable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover 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. As per clause 1 of the agreement executed between the respondent and the complainant, the possession of the unit was to be handed over by the respondent by May, 2024.
- t) The complainant has till date made the payment of Rs.82,81,976/- out of Rs.93,77,080/- strictly as per the terms of the allotment and the payment plan and no default in making timely payment towards the instalment demands has been committed by the complainant. The respondent had vide its customer statement confirmed receipt of the said amount as paid by the complainant. That the said Rs.82,81,976/- consists of the amount which was promised by the respondent in the settlement agreement which was signed by it. However, there is a continuous liability of the respondent to make payment towards the Pre-EMI amount to the complainant for the complainant to further pay to HDFC Limited. As per the statement shared by the HDFC Limited, the monthly EMI is Rs.43,491/-.
- u) Since the time period to handover the possession as stated herein above had lapsed, the complainant requested the respondent telephonically, and by visiting the office of the respondent to update him about the date of handing

*[Handwritten Signature]*

over of the possession. The representatives of the respondent 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 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. The respondent/promoter had represented and warranted at the time of settlement that it would deliver the unit of the complainant to him in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainant.

- v) The project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. The complainant believe that no occupation and completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of this Hon'ble Authority. The respondent in utter disregard of its responsibilities has left the complainant in the lurch and the complainant has been forced to chase the respondent for seeking relief.
- w) The cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to hand over the possession and compensation for delay on its part and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest amount and compensation. The complainant reserves his right to approach the appropriate Forum to seek compensation.

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

4. The complainant has sought following relief(s):



- I. Direct the respondent to pay interest for every month of delay at prevailing rate of interest. from May, 2024 till actual handing of the possession as per the provisions of the Act, 2016 and Haryana RERA Rules, 2017.
  - II. Direct the respondent to handover the possession of the unit, in a habitable state, after obtaining the occupation certificate from the concerned authorities.
  - III. Direct the respondent to execute the conveyance deed of the allotted unit in favor of the complainant.
  - IV. Direct the respondent to not raise any payment demand, in violation of the provisions of the Act, 2016 and/or contrary to the terms of the agreement.
  - V. Direct the respondent to make payments towards the Pre-EMI amount of Rs.43,491/- per month to the complainant from October, 2022 till actual offer of possession.
  - VI. Impose penalty on the builder on account of various defaults and illegalities under the 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.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds:
  - a) That the respondent was issued license bearing no's 106 and 107 dated 26.12.2013 and license no's 135 and 136 of 2014 dated 26.08.2014 for developing the said land. In furtherance of the same, the respondent and M/s. Supertech Ltd. had entered into two joint development agreements dated 25.04.2014 and dated 26.08.2014 respectively.
  - b) The complainant 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(s)/ unit(s) in the said project.

- c) Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the buyer developer agreement dated 20.11.2014 with M/s. Supertech Ltd. for an apartment being number No. W/ 0104, Tower - W, 1<sup>st</sup> floor, having a super area of 1430 sq. ft. (approx.) for a total consideration of Rs.1,16,11,080/- exclusive of applicable charges and taxes.
- d) This Authority vide Order dated 29.11.2019 passed in Suo Moto complaint No. 5802/ 2019 (hereinafter referred to as the "Transfer Order"), had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "Hues & Azalia", to the answering Respondent (M/s SARV Realtors Pvt. Ltd.) and M/s. DSC Estate Developer Pvt. Ltd. respectively. This Hon'ble 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:
- 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.
  - 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 others fail to discharge its obligations towards the Allottees.
- e) In lieu of the said directions passed by this Authority all asset and liabilities have been since transferred in the name of the answering respondent company. However, in terms of the said Order, M/s. Supertech Ltd. still

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- remains jointly and severally liable towards the booking/allotment undertaken by it before the passing of the said Suo Moto order.
- f) Thereafter the said JDA's were cancelled by the consent of both parties (answering respondent and M/s. Supertech Ltd.) vide cancellation agreement dated 03.10.2019 and the answering respondent from there on took responsibly to develop the project and started marketing and allotting new units under its name.
- g) In terms of the said cancellation agreement the answering 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 this Hon'ble Authority and DTCP, therefore the parties had decided to cancel the JDA's vide the said cancellation agreement.
- h) 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.
- i) The complainant preferred a complaint bearing no. 3624/2019, with the Adjudicating officer, of this Authority only against M/s. Supertech Ltd. The said complaint was decided vide judgement dt. 21.10.2021, with directions to refund the amounts paid. The relief as sought was for refund of an amount of Rs.60,13,205/- only.
- j) The complainant and the answering respondent entered into a settlement agreement whereby the complainant was now allotted unit no. G-201, Tower-G, in the project "HUES". The complainant and the answering respondent executed a fresh buyer developer agreement dt. 04.11.2023, for an apartment being number No. G/ 0201, Tower - G, 2<sup>nd</sup> floor, having a super area of 1258 sq. ft. (approx.) for a total consideration of Rs.93,77,080/- exclusive of applicable charges and taxes.





- k) There have been certain embargos to the development of the project, i.e. it is public knowledge, and several Courts and quasi-judicial forums have taken cognisance of the devastating impact of the Demonetisation of the Indian economy, on the real estate sector. The real estate sector, is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the Respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.
- l) The complainant has not come with clean hands before this Hon'ble Form 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. in view thereof, this complaint is liable to be dismissed at the threshold.
- m) 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 4.9.2017 to 31.12.2021.
- n) The possession of the said premises was proposed to be delivered by the respondent to the apartment allottee by May, 2024 with an extended grace period of 6 months which comes to an end by November, 2024. The timeline for possession deems to be extended owing to the force majeure events as detailed above and covered under clause "42" of the BBA.
- o) 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.



- p) 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. That similar stay orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that 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. Relevant extracts of the Order dated 04.11.2019 passed by the Hon'ble Supreme Court in WP(C) No. 13029/1985.
- q) 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.
- r) Table concluding the time period for which the construction activities in the Project was restrained by the orders of competent Authority/Court are produced herein below as follows:

S. No.	Court/Authority & Order Date	Title	Duration
1.	National Green Tribunal 09.11.2017	Vardhman Kaushik vs Union of India	Ban was lifted after 10 days



2.	Press Note by EPCA- Environment Pollution (Prevention and Control) Authority	Press Note- 31.10.2018	01.11.2018 to 10.11.2018
3.	Supreme Court- 23.12.2018	Three-day ban on industrial activities in pollution hotspots and construction work	23.12.2018 to 26.12.2018
4.	EPCA/ Bhure lal Committee Order- 31.10.2018	Complete Ban	01.11.2019 to 05.11.2019
5.	Hon'ble Supreme Court 04.11.2019-14.02.2020	M.C Mehta v. Union of India Writ Petition (c) no. 13029/1985	04.11.2019 to 14.02.2020
6.	Government of India	Lockdown due to Covid-19	24.03.2020 to 03.05.2020
7.	Government of India	Lockdown due to Covid-19	8 weeks in 2021
	<b>Total</b>	<b>37 weeks (approximately)</b>	

- s) Unfortunately, circumstances have worsened for the respondent and the real estate sector in general. The pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there was a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the Respondent were forced to return to their home towns, leaving a severe paucity of labour. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartment.

- t) Hence, the complainant is not entitled for any relief as sought by them.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....  
(4) The promoter shall-  
(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by



the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

12. Moreover, the Authority has perused the record and observes that the complainant had earlier instituted a complaint before the Adjudicating Officer of this Authority bearing No. CR/3624 of 2019, seeking refund of the amount paid towards unit no. 0104, allotted vide buyer's agreement dated 20.11.2014. The said complaint was adjudicated vide order dated 21.10.2021, whereby refund of Rs.65,65,517/- along with interest @ 9.30% per annum from the date of each payment till the date of actual realization was granted in favour of the complainant.
13. It is further borne out from the record that subsequent to the aforesaid order dated 21.10.2021, the parties entered into a settlement agreement dated 12.09.2023, in terms whereof the respondent agreed to allot an alternate unit to the complainant against the amount directed to be refunded pursuant to the said order. In furtherance thereof, the respondent allotted unit no. 0201, 2<sup>nd</sup> Floor, Tower G, in its project namely "Supertech Hues", situated at Sector-68, Gurugram, to the complainant vide agreement dated 04.11.2023.
14. In view of the aforesaid facts and circumstances, this Authority is of the considered opinion that the earlier complaint decided vide order dated 21.10.2021 does not operate as a bar to the present proceedings. The execution of the settlement agreement dated 12.09.2023 and the consequent allotment of a fresh unit gave rise to a distinct and independent cause of action. Accordingly, the present complaint is required to be examined on its own merits, being founded upon subsequent events and obligations arising therefrom.

**F. Findings on objections raised by the respondent:**

**F. I 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 04.11.2023 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.11.2024. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession.

16. The Authority allows 6 months grace period on account of force majeure is being granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent/promoter.

**F. II Objection regarding CIRP against M/s Supertech Limited and consequent moratorium against proceedings against M/s Supertech Limited**

17. The respondent has submitted that in the matter as 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 M/s Supertech Limited and imposed moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent is no longer the assets of M/s 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**. The respondent has stated in the reply that the MDA was cancelled by consent of respondent and M/s Supertech Limited 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 and 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., M/s Supertech Limited remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent and M/s Supertech Limited were jointly and severally liable for the project, no orders can be passed against M/s Supertech Limited in the matter at this stage.

**G. Findings on the relief sought by the complainants.**

**G.1 Direct the respondent to pay interest for every month of delay at prevailing rate of interest. from May, 2024 till actual handing of the possession as per the provisions of the RERA Act, 2016 and Haryana RERA Rules, 2017.**

18. The complainant was allotted a unit in the project of respondent "Supertech Hues" in Sector-68, Gurugram for a total sale consideration of Rs.93,77,080/-. The buyer's agreement was executed on 04.11.2023 between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.82,81,967/-.
19. As per clause 23 of the buyer's agreement dated 04.11.2023, due date of possession is specified as May, 2024. The possession clause is reproduced below for the ready reference:

*The possession of the Unit shall be given by MAY, 2024 or extended period as permitted by the agreement. However, the company hereby agrees to compensate the Allottee/s @ Rs.5.00/- (Five rupees Only) per sq. ft. of super area of the unit per month for any delay in handing over possession of the unit beyond the given period plus the grace period of 6 months and up to the Offer Letter of possession or actual physical possession whichever is earlier. ....*

20. Therefore, the due date for possession is calculated to be 30.05.2024. Due to force majeure conditions this Authority has already granted a grace period of 6 months. Thus, the due date for possession of the unit comes to 30.11.2024.



21. In the present complaint, the complainants intend to continue with the project the project and are seeking interest on the amount paid by them in respect of subject unit. 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.

.....

**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)**

22. As per the documents placed on record by the respondent, the Authority has observed that the due date of possession was 30.11.2024 but the occupation certificate of the project has not been obtained by the respondent till date. The complainant took a plea that offer of possession was to be made in 2024, but the respondent has failed to handover the physical possession of the allotted unit within stipulated time frame
23. **Admissibility of delay possession charges at prescribed rate of interest:**  
The complainant is continuing with the project and seeking delay possession charges. However, proviso to section 18 of the Act 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 the possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules 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.

24. 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.

25. 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., 22.01.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
26. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause—*

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

27. 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 23 of the agreement executed between the parties on 04.11.2023, the due date of handing over possession is 30.11.2024. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over 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 agreement to sell dated 04.11.2023 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled delayed possession charges at the prescribed rate of interest i.e., @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) from the due date of possession (30.11.2024) till the date of valid offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier.

**G. II Direct the respondent to handover the possession of the unit, in a habitable state, after obtaining the occupation certificate from the concerned authorities.**

29. In the present matter, it is an admitted fact on record that the respondent has not obtained the occupation certificate from the competent authority till date. In the absence of a valid occupation certificate, the project cannot be treated as complete in the eyes of law and possession, if any, cannot be construed as lawful or valid possession. The respondent shall obtain the occupation certificate from the competent authority and thereafter offer and hand over possession of the unit to the complainant ensuring that the unit is complete in all respects and in a habitable condition.

**G. III Direct the respondent to execute the conveyance deed of the allotted unit in favor of the complainant.**

30. As per section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or

competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC. Accordingly, the respondent shall execute and get the conveyance deed registered in favour of the complainants, subject to the complainants making payment of the due amount, if any, along with applicable stamp duty and registration charges within a period of 90 days from the date the obtaining occupation certificate, strictly in accordance with the provisions of the Act and the terms of the buyer's agreement.

**G. IV Direct the respondent to not raise any payment demand, in violation of the provisions of RERA Act, 2016 and/or contrary to the terms of the agreement.**

31. It is observed that the financial obligations of the parties are governed by the terms and conditions of the buyer's agreement and the mutually agreed payment plan. The respondent-promoter is bound to raise demands strictly in accordance with the agreed terms and cannot unilaterally impose charges that are not contemplated therein or are otherwise contrary to the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rules framed thereunder. Accordingly, the respondent shall ensure that all demands are raised strictly in conformity with the agreed payment plan and contractual stipulations. Any other charge not forming part of the buyer's agreement shall not be recovered from the complainants.

**G. V Direct the respondent to make payments towards the Pre-EMI amount of Rs. 43,491/- per month to the complainant from October, 2022 till actual offer of possession.**

32. At the outset, it is relevant to examine whether there exists any stipulation in the builder buyer agreement or any separate tripartite/subvention/settlement agreement obligating the respondent to bear the Pre-EMI interest on behalf of the complainant. The liability of the promoter to pay Pre-EMI can arise only if the same forms part of a contractual arrangement between the parties.



33. Upon perusal of the record, if it is found that there is clause 1(i) in settlement agreement dated 12.09.2023 that the respondent will pay amount of Rs.60,13,205/- received towards the allotment of the old unit of the complainant. The said clause constitutes a binding contractual obligation between the parties. Once the parties have voluntarily entered into a settlement agreement, the respondent is estopped from resiling from the commitments contained therein.
34. In view of the aforesaid settlement clause, the claim of the complainant towards Pre-EMI payments from October, 2022 till offer of possession cannot be examined in isolation, as the settlement contemplates refund of the principal amount received under the earlier allotment. Thus, the said relief sought of the complainant cannot awarded at this earlier stage.

**G.VI Impose 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.**

35. In the present case, although certain grievances have been adjudicated hereinabove, the complainant has not established any specific contravention warranting initiation of independent penalty proceedings in the present complaint. Even otherwise, penalty, if any, cannot be directed to be paid to the complainant. Accordingly, the relief seeking imposition of penalty upon the respondent and directing the same to be paid to the complainant is not maintainable and stands dismissed. However, it is clarified that this order shall not preclude the Authority from initiating appropriate proceedings under the Act, if any statutory violation is found, in accordance with law.

**H. Directions of the authority**

36. 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/promoter is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of interest i.e. 10.80% p.a. for from the due date of possession i.e., 30.11.2024 till the valid date of offer of possession plus two months after obtaining occupation certificate or actual handing over of possession whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- II. The arrears of such interest accrued from 30.11.2024 till the date of order by the authority shall be paid by the respondent/promoter to the complainant within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% 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 hand over the physical possession of the subject unit to the complainant/allottees, upon payment of outstanding dues, if any, after obtaining the occupancy certificate.
- V. The respondent is directed to execute the conveyance deed registered in favour of the complainants within 90 days after obtaining occupation certificate as per section 17 of the Act, upon payment of requisite stamp duty charges and administrative charges as per norms of the state government.



- VI. The respondent is directed to not to levy, demand, or recover any amount from the complainant which is not expressly stipulated in the builder buyer agreement dated 04.11.2023.
- VII. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
37. Complaint as well as applications, if any, stand disposed of accordingly.
38. Files be consigned to registry.

**Dated: 22.01.2026**



  
**Phool Singh Saini**  
(Member)  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
**GURUGRAM**