

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

<b>Date of Decision:</b>	<b>12.12.2025</b>
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NAME OF THE BUILDER		1. Supertech limited 2. Sarv Realtors Pvt Ltd
S. No.	Case No.	Case title
1.	CR/2300/2025	Jimmy Gulgulia & Shagun Gulgulia <b>Both residence of 40 Ivory Circuit, Sapphire beach, NSW 2450, Australia</b>  Vs. 1. Supertech limited 2. Sarv Realtors Pvt Ltd. <b>Both residence of 1114, 11<sup>th</sup> Floor, Hamkunt Chambers, 89, Nehru Place, New Delhi-110019</b>
2.	CR/2307/2025	Jimmy Gulgulia <b>Residence of 40 Ivory Circuit, Sapphire beach, NSW 2450, Australia</b>  Vs. 1. Supertech limited 2. Sarv Realtors Pvt Ltd. <b>Both residence of 1114, 11<sup>th</sup> Floor, Hamkunt Chambers, 89, Nehru Place, New Delhi-110019</b>
<b>CORAM:</b>		
Shri Arun Kumar		Chairman
<b>APPEARANCE:</b>		
Sh. Rishab		Advocate for the complainant
Sh. Bhrigu Dhami		Advocate for the respondent no.1
Sh. Dushyant Tewatia		Advocate for the respondent no. 2

**ORDER**

1. The above complaints have been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Supertech Hues, Sector 68, Gurugram, Haryana" being developed by the respondent/promoter i.e., Supertech limited & Sarv Realtors Pvt Ltd. The issue involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question and the complainant is seeking possession and delay possession charges at prescribed rate of interest and other related reliefs.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Sr. No	CR. no. and Date of filing of complaint	Unit No.	Date of execution of agreement for sale/allotment letter	Due date of possession, offer of possession	Total Consideration	Total Amount paid by the complainants (In Rs.)
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1.	CR/2300/2025 DOF: 23.05.2025 RR: 14.11.2025	1203, 12 <sup>th</sup> floor 1765 sq. ft.	18.03.2016	31.01.2019 [Note: July 2018 + Grace period of 6 months is included being unconditiona l and unqualified]	Rs. 1,16,51,349/- [Page 36 of complaint]	Rs. 97,14,448/- [As alleged by the complainant on page 19 of complaint]
2.	CR/2307/2025 DOF: 23.05.2025 RR: 14.11.2025	1204, 12 <sup>th</sup> floor 1765 sq. ft.	18.03.2016	31.01.2019 [Note: July 2018 + Grace period of 6 months is included being unconditiona l and unqualified]	Rs. 1,16,51,349/- [Page 36 of complaint]	Rs. 97,14,448/- [As alleged by the complainant on page 13 of complaint]

**Relief sought:**

**1. Possession along with interest.**

**2. Direct the Respondent to continue paying the subvention amount to the Bank in accordance with the Memorandum of Understanding dated 26.03.2016.**

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell against allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges and other reliefs.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder. Out of

the above-mentioned cases, the

particulars of case CR/2300/2025 titled as Jimmy Gulgulia & Shagun Gulgulia **VS.** Supertech limited & Sarv Realtors Pvt Ltd. are being taken into consideration as lead case for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

**A. Project and unit related details**

6. 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. N	Particulars	Details		
1.	Name of the project	Supertech Hues, Sector 68, Gurugram, Haryana		
2.	Nature of the project	Group housing project		
3.	DTCP license no.	106 & 107 of 2013 dated 26.10.2013	89 of 2014 dated 08.08.2014	134-136 of 2014 dated 26.08.2014
	Validity of license	25.12.2017	07.08.2024	25.08.2024
	Area for which license was granted	13.74 acres	10.25 acres	4.85 acres
4.	HRERA Registered or not registered	182 of 2017 dated 04.09.2017 [Hues towers A, B, E, F, G, H, M, N, K, T, V, W, O, P, C & D]		



	Registration valid till	31.12.2021
5.	Booking date	18.03.2016
6.	Allotment letter/BBA	18.03.2016
7.	Unit no.	1203, 12 <sup>th</sup> floor
8.	Unit area	1765 sq. ft.
9.	Date of buyer developer agreement executed between parties	18.03.2016
10.	TPA executed between the parties	23.03.2016
11.	MOU executed on	26.03.2016
12.	Clause B of the MoU dated 26th March 2016	<p><b>B. Tenure and Possession under the Subvention Scheme</b></p> <p><i><b>Tenure of Subvention Scheme:</b></i> <i>The tenure of this subvention scheme, as approved by India Infoline Housing Finance Limited, is <b>29 months</b>. The developer expects to offer possession of the booked unit to the buyer within this period.</i></p> <p><i>However, if for any reason the offer of possession of the unit is delayed beyond 29 months, the developer undertakes to continue paying the <b>pre-EMI</b> on behalf of the buyer until possession is offered. The payment of pre-EMI shall continue notwithstanding any delay in offering possession,</i></p>

		<p>and the possession of the booked flat shall remain due to the buyer.</p> <p><b>E. Possession and Closure of Scheme:</b>                      The buyer shall take possession of the flat within <b>30 days</b> of receiving the offer of possession letter from the developer. From the date of the offer of possession letter, the present subvention scheme shall be treated as <b>closed</b>, and the buyer shall be solely liable to pay the entire EMI to the financing bank.</p>
13.	Possession clause 24.	<p>The Possession of the allotted unit shall be given to the Buyer(s) by <b>July, 2018</b>. However, this period can be extended due to unforeseen circumstances for a further <b>grace period of 6 months.....</b></p> <p style="text-align: right;">(Emphasis supplied)</p>
14.	Due date of possession	<p>31.01.2019</p> <p>[<b>Note:</b> July 2018 + Grace period of 6 months is included being unconditional and unqualified]</p>
15.	Total sale consideration as per buyer developer agreement	<p>Rs. 1,16,51,349/-</p> <p>[Page 36 of complaint]</p>
16.	Amount paid by the complainants	<p>Rs. 97,14,448/-</p> <p>[As alleged by the complainant on page 19 of complaint]</p>
17	Occupation certificate	Not obtained
18	Offer of possession	Not offered

**B. Facts of the complaint**

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

- i. That the Complainant was allotted a residential unit bearing Flat No. 1203/0, having a super area of 1765 sq. ft., situated at Revenue Estate, Village Badshahpur, Sector-68, Gurugram, Haryana-122001, by the Respondents/Developers namely Supertech Limited, Sarv Realtors Pvt. Ltd., and DSC Estate Developers Pvt. Ltd. in their project namely "Supertech HUES", which is registered under Haryana Real Estate Regulatory Authority bearing RERA Registration No. 182 of 2017 dated 04.09.2017 and Project ID: RERA-GRG-450-2019. The total sale consideration of the said unit was ₹1,16,51,349/-.
- ii. That the Respondents, at the time of marketing and promotion of the Project, represented and assured that the Project would be completed by July 2018. Relying upon the representations and assurances made by the Respondents, the Complainant entered into a Buyer Developer Agreement with the Respondents for the purchase of Apartment No. R0380001203 (Flat No. 1203) situated on the 12th Floor, having a super area of approximately 1765 sq. ft., for a total consideration of ₹1,16,51,349/-.
- iii. The said Agreement contained several one-sided, arbitrary, and unreasonable clauses, which were imposed by the Respondents without giving the Complainant any opportunity to negotiate or modify the terms, particularly after a substantial amount had already been collected from the Complainant.
- iv. That as per Clause 1 and Clause 2 of the Possession Clause in the Buyer Developer Agreement, the Respondents had categorically covenanted that

- possession of the said apartment would be delivered by July 2018, with a grace period of six (6) months, i.e., January 2019.
- v. It is submitted that the said Agreement contains clauses which are contrary to the principles laid down by the Hon'ble Supreme Court in Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, wherein the Hon'ble Court held that contractual terms imposed by builders in a one-sided manner upon flat purchasers are unfair and unreasonable, and such clauses amount to unfair trade practice. That on 23.03.2016, the Complainant, the Respondents, and India Infoline Housing Finance Limited entered into a Tripartite Agreement, whereby the Complainant availed a housing loan of ₹90,00,000/- under a Subvention Scheme for the purchase of the aforesaid unit in the project "Supertech HUES".
- vi. That thereafter on 26.03.2016, the Complainant and the Respondents executed a Memorandum of Understanding (MoU) in addition to the Allotment Letter. As per Clause (b) of the said MoU:
- "The tenure of this subvention scheme as approved by India Infoline Housing Finance Limited is 29 months. The Developer expects to offer possession of the booked unit to the buyer by that time. However, if due to any reason the possession offer of the booked unit gets delayed, then the developer undertakes to pay the Pre-EMI to the buyer even after 29 months. The payment of Pre-EMI shall continue till the offer of possession with regard to the booked flat is issued to the buyer."*
- vii. That the Complainant has duly complied with all financial obligations and has made payments strictly in accordance with the demands raised by the Respondents from time to time. It is pertinent to mention that certain violations were also committed by the lending institution while disbursing the loan amount, which appears to be contrary to the guidelines issued by

the Reserve Bank of India and the National Housing Bank. The payments made towards the said Unit are as follows:

- ₹13,37,500/- paid by the Complainant on 26.03.2016;
- ₹83,76,948/- disbursed by the bank on 30.03.2016 and 22.08.2016. Thus, the Complainant has paid a total amount of ₹97,14,448/- towards the purchase of the said Unit.

viii. That the Complainant, relying upon the assurances and representations of the Respondents regarding timely completion and possession of the Project, continued to make payments as per the payment plan and as demanded by the Respondents. However, despite having received a substantial amount of ₹97,14,448/-, the Respondents have failed to offer lawful and complete possession of the Unit to the Complainant. It is submitted that more than seven (7) years have elapsed since the contractual due date of possession, yet the Respondents have failed to fulfil their contractual and statutory obligations.

ix. That due to the deceitful, negligent, and mala fide conduct of the Respondents, the Complainant has suffered immense financial losses, mental agony, and harassment. The Complainant has always been ready and willing to fulfil all obligations and to take possession of the Unit, and has made all payments as demanded by the Respondents. Despite the same, the Respondents have failed to deliver possession even after the lapse of several years beyond the promised date.

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

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

- I. Direct the respondent to pay interest for every month of delay at prevailing rate of interest. 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 continue paying the subvention amount to the Bank in accordance with the Memorandum of Understanding dated 26.03.2016
9. 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**

10. The respondent has contested the complaint on the following grounds:
- i. That Answering Respondent is one of the leading real estate developers in the State of Haryana and the National Capital Region (NCR). It has undertaken several projects across the State and has built a strong reputation for delivering high-quality real estate developments. The Answering Respondent is represented in the present proceedings through its Authorized Representative, Mr. Suchha Singh Khatri.
  - ii. One of its marquee residential projects is "Hues", located in Sector 68, Gurugram, Haryana (hereinafter referred to as the "Project" for the sake of brevity). It is submitted that the Answering Respondent was issued License Nos. 106 and 107 dated 26.12.2013, and License Nos. 135 and 136 of 2014



dated 26.08.2014 for

development of the said land. Pursuant thereto, the Answering Respondent entered into two Joint Development Agreements with Supertech Limited, dated 25.04.2014 and 26.08.2014 respectively. In terms of the aforesaid ABA, Supertech Limited was responsible for the development and marketing of the Project.

- iii. The Complainant, along with several other allottees, approached Supertech Limited to make enquiries regarding the Project. After conducting due diligence and upon being provided with all relevant information, the Complainant opted to book an apartment/unit in the said Project. Consequently, after fully understanding the contractual stipulations and the applicable payment plan, the Complainant executed a Buyer-Developer Agreement dated 18.03.2016 with Respondent No.1 for Apartment No. O-1203, Tower O, 12th Floor, having a super area of 1765 sq. ft. (approx.) (hereinafter referred to as the "Apartment") for a total sale consideration of ₹1,16,51,349/-, exclusive of applicable charges and taxes.
- iv. It is pertinent to highlight certain relevant clauses of the said Buyer-Developer Agreement (hereinafter referred to as the "Agreement"):
- As per Clause 1 of the Agreement, timely payment of instalments was the essence of the Agreement. As per Clause 24 of the Agreement, possession of the Apartment was to be delivered by July 2018, with an additional grace period of six months. In the event of delay beyond the stipulated period and grace period, the Developer agreed to compensate the allottee at the rate of ₹5 per sq. ft. of the super area per month, from the expiry of the said period until the issuance of the possession offer letter or actual physical possession, whichever occurred earlier.

v. Clause 24 further stipulates

that compensation for delay shall not be applicable to allottees who had booked their apartments under any special scheme such as a “subvention scheme.” It was also specifically agreed that any delay caused due to Force Majeure circumstances would be excluded while calculating the possession timeline.

vi. As per Clause 25 of the Agreement, possession of the Apartment would be handed over only after the allottee cleared all outstanding dues. The Complainant opted for the Construction Linked Payment Plan, under which the progress of construction was premised upon the timely payment of instalments by the allottee in accordance with the payment schedule set out in the Agreement. Any non-compliance with the payment schedule would inevitably impact the construction progress and consequently delay the delivery of possession.

vii. In the meantime, with the enactment of the Real Estate (Regulation and Development) Act, 2016, the Project was duly registered with the Haryana Real Estate Regulatory Authority, Panchkula, vide Registration No. 182 of 2017 dated 04.09.2017, upon an application filed in the name of Respondent No.1.

viii. Subsequently, the Hon'ble Authority, vide Order dated 29.11.2019 passed in Suo Motu Complaint No. 5802/2019 (hereinafter referred to as the “*Transfer Order*”), issued directions regarding the transfer of assets and liabilities in the projects “Hues” and “Azalia.” The Authority directed that SARV Realtors Pvt. Ltd. and DSC Estate Developer Pvt. Ltd. be substituted as promoters in place of Supertech Limited.

- A. (i) The registration of the projects "Hues" and "Azalia" shall be rectified and SARV Realtors Pvt. Ltd. / DSC Estate Developer Pvt. Ltd., as the case may be, shall be registered as promoters.
- B. (v) All *assets* and liabilities, including customer receipts and project loans of whatsoever nature pertaining to the projects Hues and Azalia in the name of Supertech Limited, shall be transferred to SARV Realtors Pvt. Ltd. / DSC Estate Developer Pvt. Ltd.. However, even after such rectification, Supertech Limited shall continue to remain jointly responsible for the units marketed and sold by it, and shall remain severally liable if the substituted promoters fail to discharge their obligations toward the allottees.
- ix. In compliance with the aforesaid directions, all assets and liabilities pertaining to the Project have since been transferred in the name of the Answering Respondent company. However, in terms of the said Order, Supertech Limited continues to remain jointly and severally liable with respect to bookings/allotments undertaken by it prior to the passing of the said *Suo Motu* Order.
- x. Thereafter, the aforementioned Joint Development Agreements were cancelled by mutual consent between the Answering Respondent and Supertech Limited, vide Cancellation Agreement dated 03.10.2019. Following the said cancellation, the Answering Respondent assumed full responsibility for development of the Project and commenced marketing and allotting new units in its own name.
- xi. It was mutually agreed between the parties in the said Cancellation Agreement that Supertech Limited was unable to complete the Project

within the timelines

stipulated by the Hon'ble Authority and the Department of Town and Country Planning Haryana, and therefore the JDAs were terminated.

xii. In the interregnum, the outbreak of the COVID-19 pandemic affected the entire nation from March 2020 onwards. The Government of India itself categorized the said event as a Force Majeure circumstance, which automatically resulted in an extension of timelines for completion and delivery of possession. It is submitted that the construction of the Project is presently in full swing. Any delay, if at all, has primarily been attributable to the government-imposed lockdowns and restrictions during the pandemic period, which resulted in the suspension of construction activities.

11. 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**

12. 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**

13. 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**

14. 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.*

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

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

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

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

17. The complainant was allotted a unit in the project of respondent "Supertech Hues" in Sector-68, Gurugram for a total sale consideration of Rs. 1,16,51,349/-. The buyer's agreement was executed on 18.03.2016 between the parties and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.97,14,448/-.

18. As per clause 24 of the buyer's agreement dated 18.03.2016, due date of possession is specified as July, 2018. The possession clause is reproduced below for the ready reference:

*The Possession of the allotted unit shall be given to the Buyer(s) by July, 2018. However, this period can be extended due to unforeseen circumstances for a further grace period of 6 months.....*

19. Therefore, the due date for possession is calculated to be 31.07.2018. 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 31.01.2019.

20. In the present complaint, the complainants intend to continue with the project the project and seek 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)*

21. **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.*

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.

24. 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., 12.12.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
25. 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;"*

26. 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 18.03.2016, the due date of handing over possession is 31.01.2019. The respondent has failed to

27. 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 18.03.2016 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., @10.85% 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 (31.01.2019) 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

30. 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.
31. 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
32. 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. III Direct the Respondent to continue paying the subvention amount to the Bank in accordance with the Memorandum of Understanding dated 26.03.2016.**

33. It is observed that as per Clause (b) of the Memorandum of Understanding dated 26.03.2016, the Respondent had undertaken that the tenure of the Subvention

Scheme would be 29 months and that the possession of the unit was expected to be offered within the said period. The said clause further provides that in the event the possession is delayed beyond 29 months, the Developer shall continue to bear and pay the Pre-EMI on behalf of the buyer until the offer of possession is made. Since the Respondent has failed to offer possession within the stipulated period, this Authority finds that the Respondent is liable to continue paying the Pre-EMI on behalf of the Complainant until the offer of possession of the subject unit is issued in accordance with the terms of the Memorandum of Understanding.

#### **H. Directions of the authority**

34. 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:

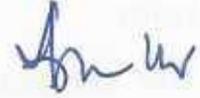
- I. The respondent/promoter no. 2 is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of interest i.e. 10.85% p.a. for from the due date of possession i.e., 31.01.2019 till the valid date of offer of possession plus two months after obtaining 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 after duly adjusting the Pre-EMI amounts paid by the respondent to the bank in terms of the MOU dated 26.03.2016.
- II. The arrears of such interest accrued from 31.01.2019 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., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - IV. The respondent is directed to 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.
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

36. Complaint as well as applications, if any, stand disposed of accordingly.
37. Files be consigned to registry.

**Dated: 12.12.2025**



Arun Kumar

(Chairman)

Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
**GURUGRAM**