

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Complaint No: 5961 of 2024**
Date of decision: 07.04.2026

NAME OF THE BUILDER		M/s SARV Realtors Pvt. Ltd	
PROJECT NAME		"Supertech Hues", Sector- 68, Gurugram, Haryana	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5961/2024	Sneha Bankim Joshi V/s M/s Supertech Limited (R:1) And SARV Realtors Pvt. Ltd (R:2)	Ms. Yamini 7 Akriti (complaint) Sh. Bhrigu Dhami for R-1 Sh. Dushyan Tewatia for R-2
2.	CR/5962/2024	Piyush Jhavar V/s M/s Supertech Limited (R:1) And SARV Realtors Pvt. Ltd (R:2)	Ms. Yamini 7 Akriti (complaint) Sh. Bhrigu Dhami for R-1 Sh. Dushyan Tewatia for R-2
3.	CR/5963/2024	Vipul Dalmia V/s Supertech Limited (R:1) And SARV Realtors Pvt. Ltd (R:2)	Ms. Yamini 7 Akriti (complaint) Sh. Bhrigu Dhami for R-1 Sh. Dushyan Tewatia for R-2

CORAM:

Shri Arun Kumar

Chairman**ORDER**

1. This order shall dispose of all the complaints titled as above filed before this authority in form CRA 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 allottees as per the agreement for sale executed inter se between parties.

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" (group housing colony) being developed by the same respondent/promoter i.e., M/s Supertech Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest.
3. The details of the complaints, reply to 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:

Project Name and Location		" Supertech Hues", Sector-68, Gurugram-122101			
		Occupation certificate: - Not obtained			
		Offer of possession: Not offered			
CR No.	Unit	BBA	Possession clause	Due date	TSC AP
CR/5961 /2024	1204, 12 th floor, in tower- K (Page no. 25 of compla int) 1180 sq. ft. (super area)	19.07.2017 (page 25 of complaint)	<i>E. 23. Possession of Unit The possession of the Unit shall be given by June 2019 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.</i>	30.12.2019	Rs.20,65,000 / (page 26 of complaint) Rs.20,65,000 /- (page 26 of complaint)

	(Page no. 27 of complaint)		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.		
CR/5962/2024	0902, 9 th floor, in tower-G (Page no. 26 of complaint) 1180 sq. ft. (super area) (Page no. 27 of complaint)	22.12.2017	E. 23. Possession of Unit The possession of the Unit shall be given by August 2019 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.	28.02.2020	Rs.11,80,073 /- (P-27 of complaint) Rs.12,00,000 /- (P-27 of complaint)
CR/5963/2024	0604, 6 th floor, in tower-K (Page no. 27 of complaint)	20.07.2017	E. 23. Possession of Unit The possession of the Unit shall be given by June 2019 or extended period as permitted by the agreement. However, the company hereby	30.12.2019	Rs.20,65,000 /- (Page no. 28 of complaint) Rs.20,65,000 /- (As per receipt dated 04.10.2017 at

			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.	page no. 45 of complaint)
Relief sought by the complainant(s):- 1. Refund				

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/5961/2024 Sneha Bankim Joshi V/s M/s Supertech Limited & SARV Relators Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Project and unit related details

5. 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.	Project area	55.5294 acres
3.	Nature of project	Group Housing Colony
4.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017
5.	DTCP License	106 & 107 of 2023 dated 26.12.2013

	Validity status	25.12.2017
	Name of licensee	Sarv Realtors Pvt. Ltd & Ors.
6.	Unit no.	1204, 12 th floor, in tower-K(Page no. 25 of complaint)
	Area admeasuring	1180 sq. ft. (super area) (Page no. 25 of complaint)
7.	Date of builder buyer agreement	19.07.2017(Page no. 24 of complaint)
8.	Possession clause	<p><i>E. 23. Possession of Unit</i> <i>The possession of the Unit shall be given.by June 2019 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></p> <p style="text-align: right;"><i>(Emphasis supplied)</i></p>
9.	Due date of possession	30.12.2019(As mentioned in the possession clause plus 6 months grace period)
10.	Total sale consideration	Rs.20,65,000/- (Page no. 26 of complaint)
11.	Total amount paid by the complainant	Rs.20,65,000/--(As per receipt dated 04.10.2017 at page no. 43 of complaint)
12.	Occupation certificate	Not obtained
13.	Offer of possession	Not offered

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -
- a. That somewhere around 2015-16, the respondents advertised about its new project namely "**Supertech HUES**" (*hereinafter called as 'the project'*) located at Revenue estate, Village Badshahpur, Sector 68, Gurugram, Haryana 122001. The said respondents painted a rosy picture



of the project in their advertisement making tall claims and representing that the project will be a picture perfect home located inside its glorious project 'Supertech HUES' and is an abode with excellent amenities in the ethereal vicinity of Gurgaon which shares entertainment centre, high ceilings, huge balconies, palatial bathrooms with modern fittings and modular kitchen for luxurious life, excellent healthcare facilities, lush green spaces, swimming pool, recreation centres, WI-FI enabled complex, sports centres and luxury club house.

- b. That believing the false assurances and misleading representations of the respondents and relying on the goodwill of the respondents, the complainant booked an apartment in the said project of the respondents' company by making a payment of Rs.20,65,000/- dated 29.06.2017 towards said booking.
- c. That thereafter, an agreement dated 20.07.2017 was executed between the complainant and respondents wherein a residential apartment/flat bearing no. R0380K001204/FLAT #1204, located on 12th floor, tower K/K admeasuring super area of 1180 sq. ft. was allotted to the complainant. The said agreement entailed all the terms and conditions relevant to the sale. The booking was made under down payment/onetime payment plan. Till date, the complainant has made full payment of Rs. 20,65,000/- as against the basic sale price of Rs. 20,65,000/-.
- d. That to add to the misery of the complainant, when he visited the project site in 2020, he was stunned to see that the project is not even 20% completed and not even a single worker was present at the project site. Rather, the project was still in the initial stage of construction despite almost 2.5 years being elapsed from the date of booking. Upon this, the

complainant approached the respondents but they assured him that construction shall be resumed at full pace soon and the project shall be handed over on time and as per schedule.

- e. That the complainant kept making calls, sending e-mails and also visiting the respondents' office in order to pursue them to deliver the possession of the unit, but the latter kept delaying it on one pretext or the other. The situation got further worsened by snail paced construction work at the project site which was brought to a complete standstill several times. However, when approached, the respondents' representatives would misleadingly claim that there was still time before the due date expired and that construction would soon resume at full speed.
- f. That further, as per the agreement dated 19.07.2017, the possession was to be handed over by June 2019 + 6 months grace period, i.e., by December, 2019 but the respondents miserably failed to construct the unit and project in question. The respondents not only betrayed the complainant by not delivering the possession but also failed to construct the unit in question.
- g. That the respondent has been caught in a web of his own lies which is clearly evident from the fact that vide the incomplete construction progress, it was clearly stated by the respondents that the unit in question was in progress and is nearing handing over of possession. This shows that the respondents had been fooling the complainant right from day one as the unit is still nowhere nearing completion. Moreover, any intimation of possession or levy of holding charges without receipt of Occupation Certificate and without valid offer of possession is completely illegal.

- h. That throughout the period from booking till execution of agreement and even beyond, the complainant maintained complete trust in the respondents, despite some lapses and misconduct on their part, such as one-sided and unfair clauses in the agreement which included a stark contrast between the delayed payments expected from the buyer and the delayed possession, as well as other charges the builder would incur for delays in handing over possession. However, the respondents miserably failed in completing the project and even resuming construction work at the project site.
- i. That the complainant has been severely exploited at the hands of the builder/respondents. The aforesaid series of events clearly portray the amount of harassment and mental agony the complainant have gone through right from the date of booking in 2017 till date and also did not carry on any construction work at the project site thereby duping the complainant of their hard-earned money and causing them great mental trauma.
- j. That the complainant and their family have been subjected to severe atrocities owing to the misconduct of the respondents. The complainant had booked the unit in question with great hope that he along with his family will have a safe home of their own. If the respondents had honoured their commitments outlined in the agreement dated 19.07.2017, the complainant would have got possession of their own home in 2019 itself.
- k. That the present complaint has been filed in order to seek delayed possession charges on the principal amount of Rs.20,65,000/- paid by the Complainant along with interest at the rate prescribed as per RERA, 2016

and HRERA Rules, 2017 from the due date of possession, along with other reliefs mentioned herein below. Hence, this complaint.

C. Relief sought by the complainants: -

7. The complainants have sought following relief(s):

- I. Disallow the grace period in calculating the due date of handing over possession.
 - II. Direct the respondents to pay delayed possession charges to the complainant on the principal amount of Rs.20,65,000/- paid by the complainant, from the due date of possession.
 - III. Direct the respondents to complete construction and obtain Occupation Certificate.
 - IV. Direct the respondents to offer possession only upon receipt of Occupation Certificate.
 - V. Direct the respondents to not levy any holding charges from the complainant.
 - VI. Direct the respondents to not levy any maintenance charges from the complainant till date of actual handover.
8. 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 no. 1

9. No reply has been submitted by the respondent no.1 i.e., M/s Supertech Ltd. However, the counsel for respondent no. 1 has stated that the respondent no.1 is under CIRP vide order dated 25.03.2022 passed by the Hon'ble New Delhi in case no. IB-204/ND/2021 titled as **Union Bank of India Versus M/s Supertech Limited** and moratorium has been imposed against the respondent no. 1 company under section 14 of the IBC, 2016. Therefore, no proceedings may continue against the respondent no. 1.

E. Reply by the respondent no. 2

10. 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.
11. That the complainant along with many other allottees had approached M/s. Supertech Ltd., making enquiries about the project, and after thorough due diligence and complete information being provided to them had sought to book 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 22.12.2017 with M/s. Supertech Ltd. for a unit bearing number 0902, tower - G,9th floor having a super area of 1180 sq.ft. (approx.) for a total consideration of Rs. 1,80,073/-.
12. That the Authority vide order dated 29.11.2019 passed in Suo-Moto complaint no. 5802/ 2019, had passed certain directions with respect to the transfer of assets and liabilities in the said projects namely, "**Hues & Azalia**", to the respondent (**M/s SARV Realtors Pvt.) Ltd.** and M/s. DSC Estate Developer Pvt. Ltd. respectively. The Authority had further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd. be brought on as the promoter in the project instead of M/s. Supertech Ltd. Certain important directions as passed by this Hon'ble Authority are as under:
 - i. (i)The registration of the project "Hues" and "Azalia" be rectified and SARV Realtors Pvt. Ltd./ DSC and others, as the case may be, be registered as promoters.
 - ii. (v)All the assets and liabilities including customer receipts and project loans of whatsoever nature, the project HUES and Azalia, in the name

of Supertech Ltd. be shifted to Sarv Realtors Pvt. Ltd/ DSC and others. However, even after the rectification, 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.

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 booing/ allotment undertaken by it before the passing of the said Suo Moto order.

13. 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.
14. 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.
15. 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.
16. 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.

17. That the complaint deems to be dismissed sine-die or dismissed as the R2 company, i.e. M/s. Supertech Ltd. is undergoing corporate insolvency resolution process and therefore all matters like the present one in which Supertech Ltd. is a party deem to be adjourned sine-die or dismissed in lieu of the moratorium imposed upon M/s. Supertech Ltd. U/s 14 of the IBC, 2016.
18. 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. The respondent cannot be made wholly liable for allotments undertaken and monies/ sale consideration received by M/s. Supertech Ltd.
19. 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 answering respondent with this frivolous complaint.
20. 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.
21. 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.

22. That with respect to the present agreement, the time stipulated for delivering the possession of the unit was on or before May, 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 February 2020. However, the said date was subject to the force majeure clause, i.e. "Clause 42". 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 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.
23. 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 is 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.
24. 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.

- i. Due to active implementation of social schemes like National Rural Employment Guarantee Act and Jawajarlal Nehru Natinal 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.
- ii. 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.

25. 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:
- i. The event must be beyond the control of the parties.
 - ii. The event either precludes or postpones performance under the contract.
 - iii. The triggering event makes performance under the contract more problematic or more expensive.
 - iv. The claiming party wasn't at fault or negligent.
 - v. The party wanting to trigger the force majeure clause has acted diligently to try to mitigate the event from occurring.
26. 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.
27. 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.

28. 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. 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.
29. That the complainant has not come with clean hands before the forum and have suppressed the true and material facts from the 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.
30. That it is submitted that the project "HUES" is registered under the Haryana Real Estate Regulatory Authority vide registration certificate no. 182 of 2017 dated 4.9.2017.
31. That the possession of the said premises was proposed to be delivered by the respondent to the Apartment Allottee by August, 2019 with an extended grace period of 6 months which comes to an end by February, 2020. The completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials and/ or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in

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

32. That the enactment of RERA Act is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate sector market. The main intention of the Respondent is just to complete the project within stipulated time submitted before the HRERA Authority. According to the terms of Builder Buyers Agreement also it is mentioned that all the amount of delay possession, if any, will be completely paid/ adjusted to the complainant at the time final settlement on slab of offer of possession. The project is ongoing project and construction is going on.
33. That in today's scenario, the Central Government has also decided to help bonafide Builders to complete the stalled Projects which are not constructed due to scarcity of funds. The Central Government announced Rs. 25,000 Crore to help the Bonafide Builders for completing the Stalled/ unconstructed Projects and deliver the homes to the Homebuyers. It is submitted that the Respondent/ Promoter, being a bonafide Builder, has also applied for Realty Stress Funds for its Gurgaon based projects. The said news was also published in Daily News / Media, copy is attached herewith.

34. 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. It is pertinent to note 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.
35. 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 has been a complete stoppage on all construction activities in the NCR Area till July, 2020. In fact, the entire labour force employed by the Respondent 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.

36. 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.

F. Jurisdiction of the Authority

37. 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

38. 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

39. 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.

40. 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.

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

F.I Objections regarding force majeure.

41. 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 19.07.2017 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.12.2019, 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."

42. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction were for a shorter period of time and are yearly one and do not impact on the project being developed by the

respondent. Though some allottee may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Moreover, the respondent promoter has already been given 6 months grace period being unqualified to take case of unforeseen eventualities. Therefore, no further grace period is warranted in account of Covid-19. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

F.II Objection regarding CIRP against respondent no. 1 and consequent moratorium against proceedings against respondent no.1.

43. 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 respondent no.1 and impose moratorium under section 14 of the IBC, 2016. The Authority observes that the project of respondent no. 2 is no longer the assets of respondent no. 1 and admittedly, respondent no.2 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.2 has stated in the reply that the MDA was cancelled by consent of respondent no.1 and respondent no.2 vide cancellation agreement dated 03.10.2019. Thereon, respondent no.2 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.2 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., respondent no.1 remains under moratorium. Therefore, even though the Authority had held in the Suo-Moto proceedings dated 29.11.2019 that respondent no. 1 & 2 were jointly and severally liable for the project, no orders can be passed against respondent no.1 in the matter at this stage.

G. Findings on the relief sought by the complainants.

G.I Disallow the grace period in calculating the due date of handing over possession.

G.II Direct the respondents to pay delayed possession charges to the complainant on the principal amount of Rs.20,65,000/- paid by the complainant, from the due date of possession;

44. In the present matter the complainant was allotted unit no. 1204, 12th floor, in tower-K, admeasuring 1180 sq. ft. in the project "Supertech Hues" Sector 68 by the respondent-builder for a sale consideration of Rs. 20,65,000/- and he has paid a sum of Rs. 20,65,000/-.
45. The complainant intends to continue with the project and is seeking delay possession charges at a prescribed rate of interest on the amount already paid by him as provided under the proviso to Section 18(1) of the Act, which reads as under:-

"Section 18: - Return of amount and compensation

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

(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)

46. As per clause E. (23) of the buyer's developer agreement talks about the possession of the unit to the complainants, the relevant portion is reproduced as under: -

"E(23). E. 23. Possession of Unit

The possession of the Unit shall be given by June 2019 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.

.....

[Emphasis Supplied]

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

As per clause E(23) of the buyer developer agreement, the possession of the allotted unit was supposed to be offered by the June 2019 with a grace period of 6(six) months. Since in the present matter the buyer developer agreement incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly, the grace period of 6 months is allowed to the promoter being unqualified. Therefore, the due date of possession comes out to be December, 2019.

48. **Admissibility of delay possession charges at prescribed rate of interest:**

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

49. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
50. 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., 07.04.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
51. 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;"*

52. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of BBA, the possession of the subject unit was to be delivered within stipulated time i.e., by June, 2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession was December 2019. The respondent no.2 has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter no.2 to fulfill its obligations and responsibilities as per the agreement to handover the possession within the stipulated period. The Authority is of the considered view that there is delay on the part of the respondent no.2 to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyers' developer agreement dated 19.07.2017 executed between the parties. Further no OC/part OC has been granted to the project.
53. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent/promoter no.2 is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., December 2019 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
54. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the

complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the said respondent has applied for Occupation Certificate or what is the status of the completion of development of the above-mentioned project. In view of the above, the respondent no.2 is directed to handover possession of the flat/unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining Occupation Certificate from the competent authority.

G.III Direct the respondents to not levy any holding charges from the complainant.

55. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

G.IV Direct the respondents to not levy any maintenance charges from the complainant till date of actual handover.

56. The complainant raised an objection towards the amount raised towards maintenance charges. This issue has already been dealt with by the Authority in complaint bearing no. **4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021**, wherein it was held that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific

clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

57. As per clause 10 of the buyer's agreement the complainant agreed to pay monthly maintenance charges from the date of offer of possession as per super area of his/her unit. Further, the allottee pays one year maintenance charges, in advance charges as intimated to the buyer(s) by the developer/maintenance agency from time to time, shall be payable by the allottee in advance by the seventh day of that month. In case of delay in receipt of monthly maintenance charges within the stipulated time period, interest @2% per month or for any part of a month shall be charges for the period of delay. The relevant clause of the buyer's agreement is extracted below:

"The maintenance and upkeep of the project or part thereof shall commence from the date of #Letter of Offer of Possession" issued by the developer to the Buyer(s). The Buyer(s) shall be liable to pay monthly maintenance charges from the date of such letter as per the super area of his/her unit. It is further made clear that the Buyer(s) shall pay one year maintenance charges, in advance on receipt of the said letter of offer of possession. After one year the monthly maintenance charges as intimated to the Buyer(s) by the Developer/maintenance agency from time to time, shall be payable by the Buyer(s) in advance by the seventh day of that month. In case of delay in receipt of monthly maintenance charges within this period, interest@2% per month or for any part of a month shall be charges for the period of delay. In the event of default in payment of maintenance charges for 2 continuous months, the Developer/its nominated maintenance agency will be entitled to effect disconnection of the services to defaulting Buyer(s) that may include disconnection of water/sewer, power/power back up and debarment from usage of any or all common facilities within the complex. The developer reserves that right to enhance the maintenance charges payable by the Buyer(S) keeping in view the cost of the maintenance of the complex. The Developer may maintain the complex or may outsource any or all maintenance services to outside agencies and authorize them to do all acts necessary in this regard. The Buyer(S) agrees and undertakes to sign a separate # Maintenance agreement", with the Developer or with the nominated maintenance agency undertaking the maintenance services of the complex before taking possession of the allotted unit."

58. Hence, the respondent is well within his rights to charge for the maintenance as per the agreed terms of the buyer's agreement executed between the parties.

H. Directions of the Authority

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

- i. The respondents/promoters no.2 i.e., SARV Realtors PVT. Ltd. is directed to pay interest at the prescribed rate of 10.80% p.a. for every month of delay from due date of possession till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.80% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondents are directed to hand over the actual physical possession of the unit to the complainants within 2 months after obtaining Occupation Certificate.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% 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 issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are



- directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- v. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
 - vi. The respondent shall not charge anything which is not the part of BBA.
 - vii. The respondent-promoter is not entitled to charge holding charges from the complainant-allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
 - viii. No directions are being passed in the matter qua respondent no.1 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***.
60. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid-up amount is mentioned in each of the complaints.
61. Complaint as well as applications, if any, stands disposed of accordingly.
62. Files be consigned to registry.


(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026