BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of decision : 14.08.2026

Name of the Builder/Respondent		**Sarv Realtors Private Limited & Supertech Private Limited**	**Appearance**
S. No.	**Case No.**	**Case title**	
1.	**CR/6490/2025**	Jyoti Adlakha and Amit Adlakha and Neha Arora Vs. Sarv Realtors Private Limited & Supertech Private Limited	Shri Harshit Batra **Advocate for the complainants** Shri Dusyant Tewatia **Advocate for the respondent no. 1** Shri Bhrigu Dhami **Advocate for the respondent no. 2**
2.	**CR/6488/2025**	Amit Adlakha Vs. Sarv Realtors Private Limited & Supertech Private Limited	Shri Harshit Batra **Advocate for the complainants** Shri Dusyant Tewatia **Advocate for the respondent no. 1** Shri Bhrigu Dhami **Advocate for the respondent no. 2**
3.	**CR/5711/2023**	Rajesh Raina and Archna Raina Vs. Sarv Realtors Private Limited & Supertech Private Limited	Shri Krish Khera **Advocate for the complainants** Shri Dusyant Tewatia **Advocate for the respondent no. 1** Shri Bhrigu Dhami **Advocate for the respondent no. 2**

CORAM:	
Shri Arun Kumar	Chairman

ORDER

1. The above complaints have been filed by the complainants/allottees 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, Golf Course Extn. Road, Gurgurgram-122101, Haryana" being developed by the respondent/promoter i.e., Sarv Realtors Private Limited & Supertech Private Limited. 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 refund along with interest.
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:

1. POSSESION

The possession of the unit shall be given to the allotee by the company by JUNE 2019. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the allotee and the allotee agrees to strictly abide by the same in this regard.
Occupation certificate: - Not obtained
Offer of possession: - Not offered

Sr. No	Cr no. and Date of filing of complaint and reply	Unit No.	Date of execution of agreement	Due date of possession,	Total Considera tion /	Total Amount paid by the

			for sale/allotment letter	offer of possession		complainants (In Rs.)
1.	**CR/6490/2025** **Date of filing of complaint: 31.12.2025** **Reply received on 20.03.2026**	R0380K02201, 22ND floor Area: 1180 sq. ft.	06.10.2016	31.12.2019 (Note:- June 2019 plus 6 months grace period is allowed)	Rs. 31,18,082/-	Rs. 31,10,000/-
2	**CR/6488/2025** **Date of filing of complaint: 31.12.2025** **Reply received on 20.03.2026**	R0380K01201, 12th floor Area: 1180 sq. ft.	06.10.2016	31.12.2019 (Note:- June 2019 plus 6 months grace period is allowed)	Rs. 31,18,082/-	Rs. 31,48,794/-
3.	**CR/5711/2023** **Date of filing of complaint: 21.12.2023** **Reply received: Not filed**	0502, 5th floor, Tower-G Area: 1180 sq. ft.	29.09.2014	31.01.2019 (Note:- July 2018 plus 6 months grace period is allowed) ***POSSESSION OF UNIT: -*** *The possession of the unit shall be given* ***to the allotee by the company by July 2018. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the allotee and the allotee agrees to strictly abide by***	Rs. 90,28,625/-	Rs. 23,71,725/-

				the same in this regard.		

Relief sought:

1. Direct the respondent to refund the entire amount paid by the complainants, along with interest at the prescribed rate from the respective dates of payment till the date of actual realizations.

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell against allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking refund along with interest.

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/6490/2025 titled as Jyoti Adlakha and Amit Adlakha and Neha Arora Vs. Sarv Realtors Private Limited & Supertech Private Limited** are being taken into consideration as lead case for determining the rights of the allottee(s) qua refund along with interest.

A. Unit and project related details

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

S. No.	Particulars	Details

1.	**Name of the project:-** Supertech HUES Sector-68, Golf Course Extn. Road, Gurgurgram-122101 **Project area: -** 55.5294 acres	
2.	Nature of project	Group Housing Colony
3.	RERA registered/not registered	Registered vide registration no. 182 of 2017 dated 04.09.2017
	Validity Status	31.12.2021
4.	DTPC License no.	106 & 107 of 2013 dated 26.10.2013
	Name of licensee	Sarv Realtors Pvt. Ltd. & Ors.
5.	Booking date	06.10.2016
6.	Unit no.	R0380K02201, 22nd floor
7.	Unit area	1180 sq. ft.
8.	Builder buyers agreement	06.10.2016
9.	Possession clause	***1. POSSESSION OF UNIT: -*** *The possession of the unit shall be given* ***to the allotee by the company by JUNE 2019. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the allotee and the allotee agrees to strictly abide by the same in this regard.***
10.	Due date of possession	31.12.2019 (Note:- June 2019 plus 6 months grace period is allowed)
11.	Total sale consideration	Rs. 31,18,082/-

12.	Total amount paid by the complainants	Rs. 31,10,000/-
13.	Occupation certificate	Not obtained
14.	Offer of possession	Not offered

B. Facts of the complaint

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

i. That the complainants is a law-abiding citizen and is residing at H. No. C-801, 8th Floor, Tower-C, Caitriona Apartments, Opposite Leela Palace Hotel, Nathupur (67), Gurugram, Haryana-122002. The complainants had booked a residential unit in the project known as *"Supertech Hues"*, situated in Sector 68, Gurugram, Haryana-122001 (hereinafter referred to as the "Project"). Accordingly, the complainants falls within the definition of an allottee under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the "Act").

ii. That, at the outset, it is submitted that the complainants had previously filed a complaint seeking possession of the allotted unit along with penalty, bearing Complaint No. 1699 of 2021, against Respondent No. 2. However, despite the directions issued by this Authority for handing over possession and payment of delayed possession charges, the respondent has failed to comply with the said directions. The construction of the Project remains substantially incomplete, and the possibility of handing over possession in the near future appears remote.

iii. It has subsequently come to the knowledge of the complainants that the Project is being developed by Respondent No. 1 and that all the assets and liabilities pertaining to the Project have been transferred from Respondent No. 2 to Respondent No. 1. These facts were neither within the knowledge of the complainants at the time of filing the earlier complaint nor were they

disclosed by Respondent No. 2 during the said proceedings. In view of these subsequent developments and the circumstances that have come to light, the complainants has approached this Authority through the present complaint, seeking refund of the amount deposited along with prescribed interest.

iv. That the issue of refund in respect of the Project has also been considered by this Authority in a similar matter titled *Rajat Bayana and Another v. Sarv Realtors Pvt. Ltd. and Others,* Complaint No. 3072 of 2023, decided on 06.05.2025. In the said matter, although delayed possession charges had initially been allowed, the complainantss subsequently sought refund of the amount deposited from Sarv Realtors Pvt. Ltd.

v. That, in view of the subsequent developments, the transfer of assets and liabilities pertaining to the Project and the findings recorded by this Authority in the aforesaid matter, the complainants submit that a fresh cause of action has arisen for seeking refund of the amount deposited. Accordingly, the complainants are entitled to seek refund along with prescribed interest from the respondents.

vi. That the Project was initially advertised by Respondent No. 2 in the year 2016. The original allottee, namely, Mr. Sikander Singh, had purchased the said unit from Respondent No. 2, relying upon the representations, advertisements and assurances made by it in relation to the Project. That subsequently, the original allottee executed an Agreement to Sell in favour of the complainants on 05.10.2016. Thereafter, a Buyer's Agreement was executed between the parties on 06.10.2016 in respect of the said unit.

vii. That during the course of construction and development of the Project, insolvency proceedings were initiated against Respondent No. 2 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC"). The application was admitted vide order dated 25.03.2022 passed in IB-204/(ND)/2021, whereby Mr. Hitesh Goel was appointed as the Interim Resolution Professional (IRP).

viii. That Respondent No. 1 is the licensee and co-promoter of the Project and had obtained Licence Nos. 106 and 107 of 2013, both dated 26.12.2013, for the development of a Group Housing Colony on the land situated in Sector 68, Gurugram, which includes the land forming part of the Project. Accordingly, Respondent No. 1 was granted the requisite licence by the Department of Town and Country Planning, Haryana (hereinafter referred to as "DTCP") for development of the Project. That Respondent No. 2 had initially advertised and marketed the Project and represented to the prospective allottees that it possessed the requisite authority and capacity to develop the same. Respondent No. 2 had further assured the prospective buyers that the Project would be completed within the stipulated period and possession of the allotted units would be handed over accordingly. By virtue of the aforesaid representations and its role in marketing and selling the units, Respondent No. 2 also falls within the ambit of the definition of "promoter" under Section 2(zk) of the Act.

ix. It is further submitted that although insolvency proceedings were initiated against Respondent No. 2 vide order dated 25.03.2022 in IB-204/(ND)/2021, the said proceedings, as subsequently clarified, do not encompass the Project in question. Mr. Hitesh Goel was appointed as the IRP in the said proceedings. That the complainants subsequently came to know that Respondent No. 2 had not obtained the requisite permission for development of the Project in its favour and had allegedly misrepresented its authority to develop the Project. The complainants further submits that the requisite statutory permissions and compliances relating to the Project had not been duly completed. The relevant facts and circumstances in this regard are elaborated in the succeeding paragraphs.

x. That, as submitted hereinabove, the requisite licence for development of the Project had been granted in favour of Respondent No. 1. However, the Project was advertised, marketed and represented to the prospective allottees by

Respondent No. 2, thereby creating an impression that Respondent No. 2 possessed the requisite authority to undertake the development of the Project. The complainants, relying upon such representations, proceeded with the purchase of the unit.

xi. That the proceedings pending before DTCP in relation to the land forming part of the Group Housing Colony indicate that the permission for transfer of development rights, namely, the Beneficiary Interest Permission (BIP), had not been granted in favour of Respondent No. 2. Consequently, Respondent No. 1 continued to remain the licensee and the entity responsible for development of the Project and, therefore, falls within the definition of a promoter under Section 2(zk) of the Act. That various irregularities and violations concerning the development of the Project have also been highlighted in the proceedings before DTCP. In this regard, the minutes of the meeting dated 01.05.2025 record, inter alia, the following observations:

i. Licence Nos. 106 and 107 of 2013 were granted to Sarv Realtors Pvt. Ltd. for the development of a Group Housing Colony in Sector 68, Gurugram. However, the amounts received against the sale of flats were being collected by Supertech Ltd., and the requisite formalities were also being undertaken by Supertech Ltd., which was stated to be contrary to the provisions of the applicable Town Planning Act/Rules.

ii. The company was offering and insisting upon the allottees taking possession of units for which the Occupation Certificate had not yet been granted.

iii. It was further informed that various authorities had been approached, but no action had been taken against the company. Sh. S.K. Sachdeva also referred to the affidavit filed by the then DTCP in CWP No. 8926 of 2022, wherein it was stated that the licence would be cancelled.

xii. That Respondent No. 2 had represented to the complainants that it possessed the requisite authority to develop the Project and had further assured that

the necessary statutory compliances under the Act were being undertaken. It was specifically represented that the registration certificate for the Project would shortly be obtained in favour of Respondent No. 2. Relying upon the aforesaid representations, assurances and warranties, the complainants proceeded with the booking of a residential apartment measuring 1,180 sq. ft., bearing Unit No. 1201, situated on the 12th Floor (hereinafter referred to as the "Unit"). Consequently, a Buyer Development Agreement dated 06.10.2016 was executed between the original allottee and the complainants. That, on the basis of the representations and documents furnished in relation to the Project, the registration certificate bearing Registration No. 182 of 2017 dated 04.09.2017 was granted by this Authority vide Memo No. HARERA-279/2017/873. That subsequently, in the year 2019, when the issue regarding the absence of requisite permission for development of the Project in favour of Respondent No. 2 came to the notice of this Authority, cognizance of the matter was taken in Suo Motu Complaint No. HARERA/GGM/5802/2019/Suo-Motu (Complaints). Vide order dated 29.11.2019, this Authority directed amendment of the registration of the Project to recognise Sarv Realtors Pvt. Ltd. as the promoter.

xiii. That the aforesaid order of this Authority clearly recognises the responsibility of Respondent No. 1 as the licensee and promoter of the Project. Further, the liability of Respondent No. 2, which had marketed and sold the units in the Project, has also been recognised in the subsequent proceedings concerning the transfer of assets and liabilities.

xiv. That, in view of the aforesaid facts, orders and circumstances, the complainants submits that Respondent Nos. 1 and 2 are jointly and severally liable for discharging the obligations and liabilities arising out of the development, marketing and sale of the Project and for providing the consequential reliefs to the complainants under the Act.

xv. That it is pertinent to submit that, subsequent to the initiation of the aforesaid

insolvency proceedings, it was specifically clarified that the Project "Supertech Hues" did not form part of the Corporate Insolvency Resolution Process (CIRP). That it is submitted that the Project "Supertech Hues" does not form part of the Corporate Insolvency Resolution Process (CIRP) initiated against Respondent No. 2. The said position was confirmed by Respondent No. 2 vide email dated 12.05.2022 and by the IRP, Mr. Hitesh Goel, vide emails dated 28.05.2022 and 01.06.2022, wherein it was clarified that all assets and liabilities pertaining to the Project had been transferred to M/s Sarv Realtors Pvt. Ltd. Further, the notices issued by Respondent No. 2 specifying the projects covered under the NCLT order dated 25.03.2022 also did not include the Project "Supertech Hues".

xvi. That, moreover, vide order dated 10.06.2022, the Hon'ble NCLAT directed that all projects of the corporate debtor, other than "Eco Village-II", shall continue as ongoing projects under the supervision of the IRP, with the assistance of the erstwhile management, employees and workmen. The said directions were subsequently considered by the Hon'ble Supreme Court in Civil Appeal No. 1925 of 2025, vide order dated 11.05.2025, wherein the Hon'ble Supreme Court declined to interfere with the continuation of the other projects as ongoing projects, observing that any contrary direction was likely to cause hardship to homebuyers and irreparable injury. A copy of the said order is annexed herewith and marked as Annexure C7.

xvii. That, in view of the aforesaid communications and judicial orders, the complainants submits that the Project "Supertech Hues" is not covered by the project-wise insolvency resolution proceedings concerning "Eco Village-II" and continues to fall outside the scope of the said project-specific resolution mechanism. Accordingly, the pendency of the insolvency proceedings does not, by itself, constitute a bar to the adjudication of the present complaint or the grant of appropriate reliefs to the complainants.

xviii. That Respondent No. 2, through its advertisements, representations and

various authorised representatives, had extensively promoted the Project and projected it as a promising residential development. The complainants was induced to invest in the Project on the basis of the representations and assurances made by the respondents regarding its development, availability of requisite approvals and timely completion. Relying upon such representations, the complainants proceeded with the purchase of the Unit with the legitimate expectation that possession would be delivered within the stipulated period. That, as per Clause 1 at Page 4 and Clause 24 at Page 10 of the Buyer's Agreement, possession of the Unit was required to be handed over by June 2019. However, the respondents have miserably failed to fulfil their contractual obligations and have not delivered possession of the Unit within the stipulated period.

xix. That the complainants has, till date, paid a substantial amount of Rs. 31,48,794/- towards the sale consideration of the Unit. Despite receipt of the aforesaid amount, the respondents have failed to undertake corresponding development of the Project or complete the construction within the stipulated period. Even after the lapse of several years beyond the agreed possession date, the Project remains substantially incomplete and there is no reasonable certainty regarding its completion or delivery of possession.

xx. That the respondents have failed to discharge their statutory and contractual obligations under the Act, the Rules and Regulations framed thereunder, as well as the terms and conditions of the Buyer's Agreement. It is further submitted that no Occupation Certificate has been obtained in respect of the Unit/concerned phase of the Project and possession has not been handed over to the complainants despite the expiry of the stipulated period and the passage of several years since the booking of the Unit.

xxi. That the complainants cannot reasonably be expected to wait indefinitely for the completion of the Project and delivery of possession, particularly when the respondents have failed to demonstrate any reasonable certainty

regarding its completion. Having waited for an unreasonable period and in view of the persistent failure of the respondents to fulfil their obligations, the complainants has lost confidence in the respondents' ability to complete the Project and deliver possession. It is well settled that an allottee cannot be compelled to wait indefinitely for possession of the allotted unit and is entitled to seek refund of the amount deposited along with the applicable interest. In this regard, reliance is placed upon the judgments of the Hon'ble Supreme Court in *Fortune Infrastructure v. Trevor D'Lima*, (2018) 5 SCC 442, and *Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan*, (2019) 5 SCC 725, wherein the Hon'ble Supreme Court recognised the right of an allottee to seek refund where the promoter fails to deliver possession within the stipulated period.

xxii. That the prolonged and unexplained delay in handing over possession of the Unit constitutes a failure on the part of the respondents to discharge their statutory obligations and gives rise to violations of Sections 11(4), 12, 18(1) and 18(3) of the Act, as applicable to the facts and circumstances of the present case. The complainants is, therefore, constrained to approach this Authority seeking appropriate relief under the provisions of the Act.

xxiii. That, in view of the continuous failure of the respondents to complete the Project and hand over possession within the agreed period, the complainants have suffered considerable financial hardship and mental agony. The complainants are no longer willing to remain associated with the Project or to continue waiting for the delivery of possession. Accordingly, the complainants have elected to withdraw from the Project and seeks refund of the entire amount deposited with the respondents.

xxiv. That, in view of the facts and circumstances stated hereinabove, this Authority is respectfully requested to direct the respondents to refund the entire amount deposited by the complainants, along with interest at the prescribed rate, in terms of Section 18(1) of the Act. The complainants has

been deprived of the use and benefit of the amount deposited and has been subjected to prolonged financial hardship on account of the respondents' failure to fulfil their statutory and contractual obligations. In view of the aforesaid authoritative pronouncement, the complainants submits that, upon failure of the promoter to hand over possession within the stipulated period, the allottee is entitled to withdraw from the Project and seek refund of the amount deposited along with prescribed interest in accordance with Section 18(1)(a) of the Act.

xxv. That the complainants further relies upon the decision of this Authority in *Rajat Bayana and Another v. Sarv Realtors Pvt. Ltd. and Others*, Complaint No. 3072 of 2023, decided on 06.05.2025, wherein the Authority considered a similar situation involving the Project "Supertech Hues and Azalia". In the said matter, the complainantss had initially sought delayed possession charges but subsequently sought refund of the amount deposited from Sarv Realtors Pvt. Ltd., to whom the Project had been handed over.

xxvi. While allowing the relief of refund along with interest, the Authority considered the transfer of all assets and liabilities pertaining to the projects "Supertech Hues" and "Supertech Azalia" from Supertech Ltd. to Sarv Realtors Pvt. Ltd./DSC and others. The Authority further observed that, notwithstanding such transfer, Supertech Ltd. continued to remain jointly responsible for the units marketed and sold by it and would also be liable in the event of failure on the part of Sarv Realtors Pvt. Ltd./DSC and others to discharge their obligations towards the allottees.

xxvii. The Authority also took note of the registration of the aforesaid projects under Registration No. 182 of 2017 and held that Sarv Realtors Pvt. Ltd./DSC and others were bound to comply with the directions of the Authority along with Supertech Ltd., in respect of the assets and liabilities pertaining to the projects. It was further recorded that, during the hearing dated 11.03.2025, learned counsel for the complainantss had clarified that refund was being

sought from Sarv Realtors Pvt. Ltd., to whom the Project had been handed over, and that its impleadment had already been allowed by the Authority on 10.12.2024. The aforesaid decision is directly relevant to the facts and circumstances of the present case, as it concerns the same Project and the liability of the respondents arising out of the transfer of assets and liabilities. The complainants, therefore, submits that the respondents are liable to discharge their respective obligations towards the complainants, including the refund of the amount deposited along with prescribed interest.

xxviii. That, in view of the foregoing facts and circumstances, the complainants submits that the present complaint is maintainable and that the complainants has a fresh cause of action to seek refund in view of the subsequent developments concerning the transfer of assets and liabilities of the Project and the continued failure of the respondents to deliver possession. Accordingly, this Authority is respectfully requested to direct the respondents, jointly and severally, to refund the entire amount of Rs. 31,48,794/- deposited by the complainants, along with interest at the prescribed rate, in accordance with the provisions of Section 18(1)(a) of the Act.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s).

i. Direct the respondents to refund the entire amount paid by the complainants, along with interest at the prescribed rate (MCLR + 2%) from the respective dates of payment till the date of actual realizations.

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 the Answering Respondent was granted Licence Nos. 106 and 107 dated 26.12.2013 and Licence Nos. 135 and 136 of 2014 dated 26.08.2014 for the development of the land in question. In furtherance thereof, the Answering Respondent entered into two Joint Development Agreements with M/s. Supertech Ltd., dated 25.04.2014 (hereinafter referred to as "JDA-1") and 26.08.2014 (hereinafter referred to as "JDA-2"), respectively.

ii. That, in terms of the aforesaid Joint Development Agreements, M/s. Supertech Ltd. was responsible for undertaking the development and marketing of the said project. That the Complainants, along with several other prospective allottees, approached M/s. Supertech Ltd. to make enquiries regarding the project. Upon conducting due diligence and receiving the requisite information and particulars concerning the project, the Complainants proceeded to book an apartment/unit therein.

iii. That, after duly considering and understanding the contractual terms and conditions, including the applicable payment plan, the Complainants executed a Buyer Developer Agreement dated 06.10.2016 in respect of Apartment No. K-2201, Tower-K, 22nd Floor, having a super area of approximately 1,180 sq. ft. (hereinafter referred to as the "Apartment"), for a total sale consideration of Rs. 31,09,796/-, exclusive of applicable charges and taxes. The relevant clauses of the Buyer Developer Agreement (hereinafter referred to as the "Agreement") are reproduced hereinbelow: That, in terms of Clause 1

of the Agreement, timely payment of the instalments by the allottee was stipulated to be the essence of the Agreement.

iv. That, as per Clause 24 of the terms and conditions of the Agreement, possession of the Apartment was to be handed over by June 2019, subject to an additional grace period of six months. The Developer had further agreed to pay compensation to the allottee at the rate of Rs. 5/- per sq. ft. of the super area of the Apartment in the event of delay in handing over possession beyond the stipulated period, including the grace period of six months, until the issuance of the offer of possession or delivery of actual physical possession, whichever was earlier, subject to the terms of the Agreement.

v. That Clause 24 of the Agreement further stipulated that allottees who had booked their apartments under special schemes, such as "No EMI till Offer of Possession" under a subvention scheme, would not be entitled to compensation for delay in handing over possession. It was also provided that any delay attributable to force majeure circumstances would be excluded while computing the stipulated possession period.

vi. That, in terms of Clause 25 of the Agreement, possession of the Apartment was to be handed over to the allottee only upon payment of all outstanding dues. That the Complainants had opted for the "CD Payment Plan", under which the progress of construction and development of the Apartment was linked to timely payments by the Complainants in accordance with the payment schedule stipulated in the Agreement. Any default or delay in making payments as per the

agreed schedule would consequently affect the progress of construction and the delivery of possession.

vii. That, upon the enactment of the Real Estate (Regulation and Development) Act, 2016, the project was registered with the Haryana Real Estate Regulatory Authority, Panchkula, vide Registration No. 182 of 2017 dated 04.09.2017, pursuant to the application submitted in the name of Respondent No. 1. That this Authority, vide order dated 29.11.2019 passed in Suo Motu Complaint No. 5802 of 2019 (hereinafter referred to as the "Transfer Order"), issued certain directions concerning the transfer of assets and liabilities pertaining to the projects namely "Hues" and "Azalia" to the Answering Respondent, M/s. Sarv Realtors Pvt. Ltd., and M/s. DSC Estate Developer Pvt. Ltd., respectively. This Hon'ble Authority further directed that M/s. Sarv Realtors Pvt. Ltd. and M/s. DSC Estate Developer Pvt. Ltd., as the case may be, be substituted as the promoters of the respective projects in place of M/s. Supertech Ltd. The relevant directions issued by this Authority are reproduced hereinbelow:

viii. The registration of the projects "Hues" and "Azalia" shall be rectified, and M/s. Sarv Realtors Pvt. Ltd./M/s. DSC Estate Developer Pvt. Ltd., as the case may be, along with the other concerned entities, shall be registered as the promoters of the respective projects.

ix. All assets and liabilities, including customer receipts and project loans of every nature pertaining to the projects "Hues" and "Azalia" and standing in the name of M/s. Supertech Ltd., shall be transferred to M/s. Sarv Realtors Pvt. Ltd./M/s. DSC Estate Developer Pvt. Ltd., as the case

may be. However, notwithstanding such rectification, M/s. Supertech Ltd. shall continue to remain jointly responsible for the units marketed and sold by it and shall also be liable in the event of failure on the part of M/s. Sarv Realtors Pvt. Ltd./M/s. DSC Estate Developer Pvt. Ltd. to discharge their respective obligations towards the allottees.

x. That, pursuant to the aforesaid directions issued by this Hon'ble Authority, the assets and liabilities pertaining to the project were transferred to the Answering Respondent. However, in terms of the Transfer Order, M/s. Supertech Ltd. continues to remain jointly responsible for the bookings and allotments made by it prior to the passing of the said order.

xi. That, subsequently, the aforesaid Joint Development Agreements were mutually cancelled by the Answering Respondent and M/s. Supertech Ltd. vide Cancellation Agreement dated 03.10.2019. Thereafter, the Answering Respondent assumed responsibility for the development of the project and commenced marketing and allotment of new units in its own name.

xii. That the aforesaid Joint Development Agreements were cancelled as M/s. Supertech Ltd. had failed to complete and develop the project within the timelines stipulated by this Hon'ble Authority and the Department of Town and Country Planning (DTCP). Accordingly, the parties mutually agreed to terminate the Joint Development Agreements by executing the Cancellation Agreement dated 03.10.2019.

xiii. That, in the meantime, the COVID-19 pandemic emerged in March 2020 and affected the entire country. The said pandemic and the consequent restrictions imposed by the Government resulted in disruption of construction activities and, as per the Answering Respondent, constituted force majeure circumstances warranting extension of the timeline for handing over possession of the Apartment.

xiv. That the construction and development work of the project is stated to be in progress. Any delay in completion of the project, if at all, is attributable to circumstances beyond the control of the Answering Respondent, including government-imposed lockdowns and restrictions which adversely affected construction activities. It is further submitted that certain restrictions on construction activities have continued to affect the pace of development.

xv. That the present complaint is liable to be dismissed, as the Complainants' own pleadings establish that the Buyer Developer Agreement was executed with M/s. Supertech Ltd. and that the payments towards the booking of the Apartment were also made to the said company. No contractual relationship was created between the Complainants and the Answering Respondent, nor were any payments made by the Complainants to the Answering Respondent. Accordingly, there is no privity of contract between the Complainants and the Answering Respondent, and the complaint, insofar as it is directed against the Answering Respondent, is not maintainable on this ground alone.

xvi. That the present complaint is further liable to be dismissed on the ground of non-joinder of necessary parties. It is submitted that the original applicant/allottee was Late Sh. Ashok Kumar Adlakha, who, as admitted by the Complainants, has since expired. The Complainants is only one of the co-allottees/legal representatives, and the rights and shares of all the legal heirs are required to be duly determined in accordance with law. The complaint, having been instituted solely by the Complainants without impleading the other necessary parties, is defective and not maintainable in its present form. Further, the succession certificate issued in favour of three legal representatives does not, by itself, confer exclusive authority upon the Complainants to institute the present complaint in her individual capacity.

xvii. That, in view of the directions contained in the Suo Motu Order passed by this Hon'ble Authority, M/s. Supertech Ltd. and the Answering Respondent have been held jointly responsible in respect of the obligations towards the allottees. However, the respective liabilities arising out of the allotments made by M/s. Supertech Ltd. and the amounts received by it cannot be fastened exclusively upon the Answering Respondent. The Answering Respondent cannot be held solely liable for the allotments undertaken and sale consideration received by M/s. Supertech Ltd.

xviii. That the present complaint is not maintainable in its present form and is based on misconceived and untenable grounds. A bare perusal of the complaint does not disclose any legally sustainable cause of action against the Answering Respondent. The complaint has been instituted

with an ulterior motive to exert undue pressure upon the Answering Respondent through proceedings which are devoid of merit.

xix. That the present complaint is also barred by the principles of res judicata. It is an admitted position that the Complainants had earlier instituted Complaint No. 3757 of 2020 in respect of the same Apartment, which was adjudicated and allowed vide judgment dated 10.11.2021. Accordingly, the institution of a subsequent complaint in respect of the same subject matter, without establishing any legally sustainable basis for the same, is impermissible in law. The present complaint is, therefore, liable to be dismissed on this ground as well.

xx. That the delay in construction and completion of the project, if any, was occasioned by circumstances beyond the control of the Answering Respondent and cannot be attributed to any deliberate act or omission on its part. It is submitted that the Flat Buyer Agreement contains provisions stipulating that, in the event of delay in delivery of possession for reasons not attributable to the Developer/Respondent, the Developer shall be entitled to a proportionate extension of time for completion of the project. In this regard, the Answering Respondent places reliance upon Clause 43 under the heading "General Terms and Conditions" of the Agreement and craves leave to refer to and rely upon the said clause at the time of arguments.

xxi. That, in terms of the force majeure clause contained in the Agreement, any delay arising on account of circumstances beyond the reasonable control of the Respondent, including disputes with construction agencies engaged by it, the COVID-19 pandemic, shortage of labour and

raw materials, and stoppage of construction pursuant to orders passed by competent courts or authorities, would constitute circumstances warranting an extension of the stipulated period for completion of the project. Accordingly, such delay cannot be attributed to any default or negligence on the part of the Respondent.

xxii. That, as per the Agreement executed in respect of the Apartment, possession was stipulated to be handed over on or before June 2019, subject to an additional grace period of six months. Accordingly, the extended date for handing over possession would fall in December 2019. However, the said timeline was subject to the force majeure provisions contained in Clause 43 of the Agreement. It is submitted that completion of a real estate project is dependent upon several circumstances and contingencies, some of which may be beyond the control of the Developer. In the present case, the Respondent made all reasonable efforts to complete the project and deliver possession within the stipulated period; however, the same could not be achieved owing to the circumstances elaborated hereinabove.

xxiii. That the timeline stipulated under the Flat Buyer Agreement was subject to the force majeure circumstances and other events beyond the reasonable control of the Respondent. It is further submitted that the Respondent had, from time to time, obtained the requisite licences, approvals, sanctions, permits and extensions, wherever required, for undertaking the development and construction of the project.

xxiv. That, despite its best efforts to hand over possession of the residential unit within the stipulated period, the Respondent could not complete

the project owing to various constraints and circumstances beyond its control. Apart from the alleged defaults on the part of certain allottees, the delay in completion of the project was also attributable to the following circumstances:

xxv. That the implementation of various government-sponsored schemes, including the National Rural Employment Guarantee Act (NREGA) and the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), resulted in a shortage of labour in the real estate sector. The availability of labour in the NCR region was adversely affected, as a substantial number of workers returned to their respective native places in view of employment opportunities available under the aforesaid schemes. Consequently, several real estate projects, including the project in question, experienced disruption in their construction schedules. The shortage of labour, coupled with the disparity between the demand for and availability of the workforce and disputes relating to labour, adversely affected the progress of construction and contributed to the delay in completion of the project.

xxvi. That the shortage of labour, water and other construction materials, as well as the requirement to obtain additional permissions, licences and sanctions from various government departments, were circumstances beyond the control of the Respondent and could not reasonably have been anticipated at the time of launching the project and commencement of construction. The Respondent, therefore, cannot be held solely responsible for delays arising from such circumstances.

xxvii. That the object of a force majeure clause is to protect a contracting party from the consequences of events and circumstances beyond its reasonable control, which materially affect its ability to perform contractual obligations. It is submitted that the circumstances referred to hereinabove adversely affected the Respondent's ability to undertake and complete construction within the stipulated timeline. Accordingly, the Respondent seeks an appropriate extension of time in accordance with the relevant provisions of the Agreement.

xxviii. That the real estate sector was also adversely affected by the demonetisation exercise undertaken by the Government of India. The sector is substantially dependent upon cash flows for meeting payments towards labour, contractors and other construction-related activities. The demonetisation exercise resulted in operational and financial disruptions, which, as per the Respondent, affected construction activities for a period of approximately four to six months. The Respondent, therefore, submits that the said circumstances also contributed to the delay in completion of the project and are required to be considered while determining the period of delay.

xxix. That the Complainants has not approached this Authority with clean hands and has allegedly suppressed material facts relevant to the adjudication of the present complaint. It is further submitted that the Complainants is a speculative investor and has no genuine intention of taking possession of the Apartment. In view of the aforesaid, the complaint is liable to be dismissed.

xxx. That the project "Hues" is registered with the Haryana Real Estate Regulatory Authority vide Registration Certificate No. 182 of 2017 dated 04.09.2017, which was valid for the period commencing from 04.09.2017 and ending on 31.12.2021. That it is pertinent to reiterate that possession of the Apartment was proposed to be handed over by March 2019, subject to an additional grace period of six months, which expired in September 2019. However, completion of the building was allegedly delayed due to non-availability of steel, cement and other construction materials, shortage of water and electricity supply, strikes and slowdown in construction activities, and insufficiency of labour. These circumstances, according to the Respondent, were beyond its control and entitled it to a reasonable extension of time under the terms of the Agreement. It is further submitted that the Respondent and its officials have been making efforts to complete the project at the earliest and that there has been no deliberate or mala fide intention to delay the delivery of possession. Additionally, construction activities were affected for a considerable period on account of restrictions imposed by the Environment Pollution (Prevention and Control) Authority due to the high level of pollution in the Delhi-NCR region.

xxxi. That the objective of the Real Estate (Regulation and Development) Act, 2016 is to regulate and promote the real estate sector and protect the interests of allottees by ensuring transparency and accountability in the development and delivery of real estate projects. It is submitted that the Respondent has been making efforts to complete the project in accordance with the timelines submitted before the competent Authority. Further, in terms of the Builder Buyer Agreement, any

amount payable towards delayed possession charges, if applicable, would be paid or adjusted at the time of final settlement, in accordance with the relevant contractual provisions. The project is stated to be ongoing and construction activities are continuing.

xxxii. That, where the parties have expressly agreed upon the terms and conditions governing their contractual relationship, their respective rights and obligations are required to be considered in accordance with the Agreement, subject to the applicable statutory provisions. Accordingly, the reliefs claimed by the Complainants are required to be examined in light of the relevant contractual stipulations and the provisions of the Act.

xxxiii. That, in addition to the aforesaid circumstances, the Hon'ble Supreme Court, vide order dated 04.11.2019 passed in W.P. (C) No. 13029 of 1985, imposed restrictions on construction activities in the Delhi-NCR region. The project "Hues" was also affected by the said restrictions, resulting in the suspension of construction activities for a considerable period. It is submitted that a complete stoppage of construction activities adversely affects the availability of labour at the project site, as workers are compelled to return to their native places or seek employment elsewhere. Consequently, even after the restrictions are lifted, resumption of construction activities and restoration of the workforce to the required strength takes considerable time. The Respondent, therefore, submits that the aforesaid restrictions materially affected the progress of construction of the project. Relevant extracts of the order dated 04.11.2019 passed by the Hon'ble Supreme Court in W.P. (C) No. 13029 of 1985.

xxxiv. That it is further submitted that the Graded Response Action Plan (GRAP), aimed at addressing major sources of air pollution, was implemented during the winter seasons of 2017-18 and 2018-19. The measures contemplated thereunder included restrictions on construction activities, closure of certain power plants and industrial units, restrictions on brick kilns, measures against waste burning, mechanised cleaning of road dust and limited implementation of the odd-even scheme. These restrictions also adversely affected construction activities in the Delhi-NCR region.

xxxv. That the COVID-19 pandemic further aggravated the difficulties faced by the Respondent and the real estate sector as a whole. The pandemic had a severe impact on economic and industrial activities worldwide. The real estate sector, being substantially dependent upon the availability of labour and the uninterrupted progress of construction activities, was particularly affected. Owing to the government-imposed lockdowns, construction activities in the NCR region came to a complete standstill until July 2020. Further, a substantial portion of the labour force engaged by the Respondent returned to their respective native places, resulting in an acute shortage of labour at the project site. In view of the aforesaid circumstances, the Respondent submits that the COVID-19 pandemic and the consequential restrictions constituted force majeure events and affected the stipulated timeline for handing over possession of the Apartment. That, in view of the submissions made hereinabove, the Complainants is not entitled to the reliefs claimed in the present complaint.

xxxvi. That the Complainants is not entitled to any compensation or refund, as claimed, and is, at best, entitled to delayed possession charges in accordance with Clause 2 read with Clause 24 of the Builder Buyer Agreement, subject to the terms and conditions thereof.

E. Jurisdiction of the Authority:

11. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

12. 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

13. 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)(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.

14. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to refund the paid-up amount along with interest at prescribed rate.

15. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

*"**Section 18: - Return of amount and compensation***
18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-
(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
***he shall be liable on demand to the allottees**, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, **to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed** in this behalf including compensation in the manner as provided under this Act:*
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

16. The Complainants were allotted Unit No. R0380K02201, 22nd floor admeasuring 1180 sq. ft, in the project titled "Supertech HUES Sector-68", situated at Sector-68, Gurugram, by the Respondent/Builder for a total basic sale consideration of Rs. 31,18,082/-. Against the said consideration, the Complainants have paid a total sum of Rs. 31,10,000/-, which constitutes approximately 99.74% of the total sale consideration.

17. A Buyer's Agreement dated 06.10.2016 was executed between the parties in respect of the said allotted unit. As per the terms of the agreement, the stipulated due date for completion of construction and offer of possession was 31.12.2019. However, the Respondent has failed to obtain the Occupation Certificate **(OC)** from the concerned competent authority till date and has also failed to offer possession of the said unit to the Complainants till date.

18. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest prescribed rate of interest. However, the allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided 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.*

19. 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.

20. 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., 14.08.2026 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

21. 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;"*

22. It is pertinent to mention over here that even after a passage of more than 10 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. It is also to mention that complainants have paid almost 99.74% of total consideration. In view of the above-mentioned facts, the allottee intends to withdraw from the project

and are well within the right to do the same in view of section 18(1) of the Act, 2016.

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

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

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

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

25. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

26. Accordingly, the Authority hereby directs the respondent/promoter no. 1 to refund the amount of ₹31,10,000/- received by them, along with applicable interest at the rate of 10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of each payment till its actual realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

G. Directions of the authority

27. Hence, the authority hereby passes this order and issues 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. 1 (Sarv Realtors Private Limited) is directed to refund the amount of Rs.31,10,000/- received by them, along with applicable interest at the rate of 10.80% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules,

2017, from the date of each payment till its actual realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

ii. 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.

iii. The respondent is further directed not to create any third-party rights against the subject unit before the full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

28. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

29. Complaint as well as applications, if any, stand disposed off accordingly. True certified copy of this order shall be placed in the case file of each matter.

30. File be consigned to registry.

Dated: 14.08.2026

Arun Kumar

Chairman

Haryana Real Estate
Regulatory Authority,
Gurugram