

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

Date of decision: 16.02.2023

<b>NAME OF THE BUILDER</b>		Vipul Limited	
<b>PROJECT NAME</b>		Vipul Lavanya	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1	CR/1912/2022	Faizan Ali Khan V/S M/s Vipul Limited	Shri Manish Shukla Shri Nishant Jain
2.	CR/1847/2022	Tanuj Mudgal and Shurti Mudgal V/S M/s Vipul Limited	Shri Manish Shukla Shri Nishant Jain
3.	CR/1976/2022	Rahul Agarwal and Sneh Lata V/S M/s Vipul Limited	Shri Manish Shukla Shri Nishant Jain

**CORAM:**

Shri Sanjiv Kumar Arora

**Member****ORDER**

1. This order shall dispose of all the 3 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 allottee 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 allottee of the project, namely, Vipul Lavanya at Vipul Limited (group housing complex) being developed by the same respondent/promoter i.e., M/s Vipul 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 possession, conveyance deed and the compensation.
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:

Project Name and Location	"Vipul Lavanya", Sector 81, Gurgaon
<p><b>Possession Clause: - 8.1. (a) Time of handing over the Possession</b>            " Subject to terms of this clause and subject to the VENDEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc, as prescribed by the VENDOR, the VENDOR proposes to hand over the possession of the Flat by <b>August 2019</b> unless extended by the Authority in accordance with the Act and Rules made thereunder subject to the receipt of requisite other approvals &amp; permissions from the concerned authorities, Force Majeure Conditions (defined in clause 8.1 b) ii) and subject to fulfilment of the terms and conditions of this Agreement including but not limited to timely payments by the VENDEE(S), in terms hereof.."  <b>(Emphasis supplied)</b></p>	
<p><b>Occupation certificate: -</b>            ➤ Not Obtained.</p>	
<p><b>Note:</b> Grace period is not included while computing due date of possession.</p>	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainant (s)	Relief Sought
1.	CR/1912/2022 Faizan Ali Khan V/S M/s Vipul Limited Date of Filing of complaint 06.05.2022	Reply Received on 25.07.2022	1102, 11 <sup>th</sup> floor Tower no. 02 (As per on page 38 of complaint)	25.03.2019 (Page no. 36 of the complaint)	31.08.2019 (As per possession clause)	TSC: - Rs.62,18,660/- (Page 39 of the complaint)  AP: - Rs.62,18,660/- (Page 23 of complaint)	-DPC - Physical possession -OC/CC
2.	CR/1847/2022 Tanuj Mudgal and Shurti Mudgal V/S M/s Vipul Limited Date of Filing of complaint 06.05.2022	Reply Received on 25.07.2022	03, Ground floor, Tower no. 02 (As per on page 42 of complaint)	15.05.2019 (Page no. 28 of the complaint)	31.08.2019 (As per possession clause)}	TSC: - Rs.60,31,760/-  AP: - Rs. 74,74,165/  (Page 23 of complaint)	DPC - Physical possession -OC/CC
3.	CR/1976/2022 Rahul Agarwal and Snehlata V/S M/s Vipul Limited Private Limited Date of Filing of	Reply Received on 25.07.2022	1003, 10th, Tower no. 02 (As per on page 40 of complaint)	10.12.2018 (Page no. 34 of the complaint)	31.08.2019 (As per possession clause)	TSC: - Rs.54,40,533/- (Page 41 of the complaint)  AP: - Rs.65,74,649/-	DPC - Physical possession -OC/CC

complaint 06.05.2022						(Page 22 of complaint )
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**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**  
**Abbreviation Full form**  
TSC Total Sale consideration  
AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with possession, conveyance deed and the compensation.
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.
6. 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/1912/2022 titled as Faizan Ali Khan V/S M/s Vipul Limited** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.

**A. Project and unit related details**

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant (s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

*CR/1912/2022 titled as Faizan Ali Khan V/S M/s Vipul Limited*

S. N.	Particulars	Details
1.	Name of the project	"Vipul Lavanya", Sector 81, , Gurugram
2.	Project area	10.512 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	26 of 2010 dated 18.03.2010 valid upto 17.03.2020
5.	Name of licensee	Vijay Luxmi INDS and 4 others
6.	RERA Registered / not registered	Registered vide 15 of 2018 dated 11.09.2018
7.	RERA Registration valid upto	31.08.2019
8.	Date of execution of flat buyer agreement	25.03.2019 (As per page no. 36 of the complaint)
9.	Unit no.	1102, 11 <sup>th</sup> floor, Tower no. 2 (As per page 38 of the complaint)
10.	Unit area admeasuring	1780 sq. ft. (Super Area) (As per page 42 of the complaint)
11.	Possession clause	<b>8.1. POSSESSION</b>

		<p><b>(a) Time of handing over the Possession</b></p> <p>Subject to terms of this clause and subject to the VENDEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc, as prescribed by the VENDOR, the VENDOR proposes to hand over the possession of the Flat by August 2019 unless extended by the Authority in accordance with the Act and Rules made thereunder subject to the receipt of requisite other approvals &amp; permissions from the concerned authorities, Force Majeure Conditions (defined in clause 8.1 b) ii) and subject to fulfilment of the terms and conditions of this Agreement including but not limited to timely payments by the VENDEE(S), in terms hereof.</p> <p><b>(Emphasis supplied)</b></p>
12.	Due date of possession	31.08.2019 (As per possession clause 8.1 of the agreement)
13.	Total sale consideration	Rs. 62,18,660/- (Page 39 of the complaint)
14.	Amount paid by the complainant	Rs.62,18,660/- (As per on page 23 of complaint)

15.	Occupation certificate /Completion certificate	The occupation Certificate placed on the file is not for the tower in which the subject unit is situated
16.	Offer of possession	11.07.2019 (As per page 26 of reply)

### B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
- I. That a project in the name of "Vipul Lavanya" at sector 81, Gurugram-122004, Haryana was being developed by the respondent - builder. The complainant coming to know about the same, booked one unit in the project of the respondent.
  - II. That the allotment of a unit was made by the respondent- builder to the complainant and allotted unit no. 1102 11<sup>th</sup> floor, in tower 2 of group housing colony.
  - III. That the total sale consideration of the unit is Rs. 62,18,660/- and out of which, the complainant has paid a sum of Rs. 62,18,660/-till date. The buyer's agreement was executed between the parties on 25.03.2019. As per clause 8.1 of the buyer's agreement the unit was to be delivered by August 2019 hence, the due date comes out to be 31.08.2019.
  - IV. That the complainant had paid all the charges including cover area

- and maintenance of the said booked flat and nothing is pending. The complainant has never ever defaulter in making payment to the respondent company and all the installments were paid timely.
- V. That the complainant is the owner of their respective flats but not a legal owner of the said property unless the occupancy certificate and conveyance deed registered or issued by the relevant authorities in favor of the complainant. The occupancy certificate shows and proof that the building has been completed as per the sanction plan. The respondent company had offered the said flats without an occupancy certificate and assured all the complainant that the occupancy certificate for relevant towers have been applied and it may take some time. The complainant was offered possession on 11.07.2019.
- VI. That it is extremely important to require the occupation certificate and getting the conveyance deed registered from the respondent - builder as the hard-earned money is involved in the said units by the complainant otherwise irreparable loss would be occurred to the complainant .
- VII. That further on account of delay in getting occupancy certificate for the aforesaid tower's conveyance deed/ registration of respective complainant unit is also getting delay day by day.
- VIII. That the respondent - developer failed to obtain occupancy certificate and, in such scenarios, it is prayed that this Hon'ble Court may be pleased to direct the respondent to adequately compensate for the



- delay in getting the OC and till such time the registered conveyance deed is to be executed in favor of the complainant.
- IX. That this Hon'ble Court has also ruled that the developers cannot use the force majeure clause for lack of approvals, financial crises and any insolvency proceedings and directed the builders to obtain the occupancy certificate for the building or pay an interest amount to residents of the building.
- X. That the complainant has diligently follow up with the respondent - builder regarding the aforesaid occupation certificate /conveyance deed approvals but every time the opposite party enjoyed and certificates at the stake of welfare of the complainant s. It is pertinent to note that the respondent - builder has caused huge harassment, mental torture and agony to the complainant due to non-fulfillment of terms and condition mentioned in the allotment letter establishing their egregious unfair trade practices.
- XI. That the respondent - builder kept on delaying the occupancy certificate and completion certificate of the project/relevant towers on one or other pretext and fail to give occupancy certificate of the said unit on the agreed terms and conditions. The complainant also sent various representation and request in this regard, but the respondent

has neither responded nor sought occupancy certificate from the concerned authorities till date. Hence the respondent – builder is liable to pay the interest on delay on actual possession.

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

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

- I. Direct the respondent to give actual physical possession of flat and direct the respondent to get the occupation certificate / cc from the concerned authority and register the conveyance deed in favour of the complainant.
- II. Direct the respondent to pay delay interest penalty.
- III. Direct the respondent to pay litigation cost.

10. 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**

11. The respondent has contested the complaints on the following grounds

- I. That the complainant – allottee have booked a unit in the project of the respondent – builder namely "Vipul Lavanya" situated at Sector 81, Gurugram. . The buyer's agreement was executed on 25.03.2019 and according to clause 8.1 the due date comes out to be 31.08.2019. Till date the complainant – allottee have paid an amount of Rs. Rs.62,18,660/-

- II. That the building has been completed as per the sanction plan. The complainant - allottee were intimated at the time of permissive possession to carry out the interior work / fit out and about the pendency of Occupation Certificate with the concerned authority. It was also intimated that the respondent has applied for Occupation Certificate vide letter dated 03.04.2018. The complainant - allottee with malafide are misleading this Hon'ble Authority and are trying to pressurize the respondent company to succumb to their illegal demands and to extort huge amounts towards their illegal demands. The complainant has already taken physical possession of the unit and were aware about the status of the occupation certificate.
- III. That the complainant - allottee have already taken possession on 11.07.2019 and are staying in the flat allotted to them and the complainant had full knowledge about the said fact at the time of taking possession of the flat in question. The complainant is not entitled to any relief. There is no fault on the part of the respondent.
- IV. The respondent had offered permissive possession to carry out interior works and for fit out at the unit whereas the complainant has taken physical possession of the unit on 11.07.2019. This Hon'ble Authority vide its order dated 12.01.2022 in Complaint bearing No. 1042 of 2021 titled as 'Pooja Jai krishna & anr. Versus M/s ADTV Communication Pvt. Ltd.' has held that the complainant is only entitled

to delay possession charges till the time he has taken possession of the unit. The respondent cannot issue occupation certificate. The occupation certificate is issued by Government Authority and the respondent has already applied for the same

- V. That the complainant require OC to claim income tax benefits or that it is very difficult to find a buyer in case a complainant wishes to sell his flat as alleged.
- VI. That the complainant has follow up with the respondent regarding OC / conveyance deed or that the respondent enjoyed or taking long extensions for approvals and certificates at the stake or the welfare of the complainant as alleged.
- VII. However, it is pertinent to submit that the complainant has to pay the charges that will be incurred at the time of registration of the conveyance deed.
- VIII. That the respondent has already obtained occupation certificates regarding 8 towers of the project and occupation certificates of only 2 towers remains to be issued by the concerned authority. The respondent as already applied for occupation certificate for remaining

2 towers on 03.04.2018. There is no fault on the part of the respondent.

- IX. That the complainant has already taken possession of their unit within the prescribed period mentioned in the agreement and they are not entitled to claim any interest on delayed possession.
- X. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

12. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.1 Territorial jurisdiction**

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

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

**Section 11**

.....

*(4) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

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

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

**G.I Direct the respondent to give actual physical possession of flat and direct the respondent to get the occupation certificate / cc from the concerned authority and register the conveyance deed in favour of the complainant.**

**G.II Direct the respondent to pay delay interest penalty.**

16. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of 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, —

.....  
*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."*

17. The apartment buyer's agreement was executed between the parties and as per the possession clause 8.1 the possession of the unit was to be handed over by August 2019. The clause 8.1 of the buyer's agreement is produced as below:

**8.1 Possession**

*Subject to terms of this clause and subject to the VENDEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with all provisions, formalities, documentation etc, as prescribed by the VENDOR, the VENDOR proposes to hand over the possession of the Flat by August 2019 unless extended by the Authority in accordance with the Act and Rules made thereunder subject to the receipt of requisite other approvals & permissions from the concerned authorities, Force Majeure Conditions (defined in clause 8.1 b) ii) and subject to fulfilment of the terms and conditions of this Agreement including but not limited to timely payments by the VENDEE(S), in terms hereof.*

18. **Admissibility of grace period:** As per clause 8.1 of buyer's agreement dated 25.03.2019, the respondent promoter has proposed to handover the

possession of the flat by August 2019. The due date comes out to be 31.08.2019.

19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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.*

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

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., 16.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.

21. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:



*“(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. The aforesaid relief no. I and II being interconnected are being taken up together. The complainant – allottee have booked a unit no. 1102 11<sup>th</sup> floor, in tower 2 of group housing colony was allotted vide allotment letter.
23. That the total sale consideration of the unit is Rs. 62,18,660/- and out of which, the complainant has paid a sum of Rs. 62,18,660/- till date. The buyer's agreement was executed between the parties on 25.03.2019. As per clause 8.1 of the buyer's agreement the unit was to be delivered by August 2019 hence, the due date comes out to be 31.08.2019.
24. The respondent – builder has offered the possession to the complainant – allottee on 11.07.2019 without obtaining occupation certificate and the same is invalid. Even though the respondent stated that the complainant – allottee have already taken the possession.
25. The counsel for the complainant stated at bar that they have received the permissive possession and the respondent has not received the occupation certificate and hence the possession is invalid Whereas the counsel for the respondent stated at bar that the offer of possession was made while relying in CR. No. 1042 of 2021 in case titled as Pooja Jai Krishna vs ADTV Communication Pvt. Ltd. . However, in that order it is clearly mentioned

that respondent is directed to obtain occupation certificate from the competent authority and then make a valid and lawful offer post that execution of conveyance deed can be done.

26. In the present case the offer of possession was not lawful as it was done on 11.07.2019 without obtaining the occupation certificate. The respondent – builder offered the possession to the complainant – allottee on 11.07.2019 without obtaining the occupation certificate and the same is held to be invalid. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 31.08.2019 till the actual handing over of possession.
27. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e. 31.08.2019 till the actual handing over of possession at the prescribed rate i.e., 10.60 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

### **G. III Compensation**

46. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim

compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer.

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

47. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to pay interest at the prescribed rate of 10.60% p.a for every month of delay from the due date i.e 31.08.2019 till the actual handing over of possession.
- ii. The respondent is directed to obtain occupation certificate from the competent authority and then make a valid and lawful offer of possession post that execution of conveyance deed be done within 3 months from the valid offer of possession as per provisions of Section 17 of the Act, 2016.
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% by

the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- iv. 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.
48. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
49. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
50. Files be consigned to registry.

  
(Sanjiv Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.02.2023