

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

Complaint no.	213 of 2024
Date of filing	23.01.2024
Date of first hearing	13.03.2024
Order pronounced on	05.03.2025

Gorav Rawat  
R/o: UTC 021, DLF Ultima, Sector 81, Gurugram

**Complainant**

Versus

M/s Vipul Limited  
**Registered office:** Regus Rectangle, Level 4,  
Rectangle 1, D4, Commercial Complex, Saket, New  
Delhi- 110017

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Manish Shukla (Advocate)

Shri Nikhil Garg and Shri Rishabh Gupta (Advocates)

Complainant

Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.



**A. Project and unit related details**

2. 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:

Sr. No.	Heads	Information
1.	Name and location of the project	"Vipul Lavanya", Sector-81, Gurugram
2.	Project area	10.512 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	26 of 2010 dated 18.03.2010 valid up to 17.03.2020
5.	Name of the Licensee	Graphic Research Consultant India and others
6.	RERA registered/ not registered and validity status	<b>Registered</b> 15 of 2018 dated 11.09.2018 Valid upto 31.08.2019 Out of total are of 10.512 acres only 2.282 acres is registered
7.	Date of Allotment	14.05.2012 (Page 54 of complaint)
8.	Unit no.	403, Tower - 02, 4 <sup>th</sup> floor (Page 54 of complaint)
9.	Unit admeasuring	1780 sq. ft. (Page 54 of complaint)
10.	Date of flat buyer's agreement	17.05.2012 (Page 84 of complaint)
	Tri-partite agreement	29.06.2012 (Page 84 of complaint)
11.	Basic sale price	Rs.72,51,720/- (BBA at page 25 of complaint)
12.	Total sale consideration	Rs. 86,19,713/- (BBA at page 25 of complaint)
13.	Total amount paid by the complainant	Rs.82,15,803/- (As <b>pleaded by complainant</b> in his complaint)
14.	Possession clause	<b>8.1(a)</b> <i>"Subject to terms of this clause and subject to the VENDEE(s) having complied with all the terms and conditions of this agreement and</i>



		<p><i>not being in default under any provisions of this agreement and complied with all provisions, formalities, documentation, etc., as prescribed by the VENDOR, the VENDOR proposes to handover the possession of the Flat within a period of thirty-six (36) months from signing of the agreement. The vendee(s) agrees and understands that the vendor shall be entitled to a grace period of 90 days, after the expiry of 36 (Thirty-Six) months, for applying and obtaining the occupation certificate in respect of the group housing complex."</i></p> <p>(BBA at page 30 of complaint)</p>
15.	Due date of delivery of possession	17.08.2015 (Calculated from the date of execution of agreement plus grace period of 90 days)
16.	Occupation certificate	Applied on 03.04.2018 (As alleged by respondent at page 8 of reply-Copy annexed at page 17 of reply in CR/5447/2023 decided on 28.08.2024)
17.	Letter signed by complainant waiving off claim of DPC and any other claims	16.09.2023 (Page 28 of reply)
18.	Permission to carry out Interior work/Fit out	25.09.2023 (Page 23 of reply)
19.	Possession Certificate	03.10.2023 (Page 14 of reply)

**B. Facts of the complaint**

3. The complainant has made following submissions in the complaint:
- i. That the complainant is a buyer and having a unit the project "Vipul Lavanya" at Sector-81, Gurugram, Haryana being developed by the respondent-builder, but the respondent has failed to offer actual possession of the said unit due to its willful negligence.
  - ii. That the complainant had purchased the flat from the respondent. A builder buyer agreement dated 17.05.2012 was executed between the parties towards allotment of unit number 403, 4<sup>th</sup> floor, admeasuring 1780 sq. ft., tower 2 at 'Vipul Lavanya' project situated at Sector-81 Gurgaon,





- Haryana. The total sale consideration of the said unit was Rs.86,19,713.95/- including all other charges.
- iii. That the buyers-agreement contain detailed terms and condition of allotment. The complainant had paid a total sum of Rs.82,15,803/- and the unit was supposed to be delivered by May 2015 but till date actual possession has not been given to the complainant. The complainant never defaulted in making payment to the respondent.
  - iv. That the complainant is the owner of the respective unit but not a legal owner of the said property unless the actual possession given by the respondent, the occupancy certificate (OC) and conveyance deed registered or issued by the relevant authorities in favor of the complainants. The receipt of occupancy certificate proves that the building has been completed as per the sanctioned plan. The respondent compelled and gave permissive possession on 16.09.2023 to avoid financial liability and obligation.
  - v. That on account of delay in getting possession, the complainants were overburdened with loan, rental, other daily expenses and EMIs owing to which the complainants are suffering from mental agony and depression.
  - vi. That this Hon'ble Court may be pleased to direct the respondent to pay delay penalty till the time registered conveyance deed is executed in favor of the complainant. Even if the complainant wish to sell their ready properties, without obtaining OC and without getting the conveyance deed registered, they can't proceed with the same. Also, if their prospective buyer is applying for a loan, banks too require certain documents and reject the loan in absence of OC/ conveyance deed.
  - vii. That the Hon'ble Court has also ruled that the developers cannot use the force majeure clause for lack of approvals, financial crisis and any



insolvency proceedings further directing the builders to obtain the occupation certificate for the building or pay interest for delay to the allottees.

**C. Relief sought by the complainants**

4. The complainants have sought the following relief(s):

I. Direct the respondent to give possession with interest (delay penalty charges) till the registration of conveyance deed in favour of the complainant.

5. On the date of hearing, the authority explained to the respondent-promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent is contesting the complaint on the following grounds:

i. That the complainant has no locus standi to file the present complaint as the complainant is already in possession of the unit since 2023. Hence, the present complaint is liable to be dismissed on this ground alone.

ii. That the complaint filed by the complainant is also barred by limitation as no step or grievance had been taken between the years 2012 till 2023. There is no documentary proof on record. Thus, the complaint is liable to be dismissed outrightly.

iii. That the companies namely M/s Graphic Research Consultants Pvt. Ltd. had acquired and purchased the land admeasuring 10.512 acres situated within the revenue estate of village Nawada Fatehpur, Sector 81, Gurgaon with the intention to promote and develop a group housing colony over the same. The owner companies have obtained license from the DTCP for setting up a group housing colony over the aforesaid land.

iv. That M/s Vipul Ltd. had inter-se entered into agreement with the owner companies in terms of which the M/s Vipul Ltd. is entitled to develop a group housing colony on the land admeasuring 10.512 acres situated in





Sector-81, Gurugram, Haryana. Pursuant to the aforesaid inter se agreement, M/s Vipul Ltd. launched the group housing project by the name of "Vipul Lavanya".

- v. That it is matter of record that some third parties had filed litigation titled as Vardhman Kaushik v/s Union of India & Ors. wherein the Hon'ble NGT while considering the degradation of environment was pleased to restrain or stop the construction activity in the region of Delhi and NCR. It is pertinent to mention here that Government of Haryana was a party and is well aware of the entire litigation and certain directions to all the developers to stop the construction work. The company through letters, individually to all its allottees including the complainants, informed about the stoppage of work of the aforesaid project. But when the restrain order got vacated the company again started construction of the project and thereafter applied for occupation certificate from the competent authority vide its letter dated 03.04.2018 and the respondent is hopeful that it will soon get the certificate for occupation from the competent authority. Upon the grant of the occupation certificate, the conveyance deed shall be executed.
- vi. That the statement of objects and reasons of the Act inter-alia is an attempt to balance the interests of consumers and promoters by imposing certain responsibilities on both. It is submitted that the complainant has never been at all aggrieved and do not fall under the definition of aggrieved person, but still by filling such false, frivolous and vexatious complaint, the complainant is by filing such false complaint, is misleading the Authority.
- vii. That the complainant has executed and acknowledged an undertaking at the time of handing over of the possession. Clause 21 of the undertaking is reiterated as follows:



*"21. That I/we entering into the unit for carrying out interiors/external facilities with clear understanding that any additional demanded by the company shall be paid by me/us in accordance with the revised payment schedule agreed upon mutually between myself/ourselves and the company. The company shall in no manner be liable to pay any penalty or compensation to the I/we for the delay in handing over of the actual physical possession of the unit for any reason whatsoever."*

Thus, the complainant has waived his right to claim any delay possession charges from the respondent.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

**E. Jurisdiction of the authority**

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

**D.I Territorial jurisdiction**

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

**D.II Subject matter jurisdiction**

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

**"Section 11**

**\*\*\*\***

**(4) The promoter shall-**



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

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

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

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

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

**F.I Objection raised by the respondent regarding the complaint being non-maintainable on ground of being barred by limitation.**

12. The respondent contends that the complaint is not maintainable as it is barred by limitation, citing that the complainant did not raise any grievance from 2012 to 2023. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others which provides as under:

*"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. **In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs***



*provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."*

13. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

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

**G.I Direct the respondent to give possession with interest (delay penalty charges) till the registration of conveyance deed in favour of the complainant.**

14. In the present complaint, the grievance of the complainant is that the respondent has failed to handover the physical possession and is seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under 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, —*

.....

*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."*

15. The plea of the respondent is otherwise that the complainant has executed an undertaking at the time of handing over of the possession wherein the complainant has waived his right to claim any delay possession charges from the respondent. The relevant part of the same is reiterated as under:

*"21. That I/we entering into the unit for carrying out interiors/external facilities with clear understanding that any additional demanded by the company shall be paid by me/us in accordance with the revised payment schedule agreed upon mutually between myself/ourselves and the company. **The company shall in no manner be liable to pay any penalty or compensation to the I/we for the delay in handing over of the actual physical possession of the unit for any reason whatsoever.**"*

16. The Authority is of the view that the said contention of the respondent is not valid as claiming delay possession charges is a statutory right provided ✓



under Section 18 of the Act. Therefore, the complainant-allottee cannot be precluded from his right to seek delay possession charges from the respondent.

17. Clause 8.1(a) of the buyer's agreement (in short, the agreement) dated 17.05.2012, provides for handing over possession and the same is reproduced below:

***"8.1 Time of handing over the Possession***

*(a) 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 provisions of this agreement and complied with all provisions, formalities, documentation, etc., as prescribed by the VENDOR, the VENDOR proposes to handover the possession of the Flat **within a period of thirty-six (36) months from signing of the agreement.** The vendee(s) agrees and understands that **the vendor shall be entitled to a grace period of 90 days, after the expiry of 36 (Thirty-Six) months, for applying and obtaining the occupation certificate in respect of the group housing complex.**" सत्यमेव जयते*

18. **Due date of handing over possession:** As per clause 8.1(a) of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 36 months from the date of signing of the agreement subject to further grace period of 90 days. Therefore, the due date of handing over possession comes out to be 17.08.2015.

19. **Admissibility of delay possession charges at 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, *ibid.* 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.*

20. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. 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., 05.03.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
22. 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;"*

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent-promoter ✓



which is the same as is being granted to the complainants in case of delayed possession charges.

24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date. The possession of the unit was to be delivered by 17.08.2015. However, the respondent has failed to handover possession of the subject apartment/unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
25. The authority observes that the respondent has admitted in its reply that the respondent has although applied for the occupation certificate to the competent authority on 03.04.2018 however, the same has not been granted to till date. Thus, the occupation certificate in respect of the subject unit has not been obtained although the same stands applied to the competent authority but is not yet granted.
26. Further an offer of permissive possession has been made to the complainant-allottee on 25.09.2023 for undertaking interior works. It is necessary to clarify whether such offer of possession made to allottee without receipt of occupation certificate would tantamount to a valid offer of possession or not, because after a valid and lawful offer of possession is being made by the promoter to the allottee, the liability of promoter for delayed possession charges comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over the valid possession. Thus, the authority is of



considered view that a valid offer of possession must have following components:

- a. Possession must be offered after obtaining occupation certificate;*
- b. The subject unit should be in a habitable condition;*
- c. The possession should not be accompanied by unreasonable additional demands.*

27. In the present matter, the respondent has offered possession (fit-outs) of the allotted unit before obtaining occupation certificate from the concerned department. Therefore, no doubt that the offer of possession has been sent to the complainant but the same is for fit outs. Thus, the offer of permissive possession is an invalid offer of possession as it triggers component (a) of the above-mentioned definition.
28. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of the occupation certificate. In the present complaint, the occupation certificate has not been obtained by the respondent till date. The respondent has handed over the actual physical possession to the allottees on 03.10.2023. The Authority further observes that the complainant was aware that the occupation certificate is not yet received by the respondent-promoter, yet he took the actual physical possession of the unit offered by the respondent. This implies that the complainant has been enjoying the vacant and peaceful possession of the unit since 03.10.2023.
29. 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 complainants are entitled to delay possession charges at the prescribed rate i.e., @11.10% p.a. w.e.f. due date of possession i.e., 17.08.2015 till the date of till the date of handing over of possession, i.e., till 03.10.2023, as per Sections 18(1) and 19(10) of the Act read with Rule 15 of the Rules, *ibid.*



**Possession**

30. The authority observes that Section 17 of the Act obligates the promoter to handover the physical possession of the subject plot/unit complete in all respect as per specifications mentioned in BBA and thereafter, the complainants-allottees are obligated to take the possession within 2 months as per provisions of Section 19(10) of the Act. However, the possession had already been handed over to the complainants in the present case. Same is evident from possession certificate dated 30.10.2023 issued in favour of the complainant.

Therefore, no direction to this effect is required.

**H. Directions of the authority**

31. 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):

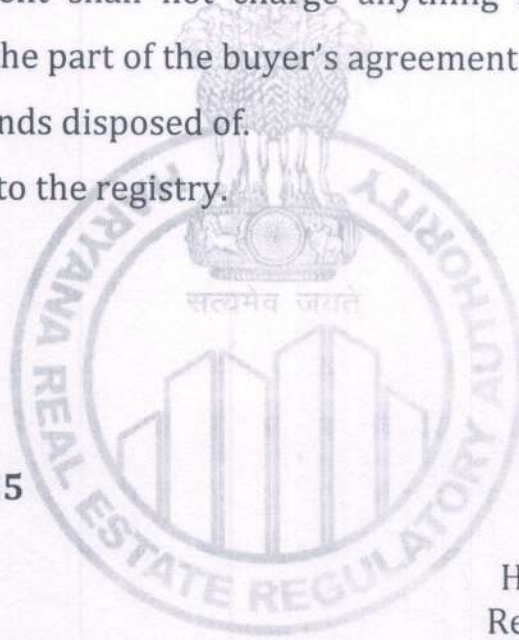
- I. The respondent-promoter is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay w.e.f. due date of possession i.e., 17.08.2015 till the date of handing over of possession, i.e., till 03.10.2023, as per Sections 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
- II. The arrears of such interest accrued from due date of possession i.e., 17.08.2015 till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per Rule 16(2) of the Rules, *ibid*.
- III. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order. The complainant is directed to pay ✓



outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

- IV. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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.
- V. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
32. The complaint stands disposed of.
33. File be consigned to the registry.

**Dated:05.03.2025**



**Ashok Sangwan**  
**(Member)**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
GURUGRAM