

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

| | |
|-------------------------------|---------------------|
| Complaint no.: | 4940 of 2024 |
| Date of filing: | 14.10.2024 |
| Date of first hearing: | 07.02.2025 |
| Date of decision | 11.11.2025 |

Mrs. Gurjeet Kaur

Sandeep Singh

**Both are R/o: - H.no. 327, DS New Rajender
Nagar, Central Delhi, 110060**

Complainants

Versus

M/s Vipul Limited

**Regd. Office at: - Regus Rectangle, Level-IV,
Rect-1 D-4, Saket, New Delhi-110017**

M/s Tulip Infratech Pvt. Ltd.

**Regd. Office at: - Plot no. 76-G, Sector 18,
Gurugram**

Respondents

CORAM:

Shri Ashok Sangwan

Member

Shri Phool Singh Saini

Member

APPEARANCE:

Mr. Amandeep Kadyan (Advocate)

Complainants

Ms. Ankur Berry (Advocate)

Respondent no. 1

Sh. Sudesh Ranjan (Advocate)

Respondent no.2

ORDER

1. This complaint has been filed by the complainant-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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details.

2. 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 | Aarohan Commercial Tower, Sector 53, Gurugram, Haryana | |
| 2. | Nature of the project | Commercial (Part of mixed Land Project) | |
| 3. | RERA Registered/ not registered | Registered vide registration no. 01 of 2018 dated 11.04.2018 Valid up to 30.06.2023 Registered area: 2.829 acres | |
| 4. | Amended registration certificate License no. and validity | 29 of 2022 dated 25.04.2022 Valid up to 31.12.2030 Registered area: 19.244 acres | |
| 5. | License no. and validity | 545-546 of 2006 dated 13.03.2006 | 168-172 of 2004 dated 16.12.2004 |
| | | Valid up to 12.03.2025 | Valid up to 15.12.2024 |
| 6. | Unit no. | 306, 3 rd floor, [Page 16 of complaint] | |
| 7. | Unit area admeasuring | 402 sq. ft. (Carpet area) 618 sq. ft. (Super area) [Page 16 of complaint] | |
| 8. | Date of allotment | 10.01.2019 [Page 16 of complaint] | |
| 9. | Possession clause | <p>6. addendum agreement</p> <p>It is agreed by the first party that it shall endeavour to complete the construction of commercial unit, obtain the Occupation Certificate and lease the property by 30.06.2023.</p> | |
| 10. | Due date of possession | 30.06.2023 + 6 months = 30.12.2023 (as per addendum agreement) | |
| 11. | Addendum Agreement executed on | 11.01.2019 [Page 25 of complaint] | |

| | | |
|-----|---------------------------------|--|
| 12. | Assured return clause | 2. That the First Party shall give an Assured return to MR. SANDEEP (100%) and MS. GURJEET KAUR (NIL) @ Rs.105.00/- per square foot per month of Super Area payable w.e.f. 11th January, 2019 payable at the end of month for which it is due till the date of possession. [Page 26 of complaint] |
| 13. | Sale consideration | Rs.93,03,630/- [Page 24 of complaint] |
| 14. | Amount paid by the complainants | Rs.89,70,393/- [As alleged by the complainants on page 13 of complaint] payment receipts on page 31 of complaint |
| 15. | Occupation certificate | Not obtained |
| 16. | Offer of possession | Not offered |

B. Facts of the complaint.

3. The complainants have made the following submissions by way of filing the present complaint: -

- That on 10.01.2019, complainants Mrs. Gurjeet Kaur, and Mr. Sandeep Singh booked a unit by making a payment of Rs. 5,00,000/- in the project names as "Aarohan Commercial Tower (now Known as Tulip Attila) situated at Aarohan Commercial Tower located in village Haiderpur Viran and Wazirabad, Sector 53, Gurugram, unit no. 306 N, 3rd floor having carpet area of 402 sq.ft. and super area of 618 sq.ft. was allotted to the complainants in the above said project.
- That on 10.01.2019, in terms of agreement to sell which was entered between the parties wherein as per the payment plan the complainants made a payment of Rs. 5,00,000/-.
- That the subsequent to the allotment of commercial unit the respondent entered into an addendum vide addendum agreement dated 11.01.2019 in order to amend certain terms to principal agreement. As per clause 3 of the addendum agreement the respondent was required to pay the

complainants an assured return at Rs. 105/- per sq.ft. per month of super area, payable w.e.f. 11.01.2019 payable at the end of every month till the due date of possession.

- d) That in terms of addendum agreement the respondent issued 12 posted date cheques vide letter dated 04.05.2019 each for an amount of Rs, 58,401 excluding taxes with respect to the assured returns payable by the respondent. Against the false assurances of the respondent the complainants received only 32 instalments out of 48 instalments from the year 2019-2023 and only 6 instalments in the year 2024 so far. Even the cheque which was to be presented in the month of September 2019, the same was returned vide return memo dated 23.09.2019 and further the cheque bearing no. 005507 was dishonoured and return on dated 28.10.2019. the complainants made several requests and representations to the representative of the respondent. However, no response was received. This shows that malafide intention of the respondent from the beginning. Not only the respondent failed to make payment towards assured returns but also failed to handover the possession of the said unit to the complainants. Furthermore, in terms of addendum agreement, the complainants also authorized the respondent to lease out the unit to any party on behalf of complainants. However, the respondent also failed to abide the said terms of the agreement. The complainants also sent a legal notice to the respondent.
- e) That the complainants have so far completed payment of 99% of the agreed amount i.e., Rs. 89,70,393/- which sums up to Rs. 88,87,335/-. The complainants have continuously tried contacting the respondent by sending multiple emails, however, the respondent has not acknowledged or responded to them.

- f) That the Aarohan Commercial project (now known as Tulip Attila (commercial)) was registered vide dated 11.04.2018 ending with 30.06.2023. The project completion date has already lapsed, and the respondent no.1 has not been able complete the project in time. Neither did the respondent upload the form A-H on the official site of HRERA nor did the respondent no.1 pay the complete assured return payment to complainants.
- g) That to complete the said project M/s Vipul Ltd. Entered in a joint venture with M/s Tulip Infratech Pvt. Ltd. The registration certificate was amended vide dated 25.04.2022. The registration certificate for the part of the project/phase residential group housing vide registration vide registration no. GGM/269/2018/01 dated 11.04.2019 which stands subsumed without affecting the obligation and liabilities of M/s Vipul Ltd. and M/s Moon Apartments Pvt. Ltd. towards the existing allottees.
- h) That despite repeated calls and meeting with the respondents, no definite commitment was shown for timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainants.
- i) That repeated calls, meetings and correspondence with the respondents and multiple visits to know the actual construction status not only cause loss to the complainants in terms of time, money and energy but also caused mental agony to him.
- j) That the cause of action arose in favour of the complainants and against the respondents from the date of booking of the said unit and it further arose when respondents failed to deliver possession of the said units within a stipulated time period. The cause of action further arose when the respondents has not completed the said project with the assured facilities

and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondents has still no rectified his defects and not rectified his defects and not fulfilled their obligations as per the builder buyer agreement.

k) That it is pertinent to bring the fact before the Authority that the respondent has neither received any OC, whether permanent or deemed, nor any completion certificate regarding the project herein. The offer of date of possession has already expired and the project has not even been started.

C. Relief sought by the complainants:

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

- I. Direct the respondents to make payment towards the assured return from January 2019 onwards till the commencement of first lease and thereafter lease rentals.
- II. Direct the respondents not to terminate the allotment of the complainant's or create third party rights or to change the allotted unit.
- III. Direct the respondents to demarcate the unit in question and handover possession in habitable condition after obtaining the OC.
- IV. Direct the respondent to complete the project in expeditious manner and offer the possession of allotted unit along with all the promised amenities and facilities and to the satisfaction of the complainants.

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 no.1

6. The respondent has contested the complaint on the following grounds:

- a) That the complaint in its present form ought to be dismissed outrightly, since the same has been filed without supporting affidavits of the complainants. Thus, raising questions on the veracity of the complete complaint.

- b) That the complainants' herein have failed to provide the correct/complete facts and the same are reproduced hereunder for necessary and proper adjudication of the present matter. Further the present complaint has been filed without adding necessary party since, the primary developer of the project is M/s Tulip Infratech Pvt. Ltd. The absence of the necessary party thus entails that the present complaint is not maintainable.
- c) That the primary relief of the complainants' is for handing over of the possession, even though the complainants are well aware that the project is now being developed by M/s Tulip Infratech Pvt. Ltd. Thus, the complaint itself being defective ought to be dismissed.
- d) That the respondent had registered the commercial complex under the name and style of "Aarohan Commercial Tower" forming part of the project under the provisions of the Act and Rules with Haryana Real Estate Regulatory Authority at Gurugram on 11.04.2018 under registration no. RC/REP/HARERA/GGM/2018/01. Further in the year 2021 the Director Town and Country Planning gave in principle approval to the respondents allowing the assignment of the Joint Development Rights and Marketing rights, etc., of respondent to Tulip Infratech Pvt. Ltd. Thus, currently M/s Tulip Infratech Private Limited has been inducted as a "Developer" through two separate joint development agreement dated 11.10.2021, which has been allowed and approved by the DTCP.
- e) That the final change of beneficial interest permission was granted by DTCP, Haryana after consideration of the joint development agreement dated 11.10.2021 between M/s Tulip Infratech Private Limited & M/s Vipul Limited. As per conditions of joint development agreement, M/s Tulip Infratech Private Limited would be the responsible for development of entire real estate project. M/s Tulip Infratech Private Limited is holding

a power of attorney as detailed out in Article 14 of the joint development agreement from the landowners on which the buildings or apartments are constructed.

- f) That further the project "Aarohan Mixed Land Use Project" is now replaced by the "Tulip Monsella and Tulip Attila (Commercial), consisting of 1383 unit residential, 108 unit general, 108-unit service personal, 191-unit EWS, 327 unit commercial-1, 4 unit commercial-2, 18-unit convenient shopping, 4-unit kiosk, 2-unit sport building/area, 1 unit club House. Accordingly, an amended registration certificate registration no. 29 of 2022, has been issued by the Authority in this regard. The bare reading of the amended registration certificate, clearly shows that the respondent no. 1 is only the license holder whereas M/s Tulip Infratech Pvt. Ltd. is the beneficial interest permission holder of the project. Thus, the area already sold to the existing allottees by M/s Vipul Limited, the applicant promoter i.e. M/s Tulip Infratech Private Limited shall be treated as contractor of M/s Vipul Limited.
- g) That as per registration no. 29 of 2022 under the mixed land use policy of TOD dated 09.02.2016, it is respectfully submitted that, holding BIP for part of the licensed area, M/s Tulip Infratech Private Limited is deemed to be the promoter for the entire licensed area, as per the definition provided in Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016. Consequently, M/s Tulip Infratech Private Limited assumes full responsibility for registration and compliance under the Act for the entire licensed area of 19.244 acres. Furthermore, it is respectfully submitted that M/s Tulip Infratech Private Limited is now solely responsible for the completion of the project. Respondent no.1, i.e., Vipul Limited, has no involvement in the construction of the project. Therefore, any delay in the

completion of the project shall be solely attributable to M/s Tulip Infratech Private Limited, and respondent no.1 cannot be held liable for the same.

- h) That further in view of the amended registration certificate, the due date of completion of the project has been approved and revised as 31.12.2030, thus the present complaint is premature since the due date of completion of the project has been acknowledged and revised to 31.12.2030 and there is no delay in the project which is attributable to the respondent no. 1. The clause H (ii) of the amended registration certificate places complete responsibility of the development of the project upon M/s Tulip Infratech Pvt. Ltd.
- i) That in the year 2019, the complainants' being in search of investment opportunities learned about the project launched by the respondents titled as "Aarohan Commercial Tower" at Sector 53, Gurugram and visited the office of the respondent no. 1 to know the details of the said project. The complainants further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
- j) That after having interest in the commercial project constructed by the respondents, the complainants vide provisional allotment letter dated 10.01.2019 booked the unit, under the assured return scheme, upon own judgement and investigation. It may be noted, that the complainants' were aware of the status of the project and thus invested in the project of the respondents without any protest or demur, to make steady monthly returns upon own judgment and investigation.
- k) That on 10.01.2019, respondent vide provisional allotment letter allotted a unit bearing no. 306N, 3rd floor, admeasuring super area 618Sq. ft. to the complainants. Further, upon knowing the assured return scheme, the

complainants upon own will paid amount of Rs. 88,87,335/- out of total sale consideration of Rs.93,02,630/- to the respondent for making steady monthly returns.

- I) That a unit buyer's agreement dated 10.01.2019, was executed between the complainants and the respondents for the unit, for a sale consideration of Rs.93,02,630/- in the project. The addendum agreement dated 10.01.2019 is executed between the respondent no.1 and the complainants.
- m) That as per clause 2 of the addendum agreement dated 11.01.2019, the unit was intended to be leased out upon the completion. In the present complaint, it is an admitted fact that the complainants' have already opted for leasing out and authorized the respondent no. 1 to lease out the unit. As per the provision of clause 2 read with clause 3, of the addendum agreement the unit in question were in deemed legal possession but the complainants were never entitled to claim the physical possession of the said Unit as it was to be leased out. It is a matter of fact, that the unit in question was deemed to be leased out upon completion. It is imperative to note, that the complainants' have mutually agreed and acknowledged that upon completion for the said unit the same shall be leased out at a rate as mutually decided among the parties.
- n) That the addendum agreement, clearly stipulated provisions for "lease" and admittedly contained a "lease clause". In the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the complainants are not an "allottees" but investor who have invested the money for making steady monthly returns.
- o) That the complainants are merely trying to hoodwink the Authority by concealing facts which are detrimental to their complaint. Since the

addendum agreement of the said commercial unit contained a "lease clause" which empowers the developer to put a unit of complainants along with other commercial space unit on lease, thus the prayer for possession has no standing being beyond the agreed terms between the respondent and complainants.

- p) That the objective of the Act of 2016 is to regulate the real estate sector in terms of the development of the project in accordance with the law and to provide relief of interest, compensation or refund to the allottees in case of violation of the provisions of the Act of 2016. The objective of the Act of 2016 is very clear to regulate the Real Estate Sector and form balance amongst the promoter, allottees and real estate agent. However, the entire Act of 2016 nowhere provides any provision to regulate the commercial understanding regarding returns on investment or lease rentals between the builder and the buyer.
- q) That the complainants herein had authorized the respondent no. 1 to further lease the unit upon completion of the same however, the construction of the project was obstructed due to many reasons beyond the control of the respondent no. 1.
- r) That the respondent was committed to complete the development of the project and lease out the unit. The Authority that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetization in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2024. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

s) That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. Such delay was not intentional. It is also submitted that the respondent was bound to adhere with the order and notifications of the courts and the government. The details of the ban on construction activities vide various directions of the national green tribunals or the statutory authorities etc. are highlighted in the table below:

| S.No | COURTS, AUTHORITIES ETC. DATE OF ORDER | TITLE | DURATION OF BAN |
|--------------|---|---|--|
| 1. | National Green Tribunal /09.11.2017 | Vardhman Kaushik Vs. Union of India | 09.11.2017 – Ban was lifted after 10 days (10 days) |
| 2. | National Green Tribunal /18.12.2017 | Vardhman Kaushik Vs. Union of India | 18.12.2017 – 08.01.2018 (22 days) |
| 3. | Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi /14.06.2018 | Order/Notification date 14.06.2018 | 14.06.2018 – 17.06.2018 (3 days) |
| 4. | Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA | Press Note - 29.10.2018 and later extended till 12.11.2018 | 01.11.2018-12.11.2018 (11 days) |
| 5. | Hon'ble Supreme Court/ 23.12.2018 | 3 days Construction ban in Delhi/NCR | 24.12.2018 – 26.12.2018 (3 days) |
| 6. | Central Pollution Control Board | | 26.10.2019 – 30.10.2019 (5 days) |
| 7. | Environment Pollution (Prevention & Control Authority)-EPCA- Dr. Bhure Lal, Chairman | Complete Ban | 01.11.2019 – 05.11.2019 (5 days) |
| 8. | Supreme Court - 04.11.2019 | M. C. Mehta Vs. Union Of India W.P. (c) 13029/1985 | 04.11.2019 – 14.02.2020 (3 months 11 days) |
| 9. | Ministry of Housing & Urban Affairs, Government of India – Covid-19 Lockdown 2020 | Notification dated 28.05.2020 | Complete 9 months extension with effect from 25.03.2020 (9 months) |
| 10. | Covid-19 Lockdown 2021 | | 8 weeks |
| 11. | Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave | Extract of the Resolution passed in the meeting dated 02.08.2021, | 3 months |
| TOTAL | | 1.7 years (approx.) | |

That as per the table shown hereinabove, the delay caused due to unforeseen circumstances, shall be considered and calculated, before determination of the date of completion of building. After considering the above delay, the date of completion of building has to be extended by approximately 1.7 years.

- t) Subsequently, upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of the project. The respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the project.
- u) That the respondent is entitled for the extension of 6 months' time period on account of the delay so caused due to worldwide spread of covid-19, which the Authority and other courts had considered it as a *force majeure* circumstance and allowed extension of 6 months to the promoters at large on account of delay so caused as the same was beyond the control of the respondent. It is also required to be considered that the Haryana Real Estate Regulatory Authority, Panchkula vide its resolution dated 09.08.2021 had considered the period affected from the second wave of Covid-19 between 01.04.2021 till 30.06.2021 as force majeure event and granted 3 (Three) months extension to all the promoters. Therefore, as the project of the respondent herein was also affected by the second wave of Covid-19, and therefore, further extension for a period of 3 months may be allowed. Further, the promoter is also entitled for a 70 days extension till 2021 when construction was banned by NGT and EPCA. Further, while computing the date, the grace period for the inadvertent delay so caused

on account of force majeure conditions may also be considered and allowed in view of the Judgement of the Hon'ble Supreme Court in '*M/S Supertech Ltd. vs. RajniGoyal, Civil Appeal No. 6649-50 of 2018*', wherein keeping in view the bans imposed by NGT and other government authorities etc., the promoter was allowed for the grace period enshrined under the agreement.

- v) That all these factors being *force majeure* may be taken into consideration for the calculation of the period of the construction of the project. The respondent had carried out its obligations in agreement with utmost diligence and currently the development of the project is being undertaken by Tulip Infratech Pvt. Ltd.
- w) That the respondent no. 1 herein was committed to complete the construction of the project and subsequently lease out the same as agreed under the agreement. Also, the respondent in due compliance of the terms of the agreement has paid assured return up till April,2020, however due to change in circumstance the beneficial interest of the project was transferred and the development of the project is no longer in control of the respondent.
- x) That since starting the complainants have always been in advantage of getting assured return as agreed by the respondent no.1. The complainants' have received an amount of Rs. 7,78,680 /- As assured return right from the date of allotment up to April,2020. as per agreed clauses, the complainants were to be paid assured return of Rs. 105/- per sq ft from execution of agreement till offer of possession.

E. Reply by the respondent no.2

- i. That the instant complaint is bad for mis-joinder of parties as the claims of the complainants pertains to respondent no.1 solely and this

ground alone manifests the deemed deletion of respondent no.2 from the array of parties.

- ii. That the instant complaint unveils no cause of action of any nature, whatsoever, against the replying he respondent, thus, the complaint doesn't survive against the replying respondent.
- iii. That the privity rule means that only the parties to a contract have enforceable rights the parties to a contract have enforceable rights and obligations under the contract. An individual or corporate entity who is not a party to the contract is called a third party. A third party does not have enforceable rights or obligations under the contract.
- iv. That the instant complaint is neither competent nor maintainable in its present shape and form against the replying respondent, thus, the deletion of name of the replying respondent from the array of parties is of paramount significance.
- v. That the complainants have no privy of contract with respondent no.2 thus, the instant complaint does not survive at all in the eye of law against the replying respondent.
- vi. That the complaint is not maintainable as it is a collusive complaint filed in collusion of the complainants and respondent no.1 and under the guise of the complaint, the complainants and the respondent no.1 want to extort money from the respondent no. 2 which they have no right to do.
- vii. That it seems apparent from the documents and records that the complaint is a meaningful product of collusion knitted in between the complainants and the respondent no.1. As per the RERA registration certificate the liabilities pertaining to the existing allottees in whose favour the third party's rights had been created by Vipul Limited, shall

lie with Vipul Ltd. respondent no.1 exclusively. However, the induction of respondent no.2 is just a camouflage of respondent no.1 to its allottee(S) and replying respondent in view of the unregistered documents adduced hereto. It astounds that the replying respondent from where all those unregistered instruments are emerging post its induction in the project. It could possibly a case of hands in gloves of complainants and respondent no. 1.

7. All other averments made in the complaint were denied in toto.
8. 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 submissions made by the parties.

E. Jurisdiction of the Authority:

9. The authority observes that it has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

10. 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:

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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."

12. 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 objection raised by the respondent no.1.

F.I Objection w.r.t. force majeure.

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) and various court orders. But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken as an excuse for delay. Further, the Authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit by 30.06.2023. As per **HARERA notification no. 9/3-2020 dated 26.05.2020**, an extension of 6 months is

granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.06.2023 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 30.12.2023.

F.II Objection regarding non-joinder of necessary party.

14. The respondent-promoter no. 1 has raised the contention that the present complaint is not maintainable due to absence of the necessary party i.e., M/s Tulip Infratech Privat Limited. The Authority observes that the complainants while filing the complaint has already made M/s Tulip Infratech Pvt. Ltd. as necessary party and the same is evident in proforma B of the complaint and form CRA which is annexed in the complaint. Therefore, the objection in this regard is dismissed as complainants have already made M/s Tulip Infratech Pvt. Ltd. respondent no.2 and reply on behalf of the M/s Tulip Infratech Pvt. Ltd. has also been filed on 27.11.2024.

F.III Objection regarding that the primary relief of the complainant is for handing over of the possession, even though the complainants are well aware that project is now being developed by M/s Tulip Infratech Pvt. Ltd.

15. The respondent-promoter no.1 has contended that the present complaint is not maintainable because the primary relief sought by the complainants is the handing over of possession, despite their knowledge that the project is now being developed by M/s Tulip Infratech Pvt. Ltd. As per the terms of the Joint Development Agreement, M/s Tulip Infratech Pvt. Ltd. is responsible for the development of the entire real estate project. M/s Tulip Infratech Pvt. Ltd. also holds a Power of Attorney from the landowners, as detailed in Article 14 of the Joint Development Agreement, for the land on which the buildings or

apartments are constructed. Furthermore, an amended Registration Certificate bearing No. 29 of 2022 has been issued by the Authority in this regard which clearly indicates that respondent no. 1 is only the license holder, whereas M/s Tulip Infratech Pvt. Ltd. is the beneficial interest/permission holder of the project. Therefore, in respect of the area already sold to the existing allottees by M/s Vipul Limited, the applicant-promoter, i.e., M/s Tulip Infratech Pvt. Ltd., shall be treated as the contractor of M/s Vipul Limited. Accordingly, M/s Tulip Infratech Pvt. Ltd. is now solely responsible for the completion of the project.

16. Respondent no. 2 states that the complainants have no privity of contract with respondent no. 2, i.e., M/s Tulip Infratech Pvt. Ltd. As per the RERA Registration Certificate, the liabilities pertaining to the existing allottees, in whose favour third-party rights were created by Vipul Limited, lie exclusively with Vipul Limited/respondent no. 1. The induction of respondent no. 2, therefore, is merely a camouflage by respondent no. 1 in relation to its allottees and the replying respondent, in view of the unregistered documents placed on record. It is further stated that a Joint Development Agreement has been executed between respondent no. 1 and respondent no. 2. However, it is respectfully submitted that the Authority has unambiguously outlined and clarified the obligations and liabilities through the Registration Certificate for the project, which are to be discharged by the respective parties in accordance with the applicable law. These obligations include those relating to both the erstwhile allottees and the future allottees, separately. The certificate annexed with the complaint is a comprehensive document detailing all relevant provisions, including the liabilities and obligations of the parties and the timeline for completion of the project, whether residential or commercial, as

the case may be. As per the relevant terms, the delivery of possession has been fixed for 31.12.2030, subject to applicable force majeure conditions.

17. As per RERA Registration Certificate No. 29 of 2022 dated 25.04.2022, the erstwhile liabilities and obligations towards the "Erstwhile Allottee(s)" lie squarely upon M/s Vipul Limited. The relevant part of registration certificate is reproduced below:

H(iv) "For the purpose of construction and development of area allocated to the landowner cum license holder and for the purpose of are already sold to the existing allottee(s) by M/s Vipul Limited, the applicant promoter i.e., Tulip Infratech Pvt. Ltd. shall be treated as contractor of M/s Vipul Limited and liabilities pertaining to existing allottees shall lie with M/s Vipul Limited as specified in the Joint Development Agreement executed between the parties.

H(vi) The Authority reserves its right to initiate penal proceedings for various acts of omissions and commission leading to violation of the provisions of the Act, rules and regulations made thereunder against the erstwhile promoter. Now through joint development agreement for the entire project including the incomplete phase is to be developed by M/s Tulip Infratech Pvt. Ltd. The liability arising out due to non-completion of the registered phase in the declared time period for completion shall be entirely with the erstwhile promoter.

For the parts of the project/phases the erstwhile promoter has given development rights to the BIP holder for these parts the role of BIP holder is like a contractor and responsibility for all obligations and liabilities arising out of this portion shall be solely with the erstwhile promoter.

18. The Authority observes that, as per Clauses H(iv) and H(vi) of Registration Certificate No. 29 of 2022 dated 25.04.2022, for the parts of the project/phases the erstwhile promoter has given development rights to the BIP holder responsibility for all obligations and liabilities arising out of this portion shall be solely with the erstwhile promoter. The unit allotted to the complainants lies in the part of the project which was initially allotted by respondent no.1 and thereafter for which development rights have been given to respondent no.2. Therefore, respondent no. 1 cannot deny its obligations under the provisions of Section 18(1) of the Act, 2016 towards the

complainants. In view of the above, the objection raised by the respondent is without merit and is accordingly dismissed.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to make payment towards the assured return from January 2019 onwards till the commencement of first lease and thereafter lease rentals.

19. The complainants are seeking unpaid assured returns on monthly basis as per addendum agreement dated 11.01.2019 at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the said addendum agreement. The respondent refused to pay the same by taking a plea that the same is not payable in view of enactment of Banning of Unregulated Deposit Schemes Act, 2019 (hereinafter referred to as the Act of 2019), citing earlier decision of the authority (*Brhimjeet & Anr. Vs. M/s Landmark Apartments Pvt. Ltd., complaint no 141 of 2018*) whereby relief of assured return was declined by the Authority. The Authority has rejected the aforesaid objections raised by the respondent in *CR/8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.* wherein the Authority while reiterating the principle of prospective ruling, has held that the Authority can take different view from the earlier one on the basis of new facts and law and the pronouncements made by the apex court of the land and it was held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon and the Act of 2019 does not create a bar for payment of assured returns even after

coming into operation as the payments made in this regard are protected as per Section 2(4)(l)(iii) of the Act of 2019. Thus, the plea advanced by the respondent is not sustainable in view of the aforesaid reasoning and case cited above.

20. The money was taken by the builder as deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. So, on his failure to fulfil that commitment, the complainant-allotees has a right to approach the authority for redressal of his grievances by way of filing a complaint.

21. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottees is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottees later on.

22. In view of the above, the builder is liable to pay that amount as agreed upon vide addendum agreement 11.09.2019 and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured

returns between the promoter and allottee arises out of the same relationship and is marked by the addendum agreement. The amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottees later on. Considering the above facts, the respondent is liable to pay assured return to the complainant-allottees as per clause 2 of the addendum agreement, which is reproduced below for the ready reference:

That the First Party shall give an Assured return to MR. SANDEEP (100%) and MS. GURJEET KAUR (NIL) @ Rs.105.00/- Aper square foot per month of Super Area payable w.e.f. 11th January, 2019 payable at the end of month for which it is due till the date of possession

23. Thus, the assured return is payable @105/- per sq.ft. per month w.e.f. 11.01.2019, till the date of possession. Thereafter, the second party authorized the first party to lease out the said unit and the lease rental are paid as per clause 3 of addendum agreement.
24. On consideration of the documents available on the record and submissions made by the parties, the complainants have sought the amount of unpaid amount of assured return as per the acknowledgement letter executed between the parties. The respondent had agreed to pay to the complainant-allottees Rs.105/- per sq. ft. on monthly basis till the date of possession and thereupon as per clause 3 of the addendum agreement. Clause 2 further provides that the complainants authorized the respondent to lease out the said unit on its/his/her behalf. It is matter of record that the respondent has not pay any penny under the heard of assured return, the respondent refused to pay the same by taking a plea of the Banning of Unregulated Deposit Schemes Act, 2019. But that Act of 2019 does not create a bar for payment of assured returns even after coming into operation and the payments made in this regard are protected as per Section 2(4)(iii) of the above-mentioned Act.

25. Therefore, considering the facts of the present case, the respondent no.1 is obligated to pay the amount of assured return at the agreed rate i.e., @ **Rs.105/- per sq. ft. per month from 11.01.2019 till the date of possession** and thereafter, lease rentals are paid as per clause 3 of the addendum agreement dated 11.01.2019.

26. The respondent no.1 is obligated to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.

G.III Direct the respondent not to terminate the allotment of the complainant's or create third party rights or to change the allotted unit/space.

27. There is nothing on record which shows that the respondents have terminated the allotment of the complainants or create any third-party rights. Therefore, no directions to this effect.

G.IV Direct the respondents to demarcate the unit in question and handover possession in habitable condition after obtaining the OC.

28. As per Clause 31 of the allotment letter dated 10.01.2019, the allottees were required to take possession of the said unit within 30 days from the date of issuance of the notice for possession, failing which it would be presumed that the allottees had taken possession. However, thereafter, on 11.01.2019, an addendum agreement was executed between the parties, wherein, under Clause 2, the allottees themselves authorized the respondent to lease out the said unit on his/her/its behalf on such terms and conditions as may be deemed fit by the first party and as incorporated in the proposed LOI/lease deed, as negotiated and finalized by the first party. The relevant clause is reproduced below:

"Clause 31 of allotment

That the allottee shall take possession of the said unit within 30 days from the date of notice for possession failing which it would be presumed that the allottee has taken possession."

"Clause 2 of the addendum agreement

That the Second Party hereby authorizes the First Party to lease out to the said unit on its/his/her/behalf on such terms and conditions as may be deemed fit by the first party and incorporated in the proposed LOI/lease deed as negotiated and finalised by the first party."

29. Moreover, as per clause 6 of the Addendum Agreement, it was agreed by the parties that the promoter shall endeavour to complete the construction of the commercial unit, obtain the Occupancy Certificate (OC), and lease the property by 30th June 2023. The relevant portion of clause 1 of buyer's agreement has been reproduced below

6. It is agreed between the parties that Clause 7.1(a) of the principal agreement stands amended and restated as under:

"7.1(a) It is agreed by the First Party that it shall endeavour to complete the construction of the commercial unit, obtain the OC and lease the property by 30th June, 2023."

30. As per the above-mentioned clauses, initially, under the allotment letter dated 10.01.2019, the allottees were required to take possession of the said unit within 30 days from the date of the notice for possession, failing which it would be presumed that the allottees had taken possession. Thereafter, an addendum agreement was executed between the parties on 11.01.2019, duly signed by both parties, wherein the allottees agreed that the unit would be put on lease in terms of Clause 7.1(a). Upon expiry of the assured return period, the allottees would start receiving lease rentals in respect of the said unit. Therefore, no directions regarding the handing over of physical possession can be issued to the complainants.

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 no.1 is directed to pay the amount of assured return at the agreed rate i.e., @ Rs.105/- per sq. ft. per month of super area from 11.01.2019 till the date of possession after obtaining Occupation Certificate from the competent authority and thereafter, lease rentals shall be paid in terms of Clause 3 of the addendum agreement dated 11.01.2019.
- II. The respondent no.1 is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
- III. The respondent no.1 is directed to execute the conveyance deed of the allotted unit within the 3 months after receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainants as per norms of the state government
- IV. The respondent no.1 shall not charge anything from the complainants which is not part of the addendum agreement dated 11.01.2019.
- V. 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.

32. Complaint stands disposed of.

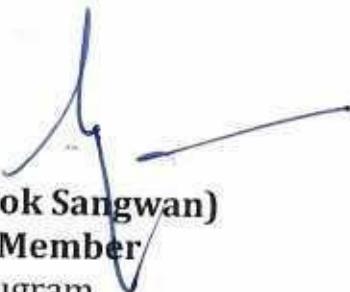
33. File be consigned to registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram

11.11.2025



(Ashok Sangwan)
Member