

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of Order: 23.12.2025**

NAME OF THE BUILDER		M/s VIPUL LIMITED	
PROJECT NAME		"AAROAHAN COMMERCIAL TOWER"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3068/2024	Prabha Chauhan V/S M/s Vipul Limited – R1 M/s Moon Apartments Private Limited – R2	Shri Amit Dalal & Shri Samir Bhalotra Advocates for complainant
2.	CR/3069/2024	Prabha Chauhan V/S M/s Vipul Limited – R1 M/s Moon Apartments Private Limited – R2	Ms. Ankur Berry Advocate for respondent no. 1 None for respondent no. 2

CORAM:

Shri Arun Kumar

Shri Phool Singh Saini

Chairman**Member****ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Aarohan Commercial Tower" situated at Sector-53, Gurugram being developed by the respondent/promoter i.e., M/s Vipul Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to possession of the units in question, assured return as promised by the respondent, execution of conveyance deed along with delay possession charges and other related reliefs.
- 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	"Aarohan Commercial Tower" by Vipul Limited at situated in Sector- 53, Gurugram.
Nature of the project	Commercial Complex [under Mixed Land Use under TOD Policy dated 09.02.2016]
Project area	1.545 acres for development of "Aarohan Commercial Tower" on 2.829 acres registered for commercial out of 19.244 acres (Total Land)
DTCP license no. and other details	168 to 172 of 2004 dated 16.12.2004 Valid up to 15.12.2024 & 545 to 546 of 2006 dated 13.03.2006 Valid up to 12.03.2025
Name of licensee	M/s Vipul Limited & others
RERA Registered/ not registered (Superseded By GGM/554/286/2022/ 29 Dated 25.04.2022)	Registered [total land area 2.829 acres] [by M/s Vipul Limited for Aarohan Commercial Tower] 01 of 2018 dated 11.04.2018 Valid up to 30.06.2023
	Registered [total land area 19.244 acres] [by M/s Tulip Infratech Private Limited for Project - Tulip Monsella (Group Housing) and Tulip Attila (Commercial)] 29 of 2022 dated 25.04.2022 Valid up to 31.12.2030
The registration certificates issued for part of the project/phase residential group housing vide Registration No. 131 of 2017 dated 28.08.2017 (Interim RERA, Panchkula) and commercial component part registered vide Registration No. GGM/269/2018/01 dated 11.04.2018 stand subsumed in this registration certificate without affecting the obligations and liabilities of M/s Vipul Ltd. and M/s Moon Apartments Pvt. Ltd. towards the existing allottees.	

Possession Clause		8.Possession 8.1 Time of handing over the possession. (a) Subject to terms of this clause and subject to the vendee 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/developer, and all just exceptions, the vendor/developer based on its present plans and estimates shall endeavor to handover the possession of the unit within a period agreed upon in terms of clause 7.1(a) herein above. Read with 7.1 Construction of the unit/ the Aarohan Commercial tower/the project. (a) It is agreed by the first party that it shall endeavor to complete the construction of the commercial unit, obtain the occupation certificate and lease the property by 31.12.2021. [Emphasis Supplied]		
Due date of possession		30.06.2022 [31.12.2021 + 6 months] (Note: the due date of possession is calculated as per clause 7 vide which 7(a) is amended and restated under addendum agreement plus Grace period of 6 months allowed as per <i>HARERA notification no. 9/3-2020 dated 26.05.2020</i>)		
Occupation certificate:		Not obtained		
Offer of possession:		Not offered		
Complaint No. & Case Title Date of complaint & Status of reply	Unit no. & Area of the unit	Date of Allotment letter and execution of buyer's agreement	Total Consideration /Total Amount paid by the complainant(s)	Due date of handing over of possession, Status of OC & Offer of possession
CR/3068/2024 Prabha Chauhan Vs M/s Vipul Limited & M/s Moon Apartments Private Limited DOF: 01.07.2024 RR:	307-A, 3 rd floor 487 sq. ft. (super area) (As mentioned in clause 2.1 of BBA at page no. 44 of the complaint)	AL: 31.07.2018 (Page 24-32 of compliant) BBA: 31.07.2018 (As per page no. 38-71 of complaint) Addendum agreement:	TSC: Rs.38,72,624/- [As mentioned in clause 2.1 of BBA at page 44 of the complaint] AP: Rs.37,34,316/- [As per receipts issued by M/s Vipul Limited at page 33-36 of complaint]	Due date of possession: 30.06.2022 (Note: 31.12.2021 as per RERA registration plus grace period of 6 months on account of COVID-19) OC:

30.01.2025 (by R1)		31.07.2018 (As per page no. 72-77 of complaint)	AR Paid: Rs.11,24,970/- Inclusive of TDS (Up to May, 2020) (As per details provided at page 65 of reply by R1)	Not obtained OFP: Not Offered
Assured return clause as per addendum agreement [clause 2 of addendum agreement]	2 That the first party shall, give an assured return @Rs.105/- per sq. ft. per month of super area (as set out in the principal agreement) payable w.e.f. 01.08.2018, payable at the end of month for which it is due, till the date of commencement of first rent payment from tenant... [page 73 of complaint]			
Increase in assured return [clause 9 of addendum agreement]	9 Should the first party not be able to lease the property even till 31.12.2023, this monthly assured return shall stand increased by 15% over last return paid for every successive three years. [page 76 of complaint]			
Obligation of respondent for payment of assured return till [clause 3 of addendum agreement]	3 That the first party shall be obligated to pay this assured return till the time it leases the unit at a rent of Rs.105/- per sq. ft. per month... [page 74 of complaint]			
CR/3069/2024 Prabha Chauhan Vs M/s Vipul Limited & M/s Moon Apartments Private Limited DOF: 01.07.2024 RR: 30.01.2025 (by R1)	307-B, 3 rd floor 493 sq. ft. (super area) (As mentioned in clause 2.1 of BBA at page no. 42 of the complaint)	AL: 31.07.2018 (Page 25-31 of compliant) BBA: 31.07.2018 (As per page no. 34-69 of complaint) Addendum agreement: 31.07.2018 (As per page no. 70-75 of complaint)	TSC: Rs.39,20,336/- [As mentioned in clause 2.1 of BBA at page 42 of the complaint] AP: Rs.30,65,684/- [As per receipts issued by M/s Vipul Limited at page 32- 33 of complaint] AR Paid: Rs.10,08,678/- Inclusive of TDS (Up to May, 2020) (As per details provided by R1 during proceedings dated 23.12.2025)	Due date of possession: 30.06.2022 (Note:31.12.2021 as per RERA registration plus grace period of 6 months on account of COVID-19) OC: Not obtained OFP: Not Offered
Assured return clause as per addendum agreement	2 That the first party shall, give an assured return @Rs.93/- per sq. ft. per month of super area (as set out in the principal agreement) payable w.e.f. 01.08.2018,			

[clause 2 of addendum agreement]	payable at the end of month for which it is due, till the date of commencement of first rent payment from tenant. Upon payment of full consideration of the unit by the second party, the first party shall give an assured return @Rs.105/- per sq. ft. per month of super area till the date of application of occupation certificate of the project. [page 71 of complaint]
Increase in assured return [clause 9 of addendum agreement]	<i>8 Should the first party not be able to lease the property even till 31.12.2023, this monthly assured return shall stand increased by 15% over last return paid for every successive three years.</i> [page 74 of complaint]
Obligation of respondent for payment of assured return till [clause 3 of addendum agreement]	<i>3 That the first party shall be obligated to pay this assured return till the time it leases the unit at a rent of Rs.105/- per sq. ft. per month...</i> [page 72 of complaint]

The complainant in the above complaint(s) has sought the following reliefs:

1. Direct the respondents to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA;
2. It is most respectfully prayed that this Authority be pleased to order the respondents to get the conveyance deed executed;
3. Direct the respondents to pay the amount of assured return from April 2020 till date with applicable rate of interest in delayed payment.
4. Direct the respondents to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondents in spite of the fact that the complainant desires to take the possession.
5. To restrain the respondents from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking.
6. Direct the respondents not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
7. Direct the respondents to provide the committed date of completion of the unit.
8. Direct the respondents to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
9. Direct the respondents to provide the exact lay out plan of the said unit.
10. Direct the respondents not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects.
11. Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, Fixed Deposit towards the HVAT, which in any case is not payable by the complainant.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received

AL	Allotment letter
BBA	Builder buyer's agreement
TSC	Total sale consideration
AP	Amount paid by the allottee(s)
OC	Occupation certificate
OFFP	Offer for possession

4. The aforesaid complaints were filed by the complainant against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016 and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges, assured return as promised by the respondent and other reliefs.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the respondent/promoter in terms of Section 34(f) of the Act which mandates the Authority to ensure compliance of the obligations cast upon the promoter, 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/3068/2024 titled as Prabha Chauhan Vs M/s Vipul Limited & M/s Moon Apartments Private Limited** are being taken into consideration for determining the reliefs of the allottee(s) qua possession, delay possession charges and others.

A. Project and unit related details

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

CR/3068/2024 titled as Prabha Chauhan Vs M/s Vipul Limited & M/s Moon Apartments Private Limited

S. No.	Particulars	Details
1.	Name of the project	"Aarohan Commercial Tower"

2.	Location of the project	Sector-53, Gurugram
3.	Nature of the project	Commercial Complex [under Mixed Land Use under TOD Policy dated 09.02.2016]
4.	Project Area	1.545 acres for development of "Aarohan Commercial Tower" on 2.829 acres registered for commercial out of 19.244 acres (Total Land)
5.	DTCP license no. and validity status	168 to 172 of 2004 dated 16.12.2004 valid up to 15.12.2024 545 to 546 of 2006 dated 13.03.2006 valid up to 12.03.2025
6.	Name of licensee	M/s Vipul Limited & others
7.	RERA Registered/ not registered (SUPERSEDED BY GGM/554/286/2022/29 DATED 25.04.2022)	Registered [total land area 2.829 acres] <i>[by M/s Vipul Limited for Aarohan Commercial Tower]</i> 01 of 2018 dated 11.04.2018 valid up to 30.06.2023
	The registration certificates issued for part of the project/phase residential group housing vide Registration No. 131 of 2017 dated 28.08.2017 (Interim RERA, Panchkula) and commercial component part registered vide Registration No. GGM/269/2018/01 dated 11.04.2018 stand subsumed in this registration certificate without affecting the obligations and liabilities of M/s Vipul Ltd. and M/s Moon Apartments Pvt. Ltd. towards the existing allottees.	Registered [total land area 19.244 acres] <i>[by M/s Tulip Infratech Private Limited for Project - Tulip Monsella (Group Housing) and Tulip Attila (Commercial)]</i> 29 of 2022 dated 25.04.2022 valid up to 31.12.2030
8.	Unit and Floor no.	307-A, 3 rd Floor [As mentioned in clause 2.1 of BBA at page 44 of the complaint]
9.	Unit area admeasuring	487 sq. ft. (Super Area) [As mentioned in clause 2.1 of BBA at page 44 of the complaint]
10.	Allotment letter	31.07.2018 [Page 24-32 of complaint]

11.	Date of execution of buyer's agreement	31.07.2018 [Page 38-71 of complaint]
12.	Possession Clause	<p>8.Possession</p> <p>8.1 Time of handing over the possession.</p> <p>(a) Subject to terms of this clause and subject to the vendee 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/developer, and all just exceptions, the vendor/developer based on its present plans and estimates shall endeavor to handover the possession of the unit within a period agreed upon in terms of clause 7.1(a) herein above.</p> <p>[as per BBA at Page 53 of complaint]</p> <p style="text-align: center;">Read With</p> <p>7.1 Construction of the unit/ the Aarohan Commercial tower/the project.</p> <p>(a) <i>It is agreed by the first party that it shall endeavour to complete the construction of the commercial unit, obtain the occupation certificate and lease the property by 31.12.2021.</i></p> <p style="text-align: right;">[Emphasis Supplied]</p> <p>[As per clause 7 amended and restated under addendum agreement at Page 75 of complaint]</p>
13.	Due date of possession	<p>30.06.2022</p> <p>[31.12.2021 + 6 months]</p> <p>(Note: the due date of possession is calculated as per clause 7 vide which 7(a) is amended and restated under addendum agreement plus Grace period of 6 months allowed as per HARERA notification no. 9/3-2020 dated 26.05.2020)</p>
14.	Addendum agreement	31.07.2018 [page 72-77 of complaint]
15.	Assured return clause as per addendum agreement	2 That the first party shall, give an assured return @Rs.105/- per sq. ft. per month of super area (as set out in the principal

	[clause 2 of addendum agreement]	agreement) payable w.e.f. 01.08.2018, payable at the end of month for which it is due, till the date of commencement of first rent payment from tenant... [page 73 of complaint]
16.	Increase in assured return [clause 9 of addendum agreement]	<i>9 Should the first party not be able to lease the property even till 31.12.2023, this monthly assured return shall stand increased by 15% over last return paid for every successive three years.</i> [page 76 of complaint]
17.	Obligation of respondent for payment of assured return till [clause 3 of addendum agreement]	<i>3 That the first party shall be obligated to pay this assured return till the time it leases the unit at a rent of Rs.105/- per sq. ft. per month...</i> [page 74 of complaint]
18.	Total sale consideration	Rs.38,72,624/- [As mentioned in clause 2.1 of BBA at page 44 of the complaint]
19.	Amount paid by the complainant	Rs.37,34,316/- [As per receipts issued by M/s Vipul Limited at page 33-36 of complaint]
20.	Assured return paid by the respondent	Rs.11,24,970/- Inclusive of TDS (till May, 2020) (as per details provided at page 65 of reply by R1)
21.	Payment Plan	Assured return plan (As per payment schedule on page no.66 of the complaint)
22.	Application to DTCP, Haryana by respondents [for assignment of joint development rights & marketing rights to Tulip]	06.03.2021 (as mentioned in letter of DTCP, Haryana dated 01.10.2021 at page 51-52 of reply)
23.	Letter by DTCP, Haryana [w.r.t allowing assignment of Joint Development Rights and Marketing Rights etc. Vipul Ltd and others to Tulip Infratech Pvt. Ltd.]	01.10.2021 (as per page 51-52 of reply)
24.	Occupation certificate /Completion certificate	Not obtained
25.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions:
- a. That in the year 2018, the respondents issued an advertisement announcing a project called "Aarohan Mixed Land Use Project" in a land parcel admeasuring a total area of approximately on the 519.244 acres of land, under the license no. 545 to 546 of 2006 and 168 to 172 of 2004 renewed from time to time. situated within the revenue estate of Villages Haiderpur and Wazirabad, Sector 53, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondents confirmed that the projects had got building plan approval from the authority.
 - b. Relying on various representations and assurances given by the respondents and on belief of such assurances, complainant booked a unit in the project by paying a booking amount towards the booking of the said unit bearing no. 307-A vide allotment letter dated 31.07.2018 for a total sale consideration Rs.38,72,624/- and complainant paid an amount of Rs.37,34,316/- as per receipts issued, the same was acknowledged by the respondents.
 - c. That the respondents confirm the booking of the unit to the complainant vide allotment letter dated 31.07.2018, providing the details of the project, confirming the booking of the unit no. 307-A, measuring carpet area measuring 317 sq. ft and super area 487 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.38,72,624/- as per the schedule of payment given in annexure -1 with the unit buyers agreement.
 - d. That a unit buyer's agreement was executed between the complainant and respondents on 31.07.2018. That as per clause 7.1 of the buyer's agreement the respondents had - The vendee undertakes and agree that the construction of the units is likely to be completed by 30.06.2023. Therefore, due date of possession comes out to be 30.06.2023.

- e. As per the demands raised by the respondents, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.37,34,316/- towards the said unit against total sale consideration of Rs.38,72,624/-.
- f. Further, the complainant having dream of its own unit in NCR signed the agreement in the hope that the unit will be delivered on or before 30.06.2023. The complainant was also handed over one detailed payment plan which was construction linked plan. It is unfortunate that the dream of owning a unit of the complainant was shattered due to dishonest, unethical attitude of the respondents.
- g. As per clause 7.1(a) of the buyer's agreement the respondents had to deliver the possession on or before 30.06.2023. The addendum unit buyer's agreement also entitled the respondents assured return per month of Rs.105/- per square foot per month of super area.
- h. That in terms of clause 7.1 of the said unit buyer's agreement, the respondents were under dutiful obligation to complete the construction and to offer the possession till date. That complainant approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondents misrepresented to complainant that the construction will get completed soon. Also, the respondents have stopped paying assured returns as mentioned above since November, 2019.
- i. The respondents despite having made multiple tall representations to the complainant, the respondents have chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees. That the respondents have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the

respondents are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

- j. That the respondents have played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondents had further malafidely failed to implement the BBA executed with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondents is filing the present complaint.
- k. The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA.
- l. That the Respondents is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- m. That the complainant being an aggrieved person filing the present complaint under Section 31 with the Authority for violation/ contravention of provisions of this Act as mentioned in the preceding paragraph.
- n. That as per Section 18 of the RERA Act. 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. That the complainant hereby make a submission before the Authority under Section 34 (f) to ensure compliance/obligations cast upon the promoter. It is requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under Section 37 of the Act.

- o. In addition to the abovementioned provision, the respondents are also bound by the Haryana Real Estate Regulation Rules, 2017 which lists the interest to be computed while calculating delay possession charges to be given by a promoter to an allottee in case of a default
- p. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under Section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this Authority.
- q. That the project in question is ongoing as defined under Rule 2(o) of the Rules ibid and does not fall in any of the exception provided under the Rules.
- r. The complainant reserves its right to add, amend, modify and rectify the present complaint, if so required, at any stage. That the present complaint is within the prescribed period of limitation. That the complainant has not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law. Hence the present complaint.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):
 - i. Direct the respondents to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA;
 - ii. Direct the respondents to get the conveyance deed executed;
 - iii. Direct the respondents to pay the amount of assured return from April 2020 till date with applicable rate of interest in delayed payment;
 - iv. Direct the respondents to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondents in spite of the fact that the complainant desires to take the possession;

- v. To restrain the respondents from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking;
 - vi. Direct the respondents not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed;
 - vii. Direct the respondents to provide the committed date of completion of the unit;
 - viii. Direct the respondents to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit;
 - ix. Direct the respondents to provide the exact lay out plan of the said unit.
 - x. Direct the respondents not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects;
 - xi. Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, Fixed Deposit towards the HVAT, which in any case is not payable by the complainant.
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.
11. The Authority issued a notice dated 02.07.2024 of the complaint to the respondents by speed post and also on the given email address at ameetkdalal@gmail.com, and secretarial@vipulgroup.in for filing reply within 4 weeks from the date of issuance of notice. The delivery reports have been placed on the file. The AR for the respondent no. 2 has put in appearance on 12.12.2024 and was directed to file reply within three weeks in the registry of the Authority with an advance copy to the complainant. Thereafter on 14.08.2025, the respondent no.2 was again directed to file reply within a period of 15 days with cost of Rs.5,000/- to be paid to the complainant, failing which the defence of the respondent no.2 shall be struck off. However, despite specific direction and providing an opportunity of being heard, no written

reply has been filed by the respondent no.2. Thus, keeping in view the opportunity given to the respondent no.2 and facts that despite lapse of one year the respondent no.2 has failed to file written reply. Therefore, the Authority vide order dated 16.10.2025, left with no option but to struck off the defence of respondent no. 2.

D. Reply by the respondent no. 1:

12. The respondent no.1 has contested the complaint on the following grounds:

- a. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the unit buyer's agreement and addendum agreement dated 31.07.2018.
- b. That the complainant herein has 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 complainant is for handing over of the possession, even though the complainant is well aware that the project is now being developed by M/s Tulip Infratech Pvt. Ltd. and the respondent no. 1 answer to or provide any effective remedy to the complainant. Thus, the complaint itself being defective ought to be dismissed.
- d. 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.
- e. 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...
- f. That it is an established fact herein that the complainant booked the unit with the respondents for investment purposes. The said complainant herein is not an "allottee", but an investor as the complainant approached the respondents with an investment opportunity in the form of a steady rental income from the commercial unit.
- g. That after having interest in the commercial project constructed by the respondents, the complainant vides allotment letter dated 31.07.2018 booked the unit, under the assured return scheme. That on 31.07.2018, respondent vide provisional allotment letter allotted a unit bearing no. 307A, 3rd Floor, admeasuring 487 sq. ft. to the complainant. Further, upon knowing the assured return scheme, the complainant upon own will paid amount of

Rs.37,34,316/- out of total sale consideration of Rs.38,72,624/- to the respondent for making steady monthly returns.

- h. That a unit buyer's agreement dated 31.07.2018, was executed between the complainant and the respondents for the unit, for a basic sale consideration of Rs.38,72,624/- in the project. It is pertinent to note that the addendum agreement dated 31.07.2018 is executed between the respondent no.1 and the complainant. That as per clause 2 of the addendum agreement dated 31.07.2018, the unit was intended to be leased out upon the completion. In the present complaint, it is an admitted fact that the complainant had already opted for leasing out and authorized the respondent no. 1 to lease out the unit.
- i. That the Addendum Agreement, clearly stipulated provisions for "Lease" and admittedly contained a "Lease Clause". That in the light of the said facts and circumstances it can be concluded beyond any reasonable doubt that the Complainant is not an "Allottee" but investor who has invested the money for making steady monthly returns.
- j. That the complainant is merely trying to hoodwink the Authority by concealing facts which are detrimental to her complaint. That since the addendum agreement of the said commercial unit contained a "lease clause" which empowers the developer to put a unit of complainant 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 complainant.
- k. 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. 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.

- l. That the complainant herein had authorized the respondent no. 1 to further lease the nit 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 and the same are explained in detail herein below.
- m. That the respondent was committed to complete the development of the project and lease out the unit. 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.
- n. That due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. That such delay was not intentional. That the respondent was bound to adhere with the order and notifications of the courts and the government. That the delay caused due to unforeseen circumstances, shall be considered and calculated, before determination of the date of completion of building. That after considering the above delay, the date of completion of building has to be extended by approximately 1.7 years.
- o. 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.

- p. That the respondent no. 1 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 May, 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.
- q. That since starting the complainant have always been in advantage of getting assured return as agreed by the respondent no.1. The complainant has received an amount of Rs.9,20,420/- as assured return right from the date of allotment up to May, 2020. In the present complaint, as per agreed clauses, the complainant was to be paid assured return of Rs.105/- per sq. ft. from execution of agreement till offer of possession.
- r. That without prejudice, it is submitted that subsequent to the coming into force of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) on 21.02.2019, any scheme involving assured return/ penalty akin to an unregulated deposit scheme has been rendered impermissible in law. Therefore, even otherwise, the continuation of such assured return/ penalty arrangements post-enactment would be contrary to statutory provisions and against public policy, and the respondent is legally barred from honouring such commitments beyond the said date.
- s. That the issue of assured returns is already sub judice before the Hon'ble Punjab & Haryana High Court in Vatika Ltd. vs UOI (CWP-26740-2022) and NEO Developers Pvt. Ltd. vs UOI (CWP-16896/2023). In both cases, directions have been issued not to take coercive steps with respect to such claims, thereby indicating that the matter requires adjudication by higher judicial forums.

- t. That the relief sought by the complainant, being 'delay interest' for handing over possession, is untenable as there was no delay attributable to respondent no.1. It is further submitted that the timelines of the project were altered due to reasons beyond the control of respondent no.1 and not due to any negligence or conduct on their part. Moreover, the complainant was fully aware of the alterations in the project timelines. Further the assured returns provided to the allottee ensures that the rights of the allottee are not hindered or suffers thus there is no valid reason to allow DPC in matters where the rights have been secured through assured returns.
- u. That the various contentions raised by the complainant are fictitious, baseless, vague, wrong, and created to misrepresent and mislead this Authority, for the reasons stated above. That none of the relief as prayed for by the complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of this Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
13. 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:

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

E.I Territorial jurisdiction

15. 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

16. 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.

17. 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.

F. Findings on objections raised by the respondent:

F.I Objection regarding the complaint barred by Limitation Act, 1963:

18. The respondent has contention of is that if the complainant has entered into an agreement with the respondent in 2018 and the complaint has been filed in 2024 after a lapse of 6 years thus, the complaint is barred by limitation. However, as per the agreed terms of the agreement dated 31.07.2018, the possession of the unit was to be handed over to the complainant on or before 30.06.2022. But the possession of the unit is yet to be handed over to complainant, therefore, the project shall be regarded as an "on-going" project and liability of the respondent is still continuing. Further, as per Section 11(4)(a) of the Act of 2016, the responsibility of the promoter continues till

the execution of conveyance deed. 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. 006000000021137 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."

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

F.II Objection regarding complainant being investor.

20. The respondent took a stand that the complainant is investor and not consumer and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under Section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is buyer and she has paid a total price of Rs.37,34,316/- to the promoter towards purchase of a unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

21. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.III Objection regarding mis-joinder of parties:

22. The respondent has raised another contention that the complainant has made M/s Vipul Limited a party to the complaint and sought the relief of handing over of possession despite her 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. 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. 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.

23. 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 complainant 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 M/s Tulip Infratech Pvt. Ltd. Therefore, the respondent no. 1 cannot deny its obligations under the provisions of Section 18(1) of the Act, 2016 towards the complainant. 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 complainant:

- G.I Direct the respondents to pay the amount of assured return from April 2020 till date with applicable rate of interest in delayed payment;**
- G.II Direct the respondents to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondents in spite of the fact that the complainant desires to take the possession;**
- G.III Direct the respondents to provide the committed date of completion of the unit;**

24. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.

- **Assured Return**

25. The complainant is seeking assured return on monthly basis as per the addendum agreement dated 31.07.2018 at the rates mentioned therein. It is pleaded by the complainant that the respondent has not complied with the terms and conditions of the said addendum agreement. Though for some time, the amount of assured return was paid but later on, the respondent refused to pay the same. In **Gaurav Kaushik and Anr. Vs. Vatika Ltd.** the authority has held that when the payment of assured returns is part and parcel of memorandum of understanding or buyer's agreement (maybe there is a clause in that document or by way of addendum or terms and conditions of the allotment of a unit), then the promoter is liable to pay that amount as agreed upon.

26. A buyer's agreement was executed between the complainant and the respondent on 31.07.2018 by which a specific unit bearing no. 307-A having super area of 487 sq. ft. has been allotted to the complainant for sale consideration of Rs.38,72,624/-. As per clause 8.1 read with clause 7.1 (a) of the buyer's agreement, the due date for handing over of possession is 31.12.2021. Thus, the due date for possession 30.06.2022 which includes the grace period of 6 months on account of COVID-19. Vide clause 2 of the addendum agreement dated 31.07.2018, the respondent has promised an

amount of Rs.105/- per sq. ft. of super area per month in the form of assured return w.e.f. 01.08.2018 till the date of commencement of first rent payment from tenant which means till first lease. The definition of "allottee" as per Section 2(d) of the Act of 2016 provides that an allottee includes a person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter. Section 2(d) of the Act of 2016 has been reproduced for ready reference:

2(d)

"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

27. Keeping in view the above-mentioned facts and the definition of allottee as per Act of 2016, it can be said that the complainant is allottee.
28. The money was taken by the promoter 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 promoter promised certain amount by way of assured return for a certain period. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.
29. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement/addendum 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 said agreement.
30. In the present complaint, the assured return was payable as per clause 2 of addendum agreement dated 31.07.2018, which is reproduced below for the ready reference:

*2. That the first party shall, give **an assured return @Rs.105/- per sq. ft. per month of super area (as set out in the principal agreement) payable w.e.f. 01.08.2018, payable at the end of month for which it is due, till the date of commencement of first rent payment from tenant...***

31. Thus, the assured return was payable @ Rs.105/- per sq. ft. of super area per month i.e., Rs.51,135/- per month w.e.f. 01.08.2018, till the date of commencement of first payment from tenant/ lease.
32. The respondent in its reply dated 30.01.2025 took a plea that the complainant is not entitled to the benefit of assured returns as the addendum agreement dated 31.07.2018 as the same is unregistered. However, the said addendum agreement is signed by the complainant as well as the respondent no. 1. This Agreement shall not be changed or modified except by written amendments duly agreed by the parties. The terms and conditions and various provisions embodied in this Agreement shall be incorporated in the sale deed and shall form part thereof". And there is no clause in buyer's agreement which talks about the assured returns. Moreover, the respondent was paying the assured returns after the execution of addendum agreement dated 31.07.2018 and paid the assured returns till 31.05.2020 as admitted by the complainant in the complaint itself.
33. In light of the reasons mentioned above, the authority is of the view that as per addendum agreement dated 31.07.2018, it was obligation on the part of the respondent to pay the assured return. It is necessary to mention here that the respondent has failed to fulfil its obligation as agreed inter se both the parties in addendum agreement dated 31.07.2018. Accordingly, in the interest of natural justice, the liability of the respondent to pay assured return as per addendum agreement is still continuing. Therefore, considering the facts of the present case, the respondent is directed to pay the amount of unpaid assured return in terms of clause 2 of addendum agreement dated 31.07.2018 at the agreed rate i.e., @ Rs.105/- per sq. ft. per month from the

date of payment of assured return has not been paid i.e., 01.06.2020 till the date of commencement of first rent payment from the tenant/lease.

- **Delay possession charges**

34. In the present complaint, the complainant intends to continue with the project and is both seeking delay possession charges and assured return with respect to the subject unit 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."

35. As per the documents available on record, that as per Clause 8 of the buyer's agreement as well as clause 7.1 of addendum agreement dated 31.07.2018, the promoter assures to complete the construction of the project by 31.12.2021. The relevant portion of the Clause 8 of the buyer's agreement as well as clause 7.1 of addendum agreement dated 31.07.2018 is reproduced hereunder:

Clause 8 of unit buyer's agreement

8.Possession

8.1 Time of handing over the possession.

(a) Subject to terms of this clause and subject to the vendee 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/developer, and all just exceptions, the vendor/developer based on its present plans and estimates shall endeavor to handover the possession of the unit within a period agreed upon in terms of clause 7.1(a) herein above.

Read with

Clause 7.1 of the addendum agreement

7.1 Construction of the unit/ the Aarohan Commercial tower/the project.

(a) It is agreed by the first party that it shall endeavor to complete the construction of the commercial unit, obtain the occupation certificate and lease the property by 31.12.2021.

[Emphasis Supplied]

36. Thus, the due date of possession comes out to be 31.12.2021. Further, as per HARERA Notification no.9/3-2020 dated 26.05.2020, an extension of 6

months is granted for the projects having completion 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 31.12.2021 i.e., after 25.03.2020. As far as grace period of 6 months as is concerned, the same is allowed. Therefore, the due date of possession comes out to be 30.06.2022 (including grace period)

37. 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 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.

38. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

39. 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., 23.12.2025 is 8.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

40. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

41. The Authority further observes that now, the proposition before the Authority whether an allottee who is getting/entitled for assured return even after expiry of the due date of possession, is entitled to both the assured return as well as delayed possession charges?

42. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of a provision in a MoU or in the BBA or an addendum to the MoU/BBA or allotment letter. The assured return in this case is payable from 01.08.2018 till the date of commencement of first rent payment from the tenant/lease. If we compare the assured return i.e., Rs.51,135/- per month with delayed possession charges i.e., Rs.33,608/- approximately payable under proviso to Section 18 (1) of the Act of 2016, the assured return is much higher. By way of assured return, the promoter has assured the allottee that he will be entitled for this specific amount till the date of commencement of first rent payment from the tenant/lease. Accordingly, the interest of the allottee is protected even after the due date of possession is over as the assured return are payable till the date of commencement of first rent payment from the tenant/lease. The purpose of delayed possession charges after due date of possession is over and payment of assured return after due date of possession is over are the

same and safeguard the interest of the allottee as his money is continued to be used by the promoter even after the promised due date and in return, she is paid either the assured return or delayed possession charges, whichever is higher.

43. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under Section 18 and assured return is payable even after due date of possession till the handing over of possession of the said unit. The allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation. In the present case, the assured return was payable till the date of commencement of first rent payment from the tenant/lease which is yet to be leased out. The project is considered habitable or fit for occupation only after the grant of occupation certificate by the competent authority.

44. Hence, the Authority directs the respondent/promoter to pay assured return to the complainant at the rate of Rs.105/- per sq. ft. per month from the date when the payment of the assured returns has not been paid i.e., 01.06.2020 till the date of commencement of first rent payment from the tenant/lease.

G.IV Direct the respondents to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA;

G.V Direct the respondents to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit;

45. As per clause 31 of the allotment letter dated 31.07.2018, 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 31.07.2018, 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."

46. As per the above-mentioned clauses, initially, under the allotment letter dated 31.07.2018, 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 31.07.2018, 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 complainant.

G.VI Direct the respondent to get the conveyance deed executed;

47. As per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favor of the complainant. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
48. The occupation certificate is yet to be obtained by the respondent-promoter. Thus, the respondent-promoter is directed to get the conveyance deed executed in terms of Section 17 of the Act of 2016.

G.VII Direct the respondents not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed;

49. The respondent-promoter is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which prejudicial to their rights as has been decided by the Authority in complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V. Emaar MGF Land Limited**" decided on 12.08.2021.

G.VIII Direct the respondents to provide the exact lay out plan of the said unit.

50. As per Section 19(1) of the Act of 2016, the allottees are entitled to obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent-promoter is obligated to provide requisite layout plan of the allotted unit in question to the complainants within a period of one (1) month from the date of this order.

G.IX Direct the respondents not to ask for the monthly maintenance charges for a period of 12 months or more before giving actual possession of unit completed in all aspects;

51. The Authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. Further, the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been

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

52. Further, it is pertinent to note that, as per Section 11(4)(d) of the Act, of the Haryana Real Estate (Regulation and Development) Act, 2016, the promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

G.X Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like Interest Free Maintenance Security Deposit, Fixed Deposit towards the HVAT, which in any case is not payable by the complainant.

G.XI To restrain the respondents from raising fresh demand for payment under any head, which is not the part of the payment plan as agreed at the time of booking;

53. The respondent-promoter shall not charge anything from the complainant which is not part of the unit buyer's agreement or addendum agreement dated 31.07.2018.

H. Directions of the Authority:

54. 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 unpaid assured return at the agreed rate i.e., @ Rs.105/- per sq. ft. per month of super area from the date when the payment of the assured returns has not been paid i.e., 01.06.2020 till the date of commencement of first rent payment from the tenant/lease and thereafter, the lease rentals shall be paid in terms of clause 3 of the addendum agreement dated 31.07.2018.
- 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

complainant, failing which that amount would be payable with interest @ 8.80% p.a. till the date of actual realization.

- iii. The respondent-promoter is directed to get the conveyance deed of the allotted unit executed in terms of Section 17 of the Act of 2016.
- iv. The respondent-promoter shall not charge anything from the complainants which is not part of the buyers' agreement or addendum agreement dated 31.07.2018. The respondent-promoter is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which prejudicial to their rights as has been decided by the Authority in complaint bearing no. **4031 of 2019** titled as "**Varun Gupta V. Emaar MGF Land Limited**" decided on 12.08.2021

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

56. The complaints as well as application, if any, stand disposed of, accordingly.

True certified copy of this order shall be placed in the case file of each matter.

57. Files be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 23.12.2025