

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

Complaint no. : 3510 of 2025
Date of complaint : 28.07.2025
Date of order: 17.07.2026

Rajesh Kharbanda

Resident of: 10A, GH2 Orchid Garden Suncity, Sector
- 54, Gurugram, Haryana-122001.

Complainant

Versus

M/s Vipul Limited

Registered office: Vipul Tech Square, Golf Course
Road, Sector-43, Gurugram, Haryana - 122009.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Manish Shukla, Advocate

Complainant

Ms. Ankur Berry, Advocate

Respondent

ORDER

1. The present complaint has been filed by the complainant(s)/allottee(s) under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made thereunder or to the 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 and location of the project	"Vipul Lavanya", Sector-81, Gurugram
2.	Nature of the project	Group housing colony
3.	Project Area	10.512 acres
4.	DTCP license no.	26 of 2010 dated 18.03.2010 Valid up to 17.03.2020
5.	Name of licensee	Vijay Luxmi INDS and 4 others.
6.	RERA Registered/ not registered	Registered [2.282 Acres out of total site area 10.512 Acres] - [For tower 2 & 3] 15 of 2018 dated 11.09.2018 Valid up to 31.08.2019
7.	Unit no.	901, 9th floor, Tower-3 (As per page no. 50 of the complaint)
8.	Unit area admeasuring	1780 sq. ft. (super area) (As per page no. 50 of the complaint)
9.	Allotment letter	24.09.2010 (As per page no. 50-56 of the complainant)
10.	Date of execution of flat buyer's agreement	05.12.2010 (As per page no. 27-49 of complaint)
11.	Possession clause	8.Possession <i>8.1 a) ... The Vendor proposes to handover the possession of the said flat within a period 36 months from the date of signing of this agreement. The vendee(s) agrees and understands that the vendor shall be entitled to a grace of 90 days, after expiry of 36 months, for applying and obtaining the occupation certificate in respect of the group housing complex.</i>

		[Emphasis supplied] (As per page 33-34 of the complaint)
12.	Due date of possession	05.03.2014 [05.12.2013 + 90 days] [Note: Due date of possession to be calculated 36 months from the date of signing of this agreement plus grace of 90 days]
13.	Basic sale consideration	Rs.51,62,000/- (As per schedule of payments i.e., Annexure-I of BBA at page no.45 of the complaint)
14.	Total sale consideration [BSP + Car parking + EDC & IDC + Cess + GST]	Rs.61,43,986.50/- (As per schedule of payments i.e., Annexure-I of BBA at page no.45 of the complaint)
15.	Amount paid against the unit	Rs.61,34,326/- (inclusive of adjustment amount of Rs.3,65,971/-) (As mentioned in table at para iii on page 10 of complaint)
16.	Occupation Certificate/ completion certificate	25.05.2015 (For Tower/ Block - 6, 7 & 8) 20.08.2015 (For Tower/ Block - 5 & 9) 04.08.2016 (For Tower/ Block - 1 & 4) 27.07.2017 (For Tower/ Block - 10) Not known (For Tower/ Block - 2 & 3)
17.	Permission of interior work/ fit out	06.07.2021 (As per page no. 73 of complaint)
18.	Permission possession letter	07.10.2021 (As per page no. 75 of the complaint)
19.	Possession certificate	07.10.2021 (As per page no. 76 of the complaint)
20.	Reply to RTI (as per reply it is mentioned that the OC for tower-2 & 3 was refused on 20.03.2020)	20.03.2020 (As per page no. 80 of the complaint)
21.	Cost rebate on account of delay possession charges	Rs.1,30,698/- on 10.10.2023 (Rs.65,349/- + Rs.65,349/-) (As per page no. 11 & 12 of reply)
22.	Letter by complainant for deletion of name of co-	08.08.2024

	allottee (Mrs. Suman Kharbanda) for the subject unit.	(As mentioned in letter dated 22.08.2024 at page no. 77 of complaint)
23.	Letter from the respondent/ promoter confirming the deletion of name of co-allottee (Mrs. Suman Kharbanda) for the subject unit.	22.08.2024 (As per page no. 77 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
 - a. That the complainant is the allottees in the project of 'Vipul Lavanya' constructed by the respondent. The complainant is the buyer and having a flat in the project of 'Vipul Lavanya' constructed by the respondent but the respondent has failed to offer actual possession of the said flat/apartment due to willful negligence from the side of the respondent. The complainant is the law-abiding citizen of India and have full faith in this Hon'ble Court. The respondent is a Limited company registered under the Indian companies act 1956 Act and is doing the real estate business providing the residential and commercial building to its customer herein after referred respondent.
 - b. That the complainant had booked the flat on 18.09.2010 and had entered into an agreement on 05.12.2010 with the respondent towards allotment of flat number 901, 9th Floor measuring 1780 Sq. ft., Tower number 3 at 'Vipul Lavanya' project situated at Sector-81 Gurgaon, Haryana. The Total sale consideration of said flat was Rs.61,34,326/- including all other charges. The respondent had allotted this said unit to the complainant under the flat - buyer agreement.
 - c. That the flat buyers-agreement contain detailed terms and condition of selling of the flat and other clauses about the right and title of flat. The complainant had paid total sum of Rs.61,34,326/- and the flat was supposed to be delivered by 05.12.2013 but till date possession of the said flat has not

been given to the complainant. The complainant has never ever defaulted in making payment to the respondent and all the payment were paid timely.

- d. That main grievance of the complainant in the present complaint is non-fulfilment of the terms and conditions contained in the flat-buyer agreement. The complainant has not received the actual possession till date and non-obtaining of OC/CC. The complainant is the owners of the respective flat but not a legal owner of the said property unless the actual possession given by the respondent, the occupancy certificate and conveyance deed registered or issued by the relevant authorities in favour of the complainant. From the occupancy certificate it shows and proof that the building has been completed as per the sanction plan. The respondent has not offered the actual possession of said flats till date despite more than 11 years have been passed and deprived from his own property after receiving full payment. The respondent compels and given permission possession on 06.07.2021, the complainant has no other choice but to take permissive possession in order to avoid financial liability and obligation. That the respondent issued a provisional permission letter on 07.10.2021 for permissive possession.
- e. That the complainant has already received the delay penalty from the respondent for the period commencing from the date of the agreement i.e., 06.07.2021, calculated at the rate of Rs.5/- per sq. ft. It is further submitted that the complainant is entitled to receive the delay penalty for the continued delay in handing over final possession from 07.07.2021 to 21.05.2025. As of this date, more than 46 months have elapsed since the date of permissive possession. Accordingly, the complainant claims delay compensation for this period.
- f. That it is humbly submitted it is covered case, as in various judgments passed by this Hon'ble Court, granted delay penalty in similar circumstance. Here in this case, the developer failed to give possession and obtain occupancy

certificate and, in such scenarios, it is prayed that this Hon'ble Court may be pleased to direct the respondent to pay delay penalty till such time the registered conveyance deed is to be executed in favor of the buyer/complainant. It is further submitted that if the complainant wishes to sell their ready properties, without an OC and conveyance deed registered, can't proceed if their prospective buyer is applying for a loan, as banks require this document as well, reject the loan in absence of OC/ conveyance deed.

- g. That the complainant is a middle-class families facing financial obligations, hence is extremely required for actual possession and OC and getting the conveyance deed registered from the respondent as the hard-earned money involved in the said flats otherwise irreparable loss would be occurred to the complainant. This Authority mandates that the promoter/builder has to obtain the occupancy and registered the conveyance a titled documents and hand over the same to his buyer/complainant. The said project/ tower come under the ambit of the law and are ready with the infrastructure required occupancy certificate. The complainant seeks permission to file copy of similar case related to same project and tower with same developer as held by this Hon'ble Court in the case of ***"Shri Bhuwan Chandra Joshi Vs Vipul Ltd Complaint Case no. 4567 of 2020"*** judgement dated 23.02.2021, this Judgment has achieved finality.
- h. That this case is identical as aforesaid, this Hon'ble Court has also ruled that developers cannot use the force majeure clause for lack of approvals, financial crises and any other pending proceedings.
- i. That the complainant is income tax payee and required possession, and need OC to claim income tax benefits on home loan and it very difficult to find a buyer in case if the complainant wish to sell his flat in the future for urgent need, without an OC, it may be very difficult.

- j. That it is pertinent to note that the Indian judiciary has never left a stone unturned whenever it is felt the interest of an innocent party is at stake the underlying principle of the right to a speedy trial is used in Expedited court proceedings and the court has followed the same principle by allowing the prayer in the interest & welfare of the society including individuals, therefore it is in harmony with constitutional principles.
- k. That the complainant has been diligent throughout, be it means of paying all of their instalments in time, following up with the opposite party earlier regarding construction status visiting sight, Approvals and OC & CC. Copy of all reminders/emails along with RTI applied by other complainant and its reply received from concerned Authority is annexed hereto with complaint in LODs.
- l. That the complainant has diligently follow up with the opposite parties regarding the aforesaid possession of flat but all in vain, it is pertinent to note that the respondent has caused huge harassment, mental torture and agony to the complainants due to non-fulfilment of terms and condition mentioned in the allotment letter establishing their egregious unfair trade practices.
- m. That the great prejudice shall be caused to the complainants if the present complaint with humble submission and relief are not allowed. It is in best endeavours to ensure timely action and justice and discourage huge organization such as respondent to use the said pandemic as an excuse to escape responsibilities and legal bindings. Covid-19 pandemic shall not be made an opportunity for the respondent to escape their accountability occupancy certificate from concerned authorities for getting issuance of.
- n. That the respondent kept on delaying in offer possession and the occupancy certificate of the project/relevant towers on one or other pretext and fail to give occupancy certificate of the said units on the agreed terms and conditions. The complainants also sent various representation and request

in this regard but the respondent has neither responded nor got occupancy certificate from the concerned authorities till date. Hence the respondent is liable to pay the compensation and damages for their deficiency in services. That the complainants are residing in rental premises in the same project.

C. Relief(s) sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to give "actual possession" with interest on delay penalty charges till the registration of the conveyance deed in favor of the complainant, in this regard covered "Shri Bhuwan Chandra Joshi VS Vipul Ltd complaint case no. 4567 of 2020 and other batch matters related to identical project and tower, referring related to identical facts and circumstances of same tower and same project with the same respondent developer;
 - ii. Any other relief as Authority may please allow for delivery of justice.
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 filed by the respondent:

6. The respondent has contested the complaint on the following grounds:
 - a. That the respondent is a company, registered under the Companies Act, 1956 having its office at Vipul Tech Square, Sector 43, Golf Course Road, Gurugram, Haryana. That for the last 25 years the respondent has been engaged in the business of Real Estate Sector.
 - b. That in the present matter the complainant has sought the relief of the actual possession and DPC. That it is extremely important to bring to the knowledge of this Authority, that the complainant has been in possession of the unit under complaint, since last 5 years i.e. July 2021. At the time of taking such possession, the complainant received the delayed possession charges (DPC) (duly admitted by the complainant in par no. 6 of complaint) amounting to

Rs.1,30,698/- vide cheque nos. 416616 and 416615, issued in favour of the complainant and Suman Kharbanda (Deleted Allottee), and the remaining dues were duly adjusted towards the last instalments. The complainant, with full knowledge and free consent, expressly waived any further claim towards DPC by executing a full and final settlement at the time of taking possession. The complainant willingly signed and agreed to the said term at the time of taking permissive possession and is therefore bound by the same. Hence, the complainant cannot be permitted to take undue advantage of the respondent, especially when the respondent acted bona fide and came forward to protect the interests of the complainant. At the specific request of the complainant, the respondent granted permissive possession and duly ensured payment of delayed possession charges by releasing the DPC amount and by adjusting the last instalments of the unit towards DPC. After accepting such benefits and a full and final settlement, the complainant is estopped from raising repetitive and untenable claims. Any such attempt amounts to unjust enrichment and an abuse of the process of law, and therefore deserves to be rejected outright.

- c. That the complainant has already received the amount of delayed possession charges for a period commencing from the date of execution of the agreement i.e. 05.12.2010 to 06.07.2021, which fact is duly admitted by the complainant himself in paragraph 6 of the complaint. The complainant already accepted and received a sum of Rs.1,30,698/- towards DPC along with adjustment of the last instalments in the form of the DPC, without any protest or demur. The complainant accepted the terms voluntarily vide signing the full and final settlement. The complainant now stands estopped from claiming any further DPC, as the law does not permit a party to derive double benefit for the same cause of action or to approbate and reprobate at the same time.

- d. That the complainant is attempting to seek relief on the basis of the law laid down by this Authority in the matter of *Shri Bhuwan Chandra Joshi vs. Vipul Ltd.*, complaint case no. 4567 of 2020, judgment dated 23.02.2021; however, the complainant is maliciously attempting to disregard and suppress the subsequent and recent precedents and orders of this Authority, which have rectified its previous stance in matters titled as *Pooja Jaikrishna & Anr. vs. M/s ADTV Communication Pvt. Ltd.*, complaint no. CR/1042/2021, and which squarely applies to the facts of the present case. In the said matter, this Authority was pleased to hold that the complainant is entitled to delayed possession charges till the date of permissive possession of the unit, as the respondent and the complainant had acted as per their own convenience.
- e. In the present matter, the complainant has already received delayed possession charges till the date of permissive possession, which fact has been duly admitted by the complainant in paragraph 6 of the complaint. Accordingly, after accepting the DPC without demur, the complainant is estopped from re-agitating the same relief before this Authority. It is a settled principle of law that a party cannot be permitted to approbate and reprobate, nor can the complainant be allowed to claim a double benefit for the same cause of action.
- f. That the same approach has been reiterated by this Hon'ble Authority in other matters pertaining to the same project as well, wherein the allottees were granted delayed possession charges only till the date of permissive possession, in the matters titled *Gorav Rawat Vs. M/s Vipul Ltd.*, CR/213/2024 and *Nishant Kumar Vs. M/s Vipul Ltd.*, CR/3522/2023. Hence, in view of the aforesaid precedents, it is submitted that the complainant is not entitled to claim any further DPC beyond the date of permissive possession of the unit.
- g. That the complainant has sought the relief of "actual possession" of the unit, whereas the complainant has already been in possession of the said unit

since July 2021. Despite enjoying peaceful possession for a considerable period of time, the complainant has now, all of a sudden, chosen to seek the relief of actual possession. The said relief is therefore contrary to the admitted conduct of the complainant and clearly reflects an afterthought. On this ground alone, the present complaint is liable to be dismissed.

- h. That the present complaint is ex facie barred by limitation. It stands admitted that the complainant accepted delayed possession charges and took permissive possession of the subject unit in July, 2021. Consequently, any alleged cause of action, if at all available to the complainant, arose on the said date. However, the complainant did not invoke the jurisdiction of any Court, Forum or Authority within the prescribed period of limitation and has now, after an inordinate and unexplained delay, instituted the present proceedings as a mere afterthought with a view to secure an unwarranted advantage.
 - i. It is a settled proposition of law that stale, belated and time-barred claims cannot be entertained. Accordingly, this Authority is denuded of jurisdiction to adjudicate a complaint which is demonstrably barred by limitation. On this short ground alone, the present complaint merits dismissal in limine.
 - j. That the present complaint is wholly false, frivolous, vexatious and a gross abuse of the process of law. The complainant, having consciously accepted delayed possession charges up to the date of permissive possession, is now attempting to resile from the same and derive an unwarranted advantage by filing the present proceedings. Such conduct is malafide, dishonest and impermissible in law, being hit by the doctrine of approbate and reprobate as well as the principle of estoppel. The complaint has been filed only as an afterthought, without any subsisting cause of action, and is liable to be dismissed in limine with exemplary costs so as to curb frivolous litigation.
7. All other averments made in the complaint denied in toto.

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the Authority:

9. 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

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 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) 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.

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 relief(s) sought by the complainant:

F.I Direct the respondent to give "actual possession" with interest on delay penalty charges till the registration of the conveyance deed in favour of the complainant, in this regard covered "Shri Bhuwan Chandra Joshi VS Vipul Ltd complaint case no. 4567 of 2020 and other batch matters related to identical project and tower, referring related to identical facts and circumstances of same tower and same project with the same respondent developer;

F.II Any other order which this Authority deems fit and proper under the facts and circumstances of the case may kindly be passed in favour of the complainant.

13. The above-mentioned reliefs sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. In the present complaint, the complainant herein (Rajesh Kharbanda) and Mrs. Suman Kharbanda applied for a booking of a flat in the project "Vipul Lavanya" at Sector-81, being developed by the respondent herein. Vide allotment letter dated 24.09.2010, the complainant and Mrs. Suman Kharbanda were allotted a unit bearing no.901, 9th floor, Tower-3, having 1780 sq. ft. (super area) in the said project. Thereafter, on 05.12.2010, a flat buyer's agreement was executed between the complainant, Mrs. Suman Kharbanda and the respondent herein with regard to the unit in question. Further, the complainant and Mrs. Suman Kharbanda have taken the physical possession of the unit on 07.10.2021. The complainant and Mrs. Suman Kharbanda have paid Rs.61,34,326/- (inclusive of adjustment amount of Rs.3,65,971/-, as mentioned in table at page 10 of complaint) against the total sale consideration of Rs.61,43,986.50/- of the said unit.

15. Furthermore, on 08.08.2024, the complainant and Mrs. Suman Kharbanda have submitted a letter with the respondent for deletion of the name of co-allottee (Mrs. Suman Kharbanda) for the subject unit and on 22.08.2024, the respondent/ promoter issued a letter by confirming the deletion of name of

co-allottee (Mrs. Suman Kharbanda) from the subject unit and the said unit now stands in the name of the complainant herein only (page 77 of complaint).

16. In the present complaint, the complainant herein (Rajesh Kharbanda) is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 18(1) proviso 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."

[Emphasis supplied]

17. Further, clause 8.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

8. Possession

8.1 Time of handing over the possession

a) ... The Vendor proposes to handover the possession of the said flat within a period 36 months from the date of signing of this agreement. The vendee(s) agrees and understands that the vendor shall be entitled to a grace of 90 days, after expiry of 36 months, for applying and obtaining the occupation certificate in respect of the group housing complex.

[Emphasis supplied]

18. **Due date of handing over of possession:** As per clause 8.1(a) of buyer's agreement, the respondent/ promoter proposed to handover the possession of the said flat within a period 36 months from the date of signing of this agreement with a grace period of 90 days, after expiry of 36 months, for applying and obtaining the occupation certificate in respect of the group housing complex. Therefore, the due date of possession comes to be 05.03.2014 (including grace period of 90 days).

19. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of

delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

20. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **17.07.2026** is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
22. The definition of term 'interest' as defined under Section 2(z) of the Act of 2016 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. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent which is the same as is being granted to them in case of delayed possession charges.
23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of

clause 8.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered by 05.03.2014. However, the respondent has not obtained the occupation certificate for the tower in which unit of the complainants is situated. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 05.12.2010 to hand over the possession within the stipulated period.

24. The Authority observes that the occupation certificate has not been granted to the respondent/promoter till date. There is no record available on the paper book as show why the occupation certificate has not been granted by the competent authority even after more than 12 years from its application. Neither the respondent has given valid and specific reason to justify this delay. Further, a permission possession letter has been made to the complainants/allottees on 06.07.2021, for undertaking to carry out the interior work/ fit out at the unit. Admittedly, the respondent has handed over the actual physical possession to the allottee on 07.10.2021. The Authority further observes that the complainants were aware that the occupation certificate is not yet received by the respondent, yet he took the actual physical possession of the unit offered by the respondent. This implies that the complainants have been enjoying the vacant and peaceful possession of the unit since 07.10.2021. The Authority is of the considered view that there is nominal delay on the part of the respondent/promoter in handing over the physical possession of the unit in terms of buyer's agreement executed between the parties.
25. Accordingly in the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 10.80% p.a. w.e.f. 05.03.2014 till 07.10.2021 i.e.,

actual hand over as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules and Section 19(10) of the Act.

26. It is pleaded by the respondent that at the time of possession, the respondent has paid an amount of Rs.1,30,698/- on account of compensation against delayed possession penalty, however, no supported document w.r.t encashment of that amount is provided during the pendency of the case. Therefore, the Authority is of the view that if the respondent has paid/ adjusted any amount on account of delay possession charges, if any, then the same shall be adjusted/ deducted from the total payable amount of delay possession charges after submitting proof of the same.

- **Conveyance deed**

27. Further, as per Section 11(4)(b) of the Act of 2016, the promoter is under obligation to get the occupancy certificate from the competent authority and make it available to the allottees or association of the allottees and the same is reproduced below:

11. Functions and duties of promoter: -

(4) The promoter shall -

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

28. Moreover, the complainant is seeking the relief for the execution of registered conveyance deed 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 favour of the complainant(s). Whereas as per Section 19(11) of the Act of 2016, the allottee(s) are also obligated to participate towards registration of the conveyance deed of the unit in question. The complainant has taken the possession of the unit on 07.10.2021 on offer of the possession of the unit. As per clause 8.2 of the flat buyer's agreement, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said

flat in favour of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

8.2 Procedure for taking possession: -

"b) ... Subject to the Vendee(s) making all payments under this Agreement, The Vendor shall prepare and execute along with the Vendee(s) a conveyance deed to convey the title of the said FLAT in favour of the Vendee(s) but after payment of stamp duty, registration charges incidental expenses for registration, legal expenses for registration and all other dues as set forth in this agreement or as demanded by the Vendor from time to time prior to the execution of the conveyance deed. The Parties agree that after the Vendee(s) has provided all the details, documents as provided in the written notice as stated in this clause and/ or other documents required for the purpose of registration of the conveyance deed, the Vendor shall make all reasonable efforts to get the conveyance deed registered within a reasonable time. The Vendee(s) agrees stand undertakes to make himself/ herself available for the purpose of registration on the date(s) as informed by the Vendor.

...The Vendee(s) shall be solely responsible and liable for compliance of the provisions of Indian Stamp Act 1899 (or any modification thereof) including any actions taken or deficiencies / penalties imposed by the Competent Authority(ies). The Vendee(s) further undertakes to indemnify and keep harmless the Vendor against all claims, demands, actions, proceedings, losses, damages, recoveries, judgements, cess, charges and expenses which may be made or brought or commenced against the Vendor, for stamp duty in respect of the Flat."

29. It is to be further noted that Section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under Section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of OC.

30. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as Section 17 (1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be,

to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

31. Therefore, the Authority observes that the respondent/promoter is duty bound to obtain the occupation certificate and execute the conveyance deed in favour of the complainant(s)/ allottee(s). In view of the above, the respondent is further directed to execute the registered conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016, after receipt of occupancy certificate from the competent authority and upon payment of requisite stamp duty charges and administrative charges as applicable, within a period of three (3) months after obtaining occupation certificate from the competent authority.

G. Directions of the Authority:

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

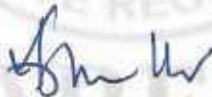
- i. The respondent/promoter is directed to pay delay possession charges on the amount paid by the complainants/allottees at the rate of 10.80% per annum from the due date of possession i.e., 05.03.2014 till the date of actual handing over of possession of the unit i.e., 07.10.2021, as per Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- ii. Also, the amount, if any, so paid by the respondent towards delayed possession charges shall be adjusted towards the delayed possession

charges to be payable by the respondent, in terms of proviso to Section 18(1) of the Act.

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(z) of the Act.
- iv. The respondent/promoter is further directed to execute the registered conveyance deed in favour of the complainants/allottees in terms of Section 17(1) of the Act of 2016, after receipt of occupancy certificate from the competent authority and upon payment of requisite stamp duty charges and administrative charges as per norms of the state government, within a period of three (3) months after obtaining occupation certificate from the competent authority.

33. Complaint as well as application, if any, stands disposed off accordingly.

34. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.07.2026