BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**3291 of 2025**
Date of complaint	**:**	**28.07.2025**
Order pronounced on:		**22.05.2026**

1. Kul Bhushan Lall
2. Bharti Lall

R/o: Flat no.1004, 10th Floor, Tower No.3, Vipul Lavanya Apartment, Sector-81, Gurugram, Haryana-122004. **Complainants**

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 Complainants

Shri Nishant Jain, Advocate Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the 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 complainant, 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] Vide no. 15 of 2018 dated 11.09.2018 Valid up to 31.08.2019
7.	Unit no.	1004, 10th floor, Tower-3, (As per page no. 31 of the complaint)
8.	Unit area admeasuring	1780 sq. ft. (super area) (As per page no. 31 of the complaint)
9.	Allotment letter ***(In favor of Mr. Suresh Pratap Singh & Mrs. Munni Dev)***	24.10.2010 (As per page no. 24 of the complaint)
10.	Date of execution of flat buyer's agreement ***(between respondent and Mr. Suresh Pratap Singh & Mrs. Munni Dev)***	30.11.2010 (As per page no. 28-51 of complaint)
11.	Possession clause	**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]** (As per page 35-36 of the complaint)
12.	Due date of possession	**28.02.2014** [30.11.2013 + 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.36,75,700/- (As per schedule of payments (revised) i.e., Annexure-I of BBA at page no.71 of the complaint)
14.	Total sale consideration ***[BSP + Car parking + EDC & IDC + Service Tax]***	Rs.46,64,265/- (As per schedule of payments (revised) i.e., Annexure-I of BBA at page no.71 of the complaint)
15.	Amount paid against the unit	Rs.43,85,425/- (As per payment receipts at page 73-105 of complaint as well as mentioned in SOA dated 22.02.2021 at page 122 of complaint)
16.	Endorsement ***(in favor of complainant)***	23.05.2019 (As per page no. 54 of the complaint)
17.	Loan Sanction letter	29.04.2019 (As per page 64-67 of the complaint)
18.	Tripartite Agreement ***[Between Complainants, respondent and Oriental Bank of Commerce]***	29.05.2019 (As per page 55-84 of the complaint)
19.	Permission to mortgage	23.05.2019 (As per page 68 of the complaint)
20.	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)

21.	Permission of interior work/ fit out	22.02.2021 (As per page no.121 of complaint)
22.	Permission possession letter	01.07.2023 (As per page no. 52 of the complaint)
23.	Possession certificate	03.08.2023 (As per page no. 53 of complaint and page no. 50 of the reply)
24.	Reply to RTI ***(as per reply it is mentioned that the OC for tower-2 & 3 was refused on 20.03.2020)***	19.05.2020 (As per page no. 108 of the complaint)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

a. That the complainants are the allottee 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 Authority. 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 original allottee Mr. Suresh Pratap Singh & Mrs. Munni Devi had purchased the flat from the respondent company and had entered into a builder-buyer agreement dated 30.11.2010 with the respondent for the allotment of Flat No. 1004, 10th Floor, measuring 1780 sq. ft., in Tower No. 3 of the project known as 'Vipul Lavanya', situated at Sector-81, Gurgaon, Haryana. The total sale consideration for the said flat was Rs.55,73,620/-, inclusive of all applicable charges. Subsequently, the original allottee sold the said flat to Mr. Kul Bhushan Lall and Mrs. Bharti Lall on 23.05.2019 and

endorsement was done, who are the current owners of the property and the complainants herein.

c. That the flat buyers-agreement contain detailed terms and condition of selling of the flat, including clauses related to the rights, title and obligations of both parties. The complainants have paid a total sum of Rs.43,85,425/- towards the purchase of the said flat. As per the Agreement, the possession of the flat was to be handed over by 30.11.2013. However, despite the lapse of considerable time, the actual possession of the said flat has not been delivered to the complainants till date. The complainants have never ever defaulter in making payment to the respondent company and all the instalment were paid timely.

d. That the main grievance of the complainants in the present complaint is the non-fulfillment of the terms and conditions stipulated in the Builder-Buyer Agreement. Despite full payment having been made, the complainants have not been handed over the *actual possession* of the flat till date. Although the complainants are the rightful allottees and purchasers of the flat, they cannot be deemed legal owners in the absence of (i) actual possession being handed over by the respondent, (ii) issuance of the Occupancy Certificate (OC), and (iii) execution and registration of the Conveyance Deed in their favor by the competent authority.

e. That it is submitted that the occupancy certificate is a crucial document that evidences the completion of the building in accordance with the sanctioned building plan. However, despite the lapse of more than 11 years, the respondent has neither issued the occupancy certificate nor offered actual and lawful possession of the flat. Instead, the respondent company compelled the complainants to accept *permissive possession* on 01.07.2023,

leaving them with no other option but to accept the same under protest in order to avoid further financial liability and hardship.

f. That in fact, due to the inordinate delay in handing over possession of the aforesaid flat, the complainants have been overburdened with financial liabilities, including loan repayments, daily household expenses, and EMIs. This prolonged delay has caused severe mental agony, emotional distress, and financial hardship to the complainants, adversely affecting their overall well-being.

g. That it is humbly submitted it is covered case, as in various judgments passed by this Authority, 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.

h. 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 Builder as the hard-earned money involved in the said flats otherwise irreparable loss would be occurred to the complainant. This Hon'ble Court/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.

i. 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. 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.

j. That the complainant has been diligent throughout, be it means of paying all of their installments in time, following up with the opposite party earlier regarding OC/CC and visiting office of the respondent, Approvals and OC & CC. It is further submitted that during the period from 2019 to 2025, the complainant made several requests for the occupancy certificate (oc) and completion certificate (cc), and also visited the office of the opposite party multiple times to ascertain the status of the same. However, on each occasion, the opposite party gave false assurances that the OC/CC would be issued within a few months. These promises were repeatedly made but never fulfilled, thereby misleading the complainant and causing undue mental harassment and hardship.

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 & EC, Proof of all be presented during the course of hearing.

l. That the complainant has diligently follow up with the opposite parties regarding the aforesaid OC/CC/EC approvals but every time the opposite party enjoyed and are repeated long extensions for these aforesaid approvals and certificates at the stake of welfare of the complainants. 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 complainant 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 the occupancy certificate, clearance certificate and encumbrance 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 complainant also sent various representation and request in this regard but the respondent has neither responded nor sought occupancy certificate from the concerned authorities till date. Hence, the respondent is liable to pay the interest on delay on actual possession.

o. That the complaint is within limitation, the complainants seek leave to add the submissions and grounds further at the time of argument or at the appropriate stage. That the complainant has not filed any other similar

petition before any court of law. That in the interest of justice that the prayer may be allowed.

C. Relief(s) sought by the complainants:

4. The complainants have 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 by the respondent.

6. The respondent has contested the complaint by filing reply on the following grounds: -
   a. That the companies namely M/s Graphic Research Consultants (India) Pvt. Ltd, M/s Vinneta Trading Pvt. Ltd. and M/s Abhipra Trading Pvt. Ltd. had acquired and purchased the land admeasuring 10.512 acres situated within the revenue estate of Village Nawada Fatehpur, Sector-81, Gurgaon with the intention to promote and develop a group housing colony over the same. The owner companies have obtained license, from the Director, Town and Country Planning, Haryana, for setting up a Group Housing Colony over the aforesaid land.
   b. That M/s Vipul Ltd. had inter-se entered into agreement with the owner companies in terms of which the M/s Vipul Ltd. is entitled to develop a group housing colony on the land admeasuring 10.512 acres situated in village

Nawada, Fatehpur, Sector 81, Tehsil and District Gurugram. That pursuant to the aforesaid inter se agreement, M/s Vipul Ltd. launched the Group Housing Project by the name of "Vipul Lavanya".

c. It is a matter of record that some third parties had filed litigation titled as Vardhman Kaushik V/s Union of India & Ors. wherein the Hon'ble NGT while considering the degradation of environment was pleased to restrain or stop the construction activity in the region of Delhi and NCR. It is pertinent to mention here that Govt. of Haryana was a party and is well aware of the entire litigation who passed certain directions to all the developers to stop the construction work. The company through letters, individually to all its allottees including the complainants, informed about the stoppage of work of the aforesaid project. But when the restrain order got vacated the company again started construction of the project and successfully completed the project and thereafter applied for the occupation certificate from the competent authority vide its letter dated 03.04.2018. The grant of the occupation certificate as on date is under consideration at the office of the competent authority and the company is hopeful that it will soon get the certificate of occupation from the competent authority. Though, the permissive possession has been handed over to the complainant upon his acknowledgment and acceptance.

d. The respondent has been regularly following up with the concerned governmental departments for the grant of occupation certificate for the remaining project. The respondent again wrote a letter dated 23.03.2021 to DTCP for grant of occupation certificate. The respondent annexed all the relevant documents for the issuance of the occupation certificate. The issuance of occupation certificate was delayed due pendency of environmental clearance certificate. The respondent had been running to the

concerned environment body constituted by the government. The respondent had been in regularly correspondence with the concerned department (State Environment Impact Assessment Authority – SEIAA). However, the tenure of State Environment Impact Assessment Authority (SEIAA) and State Expert Appraisal Committee (SEAC), Haryana got completed on 20.02.2025 due to which environment clearance cases are not being processed in Haryana State. It is only vide notification dated 24.12.2025, that Central Government has constituted SEIAA.

e. It is pertinent to mention herein that the project 'Vipul Lavanya', Sector 81, Gurugram consists of 10 Towers out of which occupation certificate of 8 towers has been taken by the respondent and has applied for the remaining two towers.

f. That the complainants are aware that the project has been completed and company has also applied for the occupation certificate from the concerned competent authority and upon grant of such occupation certificate the conveyance deed shall be executed, but still the complainants with malafide filed the present complaint to agitate their false, baseless and frivolous claim. That the present complaint is not maintainable and the Authority has no jurisdiction whatsoever to decide the present complaint.

g. That the complainant is aware that the project has been completed and company has also applied for the occupation certificate from the concerned competent authority and upon grant of such occupation certificate the conveyance deed shall be executed, but still the complainants with malafide intention chose the Authority to agitate their frivolous claim.

h. The project, i.e., "Vipul Lavanya", Sector 81, Gurugram, Haryana, is neither covered under the Haryana Real Estate (Regulation & Development) Rules, 2017 nor is the said project of the respondent registered with this Authority.

As per the definition of "ongoing projects" under Rule 2(o) of the said Rules, any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said Rules is outside the purview of Haryana Real Estate (Regulation & Development) Rules, 2017.

i. That it is also most respectfully submitted that the Authority has no jurisdiction to entertain the present complaint as the complainants have not come to the Authority with clean hands and have concealed the true and material facts.

j. That no cause of action has ever accrued in favour of the complainants to file the present complaint before the Authority. The complaint being without any cause of action is liable to be dismissed on this ground alone.

k. That the complaint of the complainants lacks bonafide and smells smack of malafide who have not approached the Authority with clean hands. The complainants are not entitled for any relief under the Act, 2016.

l. That the complainants are estopped from filing the present complaint by their own acts, conduct, admissions, commissions, omissions, acquiescence and latches. The complainants have moved the instant vexatious complaint to harass the respondent to succumb to their illegal demands and to achieve speculative bargains.

m. That it may not be out of place to submit that the statement of objects and reasons of the RERA inter-alia is an attempt to balance the interests of consumers and promoters by imposing certain responsibilities on both. That the complainants have never been at all aggrieved and do not fall under the definition of aggrieved person, but still by filing such false, frivolous and vexatious complaint, the complainants are not only harassing the respondent

company to succumb to their illegal demand, but by filing such false complaint, they are misleading the Authority.

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

E. Jurisdiction of the Authority:

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram 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

10. 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.*

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

F. Findings on the relief(s) sought by the complainants:

F.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;

F.II Any other relief as Authority may please allow for delivery of justice.

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

13. In the present complaint, the original allottees namely Mr. Suresh Pratap Singh & Mrs. Munni Dev booked an apartment in the project "Vipul Lavanya" at Sector - 81, Gurugram, of the respondent and they were allotted an apartment/ unit bearing no. 1004 at 10th floor in Tower-3 having admeasuring 1780 sq. ft. (super area) vide allotment letter dated 24.10.2010. Thereafter, a buyer's agreement was also executed between respondent/ promoter and original allottees on 30.11.2010, for a total sale consideration of Rs.46,64,265/- [which includes BSP + Car parking + EDC & IDC + Service Tax] against which respondent has received an amount of Rs.43,85,425/-. As per clause 8.1 of the flat buyer's agreement dated 30.11.2010, the respondent 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. Accordingly, the due date of possession comes

to be 28.02.2014 (including grace period of 90 days). Subsequently, the original allottees sold the subject unit to the complainants herein. Thus, the same was endorsed in favour of the complainants by the respondent vide endorsement on 23.05.2019. Therefore, the complainants stepped into the shoes of original allottee on 23.05.2019.

14. In the present complaint, the complainants have taken the physical possession of the unit on 03.08.2023 and are 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)***

15. 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) Subject to terms of this clause and subject to the vendee(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc, as prescribed by the vendor, **the Vendor proposes to 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]***

16. Therefore, the due date of possession of the unit as per clause 8.1 of the flat buyer's agreement dated 30.11.2010, the respondent 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 28.02.2014 (including grace period of 90 days).

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to Section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the 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."*

18. 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.

19. 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., **22.05.2026** is **8.80%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

20. The definition of term 'interest' as defined under Section 2(za) 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.

21. 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.

22. 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 28.02.2014. 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 30.11.2010 to hand over the possession within the stipulated period.

23. The Authority observes that the respondent has admitted in its reply that the respondent has although applied for the occupation certificate to the competent authority on 14.05.2018. However, the same 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 8 years from its application. Neither the respondent has given valid and specific reason to justify this delay. Hence, the project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the promoter as well as allottees.

24. In the present complaint, the original allottees were allotted a unit vide buyer's agreement dated 30.11.2010 and thereafter, the original allottees sold the subject unit to the complainants herein and the said unit got endorsed by the respondent in favour of the complainants vide endorsement letter dated

23.05.2019. Therefore, the complainants stepped into the shoes of original allottee on 23.05.2019 i.e., after the due date. It simply means that the complainants were well aware about the fact that the occupation certificate qua that tower in which subject unit is situated in the said project is yet to be obtained. However, they still chosen to proceed with execution of the agreement voluntarily which means that the complainants have accepted the factum of the delay. Moreover, they had not suffered any delay as the subsequent allottee/complainants herein came into picture only on 23.05.2019, when the subject unit was endorsed in their favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainants from the date of endorsement dated 23.05.2019 i.e., date on which the complainants stepped into the shoes of the original allottee.

25. Thereafter, a permission possession letter has been made by the respondent to the complainants/allottees on 22.02.2021 & 01.07.2023, 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 03.08.2023. The Authority further observes that the complainant was 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 03.08.2023. The Authority is of the considered view that there is a delay on the part of the respondent/promoter in handing over the physical possession of the unit in terms of buyer's agreement dated 30.11.2010 executed between the parties.

26. 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. the date of endorsement i.e., 23.05.2019 till 03.08.2023 i.e., the date of 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.

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 complainants are 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 complainants have taken the possession of the unit on 03.08.2023 on offer of the possession of the unit. As per clause 8.1 of the 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 directed to execute the registered conveyance deed in favour of the complainants in terms of Section 17(1) of the Act of 2016, after receipt of occupancy certificate from the competent authority and up on payment of requisite stamp duty charges and registration 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 date of endorsement in favour of the complainants i.e., 23.05.2019 till the date of actual handing over of possession of the unit i.e., 03.08.2023, as per Section 18(1) of the Act read with Rule 15 of the Rules, ibid.

    ii. 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.

    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(za) 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.

33. Complaint stands disposed of.

34. File be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 22.05.2026

HARERA
GURUGRAM