

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 124 of 2024

Date of Decision: March 27,2026

M/s. Tulip Infratech Private Limited, Having Corp. Office at Plot No. 76-G, Sector-18, Gurugram, Haryana - 122105 through its Authorised Representative

Appellant.

Versus

Haryan Real Estate Regulatory Authority, New PWD Rest House Civil Lines, Gurugram, Haryana - 122001

Respondent.

CORAM:

Justice Rajan Gupta

Chairman

Dinesh Singh Chauhan

Member (Technical)

Present: Ms. Radhika Mehta, Advocate
for the appellant.
Mr. Siddhant Arora, Advocate
for the respondent.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 18.12.2023, passed by the Authority¹ whereby the appellant was directed to deposit a sum of **Rs.1,75,87,714/-** towards late fee for delayed registration of the real estate project namely "Tulip Monsella (Group Housing) and Tulip Attila (Commercial)" measuring 19.244 acres, situated in Sector-53, Gurugram, Haryana. The appellant deposited the said amount under protest vide Cheque No. 012271 dated 27.12.2023 and seeks (i) setting aside of the impugned order, (ii)

¹ Haryana Real Estate Regulatory Authority, Gurugram

refund of the late fee with interest @ 18% per annum from the date of deposit till refund, and (iii) avoidance of “dual” collection of registration/late fee in respect of areas already registered and paid for by the erstwhile promoter M/s Vipul Ltd. The relevant portion of the impugned order dated 18.12.2023 reads as under:

“19. Finally, on 18.12.2023, the authority decided that the late fee to be deposited by the promoter is already conveyed to the promoter company vide letter dated 20.11.2023 but the same has not been deposited by the promoter till date. In view of the same, the bank accounts of the project be frozen and the promoter is restrained from creating further third-party rights in the project. Further the matter be put up on file before the authority for taking decision regarding revocation of registration of the project.

20. Subsequent to the final proceedings dated 18.12.2023, the promoter company had deposited the late fee under protest through a cheque no. 012271 dated 27.12.2023 amounting to Rs. 1,75,87,714/-. Keeping in view the deposition of late fee by the promoter the authority decides to drop further action pertaining to freezing the bank accounts of the project or restraining the promoter from creating further third-party rights in the project.

21. Accordingly, the order be communicated to the parties.”

2. Factual matrix of the case is that M/s Vipul Ltd. (erstwhile promoter) was granted licences No. 168–172 of 2004 dated 16.12.2004 (valid up to 15.12.2024) and No. 545–546 of 2006 dated 13.03.2006 (valid up to 12.03.2025) for development of a real estate project over an area measuring 19.244 acres in Sector-53, Gurugram. Vipul Ltd. obtained RERA registration for: “Aarohan Phase-I (Group Housing)” – 16.063 acres (part of 19.244 acres), FAR

83,001.743 sq.m., Registration No. 131 of 2017 dated 28.08.2017, valid up to 30.12.2022; and “Aarohan Commercial Tower” – 2.829 acres (part of 19.244 acres), FAR 40,081.468 sq.m., Registration No. 01 of 2018 dated 11.04.2018, valid up to 30.12.2023. The registration fee for both the above segments had been duly paid by the erstwhile promoter. No material is shown that any sale, marketing or booking was made by Vipul Ltd. in respect of the area beyond the registered “Aarohan Phase-I (Group Housing)” and “Aarohan Commercial Tower”. Due to financial and other constraints, the projects of Vipul Ltd. were stalled. Thereafter, by Beneficial Interest Permission (“BIP”) dated 28.03.2022, development rights over the entire land parcel of 19.244 acres were assigned in favour of the appellant. The appellant applied afresh and secured Registration Certificate No. 29 of 2022 dated 25.04.2022 for “Tulip Monsella” (Group Housing); and “Tulip Attila” (Commercial), in respect of the entire 19.244 acres, encompassing Aarohan Phase-I (Group Housing) and Arohan Commercial Tower already registered in the name of Vipul Ltd. While granting Registration Certificate No. 29 of 2022, the Authority incorporated Clause 1(iv) providing that Vipul Ltd. would be liable to pay late fee for the part of the project which was not registered by it within one month, failing which the collaborator promoter (the appellant) would be liable to pay the same within six months. The appellant and Vipul Ltd. made several detailed representations requesting deletion/waiver of Clause 1(iv) and objecting to fastening of late fee liability upon the appellant on the ground that the earlier registrations were already in place and no default had been committed in respect of any ongoing/marketed area. These representations were not accepted. Show Cause Notice dated 24.04.2023 was thereafter issued. The Authority, vide impugned order dated 18.12.2023, rejected the appellant’s

contentions and directed payment of late fee of Rs. 1,75,87,714/-, which the appellant deposited under protest on 27.12.2023.

3. The appellant assails the impugned levy of late fee on multiple, inter-related grounds, urging that no liability could legally arise since the project had already received FAR sanction in 2015 and partial registrations by erstwhile promoter M/s Vipul Ltd. under Phase-I (Registration No. 131/2017) and Aarohan Commercial Tower (Registration No. 01/2018) with all requisite fees duly paid, leaving no “ongoing project” unregistered under Section 3 of the RERA Act so as to attract late fee against the appellant.

4. It is further contended that Section 3 targets the mischief of marketing, sale or booking without registration, which was wholly absent in the present case as Vipul Ltd. never undertook any sale, marketing or booking activities in respect of any area beyond the duly registered Phase-I and commercial tower. In the absence of any commercial exploitation of the so-called unregistered FAR, invocation of penal provisions is wholly unwarranted.

5. The appellant places strong reliance upon the Explanation to Section 3 of the Act, which explicitly recognizes and legitimizes phase-wise development by mandating that each phase be treated as an independent and standalone real estate project requiring separate registration. Vipul Ltd. having already registered the relevant phases in accordance with law, the Authority could not retrospectively treat the entire licensed area of 19.244 acres into a single composite project and levy late fee on that artificial basis. This statutory position is further reinforced by Section 4(2) of the Act, which contemplates furnishing of approvals, sanctioned plans and specifications on a phase-wise basis, thereby underscoring the legislative intent to treat each phase as distinct for the purposes of registration and compliance.

6. The appellant also contends that when it applied for amended registration of the entire licensed area after stepping in as incoming promoter, it was required to pay registration fees afresh for the whole project, including areas already registered and paid for by Vipul Ltd. This resulted in a de facto duplication of registration fees, which the Authority neither adjusted nor refunded. In such circumstances, fastening an additional burden of late fee is ex facie arbitrary, punitive and disproportionate.

7. Assailing Clause 1(iv) of Registration Certificate No. 29 of 2022, the appellant submits that the said condition is not in consonance with the RERA Act and the Haryana Rules and Regulations. The Act does not contemplate creation of a substantive financial or penal liability by way of an executive stipulation in a registration certificate. The Authority could not, by such a clause, impose a form of vicarious or successor liability upon the appellant for an alleged historical default of the erstwhile promoter, particularly when the statutory ingredients of default are themselves not satisfied.

8. Lastly, it is urged that the appellant took over the project in order to revive and complete it for the benefit of the allottees. Imposition of a heavy late fee in such circumstances directly impacts project cash flows, escalates costs, and ultimately burdens the allottees themselves which is wholly contrary to the consumer-centric, completion-oriented and remedial object of the RERA Act.

9. Per contra, the respondent–Authority defended the impugned order and contends that the appellant is squarely liable for payment of late fee under the statutory framework of the RERA Act. It is urged that by virtue of Section 2(zk) of the Act, which expansively defines the term “promoter” to include assignees and transferees of development rights, coupled with Clause H(iii) of Registration Certificate No. 29 of 2022, the appellant is deemed to be

the promoter for the entire licensed area admeasuring 19.244 acres. The Authority submits that such liability is joint and several along with the original landowner/promoter, M/s Vipul Ltd., and is not diluted merely because the Beneficial Interest Permission initially pertained to a part of the project land.

10. The respondent further submits that registration of a real estate project is the very foundation of the RERA regime and strict compliance with Section 3 of the Act is mandatory. According to the Authority, a substantial portion of the project corresponding to 1,38,641.237 sq. m. of FAR remained unregistered for a considerable period, which constitutes a clear violation of Section 3. The existence of such unregistered FAR, irrespective of actual sale or marketing, is sufficient to attract regulatory consequences under the Act.

11. It is further contended that the late fee amounting to Rs.1,75,87,715/- has been levied strictly in accordance with law, under the Haryana Real Estate Regulatory Authority, Gurugram (Fixing of Standard Fees to be Levied on the Promoter) Regulations, 2021, framed under Sections 85(2)(h) and 34(e) of the Act. The computation, it is submitted, has been made in terms of Para 3, Sub-para (III) of the said Regulations for the period from October 2018 to 12.11.2021, after due notice and opportunity of hearing.

12. Lastly, the respondent–Authority submits that the present appeal is nothing but an attempt by the appellant to wriggle out of liabilities consciously undertaken and accepted under the amended registration certificate. The impugned order is stated to be reasoned, lawful and well within the jurisdiction of the Authority, having been passed after following due process and therefore, seeks dismissal of present appeal.

13. Now the questions which arise for consideration before this Bench are:

- i. Whether the appellant, as assignee-promoter, is liable for late fee on unregistered FAR notwithstanding partial registrations by the erstwhile promoter;
- ii. Whether imposition of late fee under the Haryana RERA Gurugram (Standard Fees) Regulations, 2021 is lawful;
- iii. Whether the plea of double payment and refund is sustainable;
- iv. Whether the impugned order suffers from arbitrariness or procedural infirmity.

14. Section 3(1) of the Act prohibits a promoter from advertising, marketing, booking or selling any unit in a real estate project without prior registration. The Explanation thereto mandates that in case of phase-wise development, each phase shall be treated as a distinct and independent real estate project requiring separate registration. The legislative intent thus clearly recognises segmented development and corresponding compliance obligations. In the present case, the erstwhile promoter, M/s Vipul Ltd., had obtained registration for specific phases, namely Aarohan Phase-I and Aarohan Commercial Tower, and there is no cogent material to demonstrate that any unregistered portion of the project was actively marketed or sold in contravention of Section 3. Mere existence of unutilised or unregistered FAR, in the absence of any act of promotion or sale, does not ipso facto constitute a violation.

15. Section 4(2) further reinforces the phase-wise scheme by requiring submission of approvals and documents with respect to each phase independently. However, it cannot be overlooked that the entire licensed land formed part of a composite development and that the unregistered FAR remained embedded within the sanctioned project layout. While the Authority did not conclusively establish illegal marketing of such unregistered FAR, the absence of complete

registration for the entire licensed area reflects a degree of regulatory non-compliance attributable to the project as a whole. Consequently, a limited liability on this account cannot be entirely ruled out.

16. Upon grant of BIP and issuance of amended Registration Certificate, the appellant falls within the definition of “promoter” under Section 2(zk) and is obligated to ensure compliance prospectively. However, fastening full retrospective liability upon the appellant for acts or omissions of the erstwhile promoter would be inequitable, particularly when the statutory breach itself has not been conclusively established. Clause H(iii) of the Registration Certificate providing for joint liability must be interpreted harmoniously with the Act and cannot be applied in a manner that imposes disproportionate or automatic liability without proper adjudication.

17. Clause 1(iv) of Registration Certificate No. 29 of 2022, which seeks to transfer liability of late fee upon the appellant in the event of default by Vipul Ltd., cannot be enforced in its entirety. While regulatory conditions may bind the appellant to ensure compliance, they cannot override the statutory requirement of establishing an actual violation under Section 3. At the same time, the appellant, having stepped into the project and obtained registration for the entire licensed area, cannot be completely absolved of all financial consequences arising from prior regulatory gaps.

18. It is also an admitted position that registration fee was paid earlier by Vipul Ltd. for certain phases, and the appellant, upon fresh registration, paid fee for the entire project area, resulting in partial overlap. This, coupled with the absence of clear evidence of unlawful marketing, renders the imposition of full late fee of Rs.1,75,87,714/- excessive and disproportionate. However, considering that there existed an element of delayed comprehensive

registration of the project as a whole, some regulatory levy is justified to uphold statutory discipline.

19. In view of the above, this Tribunal holds that the Authority erred in imposing such a heavy penalty in the balance unregistered FAR not proportionate to the extent of non-compliance. The circumstances warranted moderate penalty in view of the fact that the appellant voluntarily took over an abandoned project. In case, the project had not moved forward, it would have resulted in heavy loss to the allottees. Ends of justice would be served by substantially reducing late fee. Accordingly, the late fee is reduced from Rs.1,75,87,714/- to Rs.75,00,000/-, which is considered reasonable, proportionate, and consistent with the objectives of the Act.

20. Consequently, the appeal is partly allowed. The impugned order dated 18.12.2023 is modified to the extent that the late fee payable by the appellant shall stand reduced to Rs.75,00,000/-. If the appellant has already deposited the entire amount of Rs.1,75,87,714/-, the excess amount shall be refunded within 90 days from the date of uploading of this order. Clause 1(iv) of Registration Certificate No. 29 of 2022 shall remain operative only to the limited extent of the modified liability as determined herein.

21. Copy of this order be sent to the parties/counsel for the parties and the Authority.

22. File be consigned to records.

Justice Rajan Gupta,
Chairman,
Haryana Real Estate Appellate Tribunal

Dinesh Singh Chauhan
Member (Technical)

March 27,2026/mk