

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

Complaint no. : 5629 of 2022  
First date of hearing: 16.11.2022  
Date of decision : 16.11.2022

1. Manoj Bhutani

R/O: -

1. 221, Deed Plaza Complex,  
Opp. Civil Court, Gurgaon.

**Complainant**

Versus

1. Elan Limited
2. R.P. Estate Private Limited

R/O: -

1. 110025, Block I-1, Sangam Vihar,  
New Delhi, 110062
2. M-25, Greater Kailash 2,  
New Delhi

**Respondents**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Arora

Member  
Member

**APPEARANCE:**

Ms. Sanjeev Sharma  
Ms. Ganesh Kamath

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 28.12.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

### 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.N.	Particulars	Details
1.	Name of the project	"Mercado", Sector- 80, Gurugram, Haryana
2.	DTCP License no.	i.) 82 of 2009 dated 08.12.2009 ii.) licensee name - <b>R.P. Estate pvt. Ltd.</b>
3.	RERA registered/ not registered	i.) 189 of 2017 dated 14.09.2017 ii.) licensee name - <b>Elan Ltd.</b>
4.	Unit no.	GF - 0062 (Page no. 57 of reply)
5.	Super area	482 sq. ft. (Page no. 57 of reply)
7.	Allotment Letter	02.02.2016 (Annexure R3 page 33 of reply)



11.	Date of flat buyer agreement	30.03.2018 (Page no. 54 of the reply)
12.	Possession clause	<p><b>11. schedule for possession of the said unit</b></p> <p><b>11 (a)</b> The Developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the Said Bulling/Said Unit within a period of 48 months with an extensions of further twelve (12 months from the date of this agreement unless there shall be delay or failure due to Govt. department delay or duet any circumstances beyond the power and control of the Developer or Force Majeure conditions including but n limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Consideration and other charges and dues/payments mentioned in this Agreement or any failure on the part of th Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part. the Allottee(s) In making of payments to the Developer then not withstanding rights available to the Developed elsewhere in this contract, the</p>

		period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee (s) in remitting payment(s) to the Developer (Page 67, from the buyer agreement.).
13.	Due date of Possession	<b>30.09.2021</b> (The due date is taken from the buyer's agreement date.)
14.	Total sale consideration	Total sale consideration- <b>Rs. 50,91,547/-</b> (Page 11, of the complaint)
15.	Amount paid	Rs. 53,17,985/- (Page 11, of the complaint)
16.	Occupation certificate	17.10.2022 (Attached on page no.100.)
17.	Offer of possession	not offered

**Facts of the complaint**

3. That the allottee paid Rs. 743561/- on 01-02-2015 and booked a unit on ground floor no. GR0062 of 482 sq. ft. in project called "MERCADO" at NH-8 Naurangpur, sector-80 Gurugram. The license on the land admeasuring 2.987 acres is owned by M/s R.P Estates (Pt.) Ltd. having their office at M-25, Greater Kailash-II New Delhi. The license is also brought by the owner holding no. as 82 of 2009 and entered into a development agreement with M/s Elan Ltd. on 25-05-2013. The respondent company M/s Elan Ltd.

advertised the project and collected bookings from the market where the complainant also fell in this trap. The allottee paid approx Rs. 45,08,175/- excluding booking amount of Rs. 7,43,561/- on 18.09.2018 as demanded by the developer on the pretext of assured return. The amount is collected against the guarantee of the booked unit of 482 sq. ft. Meanwhile the builder buyer agreement was executed on 30.03.2018 between M/s Elan Ltd. the developer and allottee Sh. Manoj Bhutani, now the complainant. It is pertinent to mention here that real estate regulatory act was notified, and it was in operation since 2016 way back from execution of agreement. The developers promised to deliver the possession in 48 months' time from the date of execution of agreement i.e., up to 17-09-2022. The construction is far from completion and neither any occupation certificate is even applied for, nor any assured return as promised at the time of collecting down payment instead of construction linked plan. Subsequently the allottee further paid more amount after September 2018 and total amount paid to the developers is of Rs. 53,17,985/- till date as per customer statement dated 24.03-2022 issued by the developer.

4. That the respondent made several contraventions of the proceedings of RERA act like, not bothering to get Registration of the sale agreement before collecting more than 10% of the total basic cost of the unit etc. The complainants have through this complaint invoked the jurisdiction of this Hon'ble Authority under section 18 which states, "Section 18. Return of amount and compensation.

5. If the respondent fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that unit as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.
6. The respondent shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.
7. If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.
8. That the complainants have approached the Hon'ble Authority under section 31 of the Act which states the filing of complaints with the Authority or the adjudicating officer.

### **C. Relief Sought**

9. **This Authority may be pleased to direct the respondent as follows:**
- i. **Direct the respondent to Refund the entire amount paid by the complainants amounting to Rs. 53,17,985 along with interest from the date of actual payments made.**

**D. Reply by the respondent**

10. The brief facts of the complaint under reply insofar as they relate to the booking made by the complainant and the payment of booking amount are a matter of record. However, it is denied that the respondent no. 1 advertised the project, or the complainant fell into the trap of the respondent no. 1. He never solicited bookings in the project from the complainant. On the contrary, the complainant approached the him and expressed an interest in booking a unit in the project after conducting through due diligence and after reading, understanding, and accepting the terms and conditions signed the application form and paid the booking amount against the unit in question. It is pertinent to state that right from the stage of booking, the complainant had chosen construction linked payment plan which did not include payment of any return on the payments made by the complainant, by him, however the complainant kept on visiting the office of the respondent no. 1 on one pretext or other claiming returns on his investment. The complainant started visiting the office of the respondent no. 1 and behaved in aggressively with the officials of the respondent no. 1, thereafter, to avoid any serious he went way beyond the terms of the agreement and as a goodwill gesture and to maintain peace and harmony made payment of return of Rs. 5,23,875/-

for the period starting from September 2018 till 13.01.2020 for almost one and a half year.

11. It is further denied that the construction is far from complete, or occupation certificate was not applied by them or that no return was paid to the complainant. The construction has been completed and he has been granted Occupation Certificate vide Memo No. ZP-593/AD (RA)/2022/31385 dated 17.10.2022 by Town and Country Planning Department, Haryana. A bare perusal of the same clearly indicate that the complex as well as Unit are fit for habitation and carrying out the fit outs. He made payment of return of Rs. 5,23,875/- for the period starting from September 2018 till 13.01.2020 for almost one and a half year in complainant's account even though the same was never agreed upon by the parties nor was part of the terms and conditions of the application form as well as the buyers agreement.
12. He cheated the complainant and made contraventions of the proceedings of RERA Act. They respondent no. 1 has not contravened any provision of the HRERA Act, and the allegations made by the complainant are irrelevant to the facts of the present case.
13. The complainant reserves his right to file separate complaint for compensation as and when required before the appropriate authority. The Preliminary Objections may kindly be read as a part of the present para and the contents of the same are not being reproduced herein for the sake of brevity and to avoid repetition. The complainant has seemed to misinterpret the provisions of RERA to suit his own needs.

#### **E. Jurisdiction of the authority**



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**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

The Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

15. 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 sought by the complainant.**

**F.1 Direct the respondent to Refund the entire amount paid by the complainants amounting to Rs. 53,17,985 along with interest from the date of actual payments made.**

16. After considering the above-mentioned facts, the authority has calculated the due date of possession according to clause 11 (a) of the flat buyer's agreement i.e., 42 months (excluding a grace period of 180 days) from the date of sanction of buyer's agreement
17. The respondent has filed a copy of occupation certificate dated 17.10.2022 submitted by the respondents which shows that the respondents have received the occupation certificate for unit in question and the possession has not been offered by the respondents to the complainant
18. The counsel for the complainant states that the complainant has requested for refund of the amount deposited against the unit. However, now OC has been received for the project. Therefore, the complainant wishes to continue with the project and requests for offer of possession and DPC in case the same accrues as per BBA.
19. The counsel for the respondent has no objection to the same.

20. The authority hereby allows delay possession charges till the offer of possession plus 2 months as per section 19(10) of the Act.

The counsel for the respondent has no objection to the same.

**G. Directions of the authority**


21. 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):

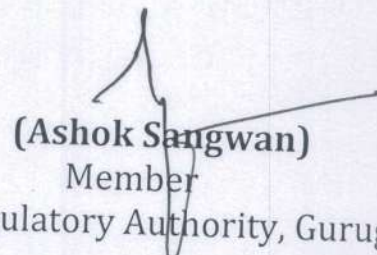
(i) The respondent shall pay interest at the prescribed rate i.e. 10.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. **30.09.2021** till the expiry of 2 months from the date of offer of possession , as per section 19(10) of the Act. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

(ii) The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.

22. Complaint stands disposed of.

23. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 16.11.2022**

