

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

Complaint no. :	4890 of 2020
Date of filing complaint:	15.01.2021
First date of hearing:	18.03.2021
Date of decision	03.03.2023

NAME OF THE BUILDER		Elan Buildcon Pvt. Ltd.	
PROJECT NAME		Elan Town Centre	
S. No.	Case No.	Case title	Appearance
1	CR/4890/2020	Amrita Sharma V/S Elan Buildcon Pvt. Ltd.	Sh. Rajan Kumar Hans Sh. J.K Dang
2	CR/4878/2020	Amrita Sharma V/S Elan Buildcon Pvt. Ltd.	Sh. Rajan Kumar Hans Sh. J.K Dang

CORAM:

Shri Sanjeev Kumar Arora

Member
ORDER

- This order shall dispose of all the 2 complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Elan Town Centre (commercial complex) being developed by the same respondent/promoter i.e., Elan Buildcon Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Elan Town Centre, Sector 67, Gurugram , Haryana
<p>Possession clause: - 11(a) <i>The developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the said building / Said Unit within a period of 36 months from the date of this agreement with an extension of further 12 months unless there shall be delay or failure due to govt.</i></p> <p style="text-align: right;">(Emphasis supplied)</p>	
<p>Occupation certificate: - ➤ OC received dated 09.03.2021</p>	
<p>Note: Grace period is not included while computing due date of possession.</p>	

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of apartment buyer agreement	Due date of possession	Total Consideration / Total Amount paid by the complainant(s)	Relief Sought	Date of withrawal

1.	CR/4890/2020 Amrita Sharma V/S Elan Buildcon Pvt. Ltd. Date of Filing of complaint 15.01.2021	Reply Received on 03.02.2021	KIOSK-0224, 2 ND FLOOR (Page no. 21 of complaint)	03.02.2018 (Page no. 18 of the complaint)	03.02.2022 (Calculated from date of execution of the agreement)	TSC: - Rs.26,17,500/- AP: - Rs. 10,21,763/-	-Refund the entire amount along with interest	08.10.2020 (As per on page 59 of complaint)
2.	CR/4878/2020 Amrita Sharma V/S Elan Buildcon Pvt. Ltd. Date of Filing of complaint 15.01.2021	Reply Received on 03.02.2021	KIOSK-0223, 2 ND FLOOR (Page no. 20 of complaint)	03.02.2018 (Page no. 17 of the complaint)	03.02.2022 (Calculated from date of execution of the agreement)	TSC: - Rs.26,17,500/- AP: - Rs.10,21,763/-	Refund the entire amount along with interest	08.10.2020 (As per on page 59 of complaint)
<p>Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:</p> <p>Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)</p>								

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking award of refund the entire amount along with interest and compensation.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure

compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of *complaint case bearing no. 4890/2020 titled Amrita Sharma V/S Elan Buildcon Pvt. Ltd.* is being taken as a lead case in order to determine the rights of the allottee(s) qua refund the entire amount along with interest.

A. Project and unit related details

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

CR/4890/2020 titled Amrita Sharma V/S Elan Buildcon Pvt. Ltd.

S. N.	Particulars	Details
1.	Name of the project	"Elan Town Centre" Sector 67, Gurugram, Haryana
2.	Project area	2.00 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	84 of 2012 dated 28.08.2012 valid upto 27.08.2021
5.	Name of licensee	M/s Elan Buildcon Pvt. Ltd.
6.	RERA Registered/ not registered	Registered dated 02.02.2018

7.	RERA registration valid up to	01.02.2022
8.	Allotment of unit	08.03.2017 (As per page no. 15 of complaint)
9.	Unit no.	KIOSK - 0224, 2 nd floor (On page no. 21 of complaint)
10.	Super area	300 sq. ft. (As per allotment letter on page no. 34 of complaint)
11.	Date of flat buyer's agreement	03.02.2018 (As per page no. 18 of the complaint)
12.	Possession clause	<p>As per Clause 11(a) of the said agreement:</p> <p>The developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the said building / Said Unit within a period of 36 months from the date of this agreement with an extension of further 12 months unless there shall be delay or failure due to govt. As such the above grace period is not allowed as there is no failure on govt.</p>
13.	Due date of possession	03.02.2022 (Inadvertently mentioned in the proceedings of the day as 03.02.2021)
14.	Total sale consideration	Rs 26,17,500/-

		(As per bba on page 48)
15.	Amount paid by the complainant	Rs. 10,21,763/- (As alleged by the complainant)
16.	Occupation certificate	09.03.2021
17.	Offer of possession for fit out	18.09.2020 (Page 55 of complaint)
18.	Surrender Letter	08.10.2020 (Page 59 of complaint)

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

- I. That the project in question is known as "Elan Town Centre", at Sector 67, Gurgaon. That respondent issued allotment letter of the unit on 08.03.2017. As per the term of conditions, the cost of unit was arrived at Rs. 26,17,500/-
- II. That the food court of the unit is 224 2nd floor. On 29.07.2016, the complainant booked the food court unit by paying Rs. 2,44,500/- through the cheque no.7668 Drawn on CitiBank.
- III. That the respondent convinced the client by showing the map of the food court unit whereas the unit had the service corridors behind every single unit, which is an essential aspect of running the kitchen of the food court unit, also the complainant could choose the unit as per her wish by seeing the layout plan, The complainant chose the unit as this unit was meeting her budget.

- IV. That even before issuance of the allotment letter the complainant had already paid Rs. 10,21,763/- on the demand of the respondent. The respondent accepted 35% of the amount even before the entering into the builder buyer agreement in contravention to Section 13 of the RERA Act, 2016.
- V. That on 03.02.2018 a pre-printed, one sided builder buyer agreement was executed between the parties and the complainant had no say and followed the dotted lines as set by the respondent builder in the agreement. The payment plan agreed between was 10:25:65, whereas the 65% of the amount was to be paid at the possession. The complainant has already paid 35% of the agreed amount till date to the respondent.
- VI. That as mentioned in the builder buyer agreement, the super area of the food court unit is supposed to be 300 square feet. whereas the builder failed to annex the exact dimensions of the unit with the builder buyer agreement, and also in due course it did not inform the complainant about the actual carpet area or its dimensions.
- VII. That on 18.09.2020 the respondent sent the intimation of the possession and along with that it sent a demand letter, asking for the payment of Rs. 37,68,638/- The respondent builder has increased the super area from 300 to 490 square feet that is an increase of 63% and that too without prior intimation and consent.
- VIII. That after receipt of the possession letter the complainant was not happy to get the unit as the super area has been increased by 63% and also she went to check the physical progress on site where she noted that the delivery of units were not in line with what was promised on the

following counts. The complainant was shocked to find out that the actual carpet area of the unit was just 81.25 Square feet (Size in LXB as 12.5X6.5 Ft.). hence the ratio of carpet area to super area is just 17% or in the words the loading was 83% of the size against the usual 45-50% in the commercial units. The respondent increased the super area of the unit from 300 sq ft to 490 sq ft and has put tremendous financial burden on the complainant. The locations of the unit is completely changed as promised and on which the builder convinced the client to buy the unit. There is a pillar of 2.5X2 feet in the center of the unit which makes the unit unfit for any commercial usage.

- IX. That in response to the aforesaid letter, the complainant sent a letter on 08.10.2020 to the respondent informing about the discrepancies in the promised and actual unit and for the cancelation of the unit as this high loading, increase in super area and change in the layout plan without consent was unacceptable to the complainant.
- X. That the various written and verbal reminders to the companies and visit to the office went unanswered by the respondent and complainant is forced to take the complainant to the Hon'ble Authority.
- XI. That as per the clause 1.6 of the builder buyer agreement the respondent convinced the complainant that the carpet area will be at least the 50% of the super area which is in line with the standard practice in the commercial units, and also the service corridors are an essential part of the kiosks and food court units but has miserably failed to keep its commitment. As per the Clause 10 of the builder buyer agreement the

respondent cannot increase the super area beyond 15% but in this case the respondent has increased the super area by 63%.

- XII. That the main grievance of the complainant is that is that the complainant is an end user who wished to open the food chain unit in the premises but the high loading has rendered this unit as unfit for the usage as the food court, as it becomes impossible to open the kitchen in such as short space, also the pillar in the centre of the unit makes it unfit for any commercial usage and that the respondent has exorbitant increased the super area and the complainant is not in a position to afford any additional financial burden and the builder has changed the layout of the unit and deprived the complainant to choose the unit as per her wish.
- XIII. That this becomes the matter of the fact that the respondent misled the complainant about the exorbitantly high loading and showed the one layout at the time of booking and changed the layout later on without consent and increased the Super area without any consent.
- XIV. That the respondent acted in contravention to section 11(4) of the said act and in spite of convincing the complainant as per clause (1.6) in builder buyer agreement that the loading is expected to be 50 % of the super area it has delivered the unit on 83% loading,, which is quite high by any set standard in the market.
- XV. That the respondent acted in contravention to section 12 of the said act and has caused the damage to the complainant by providing incorrect and false statements in the prospectus, layout plan and the builder buyer agreement.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s):

- I. Direct the respondent to refund the amount of Rs.10,21,763/- along with interest per annum.

D. Reply by the respondent

10. The respondent has contested the complaint on the following grounds.

- I. That the present complaint has been instituted by the complainant in respect of Kiosk bearing number 223 on 2nd floor admeasuring 300 sq. ft. located at sector 67 , Gurugram That it needs to be mentioned that application form dated 01.08.2013 had been voluntarily filed and signed by the complainant pertaining to purchase of a unit in the said project .Thereafter , allotment letter dated 08.03.2017 had been issued by the respondent to the complainant vide which the said kiosk had been allotted to the complainant .
- II. That the buyer's agreement was executed between the parties on 03.02.2018. The complainant without being influenced in any manner by the respondent had executed the buyer's agreement after being satisfied with the contractual covenants contained therein.
- III. That the respondent had applied to the concerned authority for obtaining the occupation certificate vide letter dated 20.03.2020.The complainant has wrongly alleged that the respondent had failed to provide the exact dimensions of the kiosk in the builder buyer's agreement. The complainant has further alleged that the respondent did not inform the complainant about the carpet area of the said kiosk. The all the relevant documents had been fully provided to the complainant wherein the

carpet area of the said kiosk along with the exact dimensions had been disclosed. Moreover it had also been conveyed to the complainant that even though all relevant documents had been provided to her, he was more than welcome to visit the office of the respondent to obtain any document as required by her.

- IV. That the complainant has wrongly stated that the ratio of carpet area to super area with respect to the said unit was just 17%. Furthermore, the complainant has intentionally misinterpreted clause 1.6 of the buyer's agreement in order to bias the mind of the honorable adjudicating officer. It is pertinent to mention that as per Clause 1.6 of the buyer's agreement, the covered area in case of a kiosk would also include the area of sitting space as well as service corridor. Moreover, it had never been communicated to the complainant that the carpet area of the kiosk would be at least 50% of the super area. It is pertinent to mention that the complainant has herself admitted that in case of commercial units, it is standard practice that the carpet area is approximately 50% of the super area. It is pertinent to mention that the complainant had booked a kiosk and not a full-fledged commercial unit as is sought to be portrayed by her.
- V. That since the complainant had booked a kiosk which was located in the food court on the and floor in the said project, the complainant cannot contend that she deserves similar advantages and perks as provided to the allottees of full-fledged commercial units. Moreover, the calculations provided by the complainant in his complaint with respect to the said kiosk are erroneous, flawed and without any basis. It would not be out of place to mention that there is no mention of a service corridor in the

buyer's agreement. It had never been agreed between the parties that a service corridor was to be provided for the kiosk in question. The complainant has falsely alleged that a service corridor was to be provided for the kiosk in question or that the same is an essential aspect of operating a kiosk in the food court. Moreover, a kitchen is provided to the food court units but not kiosks located in the food court. The complainant in order to bias the mind of this Honourable Authority has portrayed as if both the food court units and the kiosks located in the food court are one and the same thing.

- VI. That on the one hand the complainant has relied upon various terms and conditions incorporated in the buyer's agreement and the other hand the complainant has entirely ignored certain contractual covenants contained therein. It has been provided in Clause L(i) of the buyer's agreement that the complainant after being fully satisfied and relying upon her own judgment had decided to book the said kiosk, uninfluenced in any manner by the respondent. It is pertinent to mention that at the time of booking itself, the complainant had been provided with all the relevant documents and drawings with respect to the said kiosk. The complainant had not raised any objection at the relevant point in time.
- VII. That the super area in the project including the commercial unit in question has been calculated strictly in accordance with the Annexure II of buyers agreement dated 03.02.2018. The complainants are conscious of this fact and have raised frivolous allegations pertaining to alleged wrongful computation of super area. The super area has, thus, been computed on the basis of accepted norms of computation of super area as

incorporated in the voluntarily and consciously executed buyers agreement, referred to above. The allegations pertaining to alleged wrongful and unauthorized increase in super area is without any basis and has not been substantiated by the complainants.

- VIII. That the complainant has wrongly stated that the layout plans had been changed unilaterally by the respondent. It is pertinent to mention that the location of the said kiosk is in consonance with what had been promised to the complainant and mentioned in the layout plans. It is pertinent to mention that the layout plans for the said project are public documents which are readily available on the official website and with the Honourable RERA Authority. Moreover, the complainant has appended a map purportedly showing the location of the kiosk allegedly handed over to her by the respondent at the time of booking as Annexure P6. It is pertinent to mention that the said map does not even contain the kiosk in question. Moreover, the said document had never been handed over to the complainant by the respondent. Even at the time of arguments, the counsel for the complainant was unable to point out the exact location of the kiosk in the map in question.
- IX. That the respondent has duly discharged its legal obligations towards the complainant as per the buyer's agreement executed between the parties. Moreover, the location and size of the said kiosk is in conformity with the contractual covenants contained in the buyer's agreement. The complainant in order to gain wrongfully at the expense of the respondent has illegally claimed at this highly belated stage that the dimensions and

measurement of the said kiosk are not in conformity with what had been allegedly promised to her by the respondent.

- X. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

11. 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

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

E.II Subject matter jurisdiction

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

Section 11

.....
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

14. 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.
15. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section

71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

F.1 Direct the respondent to refund the amount of Rs.10,21,763/- along with interest per annum.

17. In the present case the complainant approached the Hon'ble Adjudicating Officer in year 2021 to seek refund of the amount paid by her, while vide order dated 20.08.2021 Hon'ble Adjudicating Officer directed the respondent to refund the amount paid by the complainant along with interest. Thereafter, the respondent approached the Appellate Tribunal by filing an appeal no. 565 of 2021 against the said order passed by the Hon'ble Adjudicating Officer. The same appeal was allowed vide order dated 25.04.2022 and set aside the order passed by Hon'ble Adjudicating Officer dated 20.08.2021 stating that the case is remitted for fresh trial in accordance with law to the learned Haryana Real Estate Authority, Gurugram. Hence, the parties were directed to approach the authority on 25.05.2022 for further proceedings.

18. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by her in respect of subject unit along

with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference,

"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. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) 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 apartment, plot, building, 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:

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)

4. Clause 11(a) of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"11(a). POSSESSION

"The developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the said building / Said Unit within a period of 36 months from the date of this agreement with an extension of further 12 months unless there shall be delay or failure due to govt.

5. The authority is of view that the said grace period of 6 months shall be not allowed to the respondent as there is no delay or failure due to the government . Therefore, as per clause 11(a) of the buyer's agreement dated 03.02.2018, the due date of possession comes out to be 03.02.2022.

6. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by her at the prescribed rate. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

7. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
8. 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., 03.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
9. In the present matter the buyer's agreement was executed between the parties on 03.02.2018 and the due date of possession is calculated 36 months

from the date of agreement plus grace period which comes out to be 03.02.2022. The respondent obtained the occupation certificate on 09.03.2021 offered possession for fit out on 18.09.2020 . The respondent while offering the possession for fit out sent a demand letter, asking for the payment of Rs. 37,68,638/- and has increased the super area from 300 to 490 square feet that is an increase of 63% and that too without prior intimation and consent.

10. As per the Clause 10 of the builder buyer agreement the respondent cannot increase the super area beyond 15% but in this case the respondent has increased the super area by 63%. The said clause is reproduced as below

"In case of any alteration / modification resulting in the super area of the said unit any time prior to and upon the grant of occupation certificate is +- 15% , the developer shall intimate in writing to the allottee(s) the changes thereof and the resultant change if any in the total consideration of the said unit to be paid by the Allottee(s) if the Allottee(s) objects in writing indicating his non consent/ objections to such alterations / modifications then in such case alone the developer may at its sole discretion decide to cancel this agreement without further notice and refund the money received from the allottees (less non - refundable amount) with in 90 days from the date of developer receipt of funds by the developer from resale of the said unit."

11. The super area of the unit which was allotted to the complainant was of 300 sq. ft but when the respondent sent the letter of fit out the super area was increased to 490 sq. ft. which is an increase of 63%. Since the variation in the super area is not as per the unit allotted and not as per the clause 10 of the buyer's agreement the complainant wish to withdraw from the project and wants refund of their paid up amount .
12. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and is demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein, the matter is covered under section 18(1) of the Act of 2016.
13. The council for the respondent stated at bar that sense there was a variation in the Super area allotted and actually offered but the same was as per BBA duly executed still they are ready to refund the amount to the complainant. he also stated that the relief under section 12 of the act cannot be sought in cases where BBA has already been executed. the council for the complainant at bar requested to consider the relief under section 18 of the act to which the council for the respondent did not object.
14. On such issues with regard to section 12 and 18 was brought before the Maharashtra real estate regulatory authority in matter of Anita Castellino Vs. Godrej Landmark redevelopers Private limited has observed that there are

total 4 stages between the buyer and the builder from its advertisement to final sale deed. further while dismissing the complaint the authority observed that both sections that is 12 and 18 operate at two separate times of transaction. section 12 which relates to veracity of advertisement comes before the signing of agreement and post that for any violation of 18 can be involved . Further it was observed that once an agreement to sale is signed it supersedes all prior verbal and nonverbal agreements.


15. Accordingly, 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 complainant is entitled to refund of the entire amount paid by her at the prescribed rate of interest i.e., @ 10.70% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

16. 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 refund the amount received by it from the complainant along with interest at the rate of 10.70% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
17. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 18. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
 19. Files be consigned to registry.

HARERA


(Sanjiv Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.03.2023