

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

Date of decision: 08.12.2023

NAME OF THE BUILDER		ELAN BUILDCON PVT. LTD.
PROJECT NAME		ELAN MIRACLE
S. No.	Case no.	Case title
1.	CR/918/2022	SURESH KUMAR & MANJU BALA V/S ELAN BUILDCON PVT. LTD.
2.	CR/4706/2021	KAILASH JAIN & PRABHA JAIN V/S ELAN BUILDCON PVT. LTD.
3.	CR/4707/2021	SOHAN LAL GOEL & ANITA GOEL V/S ELAN BUILDCON PVT. LTD.

CORAM:

Shri Sanjeev Kumar Arora

Member**APPEARANCE WHEN AGRUED:**

Mr. Shailendra Garg (Advocate)

Mr. J.K Dang (Advocate)

Complainants
Respondent**ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in form CRA/CAO 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.

- 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 MIRACLE" (group housing colony) being developed by the same respondent/promoter i.e., M/s Elan Buildcon Pvt. Limited. 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 delay possession charges.
- 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 BUILDCON PVT. LTD. "ELAN MIRACLE" Sector-84, Gurugram.
Possession Clause: - 7.1	
<p><i>"Schedule for possession of the said premises / unit - the promoter agrees and understands that timely delivery of possession of the said premises / unit to the allottee(s) and the common: areas to the association of allottee(s) or the competent authority, as the case may be, is the essence of the agreement. The promoter assures to hand over possession of the said premises / unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place within a period of 48 (forty eight) months from the date of this agreement with an extension of further 12 months, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development schedule for possession of the said premises / unit - the promoter agrees and understands that timely delivery of possession of the said premises / unit to the allottee(s) and the common: areas to the association of allottee(s) or the competent authority, as the case may be, is the essence of the agreement. The promoter assures to hand over possession of the said premises / unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place within a period of 48 (forty eight) months from the date of this agreement with an extension of further twelve months, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project (force majeure). If however, the completion of the</i></p>	

project is delayed due to the force majeure conditions then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the said premises / unit, provided that such force majeure conditions are not of a nature which make it impossible for the contract to be implemented. The allottee agrees and confirms that, in the event it becomes impossible for the promoter to implement the project due to force majeure conditions, then this allotment shall stand terminated and the promoter shall refund to the allottee the entire amount received by the promoter from the allottee(s) subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the promoter to the allottee(s). The promoter shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the allottee [subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the promoter, interest paid or payable by the allottee(s) to the promoter on delayed payments, brokerage(s) / incentive(s) paid by the developer / discount(s) given, taxes / statutory levies paid / payable, if any], the allottee agrees that he/ she shall not have any rights, claims etc, against the promoter and that the promoter shall be released and discharged from all its obligations and liabilities under this agreement. It is however clarified that if the developer offer the possession of the unit before the stipulated timeline as mentioned above, the allottee(s) shall take the possession without any protest or demurif however, the completion of the project is delayed due to the force majeure conditions then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the said premises / unit, provided that such force majeure conditions are not of a nature which make it impossible for the contract to be implemented. The allottee agrees and confirms that, in the event it becomes impossible for the promoter to implement the project due to force majeure conditions, then this allotment shall stand terminated and the promoter shall refund to the allottee the entire amount received by the promoter from the allottee(s) subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the promoter to the allottee(s). The promoter shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the allottee [subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the promoter, interest paid or payable by the allottee(s) to the promoter on delayed payments, brokerage(s) / incentive(s) paid by the developer / discount(s) given, taxes / statutory levies paid / payable, if any], the allottee agrees that he/ she shall not have any rights, claims etc, against the promoter and that the promoter shall be released and discharged from all its obligations and liabilities under this agreement. It is however clarified that if the developer offer the possession of the unit before the stipulated timeline as mentioned above, the allottee(s) shall take the possession without any protest or demur."

(Emphasis supplied)

Occupation certificate: - 15.03.2023			
Note: Grace period is allowed being justified as due to covid-19 the construction was delayed.			
Complaint No.	CR/918/2022	CR/4706/2021	CR/4707/2021
Allotment letter	10.04.2019 [pg. 21 of complaint]	02.07.2018 [pg. 24 of complaint]	06.09.2018 [pg. 26 of complaint]
Letter of assurance	10.04.2019 [pg. 22 of complaint]	01.09.2018 [pg. 32 of complaint]	18.08.2018 [pg. 25 of complaint]
BBA	19.11.2019 [pg. 37 of complaint]	09.04.2019 [pg. 35 of complaint]	17.04.2019 [pg. 33 of complaint]
Unit	G-023 [pg. 46 of complaint]	G-10 [pg. 44 of complaint]	G-031 [pg. 42 of complaint]
Unit area	904 sq. ft. unilaterally increased to 1138 sq. ft. [pg. 81 of complaint]	1104 sq. ft. unilaterally increased to 1392 sq. ft. Modification agreement not signed by the parties wherein the area increased is mentioned. [pg. 98 of complaint]	925 sq. ft. unilaterally increased to 1181 sq. ft. [pg. 74 of complaint]
Basic Sale Price	₹ 59,66,400/- [pg. 21 of complaint]	₹ 95,60,640/- [pg. 114 of reply]	₹ 69,95,775/- [pg. 106 of reply]
Total sale consideration	₹ 70,30,840/- [pg. 87 of complaint]	₹ 1,34,77,840/- [pg. 114 of reply]	₹ 80,75,650/- [pg. 106 of reply]
Amount paid	₹ 77,30,425/- [pg. 115 of reply]	₹ 1,08,15,282/- [pg. 114 of reply]	₹ 80,26,628/- [pg. 106 of reply]
Due date of possession	19.11.2024 *inadvertently mentioned as 19.11.2023 in the proceedings dated 18.08.2023.	09.04.2024 *inadvertently mentioned as 09.04.2023 in the proceedings dated 18.08.2023.	17.04.2024 *inadvertently mentioned as 17.04.2023 in the proceedings dated 18.08.2023.

Offer of possession for fit outs	07.09.2021 [pg. 81 of complaint]	07.09.2021 [pg. 98 of complaint]	07.09.2021 [pg. 74 of complaint]
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4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges.
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 lead case *CR/918/2022 Suresh Kumar & Manju Bala V/s Elan Buildcon Pvt. Ltd.* are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges.

A. Project and unit related details

7. The particulars of the project, the details of 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:

CR/918/2022 Suresh Kumar & Manju Bala V/s Elan Buildcon Pvt. Ltd.

S. N.	Particulars	Details
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1.	Name of the project	"Elan Miracle", Sector-84 , Gurugram Haryana
2.	Nature of the project	Commercial project
3.	Registered/not	Registered 190 of 2017 dated 14.09.2017 Valid till 13.09.2023
4.	Unit No.	G-023 ground floor [pg. 46 of the complaint]
5.	Super area	904 sq. ft. and increased to 1138 sq. ft. [pg. 81 of the complaint]
6.	Date of allotment	10.04.2019 [pg. 21 of the complaint]
7.	Date of builder buyer agreement	19.11.2019 [pg. 37 of the complaint]
8.	Possession clause	<i>POSSESSION OF THE PREMISES / UNIT: 7.1</i> <i>Schedule for Possession of the said Premises / Unit - The Promoter agrees and understands that timely delivery of possession of the said premises / unit to the allottee(s) and the common: areas to the association of allottee(s) or the competent authority, as the case may be, is the essence of the Agreement. The Promoter assures to hand over possession of the said premises / unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place within a period of 48 (forty eight) months from the date of this Agreement</i>

		<p><i>with an extension of further twelve months, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If; however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the said premises / unit, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allottee(s) subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the Promoter to the Allottee(s). The Promoter shall Intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee [subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the Promoter, interest paid or payable by the allottee(s) to the promoter on delayed payments, brokerage(s) / incentive(s) paid</i></p>
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		<i>by the developer / discount(s) given, taxes / statutory levies paid / payable, if any], the Allottee agrees that he/ she shall not have any rights, claims etc, against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement. It is however clarified that if the developer offer the possession of the unit before the stipulated timeline as mentioned above, the allottee(s) shall take the possession without any protest or demur.</i>
9.	Due date of possession	19.11.2024
10.	Total sale consideration (BSP)	Rs. 70,30,840/- [pg. 87 of the complaint]
11.	Amount paid	Rs. 77,30,425/- [pg. 115 of the reply]
12.	Occupation certificate	15.03.2023
13.	Offer of possession for fit out	07.09.2021 [pg. 81 of the complaint]

B. Facts of the complaint

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

- a. That the respondent is a builder known as Elan group represented itself as one of the most trusted and fastest growing real estate companies in India for its quality, responsibility and customer service. In the year 2017, the respondent launched its project known as "Elan miracle" to be constructed in sector - 84, village Hayatpur, Gurugram consisting high street retail /anchor/ service apartment /office /commercial /food shop /kiosk /restaurant /

multiplex /cinema /food court units etc. Located on Dwarka expressway, sector 84, Gurugram and for that purpose in the month of April 2019, its sales executives/brokers telephonically approached the complainants for the allotment of retail/commercial unit on ground floor @ ₹ 6,600/- per sq. Ft. As basic sale price and ₹ 585/- per sq. ft. As EDC/IDC and one car parking @ ₹ 4 lacs and IFMS @ ₹ 150/- per sq. ft. And showed golden dreams for the best returns to the complainants. After being convinced with the above proposals, the complainants met with its sales executives whereby they were showed the proposed payment schedule being special down payment plan according to which at the time of application for booking 10% of BSP was to be paid by them and thereafter, after 45 days, 30% of BSP was to be paid and 100% of EDC/IDC charges were to be paid within 365 days of the booking and the remaining 60% of BSP (basic sale price) + IFMS (interest free maintenance security) + car parking and stamp and registration charges and other administrative charges etc. Were settled to be paid at the time of offer of possession.

- b. That after being convinced, the complainants accepted the said proposal and applied for the allotment of a double height retail/commercial unit on ground floor in Elan miracle, sector - 84, village Hayatpur, Gurugram as per the said payment plan in the month of Feb. 2019 and were immediately allotted a unit no. G-023 on ground floor admeasuring super area 904 sq. ft. (approx.) and the total cost of the unit in question was settled to ₹ 70,30,840/- including BSP @ ₹ 6,600/- and EDC/IDC @ ₹ 585/-and IFMS @ ₹ 150/- and one car parking @ ₹ 4 lacs and paid ₹ 28,09,632/- on

- 10.04.2019 for the allotment of a retail/commercial unit admeasuring 904 sq. ft. being the super area through 3 cheques of ₹ 1,00,000/-, ₹ 14,20,000/-, and ₹ 12,89,632/- on 10.4.2019 itself and in this way an amount of ₹ 28,09,632/- i.e. more than 40% amount of the BSP of the unit no. G-023 stood paid by them to the respondent which was duly acknowledged by the respondent vide ack. no.604 dt.17.4.2019.
- c. That the letter of assurance dt.10.4.2019 was issued by the respondent to the complainants in respect of the unit in question vide which the respondent assured to pay a fixed amount of ₹ 116/- per sq. ft. per month after the completion of 30 months from April 2019 i.e. w.e.f. Oct. 2021 to the allottees till the time of offer of possession subject to timely payment of installments as per the payment plan but the complainants had already paid more than 40% amount of the unit in question. However it was also mentioned in that letter that the offer of possession shall not be dependent upon the grant of completion certificate or occupation certificate and the respondent shall stand discharged of all liabilities completely after offer of possession and the required property buyers agreement was to be executed between the parties subsequently.
- d. That on 06.06.2019, the respondent issued a 2nd reminder letter for registration of builder buyer agreement for the unit on question after payment of certain required charges of ₹ 8,279/- in favour of the respondent alongwith a list of required documents.
- e. That as per clause no.17 of the agreement in question, the respondent had undertaken of having no right to make additions or

to put up additional structure anywhere in the project contrary to the building plan or revision thereof. However the respondent was having a right to make any alterations, additions, improvements or repairs in respect of additional constructions/alterations of unsold units and use of atrium only and as per clause no.31 of the said agreement in case of any alteration/modifications resulting in change in the super area of the unit in question any time prior to and upon the grant of occupation certificate, is more than 20%, the respondent were liable to intimate in writing to the allottees and the allottees have to give his/their consent or objections in writing for such increase within 30 days of such intimation and they have to pay such additional charges and in their default, their consent shall be deemed to be given. Further as per clause no.18 of the bba, the respondent have a right to apply for increasing the current far of 1.50 and in case the same is increased and the super area of the unit in question shall stand increased thereupon the allottees have to give their unconditional acceptance for the same. The total cost of the unit in question including BSP, EDC/IDC, IFMS, car parking were also settled to ₹ 70,30,840/- for the 904 sq. ft. super area vide schedule - B of the BBA.

- f. That on 31.01.2020, the respondent issued a demand letter to the complainants whereby they were asked to make the payment of ₹ 5,28,840/- towards the EDC/IDC charges as agreed between the parties @ ₹ 585/- in respect of the unit in question bearing no. G-023 measuring 904 sq. ft. which were subsequently paid by them through a cheque dt.23.02.2020 and thus amount of ₹ 33,38,472/-

stood paid by them for their property alongwith ₹ 28,382/- towards TDS.

- g. That all of a sudden, in the second week of Sept. 2021, a letter of offer of possession dt. 07.09.2021 for fit outs and settlement of dues in respect of the unit in question was issued by the respondent to the complainants whereby they were informed about the status of completion of the construction of the unit in question and also about the status of the occupation certificate being applied to the concerned dept. and they were also informed that the unit is ready for possession for the purpose of commencing the fit outs and interior works and the complainants were asked to pay the outstanding amount of an imaginary and illegal increase of super area from 904 sq. ft. to 1138 sq. ft. And they were asked to pay a sum of ₹ 63,58,054/- towards the outstanding amount and ₹ 2,07,457/- towards the add on charges, on or before 28.09.2021 and in the event of their default, the same shall be payable alongwith delayed payment charges in terms of the application form/BBA. It is pertinent to mention here that before the letter of offer of possession in question dt. 07.09.2021, the complainants were never informed or intimated with regard to such increase of the area of the unit in question nor any consent or permission was ever obtained from them in that regard nor any measurement or demarcation of the unit in question was ever made or supplied to them nor any dimension of the boundaries including width, length and height of the unit in question was ever made or supplied to them and thus the alleged increase of about 234 sq. ft. is illegal, arbitrary, imaginary and void and thus the complainants were not

at all liable to pay such an illegal demand of more than 23 lacs rupees and only the amount of ₹ 44 lacs approx. towards the outstanding amount have been left to be payable by them to the respondent in respect of the agreed and actual super area of 904 sq. ft. of the unit in question at the time of offer of possession as per the terms and conditions of BBA dt.21.11.2019.

- h. That thereafter, the complainants were contacted by the representative of the respondent through mail on 13.09.2021 and were asked to make a payment of ₹ 65,65,511/- on the account of possession already offered by the respondent to which the complainants duly replied on 16.09.2021 and clearly asked for the clarification about the 'offer of possession for fit outs' letter dt. 07.09.2021 as the work was not even near to completion and the complainants asked the respondent to make it clear very precisely. The complainants also asked about the imaginary and illegal increase of super area from 904 sq. ft. to 1138 sq. ft. and clearly mentioned that the mezzanine floor was not agreed for and that they had paid for a double height shop and paid PLC charges for the same.
- i. Subsequently, the complainants visited the office of the respondent and got a payment plan detail report issued by the respondent and asked the respondent to abide by the terms and conditions of the BBA in question and the alleged increase of 234 sq. ft. (i.e. More than 25% of the total super area) is not acceptable as the same was never informed or intimated to them at any point of time before the issuance of letter of offer of possession dt. 07.09.2021 and no written permission or consent was ever obtained from them and

such illegal increase has been mentioned for the first time and they were not liable to pay the amount of such an imaginary and unauthorized increase of 234 sq. ft. and the respondent was asked to execute the required conveyance deed of the unit in question simultaneously on the payment of the total cost price of the unit in question and also asked to deliver its possession to them at that time so that they could utilize the same immediately. After that, the complainant again sent a mail to the respondent's representative on 23.09.2021 and asked for the reply to the mail dt.16.09.2021 and the meeting held at the office of the respondent and in addition, they requested the respondent to provide the exact dimensions of the shop in question including breadth and length and also the height from floor upto the ceiling. The complainants again sent a reminder mail to the respondent on 09.10.2021 and again asked for the exact dimensions of the shop in question.

- j. That the complainants have continuously been requesting the respondent for providing the exact dimensions of the shop in question by mentioning that as per the BBA in question they booked the unit in question bearing no. G-023 on ground floor which is double height shop with the super area of 904 sq. ft. super area (452 sq. ft. covered area) and further asked that a difference of few sq. ft. on the final measurement at the time of possession could be considered but the alleged increase in area on the basis of final measurement vide its letter dt. 07.09.2021 was not acceptable and they further remind the respondent that the parties are bound by the regd. BBA in question dt.21.11.2019 and no one is entitled to

breach the contract but no reply was given by the site of the respondent in that regard.

- k. That when the respondent didn't make the said measurement rather its officials told that such area stood increased by placing an additional temporary partition in the shape of MS steel (mild steel) and thus such area stood increased by 234 sq. ft. inspite of the fact that the placement of such temporary partition has never been intimated/informed by the respondent to the complainants nor any written consent or permission was obtained by the respondent from them and the complainants are not at all liable to pay the amount of such illegal and unwanted partition. When the complainants visited the unit in question, the fabrication work of such steel work was illegally, arbitrarily and unauthorizedly going on.
- l. That after seeing the current situation of the unit in question, the complainants became stunned and shocked and very disappointed as the same had lost its utility and beauty and when the respondent didn't supply the actual measurement of the same to the complainants then they themselves measured the unit in question vide which the width of their shop comes to 10'.8" and its length comes to 39'.6" and the total actual carpet area was less than the committed/agreed carpet area of 452 sq. ft. (904 sq. ft. as super area) and an MS steel staircase admeasuring 20.8' x 3' was temporarily installed and the work for the installation of unwanted MS steel platform measuring 9'.4" x 10'.8" was going on and then the complainants requested the labors to stop the said work then and there but they replied that the said work has been done as per

the instructions of the respondent and when the complainants requested the respondent to stop that work which was in progress without their notice, knowledge and consent, the respondent paid no heed to their request rather the complainants were asked to make the payment of such illegal increase in area of 234 sq. ft. along with the balance outstanding payment of the remaining cost of 904 sq. ft. of the unit in question for which the complainants are not at all liable to pay the same and such an illegal, unwanted and unauthorized work of MS steel installation in the shape of staircase and platform, illegally been erected/installed in the unit in question is liable to be dismantled at once from the spot.

- m. That after seeing the respondent's conduct and malafide intentions for the demand of illegal amount of more than ₹ 23 lacs, the complainants calculated the balance amount themselves and calculated the TDS amount left to be paid and after calculations, deposited ₹ 43,83,674/- towards installment amount including GST through two cheques dt. 13.10.2021 for which the respondent issued two receipts no.8294 & 8295 dt.13.10.2021. The complainants also paid ₹ 44,280/- as TDS on 15.12.2021 and in this way, amount of ₹ 77,94,808/- towards the agreed cost including GST for the unit in question has been paid by them to the respondent and in this way the total cost price of the agreed 904 sq. ft. super area (452 sq. ft. carpet area) @ ₹ 7,335/- per sq. ft. towards BSP + EDC/IDC + IFMS along with car parking + TDS totaling to ₹ 77,94,808/-, stood paid by the complainants to the respondent and only the charges for the execution and registration of the required conveyance deed of the agreed area of 904 sq. ft. have

- been left to be paid and thus the respondent is liable to deliver the actual and peaceful possession of the unit in question to the complainants and also to execute the required conveyance deed of the same in favor of the complainants after accepting the charges thereof. But the respondent is still demanding the said illegal and unjustified amount of more than ₹ 23 lacs for an imaginary increased area of 234 sq. ft. (from 904 sq. ft. to 1138 sq. ft.) which are illegal, void, arbitrary and unjustified as the same are not liable to be paid by the complainants to the respondent. Moreover, the project in question is still not feasible or approachable at this juncture as the vehicles are having no access to reach within the boundary of the project in question and also the same is having no access both from NH-8 and Dwarka express way and is also not motorable as on date and the digging work in the vicinity is still going on.
- n. That even after the service of the legal notices, the respondent paid no heed and again asked for the illegal demand of more than ₹ 23 lacs from the complainants vide a reminder letter dt.28.12.2021 and refused to deliver the possession of the unit in question to them until the said payment. In addition to all this, the respondent being reluctant, again sent a reminder dt. 08.02.2022 which was duly replied by the complainants through their advocate over mail dt.13.02.2022.
- o. That the alleged demand of more than ₹ 23 lacs is illegal, nonest and void ab initio and the complainants are not bound to pay the same till the actual dimensions of the unit in question have not been disclosed by the respondent. It is pertinent to mention here that an

amount of ₹ 77,94,808/- have already been paid by the complainants to the respondent in respect of the unit in question much before the agreed period and they have invested their hard earned money and lifetime savings for obtaining the premises in question and the respondent has failed and neglected to hand over timely physical possession of the same to them. The complainants have also been constantly requesting for delayed compensation from the respondent but all in vain. Hence this complaint.

C. Relief sought by the complainant.

9. The complainant has filed the present complaint for seeking following relief:

- a. Direct the respondent to delete the illegal and unjustified demand with regard to increased area and issue fresh statement of account.
- b. Direct the respondent to deliver actual and peaceful possession as agreed between the parties after dismantling unwanted MS steel platform and staircase.
- c. Direct the respondent to execute conveyance deed in favour of the complainants.
- d. Direct the respondent to pay delay possession charges on the amount paid for every month of delay.

D. Reply by the respondent.

10. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- a. That the complainant has approached the respondent expressing an interest in the purchase of a commercial unit in the commercial complex being developed by the respondent known as "Elan

- Miracle”, situated in Sector -84, Gurugram and had opted for a special fixed return payment plan.
- b. That thereafter, the complainant was allotted a commercial unit measuring 904 sq. ft. forming part of unit no. G-023 on the ground floor of the project- ELAN MIRACLE in Sector- 84, Gurugram by the respondent, subject, *inter alia*, to increase or decrease on the basis of variation in calculation of actual super area of the premises which was to be determined at the time of offer of possession of the premises. The terms and conditions forming part of the application form were duly understood and accepted by the complainants.
 - c. That the unit no G-023, located on the ground floor of the project was provisionally allotted in favour of the complainant vide allotment letter dated 10.04.2019. That the buyer’s agreement containing detailed terms and conditions of allotment was executed between the respondent and the complainant on 19.11.2019 and duly registered on 21.11.2019.
 - d. That the construction at site is complete and the respondent has already applied for grant of occupation certificate before Town and Country Planning Department Haryana. Vide letter dated 19.06.2021, the complainant was informed that the respondent had applied for the occupation certificate in respect of the project on 09.06.2021. The complainant was further informed that the final statement of account would be sent by the respondent shortly.
 - e. That vide offer of possession letter dated 07.09.2021, the respondent offered possession of the unit to the complainant for fit-outs and settlement of dues. The complainant was informed that

there was an increase in the super area of the unit allotted, from 904 sq. ft. to 1138 sq. ft. Consequently, the payments to be made by the complainant stood revised due to the increase in super area. It is pertinent to mention that the respondent has offered the possession of the unit in the project for fit outs at their end so that as and when the occupation certificate is issued by the Town and Country Planning Department, Haryana, the commercial operations from the units can be commenced without there being any loss of time, therefore, keeping in view the interest of all the allottees in mind, the respondent issued offer of possession for fit outs to the allottees in the complex including the complainant.

- f. That in terms of clause 7 of the buyer's agreement, possession of the unit was agreed to be offered to the complainant within 48 months from the date of execution of the buyer's agreement, with grace period of 12 months and subject to force majeure conditions and events beyond the power and control of the respondent. The buyer's agreement was executed on 19.11.2019. Hence the respondent has offered possession of the unit to the complainant, well before the agreed timelines for delivering possession.
- g. That the complainant was conscious and aware that the respondent was in the process of applying for revision of the building plans with the competent authority and that the dimensions, location, area etc. of the unit allotted to them might undergo a change. In fact, the complainant has conveyed his no objection vide letter dated 25.10.2021 to the revised plans as well as the resultant increase in area, units, height, number of floors, ground coverage etc. The complainant is contractually bound to

make payment of the demanded amounts and take possession of the unit in question. The false and frivolous complaint is liable to be dismissed with costs.

11. 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.

E. Jurisdiction of the authority

12. 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

13. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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

14. Section 11(4)(a) of the Act 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.

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 as per provisions of section 11(4)(a) of the Act 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 reliefs sought by the complainant.

F. I Direct the respondent to delete the illegal and unjustified demand with regard to increased area and issue fresh statement of account.

16. In the present case, the respondent allotted the unit of area admeasuring 904 sq. ft. but while offering the possession for fit outs to the complaint on 07.09.2021, the super area of the unit was revised from 904 sq. ft. to 1138 sq. ft. i.e., by 25.88%.
17. In the present case, clause 31 deals with alteration/modification and the same is reproduced as under for ready reference:

"31. ALTERATION/MODIFICATION

*In case of any alteration / modifications resulting in change in the super area of the said unit any time prior to and up on the grant of occupation certificate is more than *20%, 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) and the allottee(s) agrees to deliver to the developer written consent or objections to the changes within thirty (30) days from the date of dispatch by the developer. In case the allottee(s) does not send his written consent, the allottee(s) shall be deemed to have given unconditional consent to all such alterations / modifications and for payments, if any, to be paid in consequence thereof. 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 allottee(s) (less earnest money & non-refundable amounts) within ninety (90) days from the date of receipt of funds by the developer from resale of the said unit. Upon the decision of the developer to cancel the said unit, the developer shall be discharged from all its obligations and liabilities under this agreement and the allottee(s) shall have no right, interest or claim of any nature whatsoever on the said unit and the parking space(s), it allotted. Should there be any addition of a floor or part thereof in the unit, consequent to the provisions of the clause-18 of this bba, then the actual area and consequently the super area of the said unit shall stand increased accordingly and the allottee hereby gives his unconditional acceptance to the same"

18. According to the above mentioned clause of the BBA dated 19.11.2019 the complainant shall be liable to make the payment for increase in area up to 20% of super area and for any increase beyond 20% of the super area, the complainants cannot be made liable to make payment.
19. The authority further place its reliance on the mails forwarded by the complainants objecting increase in the area after issuance of offer of possession for fit outs dated 07.09.2021 but vide letter dated 25.10.2021 which is placed by the respondent in his reply at page 111, the complainants have themselves signed no objection with regard to revision of layout plan/building plans of the said project with/without increase in FAR.
20. Therefore, the authority considering the letter dated, 25.10.2021 opines that the complainants are liable to pay the amount for increased area of 25.88%.

F.II Direct the respondent to pay delay possession charges on the amount paid for every month of delay.

21. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges. The buyer's agreement was executed between the

parties on 19.11.2019. The respondent offered the possession of the unit on 07.09.2021 and the OC for the subject unit has been received from competent authority on 15.03.2023.

22. Now the authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:
- a. The possession must be offered after obtaining an occupation certificate/completion certificate.
 - b. The subject unit must be in a habitable condition.
 - c. Possession should not be accompanied by unreasonable additional demands.
23. In the present case, the first and foremost condition of a valid offer of possession is not fulfilled. The occupation certificate in respect of the project in question where the subject unit is situated was granted by the concerned authority on 15.03.2023 and the same is evident from page 21 of the written submissions filed by the respondent. The respondent offered the possession for fit out of the allotted unit before obtaining occupation certificate i.e., on 07.09.2021. Hence, the said offer is not a valid offer of possession. Therefore, the respondent is directed to offer the possession to the complainant within 30 days from the date of this order.

24. According to clause 7.1 of the agreement, the promoter assured to handover possession of the said premises/unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place within a period of 48 months from the date of this agreement with an extension of other 12 months and the due date comes out to be 19.11.2024. Therefore, from the due date, it is understood that there is no delay in the present complaint. Hence, no case of delay possession charges is made out under proviso to section 18(1) of the Act.

F.III Direct the respondent to deliver actual and peaceful possession as agreed between the parties after dismantling unwanted MS steel platform and staircase.

25. Since in the present matter OC have been received which means the project is constructed as per the approved building plans by the competent authority therefore, there is no question of demolition or dismantling of the building already constructed. Although, from the bare perusal of the agreement the authority opines that there was no clause in the BBA which was agreed between the parties regarding mezzanine floor accordingly, the complainant may approach the adjudicating officer for any loss incurred due to this, if any. As far as physical possession is concerned, since OC have been received by the respondent on 15.03.2023, therefore the respondent is directed to deliver the actual possession of the unit to the complainant, within 60 days from the date of this order. Further the complainant is directed to clear all the dues pending on his behalf and take the possession of the unit.

F.IV Direct the respondent to execute conveyance deed in favour of the complainants.

26. With respect to the conveyance deed, the provision has been made under clause 10 of the buyer's agreement and the same is reproduced for ready reference:

"CONVEYANCE OF THE SAID PREMISES/UNIT:

The promoter, on receipt of total price of the said premises / unit as per para 1. 2 under the agreement from the allottee, shall execute a conveyance deed and convey the title of the said premises / unit together with proportionate indivisible share in the common areas within 3 months from the date of issuance of the occupancy certificate and the completion certificate, as the case may be, to the allottee. Provided that, in the absence of local law, the conveyance deed in favour of the allottee shall be carried out by the promoter within 3 months from the date of issue of occupancy certificate. However, in case the allottee fails to deposit the stamp duty and/or registration charges, administrative expenses within the period mentioned in the notice, the allottee authorizes the promoter to withhold registration of the conveyance deed in his / her favour until the payment of stamp duty. Administrative expenses and registration charges of the promoter is made by the allottee."

27. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(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."

28. As OC of the unit has been obtained by the competent authority on 15.03.2023, therefore, conveyance deed can be executed with respect to the unit. Accordingly, the authority directs the respondent to execute the conveyance deed in favour of the complainants after settling the dues, if any within 90 days from the date of this order.

G. Directions of the authority

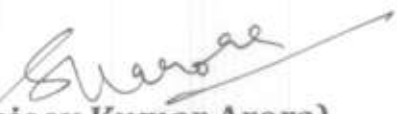
29. Hence the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The promoter shall not charge anything which is not part of the buyer's agreement. the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020
- b. The respondent is directed to deliver the actual possession of the unit to the complainant, within 60 days from the date of this order. The respondent is further directed to execute the conveyance deed in favour of the complainant in terms of section 17(1) of the Act, 2016 on payment of stamp duty and registration charges as applicable within 90 days from the date of this order. The complainant is directed to pay the outstanding dues as per the

demand raised by the respondent vide offer of letter dated 07.09.2021.

30. This decision shall mutatis mutandis apply to all the cases mentioned in para 3 of this order.
31. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
32. Files be consigned to registry.




(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.12.2023

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