



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

Complaint no. : 5318 of 2022
Date of complaint : 25.07.2022
Date of decision : 10.04.2024

1. Surender Kumar
2. Anarkali

Both R/o: -H.No-2151/3, Rajiv Nagar, Near
Shiv Mandir, Gurugram, Haryana.

Complainants

Versus

M/s Elan Buildcon Pvt. Ltd.

Office at: 3rd floor, Golf View Corporate Tower,
Golf Course Road, Sector-42, Gurugram,
Haryana.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Ms. Ritu Bhalla (Advocate)
Shri. Ishan Dang (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the

Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	ELAN Miracle, Sector 84 , Gurugram
2.	Nature of project	Commercial
3.	Project area	5.91875 acres
4.	Hrera registered	Registered Regd. No. 190 of 2017 Dated 14.09.2017
5.	DTCP license	34 of 2014 Dated 12.06.2014
6..	Unit no.	LG 055A, Lower ground floor (As on page no. 49 of complaint.)
7.	Unit admeasuring	665 sq.ft. [Super-area] [Note:- Unit area changed from 400 sq.ft. to 665 sq.ft.] (As on page no. 89 of reply)
8.	Allotment letter	24.01.2020 (As on page no. 49 of complaint)
9.	Builder buyer agreement	25.02.2020 (As on page no. 46 of reply)
10.	Possession Clause	Clause 7



	<p>7.1. Schedule for Possession of the said Premises/Unit-<i>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 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</i></p>
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		<p>termination at least thirty days prior to such termination.</p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 60 of reply)</i></p>
11.	Due date of possession	<p>25.02.2025</p> <p>[Note: Calculated 48 months plus 12 months extension]</p>
12.	Letter of Assurance w.r.t assured return	<p>05.07.2017</p> <p><i>(As on page no. 43 of complaint)</i></p>
13.	<p>Assured return provision</p> <p>[Note:- Assured return paid till July 2020]</p>	<p>Clause 1 .</p> <p><i>That Elan Buildcon Private Limited (herein after referred to as "Company") agrees to pay to the applicant, a Fixed Amount of Rs.20,424/- (Rupees Twenty Thousand Four Hundred and Twenty Four Only) per month, subject to Tax Deduction at Source, on the provisional booking in our upcoming project titled as "Elan Miracle" situated at Sector-84, Gurgaon, on the amount of Rs.18,56,458/- (Rupees Eighteen Lakhs Fifty Six Thousand Four Hundred and Fifty Eight Only) received through Ch.No. 703880 dated 12.06.2017, Ch.No. 703881 & Ch.No. 799643 dated 28.06.2017 all drawn on Axis Bank and Ch.no. 074564 dated 28.06.2017 drawn on Punjab National Bank.</i></p> <p>Clause 4.</p> <p><i>The fixed amount shall be paid by the Company to the applicant till the date of issuance of offer of possession by the Company. The offer of possession is not dependent upon grant of completion certificate and occupation certificate. After issuance of offer of possession by the Company, the applicant shall not be</i></p>

		entitled for payment of any fixed amount on the provisional booking by the Company. [Emphasis supplied] (As on page no. 43 and 45 of complaint)
14.	Payment plan	Special fixed return payment plan
15.	Total consideration	Rs.50,72,050/- [Note:- Initially the sales consideration was Rs.50,72,050/- thereafter, due to increment in the area it became Rs.80,62,162/-] (As per S.O.A dated 31.10.2022 on page no. 108 of reply)
16.	Total amount paid by the complainant	Rs.48,92,043/- (As per S.O.A dated 31.10.2022 on page no. 108 of reply)
17.	Legal notice sent by the complainants to the respondent	08.06.2022 [Seeking handover of possession and DPC/Refund alongwith assured return @Rs.33,844/- per month from August 2020 to actual realization.]
18.	Occupation certificate	15.03.2022
19.	Offer of possession for fit outs	07.05.2022 (As on page no. 57 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

I. That the complainants are law abiding citizens and the respondent is a limited company working in the field of construction and



development of residential as well as commercial projects across the country.

- II. That the complainants booked a commercial unit in the real estate project named "ELAN MIRACLE", situated at Sector-84, Gurugram, Haryana. The respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the unit to them. The respondent also assured to the consumers like complainant that all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project has been secured.
- III. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing as well as commercial projects the key factor to sell any project is the delivery of within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing the same. Therefore, the respondent used this tool, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and the



consumer will not go through the hardship of paying rent along-with the instalments of loan like in the case of other builders in market.

- IV. That on the assurances given by the respondent as well as their agents, the complainants were influenced with the assurances conveyed by the respondent through its wide publicity and the complainants booked a commercial shop bearing no. LG-055-A on lower ground floor, admeasuring 400 Sq. Ft approx super area.
- V. That the complainants booked the unit in the project on 12-06-2017 and at the time of booking/registration, the complainants have paid an amount of Rs.2.50,000/- against the above said unit. The complainants had paid a total sum of Rs.48,92,043/- in respect of the above said unit.
- VI. That it is further pertinent to mention herein that the complainants had booked the said unit under special fixed return payment plan and as per the said plan, the respondent had paid the assured return till July, 2020. Thereafter, the respondent failed to pay the same and when the complainants demanded for the remainings, the official of the respondent Mr. Aasim assured the complainants that they will adjust the amount in the balance sale consideration at the time of possession.
- VII. That it is further pertinent to mention herein that in the month of January 2020, the complainants received a letter containing two copies of buyer's agreement and advised the complainants to put their signatures attested by their banker and send to the respondent.

* The complainants did the same and handed over the copies of buyer's agreement at the office of the respondent and the officials of the respondent forced the complainants to deposit a sum of Rs.8,284/- for registration of the buyer's agreement which was duly paid by the complainants on 19-03-2020. But the complainants have not received any copy of registered buyer's agreement, till date.

VIII. That on 09-06-2021 the complainants received a letter from the respondent, informing that occupation certificate has been applied. The complainants again visited the office of the respondent and asked for the buyer's agreement but the officials of the respondent lingered the matter on one pretext or the other.

IX. That the complainants received an offer of possession letter on 07-05-2022. After seeing the said letter, the complainants noticed that the shop area has been unilaterally increased from 400 sq. ft to 656 sq. ft. and demanded a sum of Rs.38,40,168/-. The respondents unlawfully and arbitrarily increased the shop area without prior notice or permission of the complainants. The complainants sent an email on 25-05-2022 stating their inability to pay for the increased area but the respondent chose to be mute on this.

X. That on 06-06-2022 the respondent again sent a demand letter of Rs. 38,40,168/- without resolving the matter of increased area of the shop. The respondent intentionally and wilfully wanted to usurp the hard earned money of the complainants in an unlawful and illegal manner. Due to the above said act and conduct of the respondent, the

complainants have suffered a huge economic loss, mental pain, agony. The respondent did not handover the physical possession of the unit of 400 sq. ft. as booked by the complainants which is default and deficiency in service on their part.

- XI. That it is pertinent to mention herein that complainants were always willing to pay the remaining cost of the shop but the respondent refused to accept the same. The complainants through their counsel/legal representative, sent a legal notice dated 08-06-2022, to the respondents, whereby the respondents were advised that either to handed over the physical possession of the said unit on the booked area of 400 sq. ft. at the time of booking and after waiving off the interest thereon or to return the deposited amount with interest @ 24% per annum with also, assured return amount @ Rs.33,844/- per month from August, 2020 till actual realization alongwith interest @24% per annum.

- XII. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the project which is the subject matter of this complaint is situated in Sector 84, Gurugram which is within the jurisdiction of this Authority.

C. Relief sought by the complainants

4. The complainants have sought following relief(s).

- I. To direct the respondent to pay the assured return till the date of realization as per letter dated 05.07.2017.

- II. To direct the respondent to pay delayed possession charges possession from the due date of possession till actual possession of the unit.
 - III. Direct the respondent to ensure that the unit is in habitable condition.
 - IV. Direct the respondent to ensure that the area of the unit is same as was booked by the complainant.
 - V. Direct the respondent to set aside the cancellation letter.
 - VI. Direct the respondent to refund the amount paid by the complainant, if the respondent is not able to deliver the same unit as booked by the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
- D. Reply by the respondent**
6. The respondent has contested the complaint on the following grounds:-
- I. That the after making extensive research, had approached the respondent expressing an interest in purchasing a commercial unit in the commercial complex being developed by the respondent known as "ELAN MIRACLE", situated in Sector -84, Gurugram. In fact the complainants had through Channel Partner- Axiom Landbase Pvt. Ltd., approached the respondent after making independent enquiries and duly satisfying themselves regarding the viability and suitability of the aforesaid project as per their needs and had opted for a special fixed return payment plan.

- II. That thereafter, the complainants were provisionally allotted a commercial space /unit tentatively ad measuring 400 sq. ft. forming part of Unit No. LG-055-A on the lower ground floor of the project subject, *inter alia*, to increase or decrease on basis of variation in calculation of actual super area of the premises which were to be determined at the time of offer of possession
- III. A letter was sent by the respondent to the complainants on 05.07.2017 containing the detailed terms and conditions for payment of fixed amount on provisional booking by the respondent which was duly accepted by them.
- IV. That it is pertinent to mention here that the complainants have on various occasions delayed in making payments. The complainants have vide their letter dated 16.09.2019 stated that due to unavoidable circumstances they have failed to make the outstanding payments and now they are willing to pay interest of Rs.70,000/- instead of Rs.3,85,623/-. The complainants vide the aforementioned letter requested the respondent to reverse the balance interest accumulated till that date. As a gesture of goodwill, the respondent waived off the interest of Rs.3,85,623. The complainants has also as a reciprocity to the act of the respondent waived off the assured return for the period from April 2018 to September 2019.
- V. That the buyer's agreement containing detailed terms and conditions of allotment was executed between the respondent and the complainants on 25.02.2020. On 19.06.2021, the complainant was informed that the respondent had applied for the occupation certificate 09.06.2021 .The complainant was further informed that the final statement of account would be sent by the respondent shortly thereafter.

- VI. Thereafter since there was an increase in area of the unit the respondent discussed the same with the complainants and had also offered them an alternative unit of approximately 400 sq. ft. super area. After extensive discussions the complainants agreed to take the unit which had been initially booked by them with the increased area. This discussion took almost a year to fructify and thus there was a delay in issuance of the offer of possession for fit outs.
- VII. The respondent offered possession of the unit to the complainants for fit-outs and settlement of dues on 07.05.2022. The complainants were in writing informed that there was an increase in the super area of the unit allotted, from 400 sq ft to 656 sq ft.. Consequently, the payments to be made by the complainants stood revised. It is pertinent to mention that respondent has offered the possession of the units 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 complainants. Since the complainants did not come forward to take possession, reminders dated 06.06.2022, second reminder dated 04.07.2022, third reminder dated 05.08.2022 and final reminder dated 05.09.2022 were issued by the respondent.
- VIII. That in terms of clause 7 of the buyer's agreement, possession of the unit was agreed to be offered within 48 months from the date of execution of the buyer's agreement with a grace period of 12 months and subject to force majeure conditions and events beyond the power and control of the respondent. That it is a matter of admitted fact that

the buyer's agreement was executed on 25th February 2020. Hence the respondent has offered possession of the unit to the complainants well before the agreed time lines for delivering possession.

- IX. While issuing the letter dated 07.05.2022, the respondent informed the complainant that super area of the unit in question stands revised from 400 sq ft to 656 sq ft. In this regard, the following clauses of the application form is reproduced hereinbelow for ready reference:

***"Clause 10:** The Applicant confirms having made this application with the full knowledge that the Company is in the process of developing the Project as part of a Commercial Complex on the Land, and that the site plan and building plans are tentative and may be changed, altered, modified, revised, added or deleted at the sole discretion of the Company, subject to regulatory approvals and that the applicant shall have no objection to the same, if done, in pursuance thereof. It is understood and agreed by the applicant that the location, size, floor and dimension of a Unit including the Super Area mentioned is tentative and subject to change, and may be modified or revised or changed from time to time during the course of its completion and grant of occupation certificate. It is only upon the receipt of Occupation Certificate, the final Super Area shall be calculated and communicated, which shall be final and binding."*

***"Clause 17:** The Applicant understand that the Company shall develop the Project in accordance with the approved layout plan and building plans. However, if any alterations or modifications are required in such layout and building plans, whether by any statutory authority or as otherwise may be required in the best interest of development of the Project, the applicant shall not have any objection and undertakes to abide by any such change as may be approved by the DGTCP or any other competent statutory authorities. While every attempt shall be made by the Company to adhere to the location and to the Super area of the Unit, in the event there is any change in the Unit's location, its Super area or related PLC, then the resultant variation in applicable Total Consideration agreed herein, as the case may be, shall either be payable or refundable without any interest thereon and the BSP mentioned herein."*

***"Clause 18:** In the event the variation in the Super area of the unit is greater than 20% and such variation is not acceptable to the applicant, every attempt shall be made to offer an alternate unit of an approximately similar size within the project subject to availability. In the event such an alternate unit is available and the applicant accepts such alternate unit, the applicable Total Consideration, including the applicable PLC, resulting due to such changed location/ unit shall*

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be payable or refundable, as the case may be, at the BSP mentioned herein. No other claim, monetary or otherwise, shall lie against the Respondent."

- X. The relevant clauses of the buyer's agreement are reproduced hereinbelow for the assistance of the authority-

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), if allotted."

- XI. That from a perusal of the aforesaid clauses of the application form as well as the buyer's agreement it is evident that the super area of the unit is tentative and that the same is determined upon completion of construction. In case of any increase in super area, the allottees shall have to make payment for such increase and in the event of decrease in super area, the proportionate amount shall stand refunded. The complainant has consented to any additions, amendments, modification of the size, location, dimensions etc. of the unit on account of revision in building plans and have undertaken not to raise any objections to the same. The complainant has conveyed his no objection vide letter dated 16.07.2020 to the revised plans as

well as the resultant increase in area, units, height, number of floors, ground coverage etc..

XII. The complainant is liable to make payment for the increased super area of the unit in accordance with the terms and conditions of the buyer's agreement. The respondent had informed the complainants about the increase in carpet/usage area of the unit in question verbally sometime in the month of June 2021 and on several occasions when the complainants visited the office of the respondent and also vide letter dated 07.05.2022.

XIII. That it is respectfully submitted that the contractual relationship between the complainants and the respondent is governed by the buyer's agreement. The complainants have been offered possession as per the buyer's agreement and market practice and it is the complainants who have failed to make balance payment.

XIV. The present complaint raises several issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the civil court. The present complaint deserves to be dismissed on this ground alone.

E. Jurisdiction of the authority

7. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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



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

9. 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;.

10. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants

F.I Assured Return

11. The respondent has submitted in its reply that vide letter dated 05.07.2017, that on the provisional booking of the unit it would pay a fixed amount of Rs.20,424/- per month to the complainants till the date of issuance of offer of possession by the complainant. The total sale



consideration of the allotted space was Rs.50,72,050/- which has been increased to Rs.80,62,162/- due to increase in the unit area from 400sq.ft. to 656 sq.ft. and the complainants have paid a sum of Rs.48,20,037/-/- against the same.

12. The letter dated 05.07.2017 regarding the terms and conditions for fixed amount on provisional booking can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. One of the integral parts of this agreement, the letter dated 24.05.2019 is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.**, (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship. Therefore, it



can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees.

13. There is a contractual relationship between the complainant and the respondent which is governed by the Builder Buyer Agreement, executed between them. However, it is seen that the drafting of the clauses in the builder buyer agreement are not only vague and uncertain but so heavily loaded in favour of the promoter and by the allottee in fulfilling formalities and documentations etc as prescribed by the promoter. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines. Even if the contractual obligations commenced pre-RERA, the builder cannot misuse his dominant position by drafting anything which is repugnant to the statutory rights of the allottees. In the present case, the respondent/builder have misused its dominant position and drafted a clause in the letter containing terms and conditions for fixed return, which are completely vague and against the statutory rights of the complainant/allottee whereby it says that the offer of possession is not dependent on the grant of occupation certificate.
14. 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.*

15. 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. The respondent offered the possession for fit out of the allotted unit before obtaining occupation certificate i.e., on 07.05.2022. 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.

16. The complainants have admitted of receiving assured returns till July 2020. However, the counsel for the respondent during the proceedings dated 28.02.2024 stated that assured returns have been paid upto 09.06.2021. The counsel for the complainants contested it in terms of the statement of accounts, which is on record at page no. 55 of the complaint. The authority hereby directs the respondent to issue a fresh S.O.A to the complainants and pay arrears of assured return which was agreed between the respondent and the complainant vide letter dated 05.07.2017, the respondent has to pay a fixed amount of Rs.20,424/-



per month from the date of provisional booking 05.07.2017 till obtaining the occupation certificate after deducting the amount already paid.

F.II. Delay Possession charges

17. As per clause 7 of the builder buyer agreement dated 25.02.2020, the due date of possession is 25.02.2025. The respondent/promoter has obtained the occupation certificate in respect to the project on 15.03.2023. Thus, there is no delay on part of the respondent/promoter whatsoever and the project is ready well before the agreed timelines. Thus, there is no case of delay possession charges is made out hence, the authority hereby declines the said relief.

F.III. Refund

18. The complainants have stated in the complaint that they booked unit no. LG-055-A admeasuring 400 sq.ft. approx. super area. The complainants received an offer of possession letter on 07.05.2022. In the said letter of offer of possession the respondent increased the shop area from 400 sq.ft to 656 sq.ft. and a demand of Rs.38,40,168/- was made. The respondent arbitrarily increased the shop area without any prior notice or permission of the complainants. The complainants expressly stated to the respondent that they do not accept increased area of the shop and want the original booked unit only.
19. The complainants vide legal notice dated 08.06.2022, have prayed to the respondent to handover possession of the unit to the them and clearly expressed their intention of withdrawing from the project in case the same area unit is not available. Relevant portion of the legal notice is reproduced below:



" Para 16

I hereby call upon you through this legal notice, either to handed over the physical possession of the said unit on the booked area of 400 sq.ft. at the time of booking and after waiving off the interest thereon or to return the deposited amount of my client alongwith interest @24% per annum to my clients with assured return amount @33,844/- per month from August,2020 to actual realization alongwith interest @24%per annum, within a period of 15 days from the receipt of this notice, failing which my clients constrained to take appropriate legal action against you addresses at your costs and risk and consequences."

.....[Emphasis supplied]

20. Also, during proceedings dated 28.02.2024, the counsel for the complainants specifically mentioned that the increased area is not acceptable to the complainants. The counsel for the respondent stated that the respondent is ready to decrease the unit area to the originally booked area. Thus, the authority directs the respondent to handover possession of the unit (400 sq.ft) to the complainants within 30 days of this order.

H. 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):
- The respondent is directed to pay assured return of Rs.20,424/- per month from 05.07.2017 till the date of obtaining of occupation certificate i.e 15.03.2022.
 - The respondent is directed to pay arrears of accrued assured return as per the letter of assurance dated 05.07.2017 till the date of obtaining occupation certificate at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.

iii. The respondent shall not charge anything from the complainant which is not the part of the agreement of sale.

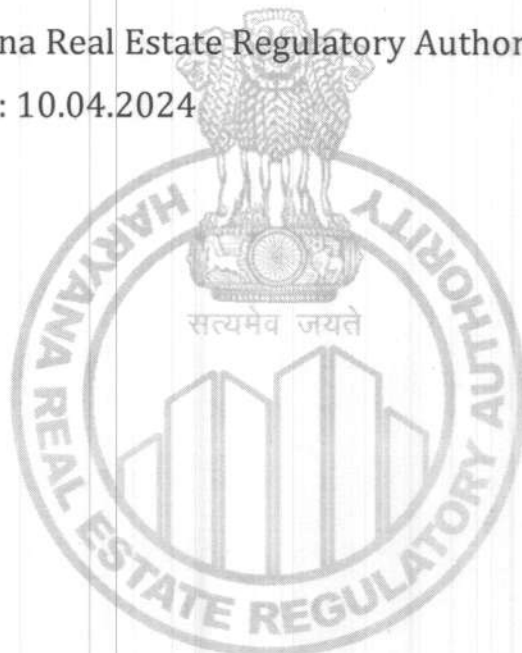
22. Complaint stands disposed of.

23. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.04.2024



HARERA
GURUGRAM