



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

**Complaint no. : 7296 of 2022**  
**Date of first hearing: 14.04.2023**  
**Order Reserve On : 02.08.2024**  
**Order Pronounced On: 09.08.2024**

1. Indra Pal Singh 2. Ritu Singh Both R/o: P-426, Sector-21, Gautam Budh Nagar, Noida-201301-U.P		<b>Complainants</b>
Versus		
M/S Elan Limited Office: - 3 <sup>rd</sup> Floor, Golf View Corporate Tower, Golf Course Road, Sector-42, Gurugram.		<b>Respondent</b>
<b>CORAM:</b>		
Shri Sanjeev Kumar Arora		<b>Member</b>
<b>APPEARANCE:</b>		
Shri A.R Sharma		Complainants
Shri J.K Dang		Respondent

**ORDER**

1. The present complaint dated 30.11.2022 has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the act or the rules

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

#### A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	Mercado, Sector 80, Gurugram.
2.	Nature of the project	Commercial
3.	Project area	2.9875 acres
4.	DTCP license no.	82 of 2009 dated 08.12.2009
5.	RERA Registration	Not registered
6.	Unit no.	SA-1902, 19 <sup>th</sup> floor, Area: 675 sq. ft. (Page 21 of complaint)
7.	New unit no.	SA-1011, 10 <sup>th</sup> floor, Area: 720 sq. ft. (Page 177 of reply)
8.	Provisional booking	21.10.2013 (page no. 133 of reply)
9.	Provisional allotment	15.01.2015 (Page no. 123 of reply)
10.	Booking of provisional unit @ addendum	27.05.2016 (Page no. 33 of complaint)
11.	Date of builder buyer agreement	29.06.2016 (not registered) (Page 19 of complaint)

12.	Reallocation of unit	08.09.2020 (page no. 177 of reply)
13.	Possession clause	<p>11(a) Schedule for possession of the said unit:</p> <p>The Developer based on its project planning and estimates and subject to all just exceptions endeavors to complete construction of the said building unit within a period of <b>48 months with an extension of further twelve months from the date of this agreement unless there shall be delay or failure due to govt. department delay or due to any circumstances beyond the power and control of the Developer</b> or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee to pay in time the Total Consideration and other charges and dues/payments mentioned in this Agreement or nay failure on the part of the Allottee to abide by all or any of the terms and conditions of this Agreement.</p>
14.	Assured return clause Vide letter dated 21.10.2013	<p>1. The Company agrees and undertakes to pay the applicant a fixed amount of Rs. <u>24,567/- per month</u> on the provisional booking of the future projects of the developers on the amount of Rs. 26,80,079/- which is subject to tax deduction at source.</p> <p>1. <u>The fixed amount shall be paid by the company to the applicant till the date of issuance of offer of possession of the premises by the concerned Developer.</u> After issuance of offer of possession by the Developer, as per the terms and conditions mentioned in the Agreement to Sell, the applicant shall not be entitled for payment of</p>

		any Fixed Amount on the provisional booking by the Company.
15.	Due date of possession	29.06.2021 (Note: Calculated 48 months plus 12 months extension)
16.	Offer of possession for fit out	11.09.2020 (page no. 178 of reply)
17.	Sale consideration	Rs. 60,39,218/- (as per statement of account on page 184 of reply)
18.	Paid up amount	Rs. 59,32,800/- (as per statement of account on page 184 of reply)
19.	Occupation certificate	17.10.2022 (page no. 191 of reply)
20.	Amount of assured return already paid by respondent	Rs. 29,99,056/- From October 2013 till September 2020 (page no. 138 of reply)

### B. Facts of the complaint

3. That as per offer of the respondents, the complainants booked a flat in 'Elan Mercado' project by 'Elan Build Tech Pvt. Ltd'. A provisional booking agreement was signed on 21.10.2013 for unit no. SA-1902 between both the parties on 'Assured Return Scheme. As per which assured return @ 11% P.A. were to be paid till issue of offer of possession. A builder buyer agreement was further signed on 29<sup>th</sup> June, 2016.

4. That the complainants have made all payments towards the booking as per terms and conditions of provision booking dated 21.10.2013 and also BBA dated 29.06.2016
5. That the complainants have paid total amount of Rs, 58,40,518/- through cheque.
6. That the respondents paid assured returns till January 2020 and thereafter issued a letter dated 15 January 2020 and stated that since O.C. has been applied for to the competent Authority, the assured returns will not be paid any more.
7. That the respondents did not issue any proof of application of O.C. and also did not issue any offer of possession letter despite several reminder by the complainants.
8. That in September 2020, the respondent informed the complainants for the first time that project has been constructed only till 17 floors and hence the original booking Sa-1902 on the 19th floor has not been constructed. An alternate Unit SA-1011 was offered.
9. That the complainants was shocked to know that after making 90% payment, the respondent informed them to accepts an alternate unit.
10. That the complainants reluctantly accept an alternate unit SA-1011.
11. That the respondent now agreed to pay the unpaid assured returns which they had earlier refused to pay from January 2020 to 10 September 2020 in lump sum payment to cover up the default.
12. That on 11 September 2020 the respondent issued a letter of offer of possession for fit/outs and again stopped assured returns saying that offer of possession for fit outs has been issued .
13. That the complainants issued such letter of possession even before O.C was obtained. The O.C has not been obtained even till date and possession has not been offered.

14. That finding no other alternative, the complainants issued legal demand notice through his Advocate dated 26.8.2022 to the respondent. Despite receipt of the above said demand notice, the respondent did not pay the remaining amount of Assured Returns to the complainants.
15. That ultimately, the complainants are constrained to approach this Hon'ble court for seeking relief for the loss suffered due to the gravest kind of deficiency, negligence in payments of remaining Assured Returns by the respondents to the complainants.

**C. Relief sought by the complainants:**

16. The complainants has sought following relief(s):
- I. To pay the remaining assured returns to the complainants from 11th September, 2020 till now, along with interest.
  - II. To give the possession for fit-outs of booking flat by the complainants only after obtaining O.C.

**D. Reply by the respondent**

17. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 29.06.2016, as shall be evident from the submissions made in the following paras of the present reply.
18. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
19. That this Hon'ble Authority does not have the jurisdiction to hear and decide the present complaint. The transactions pertaining to payment of assured returns are not covered under RERA and hence beyond the

jurisdiction of the Hon'ble Authority. The complaint is liable to be dismissed on this ground as well.

20. That the project in question, "Elan Mercado", located in Sector 80 Gurugram, has been developed by the Respondent over land admeasuring 23 Kanals 18 Marlas or 2.9875 Acres situated in Village Naurangpur, Sector 80, Gurugram, (hereinafter, referred to as the land/the said land) owned by M/s R P Estates Pvt. Ltd. The said land became subject matter of acquisition proceedings in 2004, which ultimately elapsed in August 2007. M/s R P Estates Pvt Ltd. applied for and was granted License No. 82 of 2009 dated 08.12.2009 in respect of the said land for the development of a commercial colony under Haryana Development and Regulation of Urban Areas Act 1975, by the competent authority. The land owner, R P Estates Pvt Ltd entered into an agreement with the respondent in May 2013, in terms of which the respondent is competent to develop, construct and sell units in the said project
21. That vide its judgment in the matter of Rameshwar and others Vs. State of Haryana and others, (Civil Appeal 8788 / 2015 reported as 2018 (6) Supreme Court Cases, 215), the Hon'ble Supreme Court was pleased to hold that the decision of the State Government dated 24.08.2007 to drop the acquisition proceedings and the subsequent decision dated 29.01.2010 of the Industries and Commerce Department to close the acquisition proceeding as well as the decision to entertain applications for grant of licenses from those who had bought the land after initiation of the acquisition proceedings, to be fraudulent.
22. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. Subsequently the respondent developed the land in pursuance to the licensed granted by the competent authority.

23. That thereafter, vide order dated 13.10.2020, while dealing with an application no. 93822/ 2020 filed on behalf of the State of Haryana for seeking clarification whether the lands in three cases pertaining to Paradise Systems Pvt. Ltd., Frontier Homes Developers Pvt. Ltd. and karma lakeland ltd. covered and form part of deemed award or not.
24. That the Hon'ble Supreme Court vide its Order dated 21.07.2022 (Annexure-R3) in Paragraph 46 of the said order held that the lands owned by M/s R.P. Estates Pvt. Ltd. should be excluded from the deemed award. The Hon'ble Supreme Court further affirmed that the project was completed on 14.01.2020. Pursuant to the said Order passed by the Hon'ble Supreme Court the respondent approached the office of the Town and Country Planning Department, Haryana for grant of occupation certificate which was subsequently granted on 17.10.2022 i.e. only within 3 months of passing of the said Order by the Hon'ble Supreme Court which clearly indicates that the construction of the project was complete way back in January, 2020 and Town and Country Planning Department, Haryana had no reasons to further delay the grant of occupation certificate.
25. That in the facts and circumstances, it is evident that delay in grant of occupation certificate, despite timely completion of construction of the complex was beyond the power and control of the respondent. The respondent has at all times been ready and willing to offer possession of the unit in a timely manner. There is no default or lapse in so far as the respondent is concerned.
26. That coming to the facts on the particular case, it is submitted that sometime in October 2013, the complainants had independently approached the respondent through their property dealer/broker - arios properties whereby the complainants had expressed their interest in



booking a commercial unit in the commercial complex known as "Elan Mercado" being developed by the respondent in Sector-80, Gurugram, Haryana ("Project").

27. That making detailed enquiries and after independently satisfying themselves with regard to all aspects of the project, the complainants approached the respondent for allotment of a unit in the project and had opted for a special fixed return payment plan. Allotment letter dated 15.01.2015 issued by the respondent in favour of the complainant allotting unit no. SA-1902 in the said project.
28. That the letter dated 21.10.2013 setting out the terms and conditions for payment of fixed amount of Rs. 24,567/- per month subject to tax deduction at source. In accordance with paras 1 and 5 of the said letter, the respondent had agreed to pay to the complainants fixed amount of Rs 24,567/- per month, subject to tax deduction at source, till the issuance of offer of possession by the respondent. It was further clarified that offer of possession shall not be dependent upon grant of completion certificate and occupation certificate and that after issuance of offer of possession, the complainants shall not be entitled for payment of any fixed amount. Para 6 of the said letter further provides that in the event the complainants obstructs/neglects/defaults/refuses to accept notice of offer of possession and fails to take over possession due to any reason whatsoever, the respondent shall not have any liability or obligation for payment of fixed amount and shall stand absolved and relieved of its obligations.
29. That in accordance with the agreement between the parties, the respondent duly paid the fixed amount amounting to Rs. 29,99,056/- (inclusive of TDS) to the complainants for a period from October 2013 till September 2020.

30. That after completing construction of the project, the respondent applied on 14.01.2020 to the competent authority for issuance of the occupation certificate with respect to the project.
31. That vide letter dated 08.09.2020 the complainants requested for allotment of alternative unit being unit no SA-1011 located on the 10<sup>th</sup> floor of the said project, having tentative super area of 720 sq. ft.
32. That the request made by the complainants for allotment of an alternate unit was duly accepted by the respondent. Vide letter dated 11.09.2020 the respondent, offered possession of unit no SA-1011 to the complainants for fit-outs and settlement of dues. The complainants were informed that the super area of the said unit was 720 sq ft. Accordingly, there was a corresponding increase in the charges payable by the complainants. 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 complainants.
33. That the respondent had issued demand letter dated 08.01.2016 calling upon the complainants to make payment of installment payable on or before 08.02.2016, to be paid after 2 years of booking. The complainants, however, made payment after the due date. The complainants are liable to pay interest amounting to Rs 1,06,418/-.
34. That in so far as the respondent is concerned, the respondent had duly completed construction well within the agreed time lines for delivery of possession and within the period of registration of the project under RERA. The application for issuance of occupation certificate was

submitted to the competent authority as far back as on 14.01.2020 and the same was issued on 17.10.2022.

35. Copies of all the relevant documents have been duly 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 submissions made by the parties.

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

36. 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**

37. 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**

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

##### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the*

*common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

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

39. 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** To pay the remaining assured returns to the complainants from 11th September, 2020 till now, along with interest.

40. In the present case, the complainants booked a commercial unit in the project of the respondent namely Mercado situated at sector-80, Gurugram. The provisional booking letter was issued on 21.10.2013 and thereafter the complainants were allotted a unit no. SA1902, 19<sup>th</sup> floor admeasuring 675 sq. ft. vide allotment letter dated 15.01.2015. The builder buyer agreement was executed between the parties on 29.06.2016. The said unit was reallocated from SA-1902, 19<sup>th</sup> floor admeasuring 675 sq. ft. to SA-1011, 10<sup>th</sup> floor, admeasuring 720 sq. ft. vide reallocation letter dated 08.09.2020.
41. The complainants have asserted that, in accordance with the provisional booking dated 21.10.2013, the respondent is obligated to provide an assured return at a rate of 11% per annum until the issuance of the offer of possession. Furthermore, as stipulated in the addendum to the builder buyer agreement dated 27.05.2016, which is attached as annexure at page

33 of the complaint, the respondent is similarly bound to provide an assured return at the rate of 11% per annum until the issuance of the offer of possession. The respondent provided the assured return up to September 2020; however, payments ceased thereafter.

42. The respondent-builder contends that, according to the letter dated October 21, 2013, their obligation was to pay a fixed amount until the issuance of the offer of possession. The respondent asserts that the issuance of the offer of possession is not contingent upon the receipt of a completion certificate or an occupation certificate. Additionally, the respondent has paid a total sum of ₹29,99,056/- from September 2013 till September 2020. Moreover, the unit is situated in Sector-80, Gurugram and the matter was under litigation in case Miscellaneous Application no. 50 of 2019 in Civil Appeal no. 8788 of 2015 titled as Rameshwar and Ors. Vs. State of Haryana & Ors. Initially it was decided on 12.03.2018 and finally a clarification was given by Hon'ble SC on 21.07.2022 in which it was clearly held that the project in question was complete on 14.01.2020 and the delay in obtaining OC was due to that litigation on account of which DTCP was not processing the OC documents.

43. The authority observes that as per the provisional booking dated 21.10.2013 and addendum to the builder buyer agreement dated 27.05.2016 the respondent is obligated to provide an fixed amount at a rate of 11% per annum until the issuance of the offer of possession. The relevant para is reproduced hereunder for ready reference:

1. *The company agrees and undertakes to pay the applicant, a fixed amount of ₹24,567/- per month on the provisional booking of future projects of the Developers, on the amount of ₹26,80,079/- received through Cheque N. 116421 dated 11.10.2013 drawn on HDFC Bank, Ch. no. 009131 dated 15.10.2013 drawn on State Bank of India, Ch. No. 766452 dated 17.10.2013 drawn on oriental Bank*

*of Commerce, Ch. No. 096754 dated 17.10.2013 drawn on 116423 dated 20.10.2013 drawn on HDFC Bank which is subject to Tax Deduction at Source.*

2. *The fixed amount shall be paid by the company to the applicant till the date of issuance of offer of possession of the premises by the concerned Developer. After issuance of offer of possession by the Developer, as per the terms and conditions mentioned in the Agreement to Sell, the applicant shall not be entitled for payment of any Fixed Amount on the provisional booking by the Company.*

- ***As per addendum to BBA***

*In continuation to the fixed return agreement dated 21.10.2013, we would like to further elaborate that the fixed return as mentioned in the said Fixed Return Agreement shall be paid by the Company @ 11% p.a. on the amount received against basic sale consideration and preferential location charges as per the terms & conditions of the said Fixed return agreement till the time of offer of possession of the provisionally allotted unit.*

44. The authority is of view that as per the provisional booking dated 21.10.2013 and addendum to the builder buyer agreement dated 27.05.2016 the respondent is obligated to provide a fixed amount at a rate of 11% per annum until the issuance of the offer of possession. The offer for fit out was made by the respondent on 11.09.2020. The respondent has paid a total sum of ₹29,99,056/- from September 2013 till September 2020. Although the offer for fit out of possession was not a valid offer of possession as the offer was made without obtaining of occupation certificate by the respondent company from the competent authority. But on consideration of Rameshwar and Ors. Vs. State of Haryana & Ors it was found that SC on 21.07.2022 clearly held that the project in question was complete on 14.01.2020 and the delay in obtaining OC was due to that litigation on account of which DTCP was not processing the OC documents. Therefore, the authority is of the view that the project was complete on 14.01.2020 and thereafter the respondent company made offer for fit out

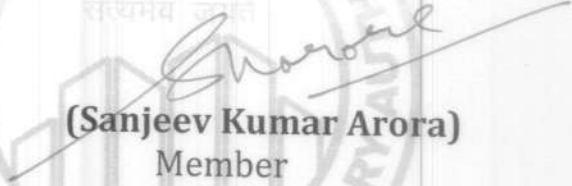
on 11.09.2020. Therefore, the respondent is obligated to the fixed amount of return only up to 11.09.2020.

**F.II** To give the possession for fit-outs of booking flat by the complainants only after obtaining O.C

45. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority on 17.10.2022.

46. Complaint stands disposed of.

47. File be consigned to registry.



**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 09.08.2024**

**HARERA**  
GURUGRAM