

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

**Complaint no.:** 326 of 2024  
**Order reserved on:** 11.02.2025  
**Order pronounced on:** 04.03.2025

Mr. Amitabh Anand Verma  
**R/o:-** House No. 294/1, New Railway Road, Adarsh  
Nagar, Gurugram- 122001

**Complainant**

**Versus**

1. M/s ELAN Buildtech Private Limited  
2. Elan Limited  
**Regd. office:-** L-1/1100, First Floor, Street No. 25,  
Sangam Vihar, South Delhi- New Delhi- 110062  
**Also at:-** 15<sup>th</sup> Floor, Two Horizon Center, DLF Phase-V,  
Sector- 43, Golf Course Road, Gurugram- 122002  
3. R P Estates Private Limited  
**Office at:-** 18, Chinar Drive, (Khasra- 1553, 1541/1,  
1554, 1557) DLF Chattarpur farms, Chattarpur, South  
Delhi, New Delhi- 110074

**Respondents**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Arun Kumar (Advocate)  
Shri Ishaan Dang (Advocate)  
None

**Complainant**  
**Respondent no. 1&2**  
**Respondent no. 3**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section

11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project related details:**

2. 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:

S. No.	Particulars	Details
1.	Name of the project	"ELAN MERCADO", Sector 80 Gurugram, Haryana.
2.	Nature of project	Commercial complex
3.	DTCP License	82 of 2009 dated 08.12.2009 valid up to 07.12.2019
4.	Name of licensee	RP Estate Pvt. Ltd.
5.	RERA Registered/ not registered	Registered vid no. 189 of 2017 dated 14.09.2017 valid up to 13.09.2023
6.	Unit no.	GF-0131, Ground floor (As per page no. 72 of the complaint)
7.	Unit area admeasuring	180 sq. ft. (super area) (As per page no. 103 of the complaint) ( <b>Note:</b> unit area was decreased to 180 sq. ft. from 210 sq. ft.)
8.	Date of provisional booking	30.08.2013 (As per page no. 51 of the complaint)
9.	Provisional allotment Letter	23.03.2015 (As per page no. 55 of the complaint)
10.	Date of execution of builder buyer's agreement	01.11.2016 (As per page no. 69 of the complaint)
11.	Assured return clause	1. <i>The company, agrees and undertakes to pay to the applicant, a fixed amount of Rs.22,000/- (Rupees Twenty Two thousand only) per month on the provisional booking of future projects of the developers, on amount of</i>

		<p>Rs.17,15,700/- received through cheque no. 835702 dated 29.08.2013 drawn on ICICI bank which is subject to tax deduction at source.</p> <p>(As per page no. 51 of the complaint)</p>
12.	Possession clause	<p><b>11 (a) Schedule for possession of the said unit.</b></p> <p>The Developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the Said Building/Said Unit within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement unless there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the Developer 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(s) to pay in time the Total Consideration and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Developer then notwithstanding rights available to the Developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Developer.</p> <p>(As per page no. 82 of the complaint)</p>
13.	Due date of delivery of possession	<p>01.11.2021</p> <p>(Note: Due date to be calculated 48 months from the date of execution of buyer's agreement i.e., 30.11.2016 + 12 months grace period)</p>
14.	Total consideration sale	Rs.16,55,280/-

		(As per statement of account on page no. 25 of the reply)
15.	Total amount paid by the complainant	Rs.16,55,280/- (As per statement of account on page no. 251 of the reply)
16.	Offer of possession for fit-out	07.03.2020 (As per page no. 103 of the complaint)
17.	Occupation certificate	17.10.2022 (As per page no. 247 of the reply)
18.	Intimation letter for handing over of possession dated	18.10.2022 (As per annexure R-7, ay page no. 250 of reply)
19.	Assured returns paid by the respondent to the complainant	Rs.16,82,645/- (as per annexure-R/8, at page 195 to196 of reply)

### B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in the month of June – July 2013 agents and representatives of respondent no. 1 approached the complainant and informed him that respondents are developing a multi storied commercial complex known as "MERCADO" situated at sector 80, Gurugram. The agents and representatives also assured the complainant that respondent no. 1 company is builder of repute, and that they will deliver the project duly completed in all respect within 48 months from the date of the booking.
- II. That believing the assurances so given by the said agents and representatives to be true and correct, the complainant made an application on 14.08.2013, to the respondent no. 1 company and paid a sum of Rs.17,15,700/-, towards the booking amount and booked a commercial shop measuring 210 sq. ft. on the ground floor bearing unit no. GF-0131 in the above said commercial project at the rate of the basic

- sale price at Rs.8,000/- per square feet i.e. for a total consideration amount of the unit at Rs.16,80,000/-.
- III. That instead of issuing the 'receipt' and the 'terms and conditions of the booking' of the commercial space so booked by the complainant and executing the builder buyer agreement on the same day of making the payment i.e. on 14.08.2013, the respondent no. 1 issued the receipt on 28.08.2013 and sent the 'terms and conditions of booking' on 30.08.2013. The respondent no. 1 wrongly shown (PLC) preferential location charges @ 7.5%, without any prior discussion/information. The 'terms and conditions of the booking' dated 30.08.2013 the respondent no. 1 admitted and assured that it will pay a sum of Rs.22,000/- per month against the said booking, to the complainant. Vide clause 5 thereof, the respondent no. 1 assured the complainant to the effect that respondent no. 1 company shall make the payment of the said assured return/payment of Rs.22,000/- per Month till the date of issuance of a valid offer of possession.
- IV. That prior to and till the time of booking of the said commercial space the respondent no. 1 neither discussed, intimated the complainant anything about PLC, EDC/IDC, IFMS etc. nor have any authority to charge the same from the complainant. The complainant was shocked to see the 'Allotment Letter' dated 23.03.2015, sent by the respondent no. 2 wherein the respondent no. 2 unlawfully and wrongly claimed PLC, EDC/IDC, and IFMS from the complainant.
- V. That the complainant was further shocked to see the 'provisional allotment letter' dated 23.03.2015, sent by the respondent no. 2, which contained the pre-printed terms and conditions on which no consent was given by the complainant as prior and since the time of booking till

the issuance of the said letter, the respondents never discussed any term or condition, except the term and condition as mentioned in the 'terms and conditions of the provisional booking' dated 30.08.2013. After receiving the allotment letter, on 23.03.2015, when the complainant discussed about the said terms with the official concerned of the respondent no. 2 and requested him to change the terms in accordance with the assurances so given by the respondent no. 1 during the time of booking but in return the official of the respondent no. 2 threatened the complainant that to change the terms of the said allotment letter is not the policy of the company and in case the same are not accepted formally by the complainant, not only the payment of the monthly assured return will be stopped to the complainant but also the amount so paid by the complainant will be forfeited by the respondents.

- VI. That the duty of the respondents to execute the builder buyer agreement at the time of accepting the booking amount for the said shop i.e., on 14.08.2013 or on the date of issuance of the 'terms and conditions of booking' vide letter dated 30.08.2013, but they didn't the same. All of sudden the complainant was further shocked to see the letter dated 26.09.2016 along with a pre-printed, dotted BBA, sent by the respondent no. 2 stating thereby that, "We are forwarding you the buyers' agreement containing the terms and conditions of sale with respect to the unit provisionally allotted to you as per the provisional allotment letter" and sought the consent of the complainant.
- VII. That upon going through the said BBA the complainant found that the said agreement contained unfair, biased terms and conditions against the complainant and favouring the respondents which were never discussed or agreed upon at the time of booking of the said unit. Those

- terms were not in accordance with the assurances and promises so made by the agents, representatives and executives of the respondent no. 1. Those terms were not only against the interests as well as just rights of the complainant but also discriminating too, at the hands of the respondents.
- VIII. Despite the above, the respondent no. 2 unlawfully and wrongly kept on demanding money from the complainant on the pretext of PLC, EDC/IDC and IFMS for which the respondents have no Authority at all. The complainant made all the payments as and when demanded before the time limit, as is evident from the statement of account. Not only this the respondents have wrongfully overcharged from the complainant on various accounts and unlawfully stopped making the payment of the assured return with effect from 14.01.2020 and without having any lawful authority have violated their part under the contract as assured by them during the time of booking of the unit. The respondent no. 2 have sent a letter dated 15.01.2020 whereby they have informed the complainant that the respondents have applied for the occupation certificate for the project in question.
- IX. That without obtaining any 'occupation certificate' or 'completion certificate', wrongfully and unlawfully the respondent no. 2 has sent a letter dated 07.03.2020 thereby "demanded on offer of possession for fit-out" as in the same letter the respondent have mentioned that they have applied for the 'occupation certificate'. The said letter too is unlawful and is not binding upon the complainant as in accordance with the laws concerned, without obtaining the required occupation certificate, no builder can either raise demand on offer of possession or can offer possession and hence the said letter is nonest, null and void.

Not only this, the respondent no. 2 wilfully and intentionally have stopped the promised monthly 'assured return' of the sum of Rs.22,000/- w.e.f. 14.01.2020. The assured return is calculated to the tune of a sum of Rs.10,56,000/- till the filing of the present complaint.

- X. That on 21.10.2022 the respondent no. 2 sent an email communication to the complainant wherein the respondent no. 2 intimated the complainant that the respondents have received the formal occupation certificate from the authority concerned. As the offer of possession dated 07.03.2020 is unlawful, null and void.
- XI. That despite the above, as is clear from the letter dated 07.03.2020, without any intimation, discussion or obtaining any prior consent from the complainant, the respondents not only have reduced the size of the unit so booked from 210 sq. ft. to 180 sq. ft. but also dishonestly, wilfully, with the motive to cheat the complainant have not refunded the pro-rata amount of reduced portion i.e. 30 sq. ft. i.e., a sum of Rs.2,40,000/-, rather have wrongly adjusted under other heads despite the fact that respondents have already overcharged and received more than the consideration amount. That the complainant have been time and again victimised at the hands of the respondents, jointly and severally and left with no other option but to seek the indulgence of this authority, hence the present complaint.

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

4. The complainant has sought following relief:
- i. Direct the respondents to deliver the commercial space so booked by the complainant duly completed in all respect as agreed between the parties, within 6 weeks from the date of order(s) after issuing the offer of possession de novo;



- ii. Direct the respondents, jointly and severally, to pay the interest at the prescribed rate for causing inordinate delay in delivery of possession of the unit in issue on the amount deposited by the complainant to be calculated from the due date of delivery i.e. 14.08.2017 till the delivery of unit and the full realisation of the interest whichever is later.
- iii. Direct the respondents to, jointly and severally, refund the amount of reduced size of the unit from 210 sq. ft. to 180 sq. ft. on pro-rata basis along with interest at the prescribed rate from the date of payment till its full realisation to the complainant;
- iv. Direct the respondents to stop the deficient service as well as the unfair, restrictive and scandalous trade practices with immediate effect and declare the pre-printed, dotted allotment letter as well as the BBA unlawful and not binding upon the complainant same being one sided, discriminating the complainant and favouring the respondents, and being ultra-vires to the terms and conditions dated 30.08.2013;
- v. To declaring the offer of possession dated 07.03.2020 to be unlawful same being offered without obtaining the required occupation certificate and direct them to issue a valid possession letter de novo;
- vi. Direct the respondents to, jointly and severally, make the payment of the assured return at the rate of Rs.22,000/- per month w.e.f. 15.01.2020 till the actual delivery of possession along with interest at the prescribed rate for the period the respective due dates of the monthly payment till its full realisation;
- vii. Direct the respondents to, jointly and severally, make the payment of amount wrongly adjusted as calculated and shown in the calculation sheet attached along with interest at the prescribed rate from the date of adjustment till its full realisation;

- viii. Direct the respondents to, jointly and severally, to refund the maintenance charges wrongly and unlawfully collected by them without lawfully handing over the unit to the complainant along with interest at the prescribed rate from the respective dates of payment till its full realisation;
- ix. Direct the respondents to, jointly and severally, pay the complainant a sum of Rs.2,00,000/- towards the litigation expenses for this complaint.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions 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 no. 1 and 2**
6. The respondents no. 1&2 have contested the complaint on the following grounds:-
1. That the complainant has 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 01.11.2016, as shall be evident from the submissions made in the following paras of the present reply. The respondents crave leave of this Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement dated 01.11.2016 as well as the terms and conditions for payment of fixed amount, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondents as well as the complainant thereunder.

- II. That this Authority does not have the jurisdiction to hear and decide the present complaint. It is submitted that transactions pertaining to payment of committed amounts are not covered under RERA and hence, beyond the very jurisdiction of the Authority. Any understanding regarding the committed amounts is over and above the scope and ambit of the buyer's agreement (which in the instant case entered into and executed on 01.11.2016) which governs the relationship between an allottee and the developer. The complaint is liable to be dismissed on this ground as well.
- III. That the project in question, "ELAN Mercado", located in sector 80 Gurugram, has been developed by ELAN Limited. (Respondent no. 2) situated in Sector 80, Gurugram, which was owned by M/s R. P. Estates Private Limited. The said land became subject matter of acquisition proceedings in 2004, which ultimately elapsed in August 2007. M/s R. P. Estates Private Limited 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 landowner, M/s R. P. Estates Private Limited entered into an agreement with ELAN Limited in May 2013, in terms of which the respondent is competent to develop, construct and sell units in the said project. That M/s R. P. Estates Private Limited was and remained the owner in possession of the said land:
- Prior to the section 4 notification dated 27.08.2004;
  - During the pendency of the acquisition proceedings i.e. 27.08.2004 to 24.08.2007;
  - At the time when acquisition proceedings stood elapsed on 26.08.2007; and

- Thereafter even on 29.01.2010 when the decision was taken by the State Government in Industries and Commerce Department not to start any acquisition proceedings afresh and to close the acquisition proceedings.
- IV. 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. Paras no 37 and 38 of the said judgment.
- V. That based on the observations in Para nos. 37 and 38, the Hon'ble Supreme Court gave directions in Para 39 (b) wherein the directions in Civil Appeal 8788/2015 were made applicable in respect of lands which were transferred by the land holder during the period from 27.08.2004 till 29.01.2010 and there were specific directions that the lands which were not transferred by the land holders.
- VI. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. ELAN Limited developed the land in pursuance to the licensed granted by the competent Authority. As per direction b) of para 39 of the aforementioned directions, the State extended benefit to the extent of 268 Acres of land (which includes the said land) by declaring the same to be outside the deemed award. The said land was rightly kept outside the deemed award in pursuance to directions passed by the Hon'ble

Supreme Court. That neither M/s R P Estates Private Limited nor respondent no. 2 herein were party to the proceedings before the Hon'ble Supreme Court when the said order was passed.

- VII. 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. stand covered and form part of the deemed Award or not, the Hon'ble Court passed the following orders:

*"We list the matter for further consideration on 03.11.2020 at 10.30 am. Pending further considerations, no third-party rights shall be created and no fresh development in respect of the entire 268 acres of land shall be undertaken. All three aforesaid developers are injuncted from creating any fresh third-party rights and going ahead with development of unfinished works at the Site except those related to maintenance and upkeep of the site."*

- VIII. That the said land is also covered in 268 acres which fall outside the deemed award as is therefore free from acquisition. Though the said land stands covered as per direction given in para (b) of 39 passed by the Hon'ble Supreme Court in its order dated 12.03.2018, in view of the aforesaid order dated 13.10.2020 passed by the Hon'ble Supreme Court, by way of abundant caution, respondent no. 2 herein as well as M/s R. P. Estates Private Limited had moved an application before the Hon'ble Supreme Court seeking impleadment in the matter.
- IX. That the Hon'ble Supreme Court vide its Order dated 21.07.2022, 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, respondent no. 1 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 (three) 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.

- X. That all the queries pertaining to the project and all issues and concerns concerning the project and further all clarifications as sought for/by the complainant were duly answered/clarified/provided by the representatives of the ELAN group and the documents pertaining to the project were made available to the complainant for inspection and only after having duly satisfied that the complainant took a well informed and conscious call to proceed further with the booking and accept the allotment of unit in the commercial complex in the project and had opted for a special fixed return payment plan. Thereafter, allotment letter dated 21.01.2015 issued by the respondent in favour of the complainant allotting unit no GF-0131 in the said project admeasuring 210 sq. ft. approx., located on the ground floor of the project.
- XI. That in the meanwhile, the respondent issued letter dated 30.08.2013 setting out the terms and conditions for payment of committed amount of Rs.22,000/- per month subject to tax deduction at source, and duly accepted by the complainant. In accordance with paras 1 and 5 of the said letter, the respondent had agreed to pay to the complainant fixed amount of Rs.22,000/- per month, subject to tax deduction at source, till the issuance of offer of possession by respondent in accordance with the terms and conditions of the agreement to sell. It was further clarified



that after issuance of offer of possession, the complainant shall not be entitled for payment of any fixed amount.

- XII. That in accordance with the agreement between the parties, the respondent duly paid the fixed amount amounting to Rs.16,82,645/- (inclusive of TDS) to the complainant for a period from August, 2013 till January, 2020. The respondent no. 2 forwarded the buyer's agreement to the complainant for execution under cover of letter dated 26.09.2016. The buyer's agreement containing the detailed terms and conditions of allotment was willingly and voluntarily executed by the complainant are binding upon the complainant with full force and effect. That after completing construction of the project, the respondent made an application on 14.01.2020, to the competent authority for issuance of the occupation certificate with respect to the project.
- XIII. That vide letter dated 15.01.2020, the respondent informed the complainant about the application to the competent authority for issuance of the occupation certificate. The complainant was also informed that upon the application for the occupation certificate, the complainant would no longer be entitled to receive committed amounts in terms of the agreement between the parties. Pertinently, no objection was made by the complainant upon receipt of the said letter and subsequent cessation of payment of committed amounts.
- XIV. That by letter dated 07.03.2020, the respondent offered possession of the unit to the complainant for fit-outs and settlement of dues. The complainant was informed that the super area of the said unit was revised to 180 sq. ft. from the earlier super area of 210 sq. ft. Accordingly, there was a corresponding decrease in the charges payable by the complainant. The complainant was called upon to clear his

outstanding dues as set out in the said letter. The respondent had offered the possession of the unit in the project for fit outs so that as and when the occupation certificate was issued by the Town and Country Planning Department, Haryana, the commercial operations from the units could be commenced without there being any loss of time, keeping in view the interest of all the allottees in the project.

- XV. That, as has been submitted in the preceding paras of the preliminary objections, the issuance of the occupation certificate was delayed on account of litigation pending before the Hon'ble Supreme Court and it is only upon issuance of the occupation certificate that the respondent no. 2 can hand over possession of the units in the project to the allottees. Respondent no. 2 cannot be held liable for delays caused on account of reasons beyond its power and control.
- XVI. That in so far as respondent no. 2 is concerned, respondent no. 2 had duly completed construction well within the agreed time lines for delivery of possession and within the period of registration of the project under the provisions of the Act of 2016. 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. By letter dated 18.10.2022, the complainant was informed about the issuance of the occupation certificate by the competent Authority.
- XVII. That thus, from the facts and circumstances set out in the preceding paras, it is evident that there is no default or lapse in so far as the respondent is concerned. However, the complainant has failed to take over possession of the said unit in question for reasons best known to



himself and has instead proceeded to file the present false and frivolous complaint, which deserves to be dismissed at the very outset.

7. The present complaint was filed on 02.02.2024 in the authority. Despite specific directions and providing an opportunity of being heard, respondent no. 3 failed to put in appearance before the authority and has also failed to file reply. In view of the same, vide order dated 10.12.2024, the matter was proceeded ex-parte against respondent no. 3.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
9. The complainant and respondent no. 1 and 2 filed the written submissions on 14.02.2025 and 16.12.2024, respectively which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

**E. Jurisdiction of the authority**

10. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**E. I Territorial jurisdiction**

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**

11. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

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

12. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondent no. 1 and 2.**  
**F.1 Objections regarding force majeure.**

13. The respondent no. 1 and 2 have raised an objection that the present complaint is covered in the matter of *Rameshwar and Others Vs. State of Haryana and others, (Civil Appeal No. 8788 of 2015 reported as 2018(6) supreme court cases, 215)* the respondent no. 1 and 2 contended that the said land is also covered in 268 acres. The Hon'ble Supreme Court affirmed that the project was completed on 14.01.2020. Pursuant to the said order passed by the Hon'ble Supreme Court, respondent no. 1 approached the office of the Town and country planning Department, Haryana for grant of occupation certificate which the subsequently granted on 17.10.2022 i.e., only within 3 months of the passing of the said order by the Hon'ble Supreme Court which clearly indicates that the construction of the project was completed way back in January 2020 and the Town and country planning

Department, Haryana had no reasons to further delay the grant of occupation certificate. Further, the issuance of occupation certificate was delayed on account of litigation pending before the Hon'ble Supreme Court and it is only upon issuance of the occupation certificate that the respondent no.2 can hand over possession of the units in the projects to the allottees. There is no default or lapse in so far as respondent no. 2 is concerned. Further the delay in grant of occupation certificate, despite timely completion of construction of the project was beyond the power and control of the respondent no. 2. The respondent no. 2 has at all times been ready and willing to offer possession of the subject unit in a timely manner.

14. On the other hand the complainant contested the above mentioned objection by way of written submissions dated 14.02.2025 stated that there was no stay or adverse order passed by the Hon'ble Apex Court in the said case which stopped the respondents to construct the project and on the other hand nothing was held by the Apex Court in favour of the respondents. Further, in the present case of R P Estate Private Limited as respondent No. 3, the ownership of the land was not transferred by respondent no. 3 in favour of the respondent no. 1. Hence, the case of respondents is outside the purview of the case of *Rameshwar vs. State of Haryana and others*.
15. On the documents and submission made by both the parties, the Authority is of the view that the Authority observed that Rule 28(2) of the Rules provides that the Authority shall follow summary procedure for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to

protract litigation. Further, as per clause 11(a) of the agreement to sell, the possession was to be offered within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 12 months to the promoter at this stage. Therefore, the possession was to be handed over by 01.11.2021. Thus, no additional grace period over and above grace period of 12 months can be given to the respondent/builders. Therefore, the due date shall be 01.11.2021.

**G. Findings regarding relief sought by the complainant**

- G.I Direct the respondents to deliver the commercial space so booked by the complainant duly completed in all respect as agreed between the parties.**
- G.II To declare the offer of possession dated 07.03.2020 to be unlawful same being offered without obtaining the required occupation certificate and direct them to issue a valid possession letter.**
16. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
17. On consideration of the documents available on record and submissions made by both the parties, the complainant was allotted a shop/office space bearing no. GF-0131, ground floor, in, for an area admeasuring 180 sq. ft. vide allotment letter dated 23.03.2015 for the total sale consideration of Rs.16,55,280/-. The complainant has paid the entire sale consideration of the subject unit. The buyer's agreement has been executed between the parties on 01.11.2016. As per clause 11(a) of the agreement, the respondent was required to hand over possession of the said premises/unit within a period of 48 months from the date of this agreement, with an extension of further 12 months. Therefore, the due date of possession comes out to be

01.11.2021. The respondent has issued offer of fit out of possession of the allotted unit of the complainants on 07.03.2020, without obtaining occupation certificate. As per said letter, the respondent company revised/reduce the super area of the unit of the complainant for 210 sq. ft. to 180 sq. ft. i.e., 14.29%. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 17.10.2022. Thereafter, respondent has issued a letter for intimation for handing over of possession letter dated 18.10.2022.

18. After, considering the above said factual and legal circumstances of the case, the offer of possession for fit-out dated 07.03.2020 is hereby quashed. The Authority hereby directs the respondent to handover the possession of the allotted unit to the complainant in terms of buyer's agreement dated 01.11.2016.

**F.III Direct the respondents, jointly and severally, to pay the interest at the prescribed rate for causing inordinate delay in delivery of possession of the unit in issue on the amount deposited by the complainant to be calculated from the due date of delivery i.e. 14.08.2017 till the delivery of unit and the full realisation of the interest whichever is later.**

**F.IV Direct the respondents to, jointly and severally, make the payment of amount wrongly adjusted as calculated and shown in the calculation sheet attached along with interest at the prescribed rate from the date of adjustment till its full realisation.**

19. In the present complaint, the complainant intend to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

*'Section 18: - Return of amount and compensation*

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....  
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

20. A builder buyer agreement dated 01.11.2016 was executed between the parties. The due date is calculated as per clause 11(a) of BBA i.e., 48 months plus 12 months grace period from the date of execution of this agreement. The relevant clause is reproduced below:

***"11 (a) Schedule for possession of the said unit.***

*The Developer based on its project planning and estimates and subject to all just exceptions endeavours to complete **construction of the Said Building/Said Unit within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement unless there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the Developer 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(s) to pay in time the Total Consideration and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Developer then notwithstanding rights available to the Developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Developer."***

21. **Due date of handing over possession and admissibility of grace period:**  
As per clause 11(a) of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months with an extensions of further twelve (12) months from the date of this agreement there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the Developer or Force Majeure conditions. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 12 months to

the promoter at this stage. Therefore, the possession was to be handed over by 01.11.2021.

**22. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

23. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 04.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

24. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 01.11.2016, the possession of the subject unit was to be delivered on or before i.e., 01.11.2021. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 17.10.2022. Thereafter, respondent has issued a letter for intimation for handing over of possession letter dated 18.10.2022.

**F.V. Direct the respondents to, jointly and severally, make the payment of the assured return at the rate of Rs.22,000/- per month w.e.f. 15.01.2020 till the actual delivery of possession along with interest at the prescribed rate for the period the respective due dates of the monthly payment till its full realisation.**

25. The complainant is seeking unpaid assured returns on monthly basis as per the builder buyer agreement read with the terms and conditions at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the provisional booking/agreement. The authority has decided the said issue in complaint bearing no. **8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon.
26. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. So, on his failure to fulfil that commitment, the allottee has a right to



approach the authority for redressal of his grievances by way of filing a complaint.

27. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original agreement for sale.
28. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainant besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant /allottee in terms of the builder buyer agreement read with addendum to the said agreement.
29. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
30. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of terms and conditions of provisions booking. The assured return in this case is payable as per clause 1 read with clause 5 of the terms and conditions of provisions booking. The

fixed return cum assured return has been committed by the promoter is an amount of Rs.22,000/- per month on the provisional booking of future projects of the developers, till the date of issuance of offer of possession of the premises by the concerned developer, which is more than reasonable in the present circumstances. The relevant clause is reproduced below for ready reference:-

1. *The company, agrees and undertakes to pay to the applicant, a fixed amount of Rs.22,000/- (Rupees Twenty Two thousand only) per month on the provisional booking of future projects of the developers, on amount of Rs.17,15,700/- received through cheque no. 835702 dated 29.08.2013 drawn on ICICI bank which is subject to tax deduction at source.*
5. *The fixed amount shall be paid by the company to the applicant till the date of offer of possession of the premises by the concerned developer. After issuance offer of possession by the developer, as per 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."*

31. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable a Rs.22,000/- per month whereas the delayed possession charges are payable approximately Rs.15,311/- per month. By way of fixed return, the promoter has assured the allottee that he would be entitled for this specific amount till the date of issuance of offer of possession of the premises by the concerned developer. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

32. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till the date of issuance of offer of possession of the premises, then the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.
33. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of terms and conditions of provisional booking thereto along with interest on such unpaid assured return as per clause 1 read with clause 5 of the terms of terms and conditions of provisional booking dated 30.08.2013, the promoter had agreed to pay to the complainant/allottee an fixed amount Rs.22,000/- per month from the provisional booking of future projects of the developer till the date of issuance of offer of possession of the premises. It is matter of record that the amount of assured return was paid by the respondent/promoter from August 2013 till January 2020.
34. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 9.10% p.a. till the date of actual realization

**F.VI Direct the respondents to, jointly and severally, refund the amount of reduced size of the unit from 210 sq. ft. to 180 sq. ft. on pro-rata basis along with interest at the prescribed rate from the date of payment till its full realisation to the complainant.**

35. The complainant states that the area of the said unit was reduce from 210 sq. ft. to 180 sq. ft. vide offer of possession for fit-out dated 07.03.2020, without giving any prior intimation to, or by taking any written consent from the allottee. The respondent in its defence submitted that increase in super area was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. As per clause 10, provides with regard to alteration/modification resulting in more than  $\pm 15\%$  change in the super area of the said unit or material change in the specifications of the said unit any time prior to and upon the grant of occupation certificate. The Company/Confirming Party shall intimate to the Allottee in writing the changes thereof. Relevant clauses of the agreement is reproduced hereunder:-

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  $\pm 15\%$ , the Developer shall intimate in writing to the Allottee(s) the changes thereof and the resultant change, if any, in the Total Consideration of the Said Unit to be paid by the Allottee(s) 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. 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.*

36. Considering the above-mentioned facts, the Authority observes that the respondent has reduce the super area of the unit from 210 sq. ft. to 180 sq. ft. vide offer of possession letter for fit-out dated 07.03.2020 with decrease in area of 180 sq. ft. i.e. 14.29 % without any justification or prior intimation to the complainant and the complainant has sought to refund the amount of reduce the super area of the subject unit. In view of the above, the Authority is hereby directed to the respondent/promoter to refund/adjust the amount in lieu of decrease in super area if any, within a period of 30 days from the date of this order.

**F.VII Direct the respondents to stop the deficient service as well as the unfair, restrictive and scandalous trade practices with immediate effect and declare the pre-printed, dotted allotment letter as well as the BBA unlawful and not binding upon the complainant same being one sided, discriminating the complainant and favouring the respondents, and being ultra-vires to the terms and conditions dated 30.08.2013.**

**F.VIII Direct the respondents to, jointly and severally, pay the complainant a sum of Rs.2,00,000/- towards the litigation expenses for this complaint.**

37. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

38. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. (supra)* has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has

exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**F.IX. Direct the respondents to, jointly and severally, to refund the maintenance charges wrongly and unlawfully collected by them without lawfully handing over the unit to the complainant along with interest at the prescribed rate from the respective dates of payment till its full realisation.**

39. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission. Since, in the present matter the respondent has obtained the occupation certificate on 17.10.2022 and intimation regarding handing over of possession of the said unit on 18.10.2022 after receiving OC therefore, the complainant is liable to pay the CAM charges.

**G. Directions of the Authority**

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


- I. The respondent/promoter is directed to pay the arrear of unpaid assured return at the agreed rate i.e., @ Rs.22,000/- per month from the date of provisional booking i.e., 30.08.2013 till the date of

- obtaining occupation certificate as per terms and conditions of the provisional booking dated 30.08.2013.
- II. The respondent is directed to pay the outstanding accrued assured return amount till date 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 @ 9.10% p.a. till the date of actual realization.
  - III. The respondent is directed to issue a revised statement of account of the allotted unit of the complainant after adjustment/refund of the amount in lieu of decrease in super area if any within a period of 30 days from the date of this order. The complainants are directed to pay the outstanding dues if any next 30 days after issuing a revised statement of account. After clearing all the outstanding dues, the respondent shall handover the possession of the allotted unit to the complainant.
  - IV. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - V. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
  - VI. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement. The respondent is debarred from claiming holding charges from the

complainant/allottee at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

41. Complaint as well as applications, if any, stands disposed off accordingly.
42. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 04.03.2025

**HARERA**  
**GURUGRAM**