BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: 3933 of 2021
Order reserved on: 19.11.2024
Order pronounced on: 11.02.2025

1. Mrs. Yogesh Yadav
R/o:- H-31, DDA Flats, Pocket-1, Sector- 2, Dwarka, New Delhi- 110075
2. Mrs. Neelam Yadav
R/o:- Pawera, Pawera (286), Chillro, Mahendragarh, Haryana- 123001 **Complainants**

Versus

M/s ELAN Buildcon Private Limited
(Through its Managing Directors and other Directors)
Regd. office:- 1A, 8th Ave Bandh Road, Junapur Village, Juanapur, New Delhi, Delhi- 11004
Also at:- 3rd Floor, Golf View Corporate Tower, Golf Course Road, Sector- 42, Gurugram- 122002 **Respondent**

CORAM:
Shri Arun Kumar **Chairman**
Shri Vijay Kumar Goyal **Member**
Shri Ashok Sangwan **Member**

APPEARANCE:
Shri Gaurav Rawat (Advovate) **Complainants**
Shri Ishaan Dang (Advocate) **Respondent**

ORDER

1. The present complaint has been filed by the complainant/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 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 complainants, 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 Miracle", Sector 84 Village Hayatpur, Gurugram, Gurugram
2.	Nature of the project	Commercial colony
3.	DTCP License	34 of 2014 dated 12.06.2014 valid up to 11.06.2019
4.	Name of licensee	Bajaj Motors(P) Ltd. and others
5.	RERA Registered/not registered	Registered vid no. 190 of 2017 dated 14.09.2017 valid up to 13.09.2023
6.	Allotment Letter in favour of the original allottee i.e., Renu Yadav and Vikram Yadav	12.06.2018 (Annexure C-2 page 85 of complaint)
7.	Unit no.	G-030, Ground Floor (Annexure C-2 page 85 of complaint)
8.	Super Area	925 sq. ft. (Annexure C-2 page 85 of complaint)
9.	Revised area as per offer of fit-out possession letter dated 07.09.2021	1181 sq. ft. (Annexure R/6 at page no. 86 of the reply)
10.	Date of execution of builder buyer agreement in favour of the original allottee i.e., Renu Yadav	04.02.2019 (Page no. 27 of the reply)
11.	Date of endorsement in favour of complainants herein	12.03.2021 (Page no. 132 of complaint)
12.	Possession clause	**7.1. Possession of the unit**

		The Promoter agrees and understands that timely delivery of possession of the said premises/unit to the allottee(s) and the common areas to the association of allottee(s) or the competent authority, as the case may be, is the essence of the Agreement. The Promoter assures ***to hand over possession of the said premises/unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place within a period of 48 (forty eight) months from the date of this Agreement with an extension of further twelve months,*** unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). **(Emphasis supplied)**.
13	Due date of delivery of possession	**04.02.2024** (Calculated from the date of execution of buyer's agreement i.e., 04.02.2019 + 12 months grace period.)
14.	Total sale consideration	Rs.1,27,811,25/- (Annexure C-2 page 85 of complaint) Rs.1,64,20,512/- (As per Applicant ledger at page no. 85 of the reply)
15	Total amount paid by the complainant	Rs.87,01,498/- (As per receipt information at page 86 of the reply)
16	Offer of possession fit outs	07.09.2021 (Page 145 of the complaint)
17.	Reminders letter for clear the outstanding dues	12.10.2021, 12.11.2021, 28.12.2021, 08.02.2022, 10.03.2022, 05.04.2022, 09.05.2022, 06.06.2022, 04.07.2022, 05.08.2022, 05.09.2022, 10.10.2022, 03.11.2022, 03.12.2022, 03.01.2023,

18.	Occupation certificate	15.03.2023 (Page no. 1 of the additional documents filed by the respondent on 12.10.2023)
19.	Intimation regarding grant of OC	22.03.2023 (Page no. 4 of the additional documents filed by the respondent on 12.10.2023)

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That in 2014, the respondent company issued an advertisement announcing a commercial project "Elan Miracle" at Sector - 84, Village Hayatpur, Gurugram was launched by M/s. ELAN Buildcon Private Limited, under the license no. 34 of 2014 dated 12.06.2014, issued by DTCP, Haryana, Chandigarh, situated at Sector - 84, Village Hayatpur, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got building plan approval from the Authority.

II. That the complainants while searching for a commercial was lured by such advertisements and calls from the brokers of the respondent for buying a commercial shop in their project namely ELAN Miracle. The respondent company told the complainants about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the national capital region. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainants and incited the complainants for payments.

III. That relying on various representations and assurances given by the respondent company and on belief of such assurances, original allottee namely Mrs. Renu Yadav, booked a unit in the project by paying an amount of Rs.25,00,000/- towards the booking of the said unit bearing no. G-030, on ground floor, in Sector 84, having super area measuring 925 sq. ft. to the respondent dated 11.05.2017 and the same was acknowledged by the respondent.

IV. That the respondent sent an allotment letter dated 12.06.2018 to the original allottee confirming the booking of the unit dated 11.05.2017, allotting a unit no. G-030, ground floor measuring 925 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e., Rs.1,27,81,125/- and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. The respondent sent aforesaid allotment letter after a delay of more than year which against the spirit of the Act, 2016.

V. That after repeated reminders and follow ups with the respondent. Respondent finally after delay of almost two years sent builder buyer agreement to the original allottee. That the original allottee duly and timely signed the agreement and sent the same to the respondent but respondent till date has failed to execute the builder buyer agreement. Further, as per clause 7.1 of the unexecuted buyer's agreement the respondent had to deliver the possession within a period of 48 months from the date of execution of the agreement. Due to default on the part of the respondent/builder till date buyer's agreement has not been executed the due date of possession shall be calculated from date of booking application form i.e., 11.05.2017. Therefore, the due date of possession comes out to be 11.05.2021.

VI. That as per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs.87,01,499/-, towards the said unit against total sale consideration of Rs.1,27,81,125/-.

VII. That the original allottees subsequently transferred/endorsed the property in favour of the complainants vide affidavit dated 15.03.2021. The original allottee executed an "agreement to sell" in favour of the complainants for an appropriate consideration. The balance amount for obtaining the property which was still under construction was paid by the complainants according to the demands raised by the respondent. The respondent/promoter, vide their nomination letter/affidavit recorded her consent to the transfer by stating:

"Accordingly, now the captioned property stands in the name of Complainants."

VIII. That respondent acknowledging/confirming the acceptance of documents for the said unit for purpose of endorsement in favour of the complainants. The respondent confirm the booking/endorsement of the said unit to the complainants providing the details of the project, confirming the booking of the unit dated 11.05.2017, allotting a unit no. G-030 ground floor, measuring 925 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.1,27,81,125/-, which includes basic price of Rs.1,06,37,500/- plus EDC and IDC of Rs.5,41,125/-, car parking charges of Rs.4,00,000/-, PLC of Rs.10,63,750/-, IFMS of Rs.1,38,750/- and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. The complainant having dream of its own commercial unit in NCR signed the booking application in the hope that the unit will be delivered within four years from the date of execution of

agreement. They were also handed over one detailed payment plan. That the dream of owning a unit of the complainants were shattered due to dishonest, unethical attitude of the respondent. Though the payment to be made by the complainants were to be made based on the construction on the ground but unfortunately the demands being raised were not corresponding to the factual construction situation on ground.

IX. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. Such arbitrary and illegal practices have been prevalent amongst builders before the advent of the Act of 2016, wherein the payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing /facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work. During the period the complainants went to the office of respondent several times and requested them to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.

X. That the complainants contacted the respondent on several occasions and were regularly in touch with the respondent with regard to execution of the builder buyer agreement. The respondent was never

able to give any satisfactory response to the complainant regarding the status of the agreement, construction and were never definite about the delivery of the possession.

XI. That the respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, allotment letter and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of the Act, 2016 and the Rules, 2017. The respondent have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period.

XII. That the respondent sent letter dated 19.06.2021 to the complainants, stating that occupation certificate has been applied for the commercial project namely "Elan Miracle" on 09.06.2021. Further, to this significant milestone, you shall not be entitled to get the fixed amount/delay penalty/down payment rebate (if applicable) with effect from the date of application of the occupation certificate.

XIII. That respondent sent letter of offer of possession for fit-outs dated 07.09.2021, to the complainants, mentioning that the construction of the said unit has been completed and the occupation certificate for said project has been applied. The unit is ready for the possession for the purpose of commencing the fit-outs and interior work and the same can be legitimately offered by the developer to you. Further stating that the super area of your unit stands revised from earlier communicated 925 sq. ft. to 1181 sq. ft. and that all the sums payable as mentioned herein below have been calculated on the basis of the super area of your unit i.e. 1181 sq. ft.

XIV. That the above said letter of offer of possession respondent raised several illegal demands on account of electricity connection and pre-paid meter charges of Rs.9,854/-, external electrification charges and HUDA water connection charges of Rs.1,71,411/-, labour cess of Rs.33,659/-, which was never the part of the payment plan provided along with allotment letter. Furthermore, respondent had arbitertelly increased the super area also from 925 sq. ft. to 1181 sq. ft. Therefore, the total demand raised by the respondent in aforesaid mentioned letter is of Rs.94,63,932/-.

XV. That the complainants after receiving the aforesaid letter of offer of possession asked the respondent to provide the copy of the occupation certificate but respondent fail to provide the same. That the respondent in respect of the said unit has not received the OC till dated. Hence, respondent without getting the OC sent offer of possession letter which is bad in the eye of law and clearly shows the malafide intention on the part of the respondent to cheat and extract the money from the innocent allottees. Furthermore, as per the provisions of the Act of 2016, respondent cannot offer sent the offer of possession letter to complainants without receiving the OC from the concerned department. Therefore, the aforesaid letter of possession dated 07.09.2021 is illegal and not valid as per the provisions of the Act of 2016.

XVI. That the allotment of the unit was made on 12.06.2018, after coming into force of the Act, 2016 and as per the Act, after coming into force of the Act the respondent can charge only on the carpet of the unit not on the super area of the unit. In the present case, respondent has charge the complainants on the super area i.e. 925 sq. ft. @ Rs.11,500/- per sq. ft. which is against the provisions of the Act, 2016 and the Rules, 2017

made thereof. Hence, in accordance to the provisions of the RERA Act, necessary penal action to be taken against the respondent. The complainants have suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the provisions of the Rules, 2017.

XVII. The possession of the property may kindly be provided to the petitioner as per the assurance given in the brochure at the time of offering the property for sale. Occupation certificate is one approval which the respondent has to obtain before handing over the possession but the respondent also has to deliver all other amenities and facilities assured at the time of selling the property and the handover would be termed as complete only when the entire amities and facilities also need to be provided and then only the handover is considered to be complete. The complainant had bought a shop in a complex and not in a standalone building and the amenities and facilities assured at the time of selling are also required to be provided at the time of the handover. The complainants have prayed that to hand over the possession of the allotted unit should be considered complete only when all the above important amenities and facilities are also provided together with the shop and the interest on the period of delay should be paid till the proper handover is given as elaborated above. All these facilities are not available in complex even today and even after repeated follow ups with respondent, no dates have been shared by respondent by which this basic infrastructure will be made available to complainants for which they have paid money more than 4 years back. That the complainants

have not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law.

C. Relief sought by the complainants:

4. The complainants have sought following relief:

i. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.

ii. Direct the respondent to quash the illegal demand raised by the respondent.

iii. To quash the illegal demand of respondent on account of electricity connection and pre-paid meter charges of Rs.9,854/-, external electrification charges and HUDA water connection charges of Rs.1,71,411/- Labour Cess of Rs.33,659/- and increase in super area.

iv. Direct the respondent not to levy Holding charges from the complainants.

v. Direct the respondent to set aside the letter of offer of possession for fit outs dated 07.09.2021 along with the demands raised for Rs.94,63,932/- and restraining the respondents from charging any penalty from complainants.

vi. To restrain the respondent from raising the illegal demand on account of advanced monthly maintenance.

vii. Direct order the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

viii. Direct the respondent to execute the builder buyer agreement with the complainants on the terms and condition as per the allotment letter.

ix. To appoint the local commissioner for inspection of the said unit and project and thereafter, give the final report in relation to deficiencies in the project and illegally increased area.

x. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.

xi. Direct the respondent to quash the illegal demand on account of increase in the area from 925 sq. ft. to 1181 sq. ft. i.e. increase of 27.67%.

xii. To initiate the penal proceedings against the respondents for contraventions of the provisions of the Act of 2016 and the Rules of 2017.

xiii. Direct the respondent to provide the exact lay out plan of the said unit and justification for increased in the area.

xiv. Direct the respondent to charge the complainants on the carpet area of the unit instead of super area.

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

6. The respondent has contested the complaint on the following grounds:-

I. That before proceeding with the reply to the complaint, certain facts are necessary to be carved out in the series as they appear which would also be an essential part towards the reply to the false and frivolous claims as well as vexatious allegations and untenable contentions of the complainant thereby assisting the Authority to arrive at justifiable conclusions. The various statements made by the complainant are couched with malice, fraud and material suppression of facts. The complainant has deliberately suppressed various material facts which have substantial bearing on the outcome of the present proceedings. The complainant has thus not come with clean hands before this Authority and their present claims clearly are an afterthought to acquire a wrongful gain for themselves and extract money of the respondents illegally.

II. The present case by the complainant is a classic example of "suppresio veri suggestio falsi". It is most humbly submitted that suppression of

truth is (equivalent to) suggestion of what is false. It is the rule of equity, as well as law, that a suppresio veri is equivalent to suggestio falsi; and where either the suppression of truth or the suggestion of false can be proved, in a fact material to the contract, the party injured may have relief against the contract.

- The complainants are regular investors who have been investing into real estate projects. Further, the complainants has in fact purchased the unit in question in resale from the erstwhile allottee Ms. Renu Yadav in March 2021. In terms of builder buyer agreement dated 04.02.2019, executed between the respondent and the erstwhile Allottee Ms. Renu Yadav, which has eventually been endorsed in favour of the complainants, the date of possession is 04.02.2024 (including grace period). Thus by no stretch of imagination, can the present complainants take a plea that the project is delayed. The complainant was well aware of the fact of the status and quality of the project and had invested after conducting all due diligence. In fact as per registration certificate dated 14.09.2017 issued by this Authority, the date of possession for the said complex namely ELAN Miracle is 13.09.2023.
- A mere perusal of the communication prove beyond any iota of doubt that the complainants themselves have been avoiding to pay the agreed balance amount, despite the fact that the respondent has already completed the construction of the project and has applied for occupation certificate. Moreover the complainant has raised a false and frivolous allegation that the builder buyer agreement has not been executed. That the builder buyer agreement w.r.t the unit in question had been executed with the erstwhile allottee Ms. Renu Yadav, from whom the complainant has purchased the said Unit in second sale in March 2021. The Said agreement has been endorsed in favour of the complainants and the complainants have accepted the terms and conditions of the said builder buyer agreement. It shall not be out of place to mention that vide letter dated 18.03.2019, the

respondent requested the erstwhile allottee Ms. Renu Yadav to come forward for registration of the said BBA.

- That the complainants in the present case have miserably failed to pay the dues timely and further, despite themselves being in default have filed a frivolous complaint to coerce and browbeat the respondents. After transfer of the unit in question in favour of the complainant, the respondent vide letter dated 07.09.2021, offered the possession of the said unit in question for fit outs. Since the construction of the complex is complete and respondent has applied for occupation certificate of the complex, the allottees of the complex approached the respondent for possession of their respective units for carrying out fit outs at their end so that as and when the occupation certificate is issued by the Town and Country Planning Department, Haryana, the units can be offered to tenants. In view of requests from different allottees, the respondent offered the possession of the unit in question to the complainant also and requested the complainant to clear her dues as per the demand raised vide letter dated 07.09.2021.
- That as per the payment plan annexed along with builder buyer agreement dated 04.02.2019, the complainant is liable to clear all his outstanding dues at the time of possession. Despite reminders and notices dated 12.10.2021 and 12.11.2021 the complainants have failed to make payments to the respondent as per the letter dated 07.09.2021. As on date there is an outstanding of Rs.1,00,33,816/- (inclusive of interest and applicable GST) towards balance consideration payable by the complainants to the respondent.
- Further, the decision to buy the units was the complainant's independent decision. They have purchased the unit in question from erstwhile allottee Ms. Renu Yadav in March 2021 after verifying the construction at site as at that time the construction of the commercial complex namely "ELAN Miracle" was almost complete at site. Thus the above proves beyond any iota of doubt that the complainants failed in their reciprocal obligations miserably

and thus it is the complainants who are in breach and not the respondent as has been falsely alleged.

III. That the unit bearing no. G-30, admeasuring 925 sq. ft. on ground floor in "ELAN Miracle" Sector 84, Village Hayatpur, Gurugram, Haryana was allotted to Ms. Renu Yadav vide allotment letter dated 12.06.2018. In March 2021 the erstwhile Allottee Ms. Renu Yadav approached the respondent for transferring the said unit in favour of the complainants. After completion of formalities, the respondent transferred the said unit in favour of the complainant. The builder buyer agreement dated 04.02.2019 was executed with the erstwhile allottee Ms. Renu Yadav and the same was endorsed in favour of the complainant and thus the complainant is bound by the terms and conditions of the said builder buyer's agreement. After satisfying themselves with regard to applicable terms and conditions governing the allotment and sale of shops in the project, the complainants executed necessary documents and confirmed that he shall be bound by the applicable terms and conditions.

IV. That as per the agreed terms the amounts are due and payable by the complainants, hence they have filed the present false and frivolous case to evade payment of charges towards increase in usage area of the Unit in question. At the time of allotment of the said unit in favour of the erstwhile allottee, Ms. Renu Yadav, the height of the said unit was 4.5 meters however at the time of completion of construction of the complex it was observed that the said unit in question has mezzanine floor thus the height of the unit is now 6.35 meters. While issuing the letter dated 07.09.2021 the respondent informed the complainant that area of the unit in question stands revised from 925 sq. ft. to 1181 sq. ft.

as the same is now a unit which has a mezzanine floor. Clauses 1.10 (ii) and 1.115 of the builder buyer agreement dated 04.02.2019. A combined reading of Clause 1.10 (ii) (b), Clause 1.15 and Clause 1.5 of the Builder Buyer Agreement dated 04.02.2019 clearly imply as under:

a) If the unit allotted becomes preferentially located, the allottee shall pay the additional PLC to the Developer.
b) The dimensions of the said unit can change, alternate property can be allotted to the allottee.
c) In the event of increase or decrease in area of the Unit, the differential shall be paid/refunded by/to the Allottee.

V. That it has been clearly established in the present case that the unit which was originally allotted to the complainant had a height of 4.5 meters and during the course of construction, the height of the said unit was increased to 6.35 meters, thus making it a unit with mezzanine floor, which implies that the unit is now preferentially located. The complainant became aware of this fact at the time of his visit to the complex before purchasing the said unit from the erstwhile allottee, Ms. Renu Yadav. The complainants being aware that the unit with mazanine floor fetched more usage area, decided to purchase the said unit from the erstwhile allottee, Ms. Renu Yadav. Secondly, the complainant is aware that the said unit now bears additional PLC of having a mezzanine floor. The complainants does not want to pay additional charges towards the said increased usage area, therefore has approached this Authority to wiggle out of his commitments. The complainants are aware that there is an increase in area of the said unit as the unit has now a mezzanine floor which results in additional usage area of the unit. The respondent had informed the complainant of increase in usage area of the Unit in question vide its letter dated 07.09.2021.

VI. That after receipt of the letter dated 07.09.2021, the respondent approached the complainant with an offer that in the event the complainant is not interested in allotment of a unit with a mezzanine floor, the respondent would offer him an alternate unit in the complex which does not have a mezzanine floor, however, the complainant being greedy and with a *malafide* intention to extract maximum from the respondent proceeded to file the present complaint before this Authority.

VII. That in view of the aforesaid, the complainant, at this stage cannot be allowed to turn back from their own obligation. The present stand of the complainant is nothing else but a harassment tool to acquire wrongful and undeserved gains out of the respondent. That ample opportunities were given to the complainant to fulfil their reciprocal obligations of making the payment timely, but despite repetitive reminders, they failed to make the necessary payment due to the respondent and have filed the frivolous complaint.

7. 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.

8. The complainants and respondent have filed the written submissions on 05.09.2024 and 28.08.2024 respectively which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainants.

E. Jurisdiction of the authority

9. 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

10. 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.*

11. 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 complainants at a later stage.

F. Findings regarding relief sought by the complainants.

F.I Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.

F.II Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.

12. The above-mentioned relief 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.

13. On consideration of the documents available on record and submissions made by both the parties, the complainants were allotted a retail /commercial shop bearing no. G-30, ground floor, in, for an area admeasuring 925 sq. ft. vide allotment letter dated 12.06.2018 for the total sale consideration of Rs.1,27,81,125/-. The complainants have paid an amount of Rs.87,01,498/- against the total sale consideration. The buyer's agreement has been executed between the parties on 04.02.2019. As per clause 7.1 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 04.02.2024. The respondent has issued offer of fit out of possession of the allotted unit to the complainants on 07.09.2021, without obtaining occupation certificate. As per the said letter, the respondent company revised the super area of the unit of the complainants from 925 sq. ft. to 1181 sq. ft. i.e., 27.67% and raised an demand of Rs.64,63,932/-. Thereafter, the respondent company issued various reminder letters for taking possession and clearing the outstanding dues. The complainants did not pay the said demands and filed the present complaint on 27.09.2021. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 15.03.2023 and thereafter, issued a letter for intimation regarding grant of occupation certificate on 22.03.2023.

14. After, considering the above said factual and legal circumstances of the case, the offer of possession for fit-out dated 07.09.2021 is hereby quashed. The occupation certificate of the allotted unit of the complainants was obtained by the respondent/promoter on 15.03.2023. In view if the above, the Authority hereby directs the respondent to handover possession of the allotted unit to the complainants as per buyer's agreement dated 04.02.2019 and in terms of section 19(10) of the Act of 2016.

F.III Direct the respondent to restrain the respondent from raising illegal demand on account of advance monthly maintenance.

F.IV Direct the respondent to restrain the respondent from raising fresh demand for payment under any head.

F.V To quash the illegal demand of respondent on account of electricity connection and pre-paid meter charges of Rs.9,854/-, external electrification charges and HUDA water connection charges of Rs.1,71,411/- Labour Cess of Rs.33,659/- and increase in super area.

F.VI Direct the respondent to set aside the letter of offer of possession for fit outs dated 07.09.2021 along with the demands raised for Rs.94,63,932/- and restraining the respondents from charging any penalty from complainants.

F.VII Direct the respondent to quash the illegal demand on account of increase in the area from 925 sq. ft. to 1181 sq. ft. i.e. increase of 27.67%.

15. The complainants have pleaded that as per the letter of offer of possession for fit-outs dated 07.09.2021, the respondents are charging various illegal charges such as the electricity connection & pre-paid meter charges of Rs.9,854/-, external electrification/DHBVN connection charges & HUDA water connection charges of Rs.1,71,411/-, and labour cess of Rs.33,659/-.

16. The Authority observes that the respondent has issued an offer of possession for fit-out dated 07.09.2021, which is annexed at page 145 to 147 of complaint. The respondents while issuing the said offer of possession for fit-out has raised several demands such as increase in basic sale price as the area of the allotted unit has been increased. Furthermore, it has raised a demand regarding electricity connection & pre-paid meter charges of

Rs.9,854/-, external electrification/DHBVN connection charges & HUDA water connection charges of Rs.1,71,411/-, and Labour Cess of Rs.33,659/-. All the demands are dealt accordingly below:

- **Electricity Connection & Pre-Paid Meter Charges of Rs.9,854/-, External Electrification/DHBVN connection charges & HUDA water connection charges of Rs.1,71,411/-.**

17. The complainants have pleaded that the respondents while issuing offer of possession for fit out dated 07.09.2021, have charged an amount on account of Electricity Connection & Pre-Paid Meter Charges of Rs.9,854/-, External Electrification/DHBVN connection charges & HUDA water connection charges of Rs.1,71,411/-. The Authority observes that as per clause 1.11 to 1.14 of the buyer's agreement dated 04.02.2019 executed inter-se parties mentions about all such charges and the same has been agreed to be paid by the complainants.

18. The Authority has already dealt the above mentioned charges in the compliant bearing no. ***CR/4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited*** wherein the Authority has held that the colonizer/promoter would be entitled to recover the actual charges paid to the concerned departments' from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainants would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.

19. Further, the details of the above mentioned charges charged by the respondent, the respondent shall provided to the complainant(s) and the complainants can verify the same from the concerned department, if

required. Thus, when the complainants agreed to pay charges under this head on the condition of the promoter providing the details of expenditure to them and the same to be verified by them, then promoter can legally charge the same from them.

- **Labour Cess of Rs.33,659/-.**

20. That the respondent in its offer of possession for fit-out letter dated 07.09.2021 has claimed reimbursement of labour cess. However, the respondent has failed to provide the clarification on what account the respondent has charged an amount on reimbursement of labour cess.

21. Moreover, the Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no. ***962 of 2019 titled Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited*** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainants is completely arbitrary and the complainants cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

- **Advance monthly maintenance charges.**

22. 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 15.03.2023 and intimation regarding grant of occupation certificate of the said unit on 22.03.2023 after receiving OC therefore, the complainants are liable to pay the CAM charges w.e.f. date of intimation regarding grant of OC plus 2 months i.e., from 22.05.2023 onwards.

- **To quash the illegal demand on account of increase in the area from 925 sq. ft. to 1181 sq. ft. i.e. increase of 27.67%.**

23. The complainants states that the area of the said unit was increased from 925 sq. ft. to 1181 sq. ft. vide offer of possession for fit-out dated 07.09.2021, without giving any prior intimation to, or by taking any written consent from the allottee. The respondent in its defence submitted that the increase in super area was duly agreed by the complainants at the time of booking/agreement and the same was incorporated in the buyer agreement. Clause 31, provides with regard to alteration/modification resulting in more than 20% change in the super area of the said unit or material change in the specifications of the said unit at any time prior to and upon the grant of occupation certificate. The respondent company shall intimate to the allottees about the alterations in writing. 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 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. 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.*

24. Considering the above-mentioned facts, the Authority observes that the respondent has increased the super area of the flat from 925 sq. ft. to 1181 sq. ft. vide offer of possession letter for fit-out dated 07.09.2021 with increase in area of 256 sq. ft. i.e. 27.67% without any prior intimation to the complainants.

25. That in ***NCDRC consumer case no. 285 of 2018 titled as Pawan Gupta Vs. Experion Developers Private Limited***, it was held that the respondent is not entitled to change any amount on account of increase in area. The relevant part of the order has been reproduced hereunder:-

The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for excess area is not

acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the builders/developers to indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.

26. In view of the above, the Authority has clear observation that there was an increase in the super area which was intimated to the complainants at the time of offer of possession for fit-out and not before. The respondent had informed the complainant of increase in usage area of the unit in question vide its letter dated 07.09.2021. As the unit which was originally allotted to the complainant had a height of 4.5 meters and during the course of construction, the height of the said unit was increased to 6.35 meters, thus making it a unit with mezzanine floor, which implies that the unit is now preferentially located. Further, in the present matter, the builder buyer agreement was executed between both the parties herein on 04.02.2019 i.e., after enactment of the Act, 2016. However, as per clause 31 of the said agreement, the respondent had increased the area of the allotted unit for

more than ± 20%, it is violation of the model agreement to sell. Moreover, the model agreement to sell (The Rules, 2017) provides that increase in the area can be allowed only upto 5%.

27. In view of the above, the Authority is of the view that the respondent has increased the area of the allotted unit by more than 27.67% however the same cannot be prescribed as per the model builder buyer agreement (as per Rules, 2017) and thus, the demand raised by the respondent vide letter dated 07.09.2021 is illegal, void and hereby set aside to the extent of charging for increase in super area beyond 5% limit as prescribed in the mode agreement to sell (as per Rules, 2017) as builder buyer agreement was executed on 04.02.2019 i.e., after enactment of the Act, 2016 and the Rules of 2017.

F.VIII Direct the respondent not to levy holing charges from the complainants.

28. The complainants have also challenged the demand raised by the respondent builder in respect of holding charges. On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer agreement. Although, this issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/2020, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer.

29. Thus, the respondent is not entitled to demand holding charges from the complainants at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

F.IX. Direct the respondent not to force the complainants to sign any indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

30. The respondent is directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the Authority in complaint bearing no. *4031 of 2019 titled as* ***Varun Gupta V. Emaar MGF Land Ltd.***

F.X Direct the respondent to execute the builder buyer agreement with the complainants on the terms and condition as per the allotment letter.

31. On consideration of documents available on records and submissions made by both the parties, the Authority observes that the allotment letter dated 12.06.2018 was issued by respondent in favour of the original allottee(s) namely Renu Yadav and also an buyer's agreement dated 04.02.2019, executed between the original allottee(s) namely Renu Yadav and the respondent herein (Annexure R2, page 27-65 of reply). Thereafter, vide endorsement sheet dated 12.03.2021 (page 132 of complaint), the subject unit was endorsed/transferred in favour of the complainants herein *vis-a vis* buyer's agreement dated 04.02.2019. In view of endorsement in favour of the complainants, no further directions are required.

F.XI Direct the respondent to appoint the local commissioner for inspection of the said unit and project and thereafter, give the final report in relation to deficiencies in the project and illegally increased area.

32. The above-mentioned relief sought by the complainants was not pressed by the complainant's counsel during the arguments in the passage of hearing. The Authority is of the view that the complainants counsel does not intend to pursue the above-mentioned reliefs sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

F.XII To initiate the penal proceedings against the respondents for contraventions of the provisions of the Act of 2016 and the Rules of 2017.

33. The complainants have not mentioned the specific provisions of the Act, 2016 and the Rules of 2017 being violated by the respondent accordingly, the said relief cannot be deliberated by the Authority.

F.XIII Direct the respondent to provide the exact lay out plan of the said unit and justification for increased in the area.

34. The Authority is of the view that as per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainants within 30 days of this order.

F.IV Direct the respondent to charge the complainants on the carpet area of the unit instead of super area.

35. On the documents and submissions made by the parties, the Authority observes that the builder buyer's agreement has been executed between the parties on 04.02.2019, between the original allottee i.e., Renu Yadav and the respondent herein (after enactment of the Act of 2016 and the Rules of 2017). The complainants have purchased the subject unit to the original allottee and the same was endorse by the respondent company on 12.03.2021. The total sale consideration of the subject unit was calculated by the respondent on the basis of the super area. As per clause 1.2 of the model 'Agreement for Sale' annexed prescribed in the Rules of 2017, the respondent is obligated to calculate the total price for the build-up unit/apartment based on the carpet area. In view of the above, the respondent is directed to calculate and charge the sale consideration of the unit based on the carpet area.

G. Directions of the Authority

36. 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 is directed to issue a revised statement of account of the allotted unit of the complainants in terms of the relief allowed under the said order within a period of 30 days from the date of this order. The complainants are directed to pay the outstanding amount within 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 complainants.

II. The respondent is directed to provide the details of charges on account of public utility services (i.e., electricity connection & pre-paid meter charges, external electrification/DHBVN connection charges & HUDA water connection charges) to the complainants and the complainants after verifying the same, the charges/payments in lieu of it can be paid by the complainants. The respondent is further directed not to charge any labour cess and holding charges.

III. The respondent is directed to not force the complainants to sign any indemnity of any nature, whatsoever.

IV. The rate of interest chargeable from the allottees 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 builder buyer's agreement. The respondent is debarred from claiming holding charges from the complainants /allottees 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.

37. Complaint as well as applications, if any, stand disposed off accordingly.

38. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.02.2025