

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

Complaint no. : 235 of 2022
Date of decision : 26.03.2025

1. Manish Joshi
2. Anjali Rathee
Both R/o: - 15, Kodesia Enclave,
Nainital Road, Bareilly, Izzat Nagar,
Uttar Pradesh-243122.

Complainants

Versus

M/s. Elan Buildcon Private Limited
Regd. office: - L1/1100, First Floor,
Street No.25, Sangam vihar,
New Delhi-110062.
Also at: Floor-3rd, Golf View Corporate Tower,
Golf Course Road, Sector-42, Gurugram.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Rajan Kumar Hans (Advocate)
Ishan Dang (Advocate)

Complainants
Respondent

ORDER

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



violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	ELAN Miracle, Sector 84 , Gurugram
2.	Nature of the project	Commercial
3.	Area of the project	5.91875 acres
4.	Hrera registered	Registered Regd. No. 190 of 2017 Dated 14.09.2017
5.	DTCP license	34 of 2014 Dated 12.06.2014
6.	Allotment letter	10.10.2019 (As on page no. 29 of reply)
7.	Unit no.	FS – 09, 2 nd floor (As per allotment letter on page no. 29





		of reply)
8.	Unit admeasuring	450 sq. ft. [Super-Area] (As per allotment letter on page no. 17 of complaint) [Note: unit area increased from 450 sq.ft. to 557 sq.ft.]
9.	Builder buyer agreement	Not executed
10.	Due date of possession	10.10.2022 [Calculated 36 months from date of allotment]
11.	Payment plan [On offer of possession - 100% of IFMS + 100% Car Parking- Usage Charges + (Stamp Duty Registration charges & Administrative Charges & all other charges as applicable will be charged extra)]	Special fixed return payment plan
12.	Total sale consideration	Rs.43,21,750/-[Earlier] Rs.52,54,255/-[Now] (As per applicant ledger in the additional documents submitted by the respondent)
13.	Total amount paid by the complainant	Rs.43,97,979 /- (As per applicant ledger in the additional documents submitted by



		the respondent)
14.	Letter of assurance	21.07.2017 (As on page no. 31 of reply)
15.	Assured return	<p>Clause 1</p> <p><i>That Elan Buildcon Private Limited (herein after referred to as "Company"), agrees to pay to the applicant, a Fixed Amount of Rs.13,316/- (Rupees Thirteen Thousand Three Hundred And Sixteen Only) per month, subject to Tax Deduction at Source, on the provisional booking in our upcoming project titled as "Elan Miracle" situated at Sector-84, Gurgaon, on the amount of Rs.14,52,632/- (Rupees Fourteen Lakhs Fifty Two Thousand Six Hundred and Thirty Two Only) received through RTGS No. ITN0919434 dated 04.06.2017, RTGS No. SBIN517156343152 dated 05.06.2017, RTGS No. SBINR12017072100032005 & ORBCR52017072100076950 DATED 21.07.2017 all transactions done through State Bank of India and Oriental Bank of Commerce.</i></p> <p>Clause 4</p> <p><i>The fixed amount shall be paid by the Company to the applicant till the date</i></p>



		<p><i>of issuance of offer of possession by the Company. The offer of possession is not dependent upon grant of completion certificate and occupation certificate. After issuance of offer of possession by the Company, the applicant shall not entitled for payment of any fixed amount on the provisional booking by the Company.</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 31 and 33 of complaint)</i></p>
16.	Occupation certificate	<p>15.03.2023</p> <p>(As per additional documents submitted by the respondent)</p>
17.	<p>Offer of possession for fit outs</p> <p>[note:- via this letter of possession, a demand of Rs.14,75,349 was made by the respondent in respect of outstanding dues)</p>	<p>07.09.2021</p> <p>(As on page no. 45 of reply)</p>
18.	Intimation regarding grant of O.C	<p>22.03.2023</p> <p>(As per applicant ledger in the additional documents submitted by the respondent)</p>

B. Facts of the complaint

3. The complainants has made the following submissions: -

- I. That the respondent M/s Elan Buildcon Private Limited is a company incorporated under the Companies Act, 1956 and falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act.
- II. That the project in question is known as "Elan Miracle" and is situated at Sector 84, Gurugram, Haryana. That in year 2017, the complainant got information about an advertisement in a local newspaper about the project. When he called on the phone number provided in the newspaper, the marketing staff of the respondent, showed a rosy picture of the project and allure with proposed specifications and invited for site visit.
- III. That the complainant visited the project site and met the local staff of the respondent. They gave an application form to the complainant and assured that a "Food Court unit" admeasuring 450 sq. ft would be given in the project under the "Special Payment Plan". The respondent informed the complainant that the carpet area will be half of the super area and in support of the same the executive of the respondent had shown the specimen copy of the Builder buyer agreement wherein this term was mentioned.
- IV. That the complainant applied for a "Food Court Unit" in the project of the respondent. On 10.10.2019, a pre-printed Allotment Letter was issued by the respondent for unit no. FS-09. The Allotment letter clearly mentioned the size of the unit as 450sq.ft. (Super area) and the total sales consideration was Rs.43,21,750/- .

- V. That as per the allotment letter, the Payment plan was "Special Fixed Return Payment Plan" which is being reproduced :

<i>S.no.</i>	<i>Instalment Name</i>	<i>Description</i>
1.	On application of Booking	10% of Basic Sale Price
2.	Within 30 days of Booking	30% of Basic Sale Price
3.	Within 6 months of Booking	20% of Basic Sale Price + 100% of EDC/IDC.
4.	On Super Structure	40% of Basic Sale Price + 100% of PLC
5.	On offer of Possession	100% of IFMS + 100% Car Parking – Usage rights + (Stamp Duty Registration Charges & Administrative Charges & all other charges as applicable will be charged extra)

- VI. That no Builder buyer agreement was executed between the complainant and the respondent and despite that the respondent continued to raise demands from the complainant in direct contravention to Section 13 of the Act. There has been a serious breach of the Act by the respondent to extract money from the complainant.
- VII. That on the call of the respondent the complainant has already paid an amount of Rs.43,97,979/- without any fail and in a timely manner. On 21.06.2021, the respondent informed the complainant that it has applied for the "Occupation Certificate" of the project. That on 07.09.2021 the respondent sent an intimation of possession along with the demand letter whereas the respondent demanded an amount of Rs.13,68,777/- from the complainant.



- VIII. That the complainant was shocked to find out that the respondent has increased the super area from 450 sq. ft to 557 sq.ft. (i.e., 23.7% of the super area.) without any prior notice, information, and approval from the complainant. This increase in the area has put an additional burden of Rs.10,37,408/- which is a steep increase of 25% in the total cost of the project.
- IX. That the complainant belongs to a middle-class family and a serving officer in the Indian arms forces having limited means of highly taxable salary and is unable to absorb this uncalled for, and illegal demand of extra amount. That after the receipt of the demand, the complainant visited the project to see the status of the construction of the project from his own eyes, was further shocked after seeing that the actual area of the said unit was only 88 sq.ft. which is far too less to run a food court unit.
- X. That the respondent has promised to give nearly about 225 sq. ft. of carpet area (i.e., 30% of 450 sq. ft. of Super area) in the Specimen builder buyer agreement and also promise the same in the marketing activities but on the possession, the respondent is giving only 88 sq.ft of carpet area whereas it has increased the super area from 450 sq.ft to 557 sq.ft. which makes the overall loading of the project to around 86%, which is way above the industry norms of around 40-55%. The respondent is doing all these things by his own wish and without any prior information.
- XI. That the complainant immediately wrote back to the respondent to register his protest via an email dated 14.09.2021 whereas the complainant highlighted that an increase of over 10 Lacs rupees in



lieu of increased area is unjustified and asked the respondent to clarify the actual area he will be getting after paying this huge amount. After getting no immediate response from the respondent, the complainant was forced to send them multiple reminders during the period.

- XII. That for the first time cause of action arose on 04.06.2017, when an application was given to the respondent to apply in the project. Further the cause of action arose on 07.09.2021, when the respondent issued the possession intimation of the project. The cause of action again arose on various occasions, till date. The cause of action is alive and continuing and will continue to subsist till such time as the Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i Direct the respondent not to charge any additional amount as demanded over and above the agreed amount as per the Allotment Letter in the absence of the BBA.
 - ii Direct the respondent not to charge the amount of Rs.10,37,408/- in lieu of increase in super area from 450 sq.ft. to 557 sq.ft. which is a steep hike of over 24%.
 - iii Direct the respondent to no to charge any interest maintenance or holding charges on the amount invested or the amount pending.
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 the complainants were allotted a commercial space admeasuring 450 sq. ft. forming part of unit no. FS-09 on second floor in the project- "ELAN MIRACLE" situated in Sector- 84, Gurugram by the respondent, subject to increase or decrease on basis of variation in calculation of actual super area of the premises which were to be determined at the time of offer of possession.
- II. That after completing the construction of the project in question, the respondent vide application dated 09.06.2021 applied for grant of Occupation Certificate and the same was conveyed to the complainants vide letter dated 19.06.2021.
- III. That at the time of booking, the complainants were conscious and very well aware that the unit is reserved for running and operating a KIOSK to be operated in the Food Court. Admittedly the food court is a larger space out of which several food joints are being run and operated by different Kiosk operators. The food court comprises not only of various kiosks, but also a larger space which is used by the consumers who purchases food items from these kiosks and such larger space is jointly used by and for the kiosk operators.
- IV. That thereafter, on 10.10.2019, an allotment letter along with agreed payment plan was issued to the complainants with respect to the

subject unit. Vide letter dated 21.07.2017, the "Terms and conditions for fixed amount on Provisional Booking" were elaborated to the complainants. That the complainants had in fact purchased the unit for quick gains and delayed the payments. The respondent sent several reminders dated 12.10.2021, 12.11.2021, 28.12.2021 and 08.02.2022 to clear the outstanding dues amounting to Rs.15,97,515/- as on 08.02.2022 (inclusive of interest).

- V. That further, a Buyer's Agreement containing detailed terms and conditions of allotment was dispatched to the complainants vide letter dated 04.10.2019. However, for reasons best known to the complainants, the complainants have not signed the same.
- VI. That vide letter dated 19.06.2021, the complainants were informed that the construction of the project has been completed and respondent has applied for the grant of Occupation Certificate. The letter of offer of possession for carrying of fit-outs and settlement of dues was sent by the respondent on 07.09.2021 wherein the complainants were informed that there was an increase in area of the unit allotted, from 450 sq ft to 557 sq ft.
- VII. That the complainants had agreed to make the payment of the total consideration as per the payment plan opted by the complainants as set out in Allotment letter along with all other charges. The complainants acknowledged and understood that the total consideration of the kiosk/unit is calculated on the basis of its super area, which was tentative. The complainants had further agreed and understood that the unit area and tentative percentage of the unit area to super area as on the date of the booking of the unit, was

subject to change till the construction of the building was complete. The covered area in case of KIOSK forming part of the food court is calculated on pro-rata basis. The complainants concededly had agreed to purchase the kiosk.

- VIII. The complainants had agreed to the terms and conditions and cannot be said to be oblivious of the fact that the covered area of the kiosk in Food Court has to be on pro rata basis and accordingly the possession of the kiosk in Food Court has been offered to the complainants. Furthermore, it is evident that the covered area of the retail units could be said to be 50% of the super area, which includes the area of sitting space(s) as well as service corridor, as against the covered area of Kiosk/Food Court retail units, which is on pro rata basis, and in case of the latter, there is no such condition of the covered area being 50% of the super area. In the present case, the super area would include proportionate dining/seating area, proportionate service corridor area, proportionate common area of the project and covered area of the unit. Accordingly, the covered area in the present case is 278.43 sq ft and the carpet area would be 88.02sq.ft.
- IX. That the complainants had booked a kiosk in the food court and not a commercial unit and therefore the calculations put forth by the complainants are baseless and flawed on the face of it. After receipt of the letter dated 07.09.2021, since the complainants were reluctant to pay the balance consideration as per the demand raised, the respondent approached them with an offer that in the event the complainants are not interested in allotment of the unit, the

respondent would offer them an alternate unit in the complex. However, the complainants with a malafide intention proceeded to file the present complaint.

- X. That the construction of the complex has been conducted by the respondent in a time bound manner. That the complainants, at this stage cannot be allowed to turn back from their own obligation. The present stand of the complainants is nothing else but a harassment tool to acquire wrongful and undeserved gains out of the respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

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

Section 11

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the

amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the reliefs sought by the complainants.

- F.I. Direct the respondent not to charge any additional amount as demanded over and above the agreed amount as per the Allotment Letter in the absence of the BBA.**
- F.II. Direct the respondent not to charge the amount of Rs.10,37,408/- in lieu of increase in super area from 450 sq.ft. to 557 sq.ft. which is a steep hike of over 24%.**
- F.III Direct the respondent to no to charge any interest maintenance or holding charges on the amount invested or the amount pending.**

13. The complainants booked a retail/commercial unit (as mentioned in the allotment letter) in the project "Elan Miracle" situated in Sector-84, Gurugram. Vide allotment letter dated 10.10.2019, the unit bearing no. FS-09, in Retail/Commercial block on 2nd Floor, admeasuring super area of 450 sq.ft. under the "Special Fixed Return

Payment Plan” was allotted in favour of the complainants for a total sale consideration of Rs.43,21,750/- inclusive of basic sale price, car parking charges, PLC, EDC/IDC, IFMS. As per the customer ledger annexed with the complaint on page no. 26-27, the complainants have till date paid Rs.43,97,979/- again the subject unit. No Builder Buyer has been executed between the complainants and the respondent till date.

14. The respondent issued a letter of offer of possession for carrying out fit outs and settlement of dues to the complainants on 07.09.2021, therein the complainants were informed that the area of the unit has been increased from 450 sq.ft. to 557 sq.ft and it has been admitted by the respondent that the super area of the unit is currently 557 sq.ft. and the carpet area is 88.02 sq.ft. The respondent has obtained the Occupation Certificate from the competent authorities on 15.03.2023. In lieu of the increase of the super area, the respondent along with the letter of offer of possession for fit outs raised a demand of Rs. 9,32,505/- to the complainants.
15. The Authority would like to express its view regarding the concept of “Valid Offer of possession”. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:
 - a. *The possession must be offered after obtaining the Occupation certificate/completion certificate.*
 - b. *The subject unit must be in a habitable state.*

c. Possession should not be accompanied by unreasonable additional demands.

16. In the present complaint, the Authority observes that the essential condition for a valid offer of possession has not been satisfied in the present case. It is noted that the Occupation Certificate for the project was granted to the respondent by the competent authority on 15.03.2023. However, the respondent had issued an offer of possession to the complainants on 07.09.2021, i.e., prior to the grant of the Occupation Certificate, rendering such offer premature and invalid. Furthermore, the respondent raised an additional demand of Rs. 9,32,505/- on account of an alleged increase in the super area of the unit, which the Authority finds to be unjustified.
17. As per the facts of the present complaint, the allotment of the unit to the complainants was made after the commencement of the Real Estate (Regulation and Development) Act, 2016. Accordingly, the respondent is found to be in contravention of Section 13 of the Act, having accepted more than 10% of the total cost of the unit without first executing a Buyer's Agreement. Additionally, the respondent has violated Section 14(2) of the Act by effecting changes in the unit without obtaining prior consent of the allottees. It is also observed that the building plans, layout plans, and sanctioned plans had already been approved prior to the allotment of the unit to the complainants, and no modifications were made to such plans up to the date when the offer of possession for fit-outs was extended. This

indicates that the actions of the respondent were arbitrary, and the financial burden resulting from such arbitrary conduct—particularly the additional monetary demand—has been wrongfully imposed upon the complainants.

18. The Authority further observes that, in accordance with Clause 18 of the Application Form executed by the complainants at the time of booking the unit, in the event of a variation in the super area exceeding 20%, and if such variation is not acceptable to the applicant, the respondent is obligated to offer an alternate unit of approximately the same size within the same project. The same is reiterated below:

“ 18. In the event the variation in the Super Area of the Unit is greater than 20% and such variation is not acceptable to the applicant, every attempt shall be made to offer an alternate unit of an approximately similar size within the Project subject to availability. In the event that such an alternate unit is available and the applicant accepts such alternate unit, the applicable Total Consideration, including the applicable PLC, resulting due to such changed location/Unit shall be payable or refundable, as the case may be, at the BSP mentioned herein. No other claim, monetary or otherwise, shall lie against the Company.”

[Emphasis supplied]

19. Thus, the Authority directs the respondent to offer an alternate unit to the complainants, in accordance with Clause 18 of the application form, within the same project, of identical size, and at the same sale consideration as originally agreed upon between the complainants and the respondent. Further, the respondent is directed to issue a

fresh offer of possession in respect of the new unit within a period of 30 days from this order.


H. Directions of the authority

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

- i. The demand raised by the respondent with respect to the increase in the super area is hereby quashed.
- ii. The respondent is hereby directed to offer an alternate unit to the complainants, in accordance with Clause 18 of the application form, within the same project, of identical size, and at the same sale consideration as originally agreed upon between the complainants and the respondent. The respondent is directed to execute the Buyer's Agreement in respect of the new unit within 30 days of this order.
- iii. The respondent is directed to issue a fresh offer of possession in respect of the new unit within a period of 30 days from this order.
- iv. The respondent is directed to allot a Preferential Located unit to the complainants, as an amount of Rs. 1,71,000/- has been collected from them towards such charges. In the event that the allotted unit is not preferentially located, the respondent shall refund the aforesaid amount to the complainants along with

interest at the rate of 11.10% per annum, calculated from the date of deposit till the date of realization.

21. Complaint stands disposed of.
22. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.03.2025



HARERA
GURUGRAM