

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

Complaint no.:	1888 of 2024
Date of filing of complaint:	15.05.2024
Date of Decision:	02.05.2025

Sh. Gurvinder Singh

Mrs. Angela Bhasin

Both R/o: Flat No. 1,2 Bhasin Plaza,
Behind Bhasi Complex, 63, Napier Town,
Gorakhpur, Jabalpur

Complainants

Versus

Elan Avenue Limited

Address: - 15th floor, two horizon centre,
DLF Phase-V, Golf Course Road,
Gurugram-122002

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Sh. Vineet Kumar Yadav (Advocate)

Complainant

Sh. Ishaan Dang (Advocate)

Respondent

ORDER

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

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 and delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	"Elan -The Presidential", Sector 106, Gurugram.
2.	Licensed project area	9.753 acres
3.	Nature of the project	Residential
4.	DTCP license no	80 of 2012 dated 17.08.2012
5.	Building plans approved on	26.10.2022
6.	RERA registered/not registered	Registered 101 of 2022 dated 21.11.2022 valid upto 30.10.2027
7.	Application form	Date and signature not mentioned [Page 28 of reply]
8.	Unit no.	T1-2002, 20 th floor, Tower 1 [Page 35 of complaint]
9.	Area admeasuring	2450 sq. ft. (Super area) 1346.58 sq. ft. (carpet area) [Page 35 of complaint]
10.	Allotment	14.03.2023 [Page 31 of the complaint]
11.	Date of execution of unit buyer's agreement	N/A
12.	Possession clause	N/A
10.	Due Date	14.03.2026 [calculated from the date of allotment letter dated 14.03.2023]
11.	Total sale consideration	Rs. 3,65,29,500/- [Page 35 of the complaint]

12.	Total amount paid by the complainants	Rs.34,00,000 /- (Page 46 of complainant)
15.	Reminders for clear payment	09.06.2023, 28.06.2023, 18.07.2023, 08.08.2023. [Page 82-88 of reply]
16.	Pre cancellation	26.08.2023 [Page 90 of reply]
17.	Cancellation	18.09.2023 [Page 92 of reply]

B. Facts of the complaint:

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

- I. That the complainant no. 1, approached respondent, through their officials about their residential project named as 'Elan-The Presidential' situated at Sector 106, Gurugram, Haryana in November 2022. It was informed to complainant no. 1 by the respondent through their officials that above mentioned project comprised of ultra-luxury apartments with all amenities that were unparalleled. To further induce complainant no. 1, respondent also showed a site plan of project, demonstrating the proposed project as having a strategic location, with distinctive and superior ambience to other existing projects, luxury outdoor spaces, clubs, shopping spaces and even an amphitheater.
- II. That the price of the flat was represented to be @ Rs.10,500/- per sq. ft. for a 3 BHK + Study flat/apartment measuring approx 2450 sq. ft. To further induce complainant no. 1, it was also informed that as a limited time offer to persons who booked immediately, the respondent will provide 20 grams of Gold along with one Apple I-phone 14. Complainant no. 1 was made to sign a 'blank booking form' with the representation that it would be duly filled up, counter-signed by the respondent returned to me after the booking was done. Based on this



representation, complainant no. 1 made a payment of Rs. 34,00,000/- to the respondent company by RTGS on 01.12.2022 at the registered office of the respondent company at 15th Floor, Two Horizon Center, DLF Phase V, Sector 43, Golf Course Road, Gurugram, Haryana-122002 and booked a 3 BHK+ST flat jointly in the name of complainant no. 1 and Complainant No. 2, i.e. Mrs. Angela Bhasin.

- III. That after the payments, complainant no. 1 was issued two receipts for the payment made by complainant no. 1 and complainant no. 1 was allotted unit no. T1-2002 on the 20th floor of the above-mentioned project. However, in these receipts, rate and price of the unit was not mentioned by the respondent.
- IV. That after a few days of the booking, on 27.03.2023, complainant no. 1 received a draft of 'allotment letter' dated 14.03.2023 through blue dart courier having reference no. 40877679312 from the respondent asking complainant no. 1 to sign the same and return to them for signature of the respondent company. That to utter shock of complainant no. 1, it was found that the price mentioned in said draft allotment letter for a unit having super area 2450 sq. ft. was mentioned as Rs.3,49,86,000/-. This price on calculation, complainant no. 1 found to be @ Rs.14,280/- per sq. ft. for the said flat, which was much more than what was promised to complainant no. 1, i.e. Rs.10,500/- per sq. ft. and there was also no mention of the 20 grams of gold and 'I-phone 14'.
- V. That the complainant no. 1, immediately on receiving the draft allotment letter vide letter dated 31.03.2023 responded to respondent by post and e-mail, requesting for correction of the sale amount in the draft allotment letter @ Rs.10,500/- per sq. ft. from Rs.14,280/- per sq. ft. and for also providing complainant no. 1 with the 20 grams of gold and one I-phone 14 as promised before booking. Complainant no. 1 also



requested respondent to provide him with a copy of the application form, which the respondent had informed, would be returned to complainant no. 1 after booking. Complainant no. 1 never received any reply to the same. As the draft allotment letter dated 14.03.2023 was not according to rate agreed between complainant no. 1 and respondent, same was never signed by complainant no. 1. Thereafter, on 07.04.2023, complainant no. 1 received a demand letter from the respondent, further demanding Rs.70,95,850/- from complainant no. 1. Complainant no. 1 responded to the demand by letter again asking for a correction in the price of booking as represented by the respondent at the time of payment of booking amount, but complainant no. 1 did not receive any appropriate reply to the same again. That vide letter dated 19.05.2023, complainant no. 1 also informed respondent that complainant no. 1 shall make the payments towards the entire sale price after the necessary correction in the draft allotment letter.

- VI. That, on 17.06.2023, the complainant no. 1 also got on call with one representative of the respondent, Mr. Shashank on Mobile No. 8130788418, who after listening to issues of complainant no. 1 promised to get it rectified, but complainant no. 1 never received any further communication from him or any of the representatives of the respondent. Complainant no. 1, on numerous occasions sent letters to the respondent seeking correction of the purchase price demanded from complainant no. 1 and for giving complainant no. 1 the 20 grams of gold and I-phone 14 as promised, which were never replied adequately by the respondent.
- VII. That to utter shock of complainant no. 1, on 18.09.2023, complainant no. 1 received a letter from the respondent informing about the cancellation of above-mentioned booking of the flat and also of the illegal forfeiture

of the entire booking amount paid by complainant no. 1. This forfeiture was illegal as complainant no. 1 never signed the draft allotment letter issued by the complainant no. 1.

- VIII. That the respondent has fraudulently and dishonestly deceived complainant no. 1 by inducing complainant no. 1 to handover money under representation of a false price of sale, i.e. Rs.10,500/- per sq. ft. and with false promises of providing 20 grams of gold and one I-phone 14. That illegal retention of Rs.34,00,000/- paid by complainant no. 1 to the respondent amounts to dishonest misappropriation and criminal breach of trust as respondent after being entrusted with money has dishonestly misappropriated the same without any lawful basis.
- IX. That the cancellation of the booking by the respondent and illegal forfeiture of the amount paid is an illegal act committed by all the respondent and all its officials in furtherance of their common intention. All the respondent has conspired to commit criminal conspiracy, cheating, criminal breach of trust and dishonest misappropriation of Rs. 34,00,000/- against complainant no. 1. Respondent since the beginning knew that they have no intention to give any flat to complainant no. 1 and they only induced complainant no. 1 to hand over money to them by making fraudulent and dishonest representation. That the complainant no. 1 has filed a complaint with the police against the respondent dated 13.04.2024.
- X. That the complainant no. 1 raised the issue pertaining to the mismatch of the sale price as mentioned at time of booking and as mentioned in the draft allotment letter at the earliest. That the complainant no. 1 did not sign on any allotment letter or BBA indicating his agreement with the arbitrarily enhanced sale price. In fact, there did not even exist any contract between the complainant no. 1 and the respondent, based on



which the respondent had any power to retain any amount of the complainant no. 1. The adamancy of the respondent to force the complainant no. 1 to accept the arbitrarily and illegally enhanced sale price is mis founded as it is not based on any enforceable contract. That the respondent by misrepresentation has usurped the hard-earned money of the complainant no. 1 and is bound to return the same with interest @ 18% per annum from the date of payment till realization. In view of the aforementioned facts and circumstances, it is clear that the respondent is misusing their dominant power over the complainant. The complainant has been duped off their hard-earned money invested in the said project. The complainant submits that the respondent has caused deficiency in service and unfair trade practice by failing to refund booking amount of the complainant no. 1 and by unilaterally and illegally amending price of booking of above-mentioned flat.

- XI. That respondent has indulged in unfair and deceptive trade practices as respondent deliberately misused the money of the complainant no. 1 for years which indicates the mala fide and illegal acts of the respondent. That print out of annexures are obtained with compliance of provisions of section 65B of evidence Act. That the computer output containing the information was obtained from the computer during the period over which the computer was used regularly to store or process information for the purposes of activities regularly carried on over that period by complainant having lawful control over the use of the computer. During the said period and throughout the material part of the said period, the computer was operating properly.
- XII. That the license granted to the respondent for residential project namely 'Elan-The Presidential' situated at Sector 106, Gurugram, Haryana, bearing No. RC/REP/HARERA/GGM/626/358/2022/101 of

2022 dated 21.11.2022, valid upto: 30.10.2027 is also likely to be revoked U/s 7 of the Act, 2016 due to unfair, deceptive and fraudulent practices of the respondent as mentioned above. That the respondent company for the purpose of promoting and selling its project has used unfair and deceptive practices, knowing fully well that it had no intention of fulfilling its promises.

- XIII. That this Authority has the territorial jurisdiction to decide the present matter between the parties. The entire cause of action has arisen within territorial jurisdiction of this Authority, all payments have been made within territorial jurisdiction of this Authority, and cancellation of booking of complainant has also been done within territorial jurisdiction of this Authority. This Authority also has exclusive subject matter jurisdiction to decide disputes between buyers and developers.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- Direct the respondent to refund the entire amount of Rs. 34,00,000/- along with interest from the date of actual payments made.

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:
- That the present complaint is not maintainable in law or on facts. The Complainants have no locus standi or cause of action to file the present complaint. That the Complainants are estopped from filing the present complaint by their own acts, conduct and acquiescence.
 - That the complainants have misinterpreted and misconstrued the provisions of the Act, 2016 and the Rules and Regulations made thereunder as well as the terms and conditions of application form, willingly and consciously executed by them.

- iii. That the complainants had approached the respondent expressing an interest in the purchase of a unit in the residential project being developed by the respondent known as "Elan- The Presidential", situated in Sector-106, Gurugram. The complainants had approached the Respondent after making independent enquiries and duly satisfying themselves regarding the viability and suitability of the aforesaid project as per the complainant's needs and requirements as well as the capability of the respondent to undertake the project. The complainants had opted for a possession linked return payment plan in terms of which, the booking amount was to be paid upon application for booking, 30% of the sale consideration value (less booking amount) was payable on execution of the buyer's agreement or within 60 days of allotment, whichever was earlier, 30% of the sale consideration upon completion of the super structure and 30% of the sale consideration was payable upon application for occupancy certificate. Balance 10% of the sale consideration value, 100% IFMS, 100% club membership charges, stamp duty, registration and administrative charges, applicable taxes, interest on delayed payment, and other amounts was payable at the time of offer of possession.
- iv. That an amount of Rs.34,00,000/- was received from the complainants out of total sale consideration value of Rs.3,65,29,500/- for the booked unit.
- v. That the complainants were allotted unit tentatively admeasuring 2450 sq. ft. super area/ 1346.58 sq. ft. carpet area, bearing unit no. T1-2002 on the 20th floor of the project by the respondent, subject, *inter alia*, final determination of the carpet area upon completion of

construction and receipt of the occupation certificate/part occupation certificate. The terms and conditions forming part of the application form were duly understood and accepted by the complainants.

- vi. That the allotment letter dated 14.03.2023 was dispatched to the complainants and the complainants were called upon to sign and return the allotment letter to the respondent within a period of 15 days from the date of its receipt. As per the payment plan, demand notice dated 07.04.2023 for the next installment payable was sent to the complainants.
- vii. That reminders dated 09.06.2023, 28.06.2023, 18.07.2023 and final reminder dated 08.08.2023 were issued to the complainants. However, the complainants failed to make payment as per the applicable payment schedule.
- viii. That the Respondent issued a pre cancellation letter dated 26.08.2023, informing the complainants that that delay payment interest was being accumulated and calling upon the complainants to clear their outstanding dues failing which the allotment in their favour was liable to be cancelled. However, the complainants failed to clear their outstanding dues despite repeated opportunities afforded to them by the respondent.
- ix. That accordingly, the respondent was left with no option but to cancel the allotment in favour of the complainants vide cancellation letter dated 18.09.2023. Consequent to cancellation of allotment, the amount of Rs.34,00,000/- stands forfeited, the earnest money (including GST @ 18%) amounting to Rs.41,05,220/-. The complainants are not left with any right, title or interest in the unit in question.

- x. That as per the terms and conditions forming part of the application form, the respondent is entitled to forfeit the earnest money amounting to 10% of the total sale consideration, as well as interest on delayed payments and applicable taxes. The total forfeitable amount works out to Rs.48,85,412/- and after deducting the payment of Rs.34 lacks made by the complainant, the respondent is entitled to recover an amount of Rs.14,85,412/- from the complainants. As such, the complainants are not entitled to any refund from the respondent, let alone any interest.
 - xi. That the respondent, on its part has duly fulfilled its obligations under the agreement between the parties, as set out in the terms and conditions forming part of the application form duly accepted by the complainants and which are binding upon the complainants with full force and effect. The complainants, on the other hand, are seeking to resile from their contractual obligations on false and frivolous pretexts. It is submitted that the complainants do not have any lawful or legitimate grievance qua the respondent which justifies or necessitates the institution of the present false and frivolous complaint and the same is liable to be dismissed with costs.
6. 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:

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

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

E.I Territorial jurisdiction

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

Section 34-Functions of the Authority:

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

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

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.* "SCC Online SC 1044 decided on 11.11.2021 and followed in *M/s Sana Realtors Private Limited & others V/s 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, is 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 the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainant.

F. Findings on relief sought by the complainants:

- i. Direct the respondent to refund the entire amount of Rs. 34,00,000/- along with interest from the date of actual payments made.
13. The counsel for the complainant's states that, as per discussions between the parties, the price of the flat was agreed to be ₹10,500/- per sq. ft. However, when the complainants received the draft allotment letter on

14.03.2023, the price mentioned was increased to ₹14,280/- per sq. ft. The complainants did not sign the said draft allotment letter. Therefore, the complainants are seeking a refund of the booking amount of ₹34,00,000/- along with interest, and revocation of the registration on the grounds of unfair, deceptive, and fraudulent practices by the respondent.

14. The counsel for the respondent submits that the complainants have paid only ₹34,00,000/- against the sale consideration of ₹3,65,29,500/-, and failed to make the remaining payments. Consequently, after issuing several reminders and a pre-cancellation notice, the respondent terminated the unit on 18.09.2023. It is further submitted that no allotment letter was signed by the complainant, and no Builder Buyer Agreement (BBA) was executed.
15. Upon consideration of the documents on record, the Authority is of the view that the complainants were provisionally allotted Unit No. T1-2002, located on the 20th floor of Tower 1, for a total sale consideration of ₹3,65,29,500/-. Pursuant to the said provisional allotment, the complainants paid an amount of ₹34,00,000/-. However, till date, no builder Buyer's Agreement has been executed. Subsequently, the respondent cancelled the unit on 18.09.2023. In the present complaint, the complainants are seeking refund of the amount paid.
16. As no draft Buyer's Agreement was ever shared by the respondent after receipt of the booking amount, the Authority is of the view that, in the absence of such an agreement, no further payment obligation is legally enforceable upon the complainant. In the absence of a duly executed Builder Buyer Agreement, the complainants cannot be held liable for additional payments based on the draft allotment letter dated 14.03.2023.

17. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

"In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project."

18. In view of the facts and reasons stated above, the Authority is of the view that the respondent was not within its rights to retain the amount received from the complainant, in the absence of a duly executed Builder Buyer Agreement. Accordingly, the complainants are entitled to a refund of the entire booking amount of ₹34,00,000/-. Therefore, the Authority hereby directs the respondent/promoter to refund the sum of ₹34,00,000/-, paid by the complainant towards the booking amount, as per the terms of the application form issued by the respondent, within 90 days from the date of this order.

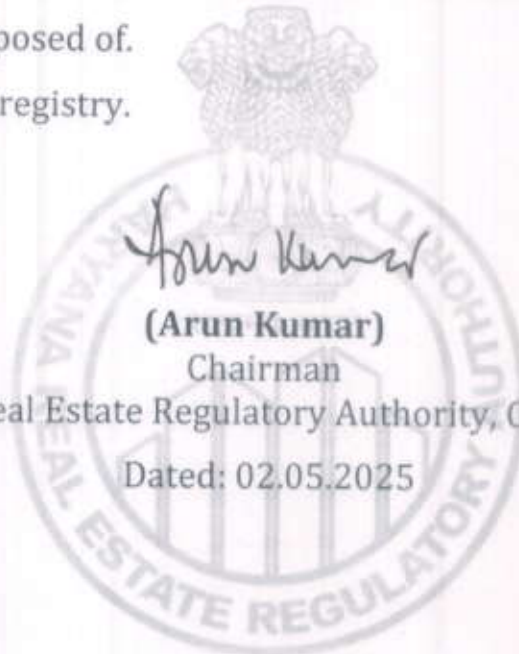
G. Directions of the Authority:

19. 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 respondent/promoter is directed to refund the paid-up amount of Rs. 34,00,000/- received by it from the complainants within 90 days from the date of this order. Failing which that amount would be payable with interest @ 11.10% p.a. till the date of actual realization.

20. Complaint stands disposed of.

21. Files be consigned to registry.



Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.05.2025

HARERA
GURUGRAM