



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

Complaint no. : 7414 of 2022  
Date of filling: 05.12.2022  
Date of decision : 16.05.2025

**Ankur Yadav**

**Address:** - Ho. No. 607/20, Basai Road,  
Pataudi Chowk, Opposite Nirankari Bhawan,  
Veer Nagar, Gurugram, Haryana-122001.

**Complainant**

**Versus**

**M/S Elan Limited**

1100/25, Block L-1, Sangam Vihar, New Delhi-110062  
15<sup>th</sup> Floor, Two Horizon Centre, DLF Phase-5,  
Sector 43, Golf Course Road, Gurugram-122002

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Mukesh Aggarwal  
Shri Ashwarya Hooda

**Counsel for Complainant**  
**Counsel for Respondent**

**ORDER**

1. The present complaint dated 05.12.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under 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	MERCADO, Sector-80, Gurugram, Haryana.
2.	Nature of project	Commercial
	DTCP License	82 of 2009 dated 08.12.2009 valid upto 07.12.2019
3.	Name of licensee	RP Estates Pvt. Ltd.
4.	Allotment Letter	22.07.2016 (as per page 144 of reply)
5.	Unit no.	FS-10 at Food Court (As per page 35 of complaint)
6.	Unit admeasuring	375 sq. ft. (super area) (As per page 35 of complaint)
7.	Buyers' agreement dated	23.08.2016 (page 32 of complaint)
8.	Possession clause	<b>11(a) Schedule for possession of the said unit.</b> <i>The Developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the Said Building/Said Unit within a period of <b>48 months with an extensions of further twelve (12) months from the date of this agreement</b> unless there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the Developer or Force Majeure conditions including but not limited</i>

		<p><i>to reasons mentioned in clause 11 (b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Consideration and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Developer then notwithstanding rights available to the Developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee (s) in remitting payment(s) to the Developer.</i></p>
9.	Due date of delivery of possession	<p>23.08.2021 (calculated from the date of buyer's agreement)</p>
10.	Total sale consideration	<p>Rs.35,38,818/- (as per applicant file on page 150 of reply)</p>
11.	Total amount paid by the complainant	<p>Rs. 35,38,819/- (as per applicant file on page 150 of reply)</p>
12.	Occupation certificate	<p>17.10.2022 (page 211 of reply)</p>
13.	Offer of possession for fit-out	<p>07.03.2020 (page 190 of reply)</p>
14.	Settlement deed dated	<p>17.07.2020</p> <p><b>Note:- Clause 10.</b> <i>That it has been further agreed between the parties that with the execution of this deed, all the disputes, i.e. claims, dispute, demands, concerns and objections of the first party in respect of the said unit and the project and/or against the company and person claiming through/under the company, stand fully and finally settled to the satisfaction of the first party and the first party further undertakes not to raise any future claims,</i></p>



		<p>dispute, demand, object or concern against the company or any of its affiliate or its subsidiary.</p> <p><b>Clause 16.</b> That the parties mutually undertake that this settlement deed has been conclude without coercion, undue influence, threat etc. and is full and final and binding upon the parties. That all claims, conflicts shall be finally considered as settled for once and all.</p>
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## B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
  - i. That, based upon representation and assurances of representative of the respondent, the complainant made a provisional booking on 14.07.2016 in the said project by making a payment of Rs.13,87,500/-, vide various cheques, wherein the respondent vide letter dated 24.07.2016 agreed and undertook to make a fixed payment of Rs.20,728/- subject to Tax deduction at source, to the complainant as Assured Return till Possession. That vide the same letter, the respondent allotted a Unit bearing No. FS-10 on Food Court having a Super Area of "375" sq. ft. (hereinafter referred to "property in question") at the rate of Rs.7,400/- per Sq. Ft. (Basic Sale Price) which shall include PLC.
  - ii. That, thereafter executed a Builder Buyer Agreement ("BBA") dated 23.08.2016 was executed by the respondent in favour of the claimant, showing a total Sale Consideration of Rs. 32,06,625/-, based on Special Fixed Return Plan, wherein the respondent as per Clause 11(a) agreed to handover the physical possession of the allotted unit within a period of 48 months with an extension of further 12 months from the date of the agreement i.e., upto 22.08.2021.

- iii. That, it is pertinent to mention here that as per assurances of the respondent that, if the complainant makes more payment to it, then the complainant would receive more assured returns. Accordingly, till 28.09.2018, the complainant paid a total sum of Rs.34,16,775/-.
- iv. That, after receipt of the said sum, the respondent as per its assurance and undertakings, enhanced the assured returns to the tune of Rs.36,684/- subject to TDS and the respondent kept paying the same till December 2019 and last payment of such assured return was credited into the account of the complainant on 13.01.2020.
- v. That, to the utter shock and dismay of the complainant, the respondent sent a letter dated 07.03.2020 raising a demand on offer of possession for Fit-Out informing that the area of the said Unit has been increased from 375 Sq. Ft. to 423 Sq. Ft. Accordingly, the respondent raised an additional demand for the sum of Rs.6,34,601/- after revising the BSP, PLC, EDC/IDC, IFMS charges of the said Unit, even after paying more than 100% of the total sale consideration from the complainant. However, the complainant made a further payment of Rs. 4,70,000/- to the respondent in good faith, receipt of which was issued by the respondent on 26.05.2020.
- vi. That, the complainant invested his hard earned money in the above said unit based on the assurances and representations made by the respondent, at the time of allotment. The complainant felt cheated by the respondent for unilaterally revising the super area and changing the Lay out plan without any prior intimation to the complainant, hence, he issued a legal notice dated 05.05.2020 to the respondent, seeking refund of the amount paid by him or, allot another Commercial Unit identical to old Commercial Unit on preferential location within 15 days of receipt of the said Legal Notice.



- vii. That, resultantly a No Dues Certificate dated 16.07.2020 was issued by the respondent in favour of the complainant and a Settlement Deed dated 17.07.2020 was signed between the parties hereto. The Settlement Deed was executed between the parties based on various terms and conditions. The relevant clauses are as follows:
- Company would waive off the interest on delayed payment for Rs. 18,430/-;
  - Company would allow discount of Rs. 78,255/- against PLC;
  - Company would credit Rs.50,513/- on account of input tax;
  - All dues against allotted unit stands settled;
  - Company would handover the possession in terms of letter dated 07.03.2020.
- viii. Thus, in this manner, the complainant paid a total sum of Rs.38,86,775/- to the respondent for the property in question. That after executing the Settlement Deed, the complainant contacted the respondent on multiple occasion to provide the information on the Occupation Certificate and for handing over of the said unit, however, the respondent turned a deaf ear to the just and lawful demand raised by the complainant. The respondent intentionally and deliberately evaded any information to the complainant.
- ix. That in view of the abovesaid facts and circumstances, the respondent has miserably and deliberately failed to honour the terms and conditions of the Settlement Deed executed between the parties and hence, the same was revoked by the complainant vide legal notice dated 18.01.2021, which was duly served upon the respondent and the respondent failed to respond the same.

- x. That in the garb of communication dated 15.01.2020 that the respondent would handover the possession of the property in question, the respondent stopped monthly Assured Return, which the respondent promised to pay to the complainant continuously, but even till date in terms of the communication dated 15.01.2020, the respondent failed to handover the possession of the property in question, which ex-facie shows that the said communication was a fake attempt of the respondent to escape from his duties and obligation. Even thereafter, it was informed that the area of the property in question was increased to 423 Sq.ft., but even after increased payment, the respondent again failed to handover the possession of the property in question, as well as, Assured Return.
- xi. That, later on, in the month of September, 2022, the complainant received a Thank You Letter from the respondent, in which it admitted that till date it not received any Occupancy Certificate from the concerned statutory authority. That, now the complainant in the first week of November 2022, again received a letter dated 18.10.2022 from the respondent that it now received the occupation certificate from the Director Town and Country Planning, Haryana, Chandigarh on 17.10.2022 and it will initiate process of handing over of possession and registration, but till date, no such communication for the same has been received by the complainant. The letter dated 18.10.2022 itself shows that the communication dated 05.01.2020 of the respondent for informing the complainant that it received the occupation certificate is ex-facie fake.
- xii. That from the act and conduct of the respondent, it is established that the respondent was having malafide intention from the very beginning and the respondent has defrauded and cheat the complainant by





exploiting payments. The respondent intentionally and deliberately induced the complainant to accept the false and frivolous offers without having intention to fulfil the same, as on one hand the respondent failed to handover the possession of the property in question and one other hand, stopped payment of the Assured Return, which the respondent was paying as per the terms of purchase of the property in question, thus, the respondent violated the provisions of the RERA Act, the Rules and Regulations framed thereunder.

- xiii. That, thus, the complainant is entitled for a sum of Rs.36,684/- per month from January 2020 till May 2020 [which comes to Rs.1,83,420/- as well as a sum of Rs.41,783/- per month from May 2020 till the date of handing over of physical possession of the unit, being the amount of Assured Return @ 12% per annum, as promised by the respondent at the time of purchase of and at the time of execution of the Builder Buyer Agreement.
- xiv. However, as on 31.10.2022, amount of Assured Return from May 2020 till October 2022, comes to Rs.12,11,707/- (Rupees Twelve Lakh Eleven Thousand Seven Hundred Seven only) and the complainant is also entitled for Rs.41,783/- per month w.e.f. November 2022 till the date of handing over of the possession.
- xv. As the respondent failed to perform its part of obligation and pay the amount of Assured Return as per promise, the respondent is liable to and the complainant is entitled to interest @ 18% per annum on the above noted amounts from the January 2020 till actual final realisation of the above noted amount.
- xvi. That apart from the above noted amount, the respondent is also liable to pay compensation on account of inconvenience, mental harassment,



injury, financial difficulties, financial loss, deficiency of services, unfair trade practice, legal cost, etc

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

4. The complainant has sought following relief(s).
  - i. Direct the respondent to pay a sum of Rs.13,95,127/- being the amount of Assured Return from January 2020 till 31.10.2022;
  - ii. The respondent be directed to pay the above noted amount of Rs.13,95,127/- along with interest @ 18% per annum for every month delay in payment of Assured Return.
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 present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Authority under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) and the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules"). The present complaint is liable to be dismissed on this ground alone. Even otherwise, the complaint is not maintainable in law and merits dismissal.
  - ii. All averments, claims, allegations and contentions raised in the complaint of the Complainant are denied as false and incorrect unless specifically admitted to be true by the Respondent. The contents of the

complaint that are not being specifically admitted may be deemed to have been denied and traversed.

- iii. That the Complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of booking, as shall be evident from the submissions made in the following paras of the present reply. The Respondent craves leave of this Hon'ble Authority to refer to and rely upon the terms and conditions set out in the application form as well as the terms and conditions for payment of fixed amount, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the Respondent as well as the Complainant thereunder.
- iv. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- v. That the Complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. The Complainant is specifically estopped from filing the present complaint on account of the Settlement Agreement dated 17.07.2020 executed by the parties whereunder the Complainant has agreed and undertaken that all his claims and disputes pertaining to the unit/project stand resolved and whereby the Complainant has



undertaken not to institute any proceedings against the Respondent in respect thereto. The Complainant has duly enjoyed the benefits under the Settlement Agreement and cannot be permitted to resile from the same.

- vi.** That this Authority does not have the jurisdiction to hear and decide complaints for grant of compensation and the same can only be instituted before the Adjudicating Officer. Moreover, transactions pertaining to payment of assured returns are not covered under RERA and hence beyond the jurisdiction of the Authority. The complaint is liable to be dismissed on this ground as well.
- vii.** That the Complainant has failed to disclose the complete factual background of the case and the same are detailed as under. That the project in question, "Elan Mercado", located in Sector 80 Gurugram, has been developed by the Respondent over land admeasuring 23 Kanals 18 Marlas or 2.9875 Acres situated in Village Naurangpur, Sector 80, Gurugram, (hereinafter, referred to as the land/the said land) owned by M/s R P Estates Pvt. Ltd. The said land became subject matter of acquisition proceedings in 2004, which ultimately elapsed in August 2007. M/s R P Estates Pvt Ltd. applied for and was granted License No. 82 of 2009 dated 08.12.2009 in respect of the said land for the development of a Commercial Colony under Haryana Development and Regulation of Urban Areas Act 1975, by the competent authority. The land owner, R P Estates Pvt Ltd entered into a agreement with the Respondent in May 2013, in terms of which the Respondent is competent to develop, construct and sell units in the said project.
- viii.** That it is pertinent to mention herein that M/s R P Estates Pvt. Ltd. was and remained the owner in possession of the said land:
- prior to the Section 4 Notification dated 27.08.2004;



- during the pendency of the acquisition proceedings i.e. 27.08.2004 to 24.08.2007;
  - at the time when acquisition proceedings stood elapsed on 26.08.2007; and
  - thereafter even on 29.01.2010 when the decision was taken by the State Government in Industries and Commerce Department not to start any acquisition proceedings afresh and to close the acquisition proceedings.
- ix. That vide its judgment in the matter of **Rameshwar and others Vs. State of Haryana and others, (Civil Appeal 8788 / 2015 reported as 2018 (6) Supreme Court Cases, 215)**, the Hon'ble Supreme Court was pleased to hold that the decision of the State Government dated 24.08.2007 to drop the acquisition proceedings and the subsequent decision dated 29.01.2010 of the Industries and Commerce Department to close the acquisition proceeding as well as the decision to entertain applications for grant of licenses from those who had bought the land after initiation of the acquisition proceedings, to be fraudulent.
- x. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. Subsequently the Respondent developed the land in pursuance to the license granted by the Competent Authority. As per direction b) of para 39 of the aforementioned directions, the State extended benefit to the extent of 268 Acres of land (which includes the said land) by declaring the same to be outside the deemed award. The said land was rightly kept outside the deemed award in pursuance to directions passed by the Hon'ble Supreme Court. It is pertinent to mention herein that neither M/s R P Estates Private Ltd nor the Respondent herein were



party to the proceedings before the Hon'ble Supreme Court when the said order was passed.

- xi. That thereafter, vide order dated 13.10.2020, while dealing with an application no. 93822/ 2020 filed on behalf of the State of Haryana for seeking clarification whether the lands in three cases pertaining to Paradise Systems Pvt. Ltd., Frontier Homes Developers Pvt. Ltd. and Karma Lakeland Ltd. stand covered and form part of the deemed Award or not, the Hon'ble Court passed the following orders:

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

- xii. That it is pertinent to mention herein that the said land is also covered in 268 acres which fall outside the deemed Award as is therefore free from acquisition. Though the said land stands covered as per direction given in para b) of 39 passed by the Hon'ble Supreme Court in its order dated 12.03.2018, in view of the aforesaid order dated 13.10.2020 passed by the Hon'ble Supreme Court, by way of abundant caution, the Respondent herein as well as M/s R P Estates Private Limited had moved an application before the Hon'ble Supreme Court seeking implement in the matter.
- xiii. That the Hon'ble Supreme Court vide its Order dated 21.07.2022 in Paragraph 46 of the said order held that the lands owned by M/s R.P. Estates Pvt. Ltd. should be excluded from the deemed award. The

Hon'ble Supreme Court further affirmed that the project was completed on 14.01.2020.

- xiv. Pursuant to the said Order passed by the Hon'ble Supreme Court the Respondent approached the office of the Town and Country Planning Department, Haryana for grant of Occupation Certificate which was subsequently granted on 17.10.2022 i.e. only within 3 months of passing of the said Order by the Hon'ble Supreme Court which clearly indicates that the construction of the project was complete way back in January, 2020 and Town and Country Planning Department, Haryana had no reasons to further delay the grant of Occupation Certificate.
- xv. That in the facts and circumstances, it is evident that delay in grant of Occupation Certificate, despite timely completion of construction of the Complex was beyond the power and control of the Respondent. The Respondent has at all times been ready and willing to offer possession of the Unit in a timely manner. There is no default or lapse in so far as the Respondent is concerned.
- xvi. That coming to the facts on the particular case, it is submitted that sometime in July 2016, the Complainant had independently approached the Respondent through Channel Partner - Home Trust whereby the Complainant had expressed his interest to book a commercial unit in the commercial complex known as "**Elan Mercado**" being developed by the Respondent in Sector-80, Gurugram, Haryana ("**Project**").
- xvii. That making detailed enquiries and after independently satisfying himself with regard to all aspects of the project , including but not limited to the entitlement and capability of the Respondent to develop the project, and after duly understanding and accepting the applicable terms and conditions governing the allotment and sale of units in the commercial complex in the Project, the Complainant approached the





Respondent for allotment of a unit in the Project and had opted for a Special Fixed Return Payment Plan. Copy of the application form executed by the Complainant after duly understanding and accepting the terms and conditions of allotment. Allotment letter dated 22.07.2016 issued by the Respondent in favour of the Complainant allotting unit no FS-10 in the said project admeasuring 375 sq ft approx., located on the 3<sup>rd</sup> floor of the project.

- xviii. That the letter dated 24<sup>th</sup> July 2016 setting out the terms and conditions for payment of fixed amount of Rs 20,728/- per month subject to tax deduction at source, and duly accepted by the Complainant. It is submitted that in accordance with paras 1 and 4 of the said letter, the Respondent had agreed to pay to the Complainant fixed amount of Rs 20,728/- per month, subject to tax deduction at source, till the issuance of offer of possession by the Respondent. It was further clarified that offer of possession shall not be dependent upon grant of completion certificate and occupation certificate and that after issuance of offer of possession, the Complainant shall not be entitled for payment of any fixed amount. The terms and conditions of payment of fixed amount were duly accepted by the Complainant.
- xix. That in accordance with the agreement between the parties, the Respondent duly paid the fixed amount amounting to Rs. 10,65,757/- to the Complainant for a period of 42 months i.e. with effect from July 2016 till January 2020.
- xx. That the Buyer's Agreement containing the detailed terms and conditions of allotment was willingly and consciously executed by the Complainant without raising any objections. That after completing construction of the project, the Respondent applied on 14.01.2020 to the competent authority for issuance of the Occupation Certificate with



respect to the project. Vide letter dated 15.01.2020 the Complainant was informed that the application for the Occupation certificate in respect of the project had been submitted to the competent authority on 14.01.2020. The Complainant was further informed that with effect from 14.01.2020, the Complainant would not be entitled to payment of fixed amount as per the agreed terms and conditions. The Complainant was further informed that the final statement of account would be sent by the Respondent shortly to initiate the hand over process.

- xxi. That vide letter dated 07.03.2020 the Respondent, offered possession of the unit to the Complainant for fit-outs and settlement of dues. The Complainant was informed that there was an increase in the super area of the Unit allotted, from 375 sq ft to 423 sq ft. Accordingly, there was a corresponding increase in the charges payable by the Complainant. It is pertinent to mention that Respondent has offered the possession of the Unit in the project for fit outs at their end so that as and when the Occupation Certificate is issued by the Town and Country Planning Department, Haryana, the commercial operations from the units can be commenced without there being any loss of time, therefore, keeping in view the interest of all the allottees in mind the Respondent issued offer of possession for fit outs to the Allottees in the Complex including the Complainant .
- xxii. That since the Complainant did not come forward to take possession, reminder dated 14.05.2020 was issued to the Complainant whereby the Complainant was called upon to pay outstanding amount of Rs 6,53,222/- and interest amounting to Rs 18,621/- as per the details given in the said letter. The Complainant made part payment of Rs 4,70,000/- the receipt of which was duly acknowledged by the Respondent vide receipt dated 26.05.2020.





xxiii. That the Complainant sent legal notice dated 15.05.2020 to the Respondent whereby the Complainant raised certain grievances against the Respondent. Thereafter, both the parties entered into a Settlement Agreement dated 17.07.2020. The terms of the Settlement Agreement were as under:

- a) Respondent provided a waiver of Rs.18,430/- to the Complainant for interest on delay payment made by the Complainant against the demand for offer of possession.
- b) Further, the Respondent provided a discount of Rs.78,255/- towards Preferential Location Charges (PLC) which were payable by the Complainant.
- c) The Respondent also agreed to provide credit on account of input tax credit for the sum of Rs.50,513/- to the Complainant.

xvii. The Settlement Deed was executed between the parties based on various terms and conditions. The relevant clauses are as follows:

- f. Company would waive off the interest on delayed payment for Rs. 18,430/-;
- g. Company would allow discount of Rs. 78,255/- against PLC;
- h. Company would credit Rs.50,513/- on account of input tax;
- i. All dues against allotted unit stands settled;
- j. Company would hand over the possession in terms of letter dated 07.03.2020.

xviii. In view of the settlement arrived at between the parties, the Complainant withdrew the legal notice dated 15.05.2020 vide letter dated 16.07.2020, a copy of which is annexed hereto as AnnexureR14. It is pertinent to mention that at the time of execution of Settlement



Deed dated 17.07.2020, the Respondent had already stopped payment of the fixed amount for over 6 months. The Complainant at the time of execution of Settlement Deed dated 17.07.2020 was aware that no further amount towards fixed amount is liable to be paid by the Respondent to the Complainant. The Complainant did not raise any objection with respect to fixed amount as the Complainant was well aware that no further amount is liable to be paid towards fixed amount by the Respondent. The Settlement Agreement clearly indicates that certain waivers were given to the Complainant by the Respondent. The Complainant at the time of signing of the Settlement Agreement was made aware that no further amount towards fixed amount is liable to be paid to him by the Respondent. The grievance with respect to payment of fixed amount raised by the Complainant in the present complaint is not only an after thought but also reflects greed of the Complainant.

- xxiv. That the Project has been registered under the provisions of the RERA Act, 2016. RERA Registration Certificate bearing Memo No. HRERA -137 (b)/2017 /1056 dated 14.09.2017 is annexed hereto as **AnnexureR15**. The registration of the Project is valid till 13.09.2022, however, the same stands extended by 6 months in terms of order dated 26.05.2020 passed by Hon'ble RERA (**AnnexureR16**).
- xxv. That however, the Complainant has failed to take possession of the unit on false and frivolous pretexts and has instead proceeded to file the present frivolous complaint. It is pertinent to mention herein that Clause 11 of the Buyer's Agreement, provides that subject to timely payment by the allottee and subject to delays beyond the control of the Respondent, the Respondent shall offer possession of the unit within 48



months from the date of execution of the Buyer's Agreement, with grace period of 12 months.

**xxvi.** That, as has been submitted in the preceding paras of the preliminary objections, the issuance of the occupation certificate was delayed on account of litigation pending before the Hon'ble Supreme Court and it is only upon issuance of the occupation certificate that the Respondent can hand over possession of the units in the project to the allottees. The Respondent cannot be held liable for delays caused on account of reasons beyond its power and control.

**xxvii.** That in so far as the Respondent is concerned, the Respondent had duly completed construction well within the agreed time lines for delivery of possession and within the period of registration of the project under RERA. The application for issuance of occupation certificate was submitted to the competent authority as far back as on 14.01.2020 and the same was issued on 17.10.2022. There is no default or lapse in so far as the Respondent is concerned. However, the Complainant has failed to take over possession of the said Unit in question for reasons best known to himself.

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.

**E. Jurisdiction of the authority:**

8. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

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

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

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees 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 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



**F Findings on the relief sought by the complainant.**

F.I Direct the respondent to pay a sum of Rs.13,95,127/- being the amount of Assured Return from January 2020 till 31.10.2022;

F.II The respondent be directed to pay the above noted amount of Rs.13,95,127/- along with interest @ 18% per annum for every month delay in payment of Assured Return.

12. That, a Builder Buyer Agreement dated 23.08.2016 was executed by the Respondent in favour of the Complainant, stipulating a total sale consideration of ₹32,06,625/-, under a 'Special Fixed Return Plan'. As per Clause 11(a) of the said BBA, the Respondent undertook to deliver physical possession of the allotted commercial unit within a period of 48 (forty-eight) months from the date of execution of the agreement, with a further grace period of 12 (twelve) months, i.e., by 22.08.2021.
13. That based on the assurances and inducements extended by the Respondent, whereby it was represented that higher payments would entitle the Complainant to enhanced assured returns, the Complainant, acting in good faith, paid a total sum of ₹34,16,775/- to the Respondent up to 28.09.2018, which exceeded the originally agreed consideration.
14. However, to the utter shock and dismay of the Complainant, the Respondent unilaterally revised the super area and altered the original layout plan without any prior intimation, approval, or consent of the Complainant, thereby breaching the terms of the agreement as well as the principles of natural justice. Consequently, the Complainant was constrained to issue a legal notice dated 05.05.2020, calling upon the Respondent to either refund the entire amount paid by the Complainant or to allot an alternate commercial unit, identical to the originally allotted unit, at a preferential location, within 15 days from the receipt of the said notice. That

thereafter, a Settlement Deed was executed between the parties, incorporating certain terms and concessions. The relevant terms of the said Settlement Deed are reproduced hereinbelow for ready reference:

- **Clause (1)** The Company agreed to waive interest on delayed payment amounting to ₹18,430/-;
- **Clause (2)** The Company extended a discount of ₹78,255/- towards Preferential Location Charges (PLC);
- **Clause (3)** The Company agreed to credit ₹50,513/- to the Complainant on account of Input Tax Credit (ITC);
- **Clause (4)** It was mutually agreed that all dues against the allotted unit stood fully and finally settled;
- **Clause (4)** The Company undertook to hand over possession of the unit in accordance with its letter dated 07.03.2020.

15. That as the Respondent has failed to discharge its contractual obligations, including but not limited to the payment of the Assured Returns as promised under the Special Fixed Return Plan, the Respondent is liable to compensate the Complainant. Accordingly, the Complainant is entitled to interest at the rate of 18% per annum on the aforementioned amounts, calculated from January 2020 until the actual and final realization of the said sums.
16. That the counsel for the respondent states that a Settlement Deed dated 17.07.2020 was voluntarily executed between the parties, incorporating various mutually agreed terms and conditions.
17. That in furtherance of the said amicable settlement, the Complainant unconditionally withdrew his legal notice dated 15.05.2020 vide communication dated 16.07.2020.
18. It is significant to note that, as on the date of execution of the Settlement Deed, the Complainant was fully aware that the Respondent had already discontinued payment of the assured return/fixed amount for a period



exceeding six months. Notwithstanding the same, the Complainant voluntarily entered into the Settlement Deed, with full knowledge and without raising any protest or objection in relation thereto. That the Settlement Deed clearly records certain waivers and concessions granted by the Respondent in favour of the Complainant. At the time of execution of the said Deed, the Complainant was duly informed and understood that no further amount towards assured returns/fixed amount was payable or liable to be paid by the Respondent.

19. Therefore, the allegations raised by the Complainant in the present complaint, in relation to non-payment of assured returns, are clearly an afterthought, lacking bona fides and devoid of any merit. The same appear to be motivated by malice and greed, and are liable to be rejected outright. As per Clause 10 and Clause 16 of the Settlement Agreement, all disputes, claims, demands, and objections between the parties stand fully and finally settled. For ready reference, Clauses 10 and 16 are reproduced below:

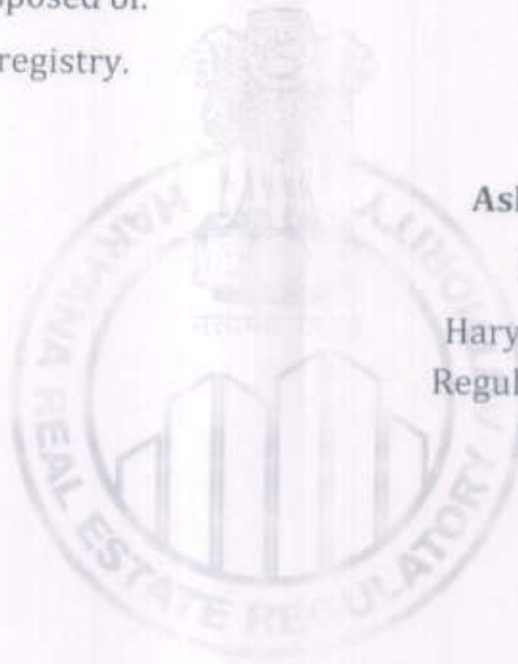
**Clause 10.** *That it has been further agreed between the parties that with the execution of this deed, all the disputes, i.e. claims, dispute, demands, concerns and objections of the first party in respect of the said unit and the project and/or against the company and person claiming through/under the company, stand fully and finally settled to the satisfaction of the first party and the first party further undertakes not to raise any future claims, dispute, demand, object or concern against the company or any of its affiliate or its subsidiary.*

**Clause 16.** *That the parties mutually undertake that this settlement deed has been conclude without coercion, undue influence, threat etc. and is full and final and binding upon the parties. That all claims, conflicts shall be finally considered as settled for once and all.*

20. Upon consideration of the submissions and documents on record, this Authority finds that the Settlement Deed dated 17.07.2020 was executed voluntarily by both parties and reflects a mutual and binding resolution of their disputes.

21. In the absence of any specific evidence or pleading alleging fraud, misrepresentation, coercion, or undue influence in the execution of the said settlement, this Authority cannot disregard the binding nature of the Settlement Deed.
22. In view of the above, the complaint is hereby dismissed. However, the Complainant is at liberty to seek appropriate remedies before a competent Authority/court.
23. Complaint stands disposed of.
24. File be consigned to registry.

Dated: 16.05.2025



  
**Ashok Sangwan**  
(Member)

Haryana Real Estate  
Regulatory Authority,  
Gurugram

**HARERA**  
GURUGRAM