

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM****Date of Order:****14.08.2025**

NAME OF THE BUILDER		ELAN LIMITED	
PROJECT NAME		"ELAN EPIC"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5960/2022	Rajasekar Mahalingam, Aruna Rajassekar and Muhilvanna Rajasekar V/S Elan Limited	Sh. Gaurav Bhardwaj Advocate for complainant Sh. Ishaan Dang Advocate for respondent
2.	CR/5962/2022	Rajasekar Mahalingam, Aruna Rajassekar and Muhilvanna Rajasekar V/S Elan Limited	Sh. Gaurav Bhardwaj Advocate for complainant Sh. Ishaan Dang Advocate for respondent

**CORAM:**

Shri Vijay Kumar Goyal

**Member****ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority 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.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Elan Epic" (Commercial Colony) being developed by the same

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respondent/promoter i.e., Elan Limited. The terms and conditions of the application for the provisional allotment, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking refund of the paid-up amount along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, amount paid by the respondent as delay penalty and relief sought are given in a table below:

Project Name and Location		Elan Limited at "Elan Epic" situated in Sector-70, Gurugram	
Occupation Certificate: 31.10.2023			
Complaint No., Case Title	CR/5960/2022 Rajasekar Mahalingam, Aruna Rajassekar and Muhilvanna Rajasekar V/S Elan Limited	CR/5962/2022 Rajasekar Mahalingam, Aruna Rajassekar and Muhilvanna Rajasekar V/S Elan Limited	
Reply status	14.09.2023	14.09.2023	
Unit no.	GF-26A, Ground floor [As per page no. 54 of the reply]	GF-26, Ground floor [As per page no. 54 of the reply]	
Area admeasuring	1099 sq. ft. (super area) [As per page no. 54 of the reply]	1099 sq. ft. (super area) [As per page no. 54 of the reply]	
Date of execution of agreement	Annexed but not executed	Annexed but not executed	
Due date of handing over of possession	Not specified	Not specified	
Date of cancellation	06.08.2022 [As per page no. 68 of the reply]	06.08.2022 [As per page no. 68 of the reply]	
Total Consideration / Total Amount paid by the complainant	TSC: Rs.2,43,30,725/- (As per allotment letter on page no. 54 of the reply) AP: Rs.76,82,524/- (As per cancellation letter	TSC: Rs.2,32,31,725/- (As per allotment letter on page no. 54 of the reply) AP: Rs.75,82,523/- (As per cancellation letter on	



	on page no. 68 of the reply)	page no. 68 of the reply)
<b>Amount paid by the respondent as delay penalty</b>	<b>Rs.9,79,209/-</b> (As per page no. 2 of the written arguments filed by the respondent)	<b>Rs.9,67,131/-</b> (As per page no. 2 of the written arguments filed by the respondent)
<b>The complainants in the above complaint(s) has sought the following reliefs:</b> 1. Direct the respondent to refund the entire amount of Rs.76,82,524/- paid by the complainants along with interest at the prescribed rate of interest. 2. Direct the respondent to pay the litigation fees incurred by the complainants on account of this case of Rs.50,000/-.		
<b>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</b> <b>Abbreviation Full form</b> TSC Total Sale consideration AP Amount paid by the allottee(s)		

- The aforesaid complaints were filed by the complainant against the promoter on account of non-execution of BBA despite paying more than 10% sale consideration and refund request was made prior to obtaining of occupation certificate, seeking refund of the paid-up amount.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
- The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case *CR/5960/2022, case titled as Rajasekar Mahalingam, Aruna Rajassekar and Muhilvanna Rajasekar V/S Elan* are being taken into consideration for determining the rights of the allottee(s) qua refund of the amount paid.

#### A. Unit and project related details



7. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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 and location	Elan Epic, Sector 70, Gurugram, Haryana
2.	Project area	3.525 acres
3.	Project type	Commercial Colony
4.	DTCP License	148 of 2008 dated 02.08.2008
	valid up to	01.08.2020 (Transferred from Koshi Builders Pvt. Ltd. and Change in Developer from Unitech Ltd. on 23/10/2018)
	Licensee name	M/s Elan Ltd.
5.	RERA Registered/ not registered	Registered vide no. 30 of 2018 dated 06.12.2018 valid up to 31.12.2023
6.	Unit no.	GF-26A, Ground floor (As per page no. 54 of the reply)
7.	Unit area admeasuring	1099 sq. ft. (super area) (As per page no. 54 of the reply)
8.	Date of booking application	22.06.2020 (As per page no. 54 of the reply)
9.	Provisional allotment cum demand letter	27.08.2020 (As per page no. 54 of the reply)
10.	Date of apartment buyer's agreement	Annexed but not executed
11.	Possession clause	<b>7. POSSESSION OF THE UNIT:</b>  <i>7.1(a) Schedule for possession of the Unit:- The Promoter/Developer proposes to offer possession of the Unit along with Parking Space(s), if applicable, to the Buyer and Common Areas and</i>



		<p><i>Facilities to the Association of Buyers or the Competent Authority, as the case may be, within a period of 48 (forty eight) months from the date of this Agreement with a grace period of a maximum of further twelve months, unless there is delay or failure due to reasons of Force Majeure in which case, the Promoter/ Developer shall be entitled to necessary extension of time for delivery of possession. Provided that any Force Majeure condition is not of a nature and magnitude which makes it impossible for the Project to be completed. It is however clarified that the above mentioned timelines are the maximum limits and if the Developer hands over the unit on/before the aforesaid period, the allottee(s) shall take the handover of the unit without any protest or demur and pay all the dues timely.</i></p> <p>(As per page no. 79 of the reply)</p>
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	<p>Rs.2,43,30,725 /-</p> <p>(As per allotment letter on page no. 54 of the reply)</p>
14.	Amount paid by the complainants	<p>Rs.76,82,524/- (32.32% of the BSP)</p> <p>(As per cancellation letter at page no. 68 of the reply)</p>
15.	Demands cum reminders letter	<p>01.06.2021, 20.09.2021, 11.10.2021, 10.11.2021, 13.01.2022, 07.02.2022, 04.03.2022, 04.04.2022</p>
16.	Pre cancellation letter	<p>09.05.2022</p> <p>(As per page no. 65 of the reply)</p>
17.	Reminders for pre cancellation	<p>04.06.2022</p> <p>(As per page no. 66 of the reply)</p>
18.	Cancellation letter	<p>06.08.2022</p> <p>(As per page no. 68 of the reply)</p>
19.	Occupation certificate	<p>31.10.2023</p> <p>No document has been placed on record.</p>

		Hence taken from the DTCP website.
20.	Amount paid by the respondent as delay penalty	Rs.9,79,209/- (As per page no. 2 of the written arguments filed by the respondent)

### B. Facts of the complaint:

8. The complainants have made the following submissions:

- I. That the complainants Mr. Rajasekhar Mahalingam, Mrs. Aruna Rajasekar & Mr. Muhilvanna Rajasekar all R/o E-140, SMJM, Maha Illan, Sector-57, Sushant Lok, Gurgaon, Haryana are respectable and law abiding citizens of India.
- II. That the representatives of the respondent company in 2019, met the complainants, spoke very high of the reputation of the company to deliver the project on time and also handed over a brochure and stated that the respondent has conceived and is in the process of contracting and equipping a commercial complex on the said land spread over multiple levels /floors, which the respondent is proposing to complete in all respects with reference to civil finishes, flooring, electrical power to distribution panels on each level/floor plumbing and ventilators, etc.
- III. That the representatives of the company then handed over a brochure of the company regarding the Elan Limited (herein referred as company) in the 2020 itself and the brochure of the company, looked to be a very well designed brochure of international standards speaking high of the Respondent.
- IV. That the complainants who were caught in the web of false promises of the representatives of the respondent booked a commercial space in project "Elan Epic", on 22.06.2020 w.r.t



unit no. bearing GF26A, Ground Floor Sector 70, Gurugram, Haryana admeasuring super area of 1099 sq. ft. approx. & corresponding carpet area of 526 sq. ft. However, acknowledging the booking complainants have paid an amount of Rs.50,000/- via receipt dated 28.08.2020 through card which was cleared by HDFC Bank.

- V. That the total sale consideration of the unit of the project was give Rs.2,42,30,725/- inclusive of Basic Sale Price and other charges such as IDC, EDC, PLC, Car Parking, Stamp Duty Charges, Registration Fee, Interest Free Maintenance Security, Monthly Maintenance charges, Power Back up Charges, Service Tax & any other government taxes/charges levied.
- VI. That the allotment letter dated 27.08.2020 had one-sided conditions stated subject to payment of Rs.50,32,523/- including applicable GST on or before 26.09.2020, failing which the provisional allotment cum demand letter shall automatically cancelled without any notice/remainder/communication and the aforesaid commercial unit stand cancelled.
- VII. That memorandum of understanding was signed by the complainant(s) dated 01.08.2020 with respect to the provisional booking dated 22.06.2020 with respondent as there was no builder buyer's agreement executed.
- VIII. That the memorandum of understanding explicitly states about Assured Returns that company agrees and undertakes to pay to the applicant down payment discount equivalent to Rs.729/- per sq. ft. in total amount of Rs.8,01,171/- shall

be disbursed in 09 equal monthly installments. The respondent has received 21 cheques from August, 2020 till March, 2022 and the same were duly honored. But the respondent clearly failed to make payment of assured return from April, 2022 till the filing of the present complaint. The complainants approached the respondent several times either to execute the builder buyer's agreement along with the payment of assured return or to refund the entire deposited amount but on the contrary, the respondent kept on ignoring the requests of the complainants.

- IX. That the respondent raised a demand of more than 35% of amount within a period of 60 days from allotment letter as complainants have paid Rs.76,82,524/- for the said unit. The complainants have paid their hard earned money towards the sale consideration of the said unit. However till date no builder buyer's agreement between is executed the respondent and the complainants. The respondent has cheated by inducing the complainant(s) to pay more than 35% of the total consideration amount as they had to struggle big time to manage that wholesome amount for the said unit.
- X. That the complainants had started feeling the brunt of the unprofessional and unethical treatment of the respondent. Further the complainants requested the respondent to cancel the unit and refund the deposited amount as the respondent clearly failed to adhere the rules and regulation as stipulated under the Act of 2016. However, instead of refunding the entire amount to the



complainants, the respondent's representatives started threatening the complainants to forfeit the entire deposited sum in case of non-fulfillment of respondent's demand and further to sell the same unit at higher prices.

- XI. That the complainants sent a mail dated 01.12.2021 for final calculation for exit from the project for which there was no extendable help from respondent. It is pertinent to mention that despite requesting several times to the respondent for settling the account for surrendering the said unit due to non-execution of BBA as per Act of 2016, the conduct and representation of the respondents was always adverse and undesirable.
- XII. That the complainants time and again requested the respondents to execute the builder buyer's agreement as per Act of 2016 and also to raise demand for payment as per payment plan. The complainants also inquired about the occupation certificate of the said project as the conduct of respondents demanding more than 50% of the total sale consideration without executing the builder buyer's agreement is unethical, illegal and bad in eyes of the law. However, the respondent did not pay any heed towards the request(s) of the complainants and kept on demanding the money from the complainants.
- XIII. That the complainants in reply to the demands raised by the respondent showed its inability to fulfill the said demands as the complainants had to arrange the money in order to fulfill demands raised by the respondent. Further the complainant did not expect such a huge demand from



the respondent without having received the occupation certificate. But to the contrary of request(s) from the complainants for withdrawing the demands raised by the respondent, the respondent kept on ignoring the same on one pretext for the other.

- XIV. That the complainants were shocked on receiving a cancellation letter dated 06.08.2022. The complainants have paid more than 35% of the total sale consideration of their hard earned money without execution of builder buyer's agreement.
- XV. That the respondent has played a fraud upon the complainants and cheated them with a false promise to complete the construction over the project site within stipulated period. In spite of this, the respondent has maliciously been issuing demand for payment along with the interest, despite the fact that the payments are made under the special payment plan.
- XVI. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of the units and the provisions allied to it. The modus operandi adopted by the respondent, from the respondent's point of view may be unique and innovative but from the consumers point of view, the strategies used to achieve its objective, invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers, be it either through not implementing the



services/utilities as promised in the brochure or through not delivering the project in time.

- XVII. That it was also noticed from the various judgments of the Hon'ble Authority that the buyer's agreement, which have one-sided terms and conditions, heavily loaded in favor of the builder/respondent are being considered as violation of the Constitution of India and hence are being termed as illegal and unjustified and therefore the conditions are being held not being applicable on the complainants.
- XVIII. That after losing all the hope from the respondent's company and having shattered and scattered dreams of owning a unit and also paying considerable amount and realizing that the respondent is not refunding the amount together with interest to the complainants since the complainants are not interested in purchase of the unit, the complainants decided to approach this Hon'ble Authority for redressal of their grievance.
- XIX. That the present complaint has been filed in order to seek the refund of the unit along with the interest at prescribed rate on already paid money and other relief.

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

9. The complainants have sought following relief(s):
- i. Direct the respondent to refund the entire amount of Rs.76,82,524/- paid by the complainants along with interest at the prescribed rate of interest.
  - ii. Direct the respondent to pay the litigation fees incurred by the complainants on account of this case of Rs.50,000/-.

**D. Reply by the respondent:**

10. The respondent has contested the complaint on the following grounds:

- a. That the complainants had approached the respondent for booking of unit no. G-26A on Ground Floor in project "Elan Epic" situated in Sector-70A, Gurugram and had opted for a special payment plan. The complainants had duly executed and submitted application form dated 22.06.2020 and had accepted and understood the terms and conditions forming part of the application form. The complainants had approached the respondent after conducting extensive and independent investigations with regard to all aspects of the project and proceeded to book the unit after being fully satisfied with all aspects of the project including but not limited to the capability of the respondent to undertake development of the project. The complainants, inter alia, agreed and undertook to execute the buyer's agreement in the standard format of the respondent company as and when called upon to do so. The complainants agreed and acknowledged that the provisional allotment in his favour shall take effect only upon execution of the buyer's agreement.
- b. That vide letter dated 01.08.2020 containing the detailed terms and conditions for payment of down payment discount were issued by the respondent to the complainants. In terms of clause 1 of the said letter, the respondent was liable to pay down payment discount equivalent to Rs.729/- per sq. ft. to the complainants towards fixed return. In terms of the said letter the respondent handed over post-dated cheques up to 30.04.2021 which have been duly encashed by the complainants. The respondent has paid an amount of





Rs.8,01,171/- (inclusive of TDS) as total down payment discount to the complainants till April, 2021. In terms of clause 2 of the said letter, after expiry of 9 months (if the project gets delayed), the respondent shall pay to the complainants delay penalty. The respondent has paid an amount of Rs.9,79,209/- (inclusive of TDS) as delay penalty to the complainants starting from May, 2021 till 31.03.2022.

- c. That under cover of letter dated 26.08.2020, the respondent sent two copies of the builder buyer's agreement for execution to the complainants. The instructions for execution of the buyer's agreement and its subsequent registration were also set out in the said letter. The complainants duly received the buyer's agreement but refrained from executing the same for reasons best known to themselves.
- d. That unit no. GF-26A admeasuring approximately 1099 sq. ft. (super area) located on the Ground Floor of the project with total sale consideration of Rs.2,43,30,725/- was provisionally allotted in favour of the complainants vide provisional allotment letter dated 27.08.2020. The respondent raised demands for payment in accordance with the applicable payment plan. However, the complainants defaulted right from the very beginning.
- e. That the respondent vide letter dated 01.06.2021 raised demand for payment of Rs.29,64,588/- payable on or before 28.08.2021, however the complainants failed to pay the same. Therefore, respondent sent reminder letters dated 20.09.2021 and 11.10.2021 to the complainants requesting for payment of outstanding dues on immediate basis. On non-payment of the outstanding dues by the complainants, the respondent sent reminder letter dated

10.11.2021 to the complainants again requesting for payment of pending dues, however the complainants failed to clear the same. Therefore, the respondent issued final reminder letters dated 13.01.2022, 07.02.2022, 04.03.2022 and 04.04.2022 to the complainants requesting for clearance of pending dues on immediate basis.

- f. That since the complainants ignored the demand letters and reminders sent by the respondent and failed to come forward for clearing their outstanding dues, the respondent was compelled to send a pre-cancellation letter dated 09.05.2022 to the complainants, giving them a last and final opportunity for payment of outstanding dues. The said letter was also ignored by the complainants who failed to clear the dues. Therefore, respondent again sent reminder dated 04.06.2022 to pre-cancellation letter requesting for payment of pending dues.
- g. That in the meanwhile, the complainants had still not executed the buyer's agreement. Accordingly, the respondent sent letter dated 30.07.2022 to the complainants as a reminder to execute the builder buyer's agreement referring to previous reminders sent by the respondent and called upon the complainants once again to execute the builder buyer's agreement and return the signed copies of builder buyer's agreement at the earliest so that process for registration of the same could be commenced. However, as before the complainants failed to execute the same and also failed to clear their outstanding dues.
- h. That under the circumstances, in view of the wilful and continuing defaults by the complainants, the respondent left with no other option but to cancel the allotment of the unit vide cancellation



letter dated 06.08.2022. The complainants were informed that the allotment in their favour was cancelled in terms of clause 7 and 26 of the terms and conditions of the booking application form with forfeiture of earnest money, interest on delayed payments and other amounts of non-refundable nature. The complainants were called upon to submit all original documents so as to enable the respondent to process the refund in favour of the complainants. However, the complainants did not even bother to contact the respondent despite receipt of the letter of cancellation.

- i. That the allotment in favour of the complainants stands cancelled vide cancellation letter dated 06.08.2022 due to persistent and wilful defaults by the complainants in making payment of sale consideration as per the applicable payment plan. Admittedly, the complainants have not made payment of complete sale consideration in respect of the unit in question. Consequently, it is illogical on part of the complainants to allege that the respondent failed to complete construction within the stipulated time.
- j. That the respondent has duly fulfilled its obligations towards the complainants. However, the complainants are in breach of their contractual obligations by their failure to execute the buyer's agreement in the standard format of the respondent company as well as by failing to take possession of the unit after payment of balance amounts payable as per the applicable payment plan despite repeated reminders from the respondent. The allotment in favour of the complainants has been rightly cancelled by the respondent in accordance with the terms and conditions of the application executed by the complainants. There is no default or

lapse in so far as the respondent is concerned. The false and frivolous complaint is liable to be dismissed.

11. 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 submission made by the parties.

**E. Jurisdiction of the authority:**

12. The objection raised by the respondent regarding rejection of complaint on ground of subject matter 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**

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**

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) 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;*

**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.*

13. 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.

**F. Findings on the relief sought by the complainants:**

**F.1 Direct the respondent to refund the entire amount of Rs.76,82,524/- paid by the complainants along with interest at the prescribed rate of interest.**

14. The complainants were allotted a unit in the project of respondent "Elan Epic" in Sector-70, Gurugram for a total sale consideration of Rs.2,43,30,725/-. Though a buyer's agreement is annexed along with the complaint but the same is unexecuted and as per settled law decided by the Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018** observed that *"when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."*

15. In view of the above-mentioned reasoning, the due date of possession is to be calculated from date of provisional allotment letter i.e., 20.08.2020. Therefore, the due date of handing over of the possession of the unit comes out to be 20.08.2023. Even if we consider the annexed buyer's agreement which says the offer of possession of the unit is to be made within a period of 48 months from the date of the agreement

along with a grace period of 12 months. In the absence of buyer's agreement, the date of provisional allotment is to be treated as date of agreement i.e., 20.08.2020, ought to be taken as date for calculating due date of possession. Therefore, due date of possession in terms of possession clause at the uppermost limit could be considered as 20.08.2025.

16. The counsel for the complainants vide proceedings of the day dated 14.07.2025 stated that an email request was sent to the respondent for withdrawal from the project on 01.12.2021, hence, the complainants may be allowed refund of the paid-up amount along with the interest. The counsel for the respondent vide proceedings dated 14.07.2025 mentioned that various reminders for execution of buyer's agreement were sent to the complainants and the unit was cancelled vide cancellation letter dated 06.08.2022 on account of non-payment after issuing various reminder letters followed by a pre-cancellation letter dated 09.05.2022.
17. The complainants have filed the present complaint on 07.09.2022 seeking refund of the paid-up amount along with interest relying on the email request dated 01.12.2021 for refund which was made prior to obtaining of occupation certificate. Now, the question arises before the Authority is that whether the cancellation of the unit of the complainant is valid or not?
18. The Authority has observed that in the email dated 01.12.2021, the complainants have asked for a *"possibility of reasonable mutual settlement by which both the units can be surrendered"*. The complainants have not clearly expressed the intention to withdraw from the project and refund of the paid-up amount. Thus, the said request cannot be considered as a request for refund.



19. The respondent in its reply mentioned that the respondent has applied for the occupation certificate on 25.05.2023 and as per the information available on the website of DTCP, the occupation certificate was received on 31.10.2023. The issuance of occupation certificate by the competent Authority depicts that the construction of the project has been completed wherein the unit of the complainant is situated and all the requisites are fulfilled by the respondent company to obtain the occupation certificate.
20. As per the documents placed on record by the respondent, the Authority has observed that the before cancelling the allotment of the unit of the complainants the respondent has issued various reminders dated 01.06.2021, 20.09.2021, 11.10.2021, 10.11.2021, 13.01.2022, 07.02.2022, 04.03.2022 and 04.04.2022 followed by a pre-cancellation letter dated 09.05.2022 and also a reminder for pre-cancellation letter dated 04.06.2022 and thereafter terminated the unit vide cancellation letter dated 06.08.2022 on account of non-payment of outstanding dues by the complainants. The complainants have paid opted for a special payment plan and as per the opted payment plan the complainants had to pay 40% of the basic sale consideration within 12 months from the date of booking and remaining 60% on the receiving of occupation certificate but till date the complainants have paid Rs.76,82,254/- which amount to 32% of the basic sale consideration of Rs.2,37,65,875/- and 31% of the total sale consideration of Rs.2,43,30,725/-. As the respondent has cancelled the unit after giving ample opportunities to the complainant to pay the outstanding dues by way of demand letters and reminders to the same, thus, the cancellation of the unit stands valid.

21. Though no buyer's agreement was executed but the complainants have filed the present complainant before the due date as detailed out in para 15 has lapsed. As per section 18 of the Act of 2016, the complainant-allottee has right to continue or withdraw from the project but the same has to be expressed in clear terms before offer of possession as held by the Authority in **complaint no. 613 of 2018** titled as "**Mridula Parti and Partha Sarathi De Vs. M/s Microtek Infrastructures Pvt. Ltd.**". In the instant complaint, the complainants never expressed their wish to withdraw from the project unless the unit was cancelled by the respondent on 06.08.2022 which tacitly shows that the complainants intended to continue with the project and the refund has been sought only by way of filing of this complaint on 07.09.2022 i.e., after the cancellation of the unit. Therefore, the respondent is entitled for deduction of earnest money.

22. Now when the complainant approached the Authority to seek refund, it is observed that under clause 8 of the terms and conditions of provisional booking dated 01.08.2020, the respondent-builder is entitled to forfeit the 10% of the total sale consideration. The relevant portion of the clause is reproduced herein below:

*"The applicant is proceeding to enter into this transaction fully conscious of the fact that in the event of commission of default, 10% of the total sale consideration along with brokerage paid, administrative charges, interest on unpaid instalments along with any other amounts of non-refundable nature, including the down payment discount and/or delay penalty amount paid by the company till the date of cancellation and administration charges at the time of cancellation shall be liable to be forfeited. The quantification of the aforesaid amount shall never be challenged by the applicant"*

23. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of **Maula Bux VS. Union of India, (1970) 1 SCR 928** and **Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136**, and wherein it was held that forfeiture of the amount in case of



breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 **Ramesh Malhotra VS. Emaar MGF Land Limited** (decided on 29.06.2020) and **Mr. Saurav Sanyal VS. M/s IREO Private Limited** (decided on 12.04.2022) and followed in CC/2766/2017 in case titled as **Jayant Singhal and Anr. VS. M3M India Limited** decided on 26.07.2022, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and this Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

24. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on surrender by the complainant-allottee or cancellation by the builder but that was not done. So, the respondent is directed to refund the amount received from

the complainant i.e., Rs.76,82,524/- after deducting 10% of the basic sale consideration along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 06.08.2022 till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid. The amount of Rs.9,79,209/- already paid on account of delay penalty shall be adjusted.

**F.II Direct the respondent to pay the litigation fees incurred by the complainants on account of this case of Rs.50,000/-.**

25. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**G. Directions of the Authority:**

26. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:





- i. The respondent/promoter is directed to refund the amount i.e., **Rs.76,82,524/-** received by him from the complainants after deduction of 10% of basic sale consideration of Rs.2,37,65,875/- as earnest money along with interest at the rate of 10.85% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 06.08.2022 till the actual realization of the amount after adjusting an amount of Rs.9,79,209/- already paid on account of delay penalty.
  - ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
  - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
28. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
29. Files be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2025