

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

Complaint no. : 2745 of 2023  
Date of decision : 03.09.2025

1. Anuj Srivastava
2. Gunjan Anand

**Both R/o:** -Flat no. 903, Mapsko Casa Bella,  
Sector-82, Shikohpur, Gurugram.

**Complainants**

Versus

M/s Elan Buildcon Pvt. Ltd.

**Office at:** 3<sup>rd</sup> floor, Golf View Corporate Tower,  
Golf Course Road, Sector-42, Gurugram,  
Haryana.

**Respondent**

**CORAM:**

Ashok Sangwan

**Member**

**APPEARANCE:**

Gulab Singh Jarodia  
Ishan Dang

Complainants  
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 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 complainants, 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                    | "Miracle", Sector-84, Village-Hayatpur, Gurgaon, Haryana.                                 |
| 2.      | Nature of the project                  | Commercial  |
| 3.      | Area of project                        | 5.91875 acres   |
| 4.      | DTCP license                           | License no. 34 of 2014<br>Dated-12.06.2014  |
| 5.      | RERA Registered                        | Registered<br>Vide registration no. 190 of 2017<br>Dated:- 14.09.2017                     |
| 6.      | Allotment letter                       | 13.10.2017<br>(As on page no. 41 of complaint)  |
| 7.      | Unit no.                               | LG-KS-16, Type-Retail/Commercial, Floor-Lower ground.<br>(As on page no. 20 of complaint) |
| 8.      | Unit area                              | 158 sq.ft [Actual Area]<br>315 sq.ft. [Super-Area]<br>(As on page no. 20 of complaint)    |
| 9.      | Date of execution of buyer's agreement | 10.07.2019<br>(As on page no. 17 of complaint)  |
| 10.     | Possession clause                      | <b>CLAUSE -7 POSSESSION OF THE PREMISES/UNIT:</b>   |

|  |  |  |
|--|--|--|
|  |  | <p><b>7.1 Schedule for Possession of the said Premises/Unit-</b> The Promoter agrees and understands that timely delivery of possession of the said premises/unit to the allottee(s) and the common areas to the association of allottee(s) or the competent authority, as the case may be, is the essence of the Agreement. The Promoter assures to hand over possession of the said premises/unit along with ready and complete common area with all specifications, amenities and facilities of the project in place within a period of 48(forty eight) months from the date of this Agreement with an extension of further twelve months, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or nay other calamity caused by nature affecting the regular development of the real estate project("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the said premises/unit, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allottee(s) subject to deduction of non-refundable amounts including but not limited to return on investments paid/payable by the Promoter to the Allottee(s). the Promoter shall intimate the allottee about such</p> |
|--|--|--|



|     |   |  |
|-----|---|--|
|     |   | <p><i>termination at least thirty days prior to such termination.</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 23 of complaint)</i></p>   |
| 11. | Due date of possession  | <p>10.07.2024</p> <p>[Calculated 48 months from date of execution of the agreement + 12 months]</p>  |
| 12. | Payment plan  | <p>On offer of possession- 100% of IFMS charges + 100% car parking- Usage rights (if any) + (*Stamp duty, Registration charges &amp; Administrative charges &amp; all other charges as applicable will be charged extra)</p> <p>(As on page no. 33 of complaint)</p>   |
| 13. | Total sale consideration                                      | <p>Rs.28,80,518/-</p> <p>(As per customer ledger dated 10.06.2023 on page no. 40 of complaint)</p>   |
| 14. | Total amount paid by the complainant                          | <p>Rs.29,91,001/-</p> <p>As per customer ledger dated 10.06.2023 on page no. 39 of complaint)</p>  |
| 15. | Letter of Assurance sent by the respondent to the complainant | <p>06.04.2018</p> <p>(As on page no. 51 of complaint)</p>  |
| 16. | Assured Return  | <p><i>The Company shall pay fixed amount of Rs.35.00 (Rupees Thirty Five Only) per sq.ft. per month after completion of 36 months with a grace period of 6 (six) moths from 01<sup>st</sup> April 2018 i.e w.e.f October 2021 to the applicant till the time of offer of possession subject to timely payment of installment as per the attached payment plan herewith and if the applicant shall not make the payments as per the attached payment plan than , Company shall also be entitled to charge interest @21% p.a. for first 60 days and interest @24% after 60 days from the due date of installments.</i></p> |

|     |  |   |
|-----|--|---|
|     |  | (As on page no. 51 of complaint)            |
| 17. | Occupation certificate   | 15.03.2023<br>(As on page no. 102 of reply) |
| 18. | Conditional offer of possession for fit-outs<br>[Note:- unit area was changed from 315 sq.ft. to 283 sq.ft.] | 04.03.2022<br>(As on page no. 90 of reply)  |

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
  - I. That the complainants booked a KIOSK unit ON THE Lower Ground in the project "Elan Miracle" situated at sector-84, Gurugram. Believing the representations made by the respondent's representatives and believing upon them, the complainants applied for the allotment of a shop/unit bearing no.LG-KS-16, having the super area of 315 sq.ft in the project of the respondent.
  - II. That on 13.10.2017, a provisional allotment letter was issued by the respondent in favour of the complainants. Vide the said allotment letter, a unit bearing no. LG-KS-16 on Lower Ground Floor having a super area of 315 sq. ft. (approx.) was allotted for a sale consideration of Rs.28,80,518/- and the complainants have duly paid an amount of Rs.29,91,001/-.
  - III. That the complainants had deposited the required amount as per the payment plan opted by the complainants according to the complainants Builder Buyer Agreement executed between the complainant and the respondent on 10.07.2019. Para no. (F) of the said Agreement dated 10.07.2019, it is clearly mentioned that the



possession of the said unit/shop shall be handed over to the complainants within a stipulated period of 60 months from the date of Agreement dated 10.07.2019.

- IV. That on 19.06.2021, the complainants received an intimation from the respondent regarding the application for the Occupation certificate. The respondent applied the Occupation Certificate so that it could ask for more payments from the allottees. It is to be noted that the actual Occupation Certificate was granted 2 years later which means that a lot of work was pending on the site and it was not ready and safe at the time of application for the Occupation Certificate.
- V. That on 22.03.2023, the complainant received a letter from the respondent regarding the grant of Occupation Certificate, wherein the respondent had mentioned that the Carpet Area has been reduced.

**C. Relief sought by the complainants**

4. Vide proceedings dated 14.08.2024, the counsel for the complainants filed an application for amendment of relief from that of refund to Assured Return and Delayed possession Charges.
5. The complainants have sought following relief(s).
- I. Direct the respondent to pay the assured return as per the agreed terms.
  - II. Direct the respondent to pay delay possession charges with compound interest @24% per annum till the handing over of the unit.
6. On the date of hearing, the Authority explained to the respondent/promoter about the contravention 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**

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

- I. That the complainants had approached the respondent expressing an interest in the purchase of a commercial unit in the commercial complex being developed by the respondent known as "ELAN MIRACLE", situated in Sector -84, Gurugram. The complainants had opted for a special down payment plan.
- II. That thereafter, the complainants were allotted a commercial space tentatively admeasuring 315 sq. ft. super area bearing Kiosk/Unit No. LG-KS-16 on the lower ground floor. The terms and conditions forming part of the application form were duly understood and accepted by the complainants. The respondent had forwarded the Buyer's Agreement to the complainants for execution. Since, the complainants failed to do so, reminders were issued to the complainants do so, reminders were issued to the complainants calling upon them to do the needful. Eventually, the Buyer's Agreement was executed between the complainants and respondent on 10.07.2019.
- III. That the complainants conveyed their consent to the revision in the layout/building plans and the resultant changes in the unit vide letter dated 15.02.2021.
- IV. That the respondent issued letter dated 20.02.2018 whereby it agreed to pay to the complainants a fixed amount of Rs.21,913/- per month in accordance with the terms and conditions set out therein. It was clarified that offer of possession shall not be dependent upon grant of completion certificate and/or occupation certificate and that the respondent shall stand discharged of its liabilities after offer of



possession. It is submitted that the complainants have received Rs.12,76,161/- as assured return with effect from February 2018 till June 2021, upon application for issuance of the occupation certificate.

- V. That thereafter the complainants and the respondent entered into the Buyer's Agreement dated 11.07.2019. That in the meantime, the respondent duly completed construction of the project and made an application to the competent authority on 09.06.2021 for issuance of the Occupation Certificate.
- VI. That vide letter dated 19.06.2021, the respondent informed the complainants that the Occupation Certificate for the project in question has been applied on 09.06.2021. The complainants were also informed that they would no longer be entitled to get the fixed amount with effect from the date of application for the occupation certificate. Pertinently, Clause 7.2 of the Buyer's Agreement dated 11.07.2019 also provides that the respondent, upon applying for the occupation certificate shall offer possession of the premises to the allottee.
- VII. That vide letter dated 07.09.2021, the respondent sent Offer of Possession for Fit-outs to the complainants whereby the respondent requested the complainants to take possession of unit after clearing their outstanding clear dues as per the attached statement. The complainants were informed that there was an increase in the super area of the unit allotted, from 555 sq ft to 552 sq ft. Consequently, the payments to be made by the complainants stood revised. The respondent has offered the possession of the units in the project for fit outs at their end keeping in view the interest of all the allottees in mind so that as and when the Occupation certificate was issued by the Town and Country Planning Department, Haryana, the



commercial operations from the units could be commenced without there being any loss of time.

- VIII. That as per Clause 31 of the agreement it is evident that the super area of the unit is tentative and that the same is determined upon completion of construction. In case of any increase in super area, the allottees shall have to make payment for such increase and in the event of decrease in super area, the proportionate amount shall stand refunded.
- IX. That pertinently, after receipt of the offer of possession letter dated 07.09.2021, the complainants refrained from making payment of the demanded amounts and from taking possession of the unit.
- X. That the respondent gave various opportunities to the complainants to clear their outstanding dues. Letters and reminders dated 12.10.2021, 12.11.2021, 28.12.2021, 08.02.2022, 07.03.2022, 05.04.2022, amongst others were issued to the complainants reminding to clear their outstanding dues. However the said reminders were ignored by the complainants.
- XI. That it is pertinent to mention herein that in terms of Clause 5 read with Clause 9.3 of the Buyer's Agreement, time is the essence with respect to complainant's obligation to pay the sale consideration as provided in the payment schedule and in case of delay in making payment, the respondent shall have the right to terminate the Provisional Allotment/ Agreement and forfeit the booking amount and other amounts as specified in the buyer's agreement.
- XII. That in terms of Clause 7 of the Buyer's Agreement, possession of the unit was agreed to be offered to the complainants within 48 months from the date of execution of the Buyer's Agreement, with grace period of 12 months and subject to force majeure conditions and

events beyond the power and control of the respondent. The Buyer's Agreement was executed on 11.07.2019. Hence the respondent has offered possession of the unit to the complainants, well before the agreed time lines for delivering possession.

- XIII. That on account of the continuing and wilful lapses on the part of the complainants, the respondent was constrained to issue a pre cancellation letter dated 16.05.2023, calling upon the complainants to clear their outstanding dues failing which the respondent might be compelled to cancel the allotment in their favour.
- XIV. That instead of coming forward to take possession even after issuance of the pre cancellation notice, the complainants refrained from making payment of balance amounts and taking possession of the unit and have instead proceeded to file the present false and frivolous complaint on baseless grounds. It is respectfully submitted that evidently the complainants are not interested in taking possession of the unit but are seeking false and frivolous pretexts to avoid their contractual obligations under the Buyer's Agreement.

**E. Jurisdiction of the authority**

8. The respondent raised a preliminary submission/objection that 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**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of



Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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;*

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 complainants**

#### **F.I Assured Return**

12. The respondent has submitted in its reply that vide letter dated 20.02.2018, it committed to pay a fixed amount of Rs.21,913/- per month to the complainants from the time of provisional booking until the offer of possession was issued to the complainants. The total sale consideration for the allotted space was Rs.62,71,345/-, of which the complainants have already paid Rs.58,04,162/-.

13. The letter dated 20.02.2018 regarding the “*terms and conditions for fixed amount on provisional booking*” can be considered as an agreement for sale interpreting the definition of the agreement for “agreement for sale” under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. One of the integral parts of this agreement, the letter dated 20.02.2018 is the transaction of assured return inter-se parties. The “agreement for sale” after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the “agreement” entered between promoter and allottee prior to coming into force of the Act as held by the Hon’ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.***, (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the



same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees.

14. There is a contractual relationship between the complainant and the respondent which is governed by the Builder Buyer Agreement, executed between them. However, it is seen that the drafting of the clauses in the builder buyer agreement are not only vague and uncertain but so heavily loaded in favour of the promoter and by the allottee in fulfilling formalities and documentations etc as prescribed by the promoter. In the present case, the respondent/builder have misused its dominant position and drafted a clause in the letter containing terms and conditions for fixed return, which are completely vague and against the statutory rights of the complainant/allottee whereby it says that ***the offer of possession is not dependent on the grant of occupation certificate.***

15. The Authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:

- a. The possession must be offered after obtaining an occupation certificate/completion certificate.***

- b. The subject unit must be in a habitable condition.*
- c. Possession should not be accompanied by unreasonable additional demands.*

16. In the present case, the essential condition for a valid offer of possession has not been met. The occupation certificate for the project in which the subject unit is located was issued by the competent authority on 15.03.2023. However, the respondent had offered possession for the fit-out of the allotted unit prior to obtaining this certificate, specifically on 07.09.2021. Consequently, this offer does not constitute a valid offer of possession. Accordingly, the respondent is hereby directed to provide possession of the unit to the complainant within 30 days from the date of this order.
17. The Authority directs the respondent to issue a fresh Statement of Accounts (S.O.A) to the complainants and to pay the arrears of assured returns as stipulated in the letter dated 06.04.2018. According to this agreement, the respondent is directed to pay a fixed amount of Rs.35.00/- per sq.ft. per month from the date 01.10.2021, until the occupation certificate was obtained, after deducting the amounts already paid by the respondent on account of assured returns.


#### **H. Directions of the authority**

18. 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 is directed to handover possession of the unit to the complainant within 30 days of this order.
  - ii. The respondent is directed to pay assured return of Rs.35.00/- per sq.ft. per month from 01.10.2021 till the date of obtaining of



occupation certificate i.e 15.03.2023, after adjusting the amount already paid by the respondent on account of assured return.

- iii. The respondent is directed to pay arrears of accrued assured return as per the letter of assurance dated 06.04.2018 till the date of obtaining occupation certificate at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
  - iv. The respondent shall not charge anything from the complainant which is not the part of the agreement of sale.
19. Complaint stands disposed of.
  20. File be consigned to registry.

  
**(Ashok Sangwan )**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2025

**HARERA**  
GURUGRAM