



**HARERA**  
**GURUGRAM**

Complaint No. 2743 of 2023

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

Complaint no. : 2743 of 2023  
Date of decision : 03.09.2025

1. Satwant Kaur  
2. Sarabjeet Singh Sethi  
**Both R/o:** -M-219, Ground Floor, Mayfield  
Garden (Now Orchid Island), Near Artemis  
Hospital, Sector-51, 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 Dated-12.06.2014
5.	RERA Registered	Registered Vide registration no. 190 of 2017 Dated:- 14.09.2017
6.	Allotment letter	04.04.2018 (As on page no. 59 of complaint)
7.	Unit no.	FS-012, Type-Retail, Floor-2 <sup>nd</sup> . (As on page no.27 of complaint)
8.	Unit area	575 sq.ft. [super-area] 288 sq.ft. [carpet-area] (As on page no. 27 of complaint)
9.	Date of execution of buyer's agreement	16.11.2019 (As on page no. 17 of complaint)
10.	Possession clause	<b>CLAUSE -7 POSSESSION OF THE</b>





**PREMISES/UNIT:**

**7.1 Schedule for Possession of the said Premises/Unit-** 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 any 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



		<p><i>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 termination at least thirty days prior to such termination.</i></p> <p><i>[Emphasis supplied]</i> <i>(As on page no. 33 of complaint)</i></p>
11.	Due date of possession	<p>16.11.2024</p> <p>[Calculated 48 months from date of execution of agreement+ 12 months ]</p>
12.	Payment plan	<p>On offer of possession- 30% of Basic Sale Price + 100% of IFMS charges + 100% Car parking- (Usage Rights) + (*Stamp</p>
13.	Total sales consideration	<p>Rs.48,44,860/-</p> <p>(As on page no. 68 of complaint)</p>
14.	Total amount paid by the complainant	<p>Rs.40,86,565/-</p> <p>(As on page no. 70 of complaint)</p>
15.	Assured return	<p>13.06.2018</p> <p>(As on page no. 72 of complaint)</p>
16.	Assured return paid	<p>Rs.10,08,624/-</p> <p>(As on page no. 50 of reply)</p>





17. Letter of Assurance dated  
13.06.2018

(As on page no. 72 of  
complaint)

**Clause 1**

That **Elan Buildcon Private Limited** (herein after referred to as "**Company**"), agrees to pay to the applicant, a fixed Amount of **Rs.20,414/-** (Rupees Twenty Thousand Four Hundred Fourteen Only) per month, subject to Tax Deduction at Source, on the provisional booking in our upcoming project titled as "**Elan Miracle**" situated at Sector-84, Gurugram, on the amount of **Rs.16,23,215/-** (Rupees Twenty Thousand Four Hundred Fourteen Only) received through Cheque No. 000530 dated 21.02.2018, Cheque No. 141882 Dated 31.03.18, Cheque No. 425702 Dated 14.04.18 and Cheque No. 425704 Dated 08.06.18 all cheque Drawn through IDBI Bank Respectively.

**Clause 4**

The fixed amount with bank guarantee (as mentioned in clause no. 2) shall be paid by the Company to the applicant till the date of issuance of offer of possession by the Company and offer of Possession shall be given by the company on applying of occupation certificate. The offer of possession is not dependent upon grant of completion certificate and occupation certificate. After issuance of offer of possession by the Company, the applicant shall not

		be entitled for payment of any fixed amount on the provisional booking by the Company. (As on page no. 72-74 of complaint)
18.	Occupation certificate	15.03.2023 (As on page no. 123 of reply)
19.	Conditional offer of possession for fit-outs [Note:- unit area decreased from 575 sq.ft. to 557 sq.ft]	07.09.2021 (As on page no. 76 of complaint)
20.	Final reminder	14.04.2023 (As on page no. 133 of reply)
21.	Pre cancellation letter	16.05.2023 (As on page no. 134 of reply)
22.	Cancellation letter	09.06.2023 (As on page no. 137 of reply)

### B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
  - I. That the complainants booked a food court unit on the second floor 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.FS-012, having the super area of 575 sq.ft in the project of the respondent.
  - II. That on 04.04.2018, a provisional allotment letter was issued by the respondent in favour of the complainants. Vide the said allotment letter, a unit bearing no. FS-012 on Second Floor having a super area

of 575 sq. ft. (approx.) was allotted for a sale consideration of Rs.53,89,766/- and the complainants have duly paid an amount of Rs.41,58,542/-.

- 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 21.11.2019. Para no. 7(7.1) of the said Agreement dated 21.11.2019, it is clearly mentioned that the possession of the said unit/shop shall be handed over to the complainants within a stipulated period of 48 months from the date of Agreement dated 21.11.2019.
- IV. That on 22.03.2023, 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 07.09.2021, the respondent issued the demand letter with possession fit out letter without taking the OC from the competent authority this is totally against the law.
- VI. That due to the illegal acts of the respondent, the complainants had suffered to great mental agony, physical harassment, financial loss, humiliation. There is a gross deficiency of services on the part of the respondent. As per para (F) on page no. 9 of 40 of the BBA, the complainants had been allotted unit no. FS-012 having actual area of 288 sq.ft and super area of 575 sq.ft. The complainant received a letter from the respondent regarding the grant of OC , wherein the



respondent have mentioned that the Carpet Area has been reduced to 83.98 sq.ft.

**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 and the same was allowed by the Authority.
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 fixed return payment plan.
  - II. That thereafter, the complainants were allotted a commercial space tentatively admeasuring 575 sq. ft. super area bearing Kiosk/Unit No. FS-012 on the second floor. The terms and conditions forming part of



the application form were duly understood and accepted by the complainants.

- III. That the respondent issued letter dated 13.06.2018 setting out the terms and conditions for payment of the fixed amount on provisional booking, whereby the respondent agreed to pay to the complainants a fixed amount of Rs.20,414/- 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 the Occupation certificate and that the respondent shall be discharged of its liabilities after offer of possession.
- IV. That vide email dated 23.08.2021, the respondent has stated that it shall adjust the assured returns payable as per letter dated 13.06.2018 w.e.f 01.04.2021 upto 09.06.2021 at the time of final demand.
- V. That the respondent called upon the complainants to come forward for the execution and registration of the Buyer's Agreement. Eventually, the Buyer's Agreement was executed between the complainants and respondent on 16.11.2019.
- VI. That vide letter dated 19.06.2021, the respondent informed the complainants that the Occupation certificate for the project has been applied by the respondent on 09.06.2021. the complainants were also informed that the complainants would no longer be entitled to get the fixed amount with effect from the date of application for the Occupation Certificate. Vide letter dated 07.09.2021, the respondents sent an Offer of possession for Fit-Outs to the complainants whereby the respondent requested the complainants to take possession of the unit after clearing their outstanding dues. The complainants were informed that there was a decrease in the super area of the unit from

575 sq.ft. to 557 557 sq.ft. Consequently, the payments to be made by the complainants stood revised due to the decrease in the super area.

- VII. That the complainants did not come forward to take possession of the unit after clearing their outstanding dues, reminders for possession dated 12.10.2021, 28.12.2021, 08.02.2000, 07.03.2022, 05.04.2022, 09.05.2022, 06.06.2022, 04.07.2022, 05.08.2022, 05.09.2022, 10.10.2022, 03.11.2022, 03.12.2022, 03.01.2022, 03.02.2022 were issued to the complainants reminding the complainants to clear their outstanding dues and take possession of the unit.
- VIII. That the respondent is in receipt of the Occupation certificate dated 15.03.2023 and vide letter dated 22.03.2023 and email dated 27.03.2023, the complainants have been informed about receipt of the Occupation certificate. Instead of coming forward to take possession of the unit even after numerous reminders, the complainants continued to ignore the reminders. Consequently, the respondent issued a final reminder dated 14.04.2023 and pre cancellation letter dated 16.05.2023.
- IX. That the complainants addressed a false and frivolous email dated 17.05.2023 whereby, the complainants had questioned the calculation of the area of the unit. The respondent had replied vide email dated 17.05.2023 that since the unit is a KIOSK in the food court, the common sitting area and service corridor area also get proportionally adjusted in the area of kiosks in the food courts.
- X. That despite the respondent explaining to the complainants that there is no illegality with regard to the area calculation of the unit, the complainants refrained from making payment of balance amount



and taking possession of the unit. Under the circumstances, the complainants eventually issued cancellation letter dated 09.06.2023.

- XI. Pertinently, the complainants have failed to challenging the cancellation letter dated 09.06.2023. the unit has been legally cancelled. It is submitted that the complainants do not have any lawful or legitimate grievance qua the respondent which justifies or necessitates the institution of the present complainant and the same is liable to be dismissed with costs.

**E. Jurisdiction of the authority**

8. 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 13.06.2018, it committed to pay a fixed amount of Rs.20,414/- 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.4844,860/-, of which the complainants have already paid Rs.40,86,565/-.
13. The letter dated 13.06.2018 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 13.06.2018 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 relevant 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. the respondent has submitted that the unit of the complainants was cancelled on 09.06.2023 on account of non-payment by the complainants after issuing several reminders and a Pre-cancellation letter dated 16.05.2023. The



Authority is of the view that the said cancellation dated 09.06.2023 is bad in law as the cancellation have taken place on account of non-payment of outstanding dues by the complainants but the stage at which the outstanding dues were to be paid was on offer of possession, here in the present complaint the said charges were demanded by the respondent on the issuance of an invalid Offer of possession, made before receiving the Occupation Certificate.

17. Consequently, this offer does not constitute a valid offer of possession. The said cancellation is set aside and accordingly, the respondent is hereby directed to provide possession of the unit to the complainants within 30 days from the date of this order.
18. As per the respondent's letter dated 07.09.2021, the super area of the subject unit was revised from 575 sq. ft. to 557 sq. ft. The complainants, vide email dated 27.03.2023, raised objections to this revision and alleged that the carpet area of the unit was unilaterally reduced from 288 sq. ft. to 83.98 sq. ft., which constitutes merely 15% of the revised super area.
19. The Authority is of the view that such a drastic reduction in the carpet area, without justification or prior consent of the complainants, amounts to an arbitrary and unilateral act on the part of the respondent. The respondent is, therefore, directed to allot and deliver a unit of the same specifications and dimensions as originally booked and allotted to the complainants. The complainants ought not to be made to suffer any loss or prejudice on account of the respondent's unilateral modification in the area of the unit.
20. 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 13.06.2018. According to this

agreement, the respondent is directed to pay a fixed amount of Rs.20,414/- per month from the date of provisional booking, 21.02.2018, until the occupation certificate was obtained, after adjusting the amounts already paid by the respondent on account of assured returns.

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

21. 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 cancellation of the unit dated 09.06.2023 is set aside and the respondent is directed to the respondent is hereby directed to provide possession of the unit to the complainants within 30 days from the date of this order.
  - ii. The respondent is directed to allot and deliver a unit of the same specifications and dimensions as originally booked and allotted to the complainants.
  - iii. The respondent is directed to pay assured return of Rs.20,414/- per month from 21.02.2018 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.
  - iv. The respondent is directed to pay arrears of accrued assured return as per the letter of assurance dated 13.06.2018 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.



v. The respondent shall not charge anything from the complainant which is not the part of the Buyer's Agreement.

22. Complaint stands disposed of.

23. File be consigned to registry.



**(Ashok Sangwan )**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2025



**HARERA**  
**GURUGRAM**