

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

Complaint no.: 7245 of 2022  
Date of filing: 16.11.2022  
Date of order: 15.07.2025

Skynet Enterprises Private Limited  
**Registered Office:**  
609, Katra Ishwar Bhawan,  
Khari Baoli, Delhi – 110 066

**Complainant**

Versus

Elan Limited  
**Registered Office:**  
L-1/1100, First Floor, Street  
No. 25, Sangam Vihar, South  
Delhi, New Delhi – 110 062

**Respondent**

**CORAM:**  
Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman  
Member**

**APPEARANCE:**  
Ms. Samapika Biswal (Advocate)  
Shri Ishan Dang (Advocate)

**Complainant  
Respondent****ORDER**

1. This order shall dispose of the aforesaid complaint titled above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations,

responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

### A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), 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   | ELAN MERCADO, Sector 80 Gurugram, Haryana.  |
| 2.      | Nature of project   | Commercial complex  |
| 3.      | DTCP License  | 82 of 2009 dated 08.12.2009 valid up to 07.12.2019  |
| 4.      | Name of licensee  | RP ESTATE PVT LTD   |
| 5.      | RERA Registered/ not registered                                       | Registered vid no. 189 of 2017 dated 14.09.2017 valid up to 13.09.2023  |
| 6.      | Letter of terms and condition for fixed amount on provisional booking | 20.12.2016<br>(Page no. 161 of the reply)   |
| 7.      | Unit no.  | SA-1009, 10 <sup>th</sup> floor<br>(Page no. 49 of the complaint)   |
| 8.      | Unit admeasuring  | 891 sq. ft.<br>(Page no. 49 of the complaint)   |
| 9.      | Allotment Letter  | 21.12.2016<br>(Page 31 of complaint)  |
| 10.     | Date of execution of buyer agreement                                  | 03.01.2017<br>(Page no. 46 of the complaint.)   |
| 11.     | Possession clause   | <b>7.1 schedule for possession of the said unit.</b><br>The Promoter agrees and understands that timely delivery of possession of the said promises / 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.<br><b>The promoter assures to hand over possession of the said premises/unit along with ready and</b> |

|     |                                    |   |
|-----|------------------------------------|---|
|     |                                    | <p><i>complete common areas 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.</i></p>  |
| 12. | Due date of delivery of possession | <p>03.01.2022</p> <p>(Calculated from the date of execution of buyer's agreement i.e., 03.01.2017 plus 12 months grace period)</p>  |
| 13. | Assured return clause              | <p>1. The Elan Limited (herein after referred to as "Company"), agrees and undertakes <b>to pay to the applicant, a Fixed Amount of Rs.83,810/-</b> (Rupees Eighty Three Thousand Eight Hundred Ten Only) <b>per month</b>, which is subject to Tax Deduction at Source, on the provisional booking in Mercado, on the amount of Rs.41,18,648/- (Rupees Forty One Lakh Eighteen Thousand Six Hundred Forty Eight Only) received through Ch. No. 954667 dated 22.09.2016, Ch. No. 954672 dated 28.09.2016, Ch. No. 954675 dated 10.10.2016, Ch. No. 031488 dated 21.10.2016 and Ch. No. 559152 dated 15.12.2016 all cheques drawn on Canara Bank.</p> <p>4. That the company shall be <b>liable to pay fixed return @12% to the applicant till the time of offer of the first lease at prevailing market rental after offering possession of the unit.</b> Company shall not be responsible for the lease and payment of fixed return thereafter. After offer of the first lease the company shall stand completely discharged of its liabilities and shall not be required to pay the fixed return thereafter.</p> <p>(page 161 of reply)</p> |



|     |  |   |
|-----|--|---|
| 14. | Assured return paid by the respondent to the complainant | December 2019<br>(page no. 165 of the reply)  |
| 15. | Total sale consideration                                 | Rs.50,49,684/-<br>(As per mentioned in the allotment letter dated 21.12.2016 at page no. 31 of the complaint) |
| 16. | Total amount paid by the complainant                     | Rs.43,65,790/-<br>(As per receipt information at page no. 208 of the reply)                                   |
| 17. | Occupation certificate                                   | 17.10.2022<br>(Page no. 141 of the reply)   |
| 18. | Offer of possession                                      | Not offered   |

### B. Facts of the complaint.

3. The complainant has made following submissions in the complaint:

- i. That the complainant had applied for allotment of a unit in the commercial project of the respondent viz. 'Elan Mercado' on 23.09.2016, pursuant to which allotment of unit bearing no. SA-1009 admeasuring 891 sq. ft., was allotted. Further, the complainant unit was reallocated to Unit no. SA-1012 admeasuring 900 sq. ft. by the respondent.
- ii. That the complainant paid booking amount of Rs.43,65,790/- to the respondent towards the unit and the respondent issued an allotment letter dated 21.12.2016 in favor of the complainant in respect of the unit.
- iii. The allotment was under a 'Special Fixed Return Payment Plan', whereby a fixed amount of Rs.83,810/- was payable per month till offer of the first lease at prevailing market rental after offering possession of the unit, as per agreement dated 20.12.2016 between the parties. The complainant has received the fixed amount till the month of November, 2019, in terms of the said agreement dated 20.12.2016.

- iv. That the builder buyer agreement was executed between the respondent and the complainant on 03.01.2017 in respect of the unit. As per Clause 11(a) of the buyer's agreement, the unit was to be offered for possession to the complainant within a period 48 months, with an extension of 12 months, i.e., latest by 02.01.2022. The total sale consideration payable for the unit was Rs. 50,49,684/-.
- v. That the respondent approached the complainant with a request for re-allocation of the unit to another unit, viz. Unit No. SA-1012 admeasuring 900 sq ft. by its letter dated 06.02.2021. It was represented that the construction is complete and the occupation certificate is awaited. The respondent further insisted on signing of an addendum to record the said re-allocation of the unit.
- vi. The request for re-allocation of the unit was accepted by the complainant in good faith, and after inspection of the said unit. This was communicated to the respondent verbally as well as by way of letter dated 17.03.2021. It was further suggested that the parties may straightaway proceed to execute the conveyance deed for the unit, upon receipt of the occupation certificate.
- vii. Pertinently, the complainant by the said letter dated 17.03.2021, also requested the respondent for a copy of the application for occupation certificate as well as the revised sanctioned layout plans showing the allotment of the unit, its area and the building plan.
- viii. That the complainant also requested the respondent to indicate the full and final amount payable towards the unit. However, there was no response from the respondent and neither of these details was shared with the complainant.
- ix. That the respondent insisted on signing of an addendum, a draft of which was then provided to the complainant in March, 2021. The complainant agreed to execute the addendum, however with changes. The complainant, accordingly, sent a revised draft of the addendum with its changes to the respondent for its



approval in April, 2021. The complainant sent a signed copy of the addendum to the respondent in July, 2021. The respondent received the same and communicated its approval to the complainant on the said draft in August, 2021. However, respondent has inexplicably not signed the said addendum till date, despite follow-ups.

- x. As per the buyer's agreement, the respondent was required to deliver possession of the unit latest by 02.01.2022 (including an extension of 12 months). The representatives of the complainant have repeatedly attempted to get in touch with the representatives of the respondent over phone, email and WhatsApp, to seek an update on the status of possession of the Unit, but to no avail. The date 02.01.2022 has since expired and no offer of possession has been made to the complainant. The respondent is statutorily liable to pay delayed interest for its failure to deliver possession of the unit. There is no written communication from the respondent with respect to the status of the occupation certificate, execution of the conveyance deed and handing over of possession of the unit.
- xi. That, as per the agreement dated 20.12.2016, the respondent was liable to pay a fixed monthly amount of Rs.83,810/- to the complainant, i.e. assured return till offer of the first lease at prevailing market rental after offering possession of the Unit. Admittedly, no offer of possession has even been made by the respondent to the complainant till date. The respondent continues to remain liable to pay the assured returns. However, the respondent has unilaterally withheld and failed to pay the assured returns for the period of December, 2019 till date. The total amount payable towards assured returns from December, 2019 till October, 2022 is an amount of Rs.29,33,350/- less TDS of Rs.2,93,335/-, i.e. a sum of Rs.26,40,015/-.

- xii. During a meeting with the respondent to follow-up for possession and execution of conveyance deed in respect of the unit in January, 2022, the respondent verbally communicated to the complainant, that a sum of Rs.11,80,000/- is outstanding towards the unit. No basis for the calculation of the said amount was shown to the complainant. The complainant denies that any amount is payable by it to respondent, in view of the outstanding amounts payable towards the assured returns, which far exceeds the alleged outstanding amount towards the unit.
- xiii. Though no basis or written demand has been raised by the respondent for Rs. 11,80,000/-, without prejudice, assuming the same to be correct, even after adjusting the said amount, a balance amount of Rs.14,60,015/- (after deduction of TDS) is still liable to be paid by respondent to the complainant as on date.
- xiv. Aggrieved by the illegal actions of the respondent, the complainant issued a legal notice dated 10.03.2022 to the respondent for its failure: (i) to deliver possession of the unit by the stipulated time of 02.01.2022 and execute the conveyance deed; and (ii) to pay the assured return of Rs.23,46,680/- due and payable to the complainant as on that date. However, no response was issued by the respondent to the legal notice.
- xv. That the respondent has, till date neither shared any occupation certificate obtained for the project with the complainant, nor issued any offer of possession of the unit to the complainant within the stipulated time under the buyer's agreement. Furthermore, no monies have been paid by the respondent since December, 2019 till date, which is a breach of the said agreement dated 20.12.2016.
- xvi. That the respondent has been called upon to handover possession of the unit to the complainant and execute the conveyance deed for the unit in a timely

manner. However, there has been no response from the respondent. It is apprehended that the respondent's intentions have now become dishonest and that it is attempting to wrongly withhold the unit of the complainant.

- xvii. Pertinently, even after the passage of six years since booking of the unit, the project is still not complete and possession has still not been handed over. Also, the Registration Certificate for the project bearing Registration No. 189 of 2017 dated 14.09.2017 has also expired on 13.09.2022.
- xviii. The respondent has also not offered possession of the unit in terms of the Clause 11(a) of the buyer's agreement dated 03.01.2017 as per which possession was to be handed over by 02.01.2022. The complainant is accordingly entitled to payment of delay interest at the prescribed rate.

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

#### **4. The complainant has sought the following relief(s):**

- I. Direct the respondent to pay interest for every month of delay at prevailing rate of interest.
- II. Direct the respondent to pay assured returns to the complainant till the time of offer of the first lease at prevailing market rental after offering possession of the unit, as per Clause 4 of the agreement dated 20.12.2016.
- III. Direct the respondent to pay assured returns of Rs.83,810/- per month from December, 2019 till October, 2022 i.e. an amount of Rs.29,33,350/- less TDS of Rs.2,93,335/-, i.e. a sum of Rs.26,40,015/- to the complainant.
- IV. Direct the respondent to pay respondent to pay interest at the rate of State Bank of India highest marginal cost of lending rate + 2%, i.e. 10% per annum approximately, on the aforesaid amount in S. No II
- V. Direct the respondent to handover the possession of the unit to the complainant along with delay interest at the rate of State Bank of India highest marginal cost of lending rate + 2%, i.e. 10% per annum approximately, till the date of possession; and execute the conveyance deed in respect of the Unit.
- VI. Direct the respondent to adjust the monies due and payable to the Complainant under S. No II against the balance amount payable under the builder buyer agreement.



- VII. Direct the respondent to execute the Addendum, draft of which was shared with the Respondent in August, 2021
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 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.
  - ii. That the complainant is estopped by its 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 letter dated 06.02.2021 whereby allotment of unit no SA-1009 was cancelled at the request of the complainant. The complainant is not left with any right, title or agreement in respect of the said unit and hence is neither entitled to seek possession nor claim any interest for alleged delay in offering possession of the same. In so far as the alternative unit, SA-1012 which was offered by the respondent, the complainant has neither come forward to execute the buyer's agreement in respect of the said unit nor has the complainant executed the addendum in the format provided by the respondent as per the agreement between the parties.
  - iii. 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.

- iv. That the project in question, "Elan Mercado", located in Sector 80 Gurugram, has been developed by the respondent over land admeasuring 23 Kanals 18 Marla's or 2.9875 Acres situated in Village Naurangpur, Sector 80, Gurugram 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. 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 an 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.
- v. 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.
- vi. 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.

- vii. There are certain other elements which need attention at this stage. The Act now stands replaced by "The Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013". In terms of Section 24(1)(b) of said 2013 Act, where an award had been made Under Section 11 of the Act, the proceedings under the provisions of the Act would continue as if the Act had not been repealed. Thus, even if a direction is passed that an award be deemed to have been made on 26.08.2007, the provisions of the Act would still continue to operate in respect of such acquisition in question. There is however, one point which may pose some difficulty. Out of 688 acres of land which was covered by Declaration Under Section 6 of the Act in the present matter, majority of the lands were taken over by builders/private entities and as such presently the concerned landholders are not in possession of their holdings. However, in case of certain other lands where no transactions were entered into, as a result of dropping of the acquisition, those land holders are presently in occupation without there being any cloud of acquisition. If we restore status ante where the entirety of 688 acres of land continues to be under acquisition, the interest of such landholders is bound to be put to some prejudice. Those landholders are not parties to this litigation, nor their interest in any manner, is represented in the proceedings. They would now be visited with the prospect of losing their holdings. Those who sold away their holdings to the builders/private entities



after the acquisition was initiated, naturally would not be prejudiced at all nor can the builders/private entities who purchased the land after the land was initiated can put up a plea of prejudice. However, those who had never sold the holdings and continued to face the prospect of acquisition will certainly be put to prejudice. It is possible that some such landholders may have sold away their holdings or may have applied and secured licenses for construction. In cases, where third party interests have thus intervened, there would be some more concern.

- viii. On one hand, the real and substantial relief to be granted in the matter would be not just restoring the status ante and invalidating of the transactions but the relief ought to be that the process of acquisition is taken to its logical end and the objective that said acquisition was to achieve must be sub-served. On the other hand, even while passing appropriate directions in the nature that there was a deemed Award, the interest of those landholders who had not parted with their holdings and had faced the acquisition and had not participated in the proceedings ought to be secured. Further, the interest of purchasers of individual apartments is also required to be protected. It is axiomatic that wherever a superior Court finds that the exercise of power by the executive was mala fide or that there was fraud of power, the full and substantial relief must be granted. The principles of restitution and concept of unjust enrichment as explained in cases referred to hereinabove show that no person who directly or indirectly was a party to the fraud of power be allowed to reap or retain any unjust enrichment. Though, it is through the acts on part of the landholders that the builders/private entities were brought on the scene, we don't hold them to be *pari delicto* along with builders/private respondents. But at the same time, they cannot be given benefit of annulment of transactions and restoration of their holdings. The greater victim in the

matter was the public interest. The land holders in any case had received considerations which were greater than what was awarded in Awards dated 09.03.2006 and 24.02.2007, which were the most proximate awards in terms of time. However, even when we propose to take the matter to its logical end and say that there was a deemed award, those who had not sold away their holdings and had not in any manner either directly or indirectly, tried to jeopardize the process of acquisition, cannot at this length of time be subjected to any prejudice. We will therefore have to exclude that body of landholders who had not transferred their holdings unlike the writ petitioners and similarly situated landholders, so also the purchasers of individual apartments from the width of our directions. Though fraud vitiates every resultant action and on that principle every beneficiary/purchaser in subsequent transaction must restore such benefit, an exception has to be made in favor of individual purchasers of flats or apartments who are being left undisturbed while molding the relief. Any payments made by them can be adjusted towards the amounts payable to the colonizer and their possession can be regularized by HUDA/HSIDC on suitable conditions by making allotment to them. This aspect will stand covered by directions issued hereafter.

- ix. That based on the observations in Para 37 and Para 38, the Hon'ble Supreme Court gave directions in Para 39 (b) wherein the directions in Civil Appeal 8788 / 2015 were made applicable in respect of lands which were transferred by the land holder during the period from 27.08.2004 till 29.01.2010 and there were specific directions that the lands which were not transferred by the land holders during the period from 27.08.2004 till 29.01.2010 are not governed by these directions as under: Para 39(b) is reproduced hereinbelow for ready reference.



39. Having bestowed our attention to various competing elements and issues we deem it appropriate to direct:

.....  
(b) The decision dated 24.08.2007 was taken when the matters were already posted for pronouncement of the award on 26.08.2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24.08.2007 has been held by us to be an exercise of fraud on power, it is directed that an Award is deemed to have been passed on 26.08.2007 in respect of lands (i) which were covered by declaration Under Section 6 in the present case and (ii) which were transferred by the landholders during the period 27.08.2004 till 29.01.2010. The lands which were not transferred by the landholders during the period from 27.08.2004 till 29.01.2010 are not governed by these directions.

- 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 licensed 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. 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 Lake Land 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 enjoined 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 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 impleadment 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 sometime in July 2016, the complainant through its authorized person had independently approached the respondent and had expressed its interest in booking a unit in the commercial complex known as "Elan Mercado" being developed by the respondent in Sector-80, Gurugram, Haryana.
- xvii. That making detailed enquiries and after independently satisfying itself 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. Allotment letter dated 21.12.2016 issued by the respondent in favor of the complainant allotting unit no. SA-1009 in the said project admeasuring 891 sq ft approx., located on the 10<sup>th</sup> floor of the project.
- xviii. That the letter dated 20<sup>th</sup> December 2016 setting out the terms and conditions for payment of fixed amount of Rs.83,810/- per month subject to tax deduction at source, and duly accepted by the complainant. 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.83,810/- per month, subject to tax deduction at source, till the time of offer of the first lease at the prevailing market rental after offer of possession by the respondent. It was further clarified in para 6 of the said letter that upon cancellation of allotment of the premises, i.e. unit no. SA-1009 due to any reason, 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 37 months i.e. with effect from December 2016 till January, 2020.

- xx. That the buyer's agreement in respect of unit no SA-1009 containing the detailed terms and conditions of allotment was willingly and consciously executed by the complainant without raising any objections.
- xxi. That the complainant had approached the respondent and requested for cancellation of allotted unit no. SA-1009 admeasuring 891 sq. ft. super area approx. and requested for allotment of an alternate unit, i.e. SA-1012 admeasuring 900 sq. ft. in the same project. The respondent accepted the request made by the complainant and cancelled allotment of unit no. SA-1009 and allotted unit no. SA-1012 to the complainant by letter dated 06.02.2021. The respondent conveyed to the complainant that the buyer's agreement dated 03.01.2017 had been executed in respect of unit no SA-1009 whereas the complainant was seeking allotment of unit no SA-1012. In these circumstances, the respondent had provided two options to the complainant. The first option was to cancel the Buyer's Agreement dated 03.01.2017 and to execute a fresh Buyer's Agreement in respect of the new allotment. This would have entailed forfeiture of earnest money and other amounts as per the Buyer's Agreement. In order to avoid forfeiture of earnest money and other amounts, the respondent had alternatively recommended execution of an addendum to the buyer's agreement dated 03.01.2017 whereby the details of the unit, its super area, payment plan etc. would be substituted in place of the earlier allotted unit. The complainant was also desirous of avoiding forfeiture of earnest money and other amounts and hence agreed to the execution of an addendum agreement.
- xxii. That as per the mutually agreed terms and conditions, the respondent forwarded an addendum agreement for execution to the complainant.



However, instead of executing the addendum in the format sent by the respondent, the complainant started insisting on directly executing and registering the conveyance deed in respect of unit no SA-1012. When the respondent refused to accept the unreasonable and illegal demand made by the complainant, the complainant executed an addendum containing arbitrary and unilateral terms and conditions which were never agreed to between the parties.

- xxiii. That the respondent orally communicated its refusal to accept any such unilateral and arbitrary changes made by the complainant which are contrary to the agreement between the parties and called upon the complainant to execute the addendum in the format sent by the respondent. However, the complainant has failed to do so for reasons best known to itself.
- xxiv. That there is no delay in delivering possession of unit SA-1009 in as much as the said unit was cancelled by the complainant even before the so-called due date of possession. There arises no question of any so-called delay in offering possession of a unit in which the complainant is not left with any right, title or interest. Consequently, there is no question of payment of any interest or compensation to the complainant.
- xxv. That insofar as unit no. SA -1012 is concerned, the complainant has neither executed a fresh buyer's agreement in respect of the said unit nor has the complainant executed the addendum to the existing buyer's agreement in the format provided by the respondent. The complainant is conscious and aware that until the addendum in the format provided by the respondent is executed by the complainant or a separate buyer's agreement in respect of unit no SA-1012 is executed by the complainant, the respondent is not under any obligation to offer possession of the said unit to provide any details with regard to the status of the project/unit etc. however, in order to obviate all

controversy, it is clarified that occupation certificate has been received by the respondent on 17.10.2022.

- xxvi. That the letter dated 20.12.2016 for payment of fixed amount, the liability for payment of assured returns ended upon cancellation of unit no. SA- 1009. Admittedly, assured returns have been paid by the respondent and duly received by the complainant till January, 2020. Any assured returns payable to the complainant shall be adjusted against the balance amount payable against unit SA-1012 once the complainant executes the addendum to the buyer's agreement dated 03.01.2017. In case the complainant refuses to execute the addendum in the format sent by the respondent, the complainant shall be required to execute the Buyer's Agreement in respect of unit SA-1012. In such case, any assured return payable to the complainant shall first be adjusted against the earnest money and other amounts forfeited under Buyer's agreement dated 03.01.2017 and the balance, if any, shall be adjusted towards balance amount payable towards unit SA-1012.
- xxvii. That the complainant does not have any legitimate grievance qua the respondent and the institution of the present false and frivolous complaint is unjustified and unwarranted.
- xxviii. 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. 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 Authority.
- xxix. That the complainant has failed to execute the buyer's agreement/addendum on false and frivolous pretexts and has instead proceeded to file the present frivolous complaint. The complainant cannot be permitted to take advantage of its own wrongdoing and delays.

- xxx. That without prejudice to the submission of the respondent that there is no delay on the part of the respondent, 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.
- xxxi. That, 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.
- xxxii. 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.
- xxxiii. That the reallotment was done at the request of the complainant and was subject to execution of necessary documents including the addendum to the buyer's agreement in the standard format of the respondent company. However, the addendum was not executed by the complainant in the format sent by the respondent. Moreover, the super area of the unit at the time of booking/allotment was tentative and finally determined after completion of construction.



- xxxiv. That the complainant had opted to a special fixed return payment plan. The respondent had agreed to pay fixed amount of Rs.83,810/- per month in accordance with the terms and conditions for payment of fixed amount as set out in the letter dated 20.12.2016. However, the terms and conditions of the said letter have been misinterpreted and misconstrued by the complainant.
- xxxv. That the complainant has received fixed amount till January 2020 and not till November 2019 as stated in the corresponding para of the complaint.
- xxxvi. That selective clause of the Buyer's Agreement cannot be relied upon in isolation and the contract as a whole is to be read and interpreted in its entirety. It is wrong and denied that possession of the unit was agreed to be handed over by 02.01.2022. Time lines for delivery of possession are dependent upon various factors such as timely payment of sale consideration by the allottee and time taken by statutory authorities in according approvals. In case of delay caused due to reasons beyond the power and control of the respondent, the due date of possession also stands extended. The total sale consideration of the unit does not include applicable taxes, interest on delayed payments, stamp duty, registration charges and other charges payable at the time of offer of possession.
- xxxvii. That the respondent had approached the complainant with a request for re allocation of another unit. On the contrary, it was the complainant who had approached the respondent and requested for cancellation of unit no. SA-1009 admeasuring 891 sq. ft. super area approx. and for allotment of an alternate unit, i.e. SA-1012 admeasuring 900 sq. ft. in the same project.
7. All other averments made in the complaint were denied in toto.
8. 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.**

9. 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**

10. 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 purposes 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 a complete territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

11. 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.*

12. 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 complainant.**

- F.I Direct the respondent to pay assured returns to the complainant till the time of offer of the first lease at prevailing market rental after offering possession of the unit, as per Clause 4 of the agreement dated 20.12.2016.**
- F.II Direct the respondent to pay assured returns of Rs.83,810/- per month from December, 2019 till October, 2022 i.e. an amount of Rs.29,33,350/- less TDS of Rs.2,93,335/-, i.e. a sum of Rs.26,40,015/- to the complainant.**
- F.III Direct the respondent to pay respondent to pay interest at the rate of State Bank of India highest marginal cost of lending rate + 2%, i.e. 10% per annum approximately, on the aforesaid amount in S.No II.**

13. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
14. The factual matrix of the case reveals that the complainant was originally allotted a unit no. SA-1009 admeasuring 891 sq. ft. vide allotment letter dated 21.12.2016, along with a letter dated 20.12.2016 containing terms and conditions for a fixed assured return of Rs.83,810/- per month (subject to tax deductions) until the offer of the first lease after offering possession of the unit. A builder buyer agreement dated 03.01.2017 was executed inter se parties for the said unit for a total sale consideration of Rs.50,49,684/-.
15. The complainant herein contends that fixed assured returns were stopped from December 2019 despite no offer of possession being made. On contrary, the respondent claims that the original unit SA-1009 was cancelled at the request of the complainant and a new unit SA-1012 admeasuring 900 sq. ft. was offered in its place. The respondent further claims that since the complainant did not execute a fresh agreement or addendum for the new unit, there was no further liability to pay assured returns.
16. As a result, from the respondent contentions and conduct the complainant have been left without both the unpaid assured returns and possession of the unit. Upon perusal of the documents and pleading made by both the parties, it is evident that the respondent, vide letter dated 06.02.2021, reallocated the



original allotted unit of the complainant to SA-1012, wherein the respondent has firmly mentioned that:

*"Accordingly, at the same pricing structure per sq. ft. as earlier agreed with you, may we request you to kindly send us all payments based upon opted payment plan."*

17. Subsequently, the complainant, vide letter dated 17.03.2021, agreed to the reallocation. This letter also recorded that there was no need to execute an amendment to the existing builder buyer agreement dated 03.01.2017, as the original agreement terms were incongruous with the current status of the project.

18. It is further observed that the respondent has not submitted any documentary proof showing that the complainant had requested the reallocation of Unit no. SA-1009. On the contrary, the complainant has provided draft addendums to the buyer's agreement dated July 2021 and August 2021 (Annexure P7), duly signed by the complainant. The August 2021 draft addendum was also received by the respondent and specifically included a clause confirming the obligation to pay the assured returns, same is reiterated below:

3.  
*The Second Party acknowledges that the allotment of the Unit is under a Special- Fixed Return Payment Plan. The Second Party further acknowledges that the monthly fixed assured return of Rs. 83,810/- (Rupees Eighty Three Thousand Eight Hundred Ten only) shall be payable to the First Party until offer of possession of the Unit, as per the Terms and Conditions vide letter dated 20.12.2016 issued by the Second Party to the First Party.*

19. Accordingly, the respondent's claim that its liability to pay assured returns ended due to the complainant's failure to execute a fresh agreement or addendum by complainant is devoid of merits. The respondent itself initiated the reallocation but failed to finalize the addendum despite receiving signed drafts from the complainant. Moreover, the respondent retained a substantial amount of the sale consideration paid by the complainant since 2016. If the respondent

considered the original unit cancelled and did not intend to proceed with the addendum, it should have refunded the amount.

20. Since the reallocation of the unit was initiated by the respondent and accepted by the complainant at the same rate, and the respondent retained the amount paid by the complainant, the obligation to pay the fixed assured returns as per the letter dated 20.12.2016 remains continuing and is not affected by the mere change of unit.

21. As per Clause 4 of the letter dated 20.12.2016, the respondent's obligation was to pay assured returns until the offer of the first lease after offering possession of the unit. Since no possession has been offered for either the original unit SA-1009 or the reallocated unit SA-1012, the respondent remains liable to pay fixed assured returns to the complainant as per the agreed terms. The time period for the liability of assured return to be paid by the respondent is being elaborated in the succeeding paragraphs of the present order.

**F.IV Direct the respondent to pay interest for every month of delay at prevailing rate of interest.**

**F.V Direct the respondent to handover the possession of the unit to the complainant along with delay interest at the rate of State Bank of India highest marginal cost of lending rate + 2%, i.e. 10% per annum approximately, till the date of possession; and execute the conveyance deed in respect of the Unit.**

22. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of Section 18(1) of the Act which reads as under:

***"Section 18: - Return of amount and compensation***

***18(1). If the promoter fails to complete or is unable to give possession of an  
apartment, plot, or building, —***

***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***

23. Herein, the builder buyer agreement was executed on 03.01.2017 for the unit no. SA-1009 between the parties. Thereafter, as already elaborated above complainant's unit was reallocated to SA-1012 vide letter dated 06.02.2021 at the same price structure.

24. Clause 7.1 of the buyer's agreement dated 03.01.2017 provides the time period of handing over possession and the same is reproduced below:

*7.1 schedule for possession of the said unit.*

*The Promoter agrees and understands that timely delivery of possession of the said promises / 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 areas 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.*

25. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.



26. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottees are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit.

27. **Due date of possession and admissibility of grace period:** As per clause 7.1 of buyer's agreement, the respondent/promoter has proposed to handover the possession within a period of forty-eight months including unqualified grace period of twelve months from the date of execution of agreement. The authority calculated the due date of possession from the date of execution of agreement i.e. 03.01.2017 which comes out to be 03.01.2022 including unqualified grace period of 12 months.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. Rule 15 has been reproduced as under:

*"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]*

*For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"*

29. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules has determined the prescribed rate of interest. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **15.07.2025** is 8.90%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.90%.
30. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.
31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.90% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges
32. On consideration of documents available on record and submissions made by the complainant and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The possession of the subject unit was to be handed over by 03.01.2022. However, the possession has not been offered to the complainant till date, despite the respondent having obtained the occupation certificate for the project on 17.10.2022.

#### **DETERMINATION OF THE ISSUES**

33. It is matter of record that the amount of assured return was paid by the respondent promoter till December 2019. Further, no possession has been offered to the complainant. The occupation certificate for the project was

obtained by the respondent on 17.10.2022. The complainant has sought the unpaid amount of assured return as per the terms of letter dated 20.12.2016. As per clause 4 of the MOU dated 20.12.2016, the promoter had agreed to pay fixed assured return to the complainant-allottee till first lease.

34. In the present case, the complainant is seeking both assured return as well as delay period interest. Herein, the due date of possession was 03.01.2022 and keeping in view the clause 4 of the letter dated 20.12.2016 which states that after offer of the first lease the company shall stand completely discharged of its liabilities and shall not require to pay the fixed return thereafter. The Authority is of the view that the liability of the respondent to pay assured return to the complainant shall subsist only till the date of occupation certificate i.e. 17.10.2022 as permitting the allottee to claim both delay period interest and assured return for the same period would amount to double penalty upon the promoter.

35. Considering the facts of the present case, the respondent is obligated to pay the remaining assured return at the agreed rate i.e., Rs.83,810/- (subject to tax deduction) per month from the date the same was not paid by the respondent i.e., January 2020 till the date of occupation certificate i.e., 17.10.2022. Thereafter, the respondent is obligated to pay delay possession charges @ 10.90% p.a. on the amount paid by the complainant i.e., Rs.43,65,790/- w.e.f. the date of occupation certificate i.e., 17.10.2022 till the date of valid offer of possession of the reallocated unit no. SA-1012.

**F.VI Direct the respondent to adjust the monies due and payable to the Complainant under S. No II against the balance amount payable under the builder buyer agreement.**

36. The respondent is directed to issue a revised statement of account of the reallocated unit i.e. SA-1012 to the complainant after adjustment of unpaid assured return and delay period interest on account of both the parties. Further,



the complainant is directed to pay the outstanding amount after issuance of a revised statement of account.

**F.VII Direct the respondent to execute the Addendum, draft of which was shared with the Respondent in August, 2021.**

37. The Authority observes that the respondent has already obtained the Occupation Certificate from the competent Authority on 17.10.2022 and considering that the complainant has already paid substantial amount against the sale consideration of the unit, also as already elaborated above the respondent vide letter dated 06.02.2021 has agreed reallocation of the unit at the same agreed price of original allotted unit. Accordingly, at this stage respondent cannot now be directed at this to execute any fresh agreement for sale and revise the terms and conditions.


**G. Directions of the Authority:**

38. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with 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 is directed to pay the amount of assured return from the date the same was not paid by the respondent i.e., January 2020 till the date of occupation certificate i.e., 17.10.2022 at the agreed rate i.e., Rs.83,810/- (subject to tax deduction) per month. The respondent is directed to pay the said assured return amount within 90 days from the date of this order and failing which that amount would be payable with interest @ 8.90% p.a. till the date of actual realization.
- II. Further, the respondent is directed to pay delay possession charges @ 10.90% p.a. on the amount paid by the complainant(s) w.e.f. 17.10.2022 till the date of valid offer of possession of the reallocated unit no. SA-1012. The arrears of such interest accrued from 17.10.2022 till the date of this order

by the authority shall be paid by the promoter to the complainant within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainant before 10<sup>th</sup> of each subsequent month as per Rule 16(2) of the rules.

- III. The respondent is directed to issue a revised statement of account of the reallocated unit i.e. SA-1012 to the complainant in terms of the relief allowed under the said order within a period of 30 days from the date of this order. The complainant is directed to pay the outstanding amount within next 30 days after issuing a revised statement of account. After clearing all the outstanding dues, the respondent shall handover the possession of the allotted unit to the complainant. The complainant is also obligated to take the possession of the subject unit in terms of Section 19(10) of the Act, 2016.
- IV. The respondent is directed to get the conveyance deed executed in the favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- V. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.

  
**(Ashok Sangwan)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

  
**(Arun Kumar)**

Chairman

**Dated: 15.07.2025**