

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM****Date of Order:****11.09.2025**

NAME OF THE BUILDER		ELAN LIMITED	
PROJECT NAME		"ELAN MERCADO"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4581/2024	Narain Dass V/S Elan Limited	Ms. Aishwarya Dobhal Advocate for complainant Sh. Ishaan Dang Advocate for respondent
2.	CR/4582/2024	Narain Dass V/S Elan Limited	Ms. Aishwarya Dobhal Advocate for complainant Sh. Ishaan Dang Advocate for respondent

CORAM:

Shri Vijay Kumar Goyal

Member**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Elan Mercado" (Commercial Complex) being developed by the same respondent/promoter i.e., Elan Limited. The terms and conditions

of the application for the provisional allotment, fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking delayed possession charges along with interest and others.

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

Project Name and Location		Elan Limited at “Elan Mercado” situated in Sector-80, Gurugram	
Occupation Certificate: 17.10.2022			
Complaint No., Case Title	CR/4581/2024 Narain Dass V/S Elan Limited	CR/4582/2024 Narain Dass V/S Elan Limited	
Reply status	01.05.2025	01.05.2025	
Unit no.	FS-51 (Food Court) [As per page no. 25 of the complaint]	GF-0087, ground floor [As per page no. 33 of the complaint]	
Area admeasuring	384 sq. ft. (super area) [As per page no. 25 of the complaint]	301 sq. ft. (super area) [As per page no. 33 of the complaint]	
Revised unit area	441 sq. ft. (As per offer of possession for fit-out on page no. 162 of the reply)	290 sq. ft. (As per offer of possession for fit-out on page no. 162 of the reply)	
Allotment letter	27.10.2016 (As per page no. 14 of the complaint)	12.05.2016 (As per page no. 22 of the complaint)	
Date of execution of buyer’s agreement	01.08.2017 (As per page no. 22 of the complaint)	29.09.2016 [As per page no. 30 of the complaint]	
Due date of handing over of possession	01.02.2022 [Note: Due date to be calculated 48 months from the date of execution of buyer’s agreement i.e., 01.08.2017 plus 6 months as	29.03.2021 [Note: Due date to be calculated 48 months from August, 2016 being earlier plus 6 months as per HARERA notification no. 9/3-	

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	per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]	2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
Offer of possession for fit-out	07.03.2020 [As per page no. 162 of the reply]	07.03.2020 [As per page no. 171 of the reply]
Total Consideration / Total Amount paid by the complainant	TSC: Rs.24,27,264/- (As per payment plan on page no. 53 of the complaint) AP: Rs.31,34,390/- (As per receipt information on page no. 71 of the complaint)	TSC: Rs.33,93,746/- (As per payment plan on page no. 58 of the complaint) AP: Rs.37,13,144/- (As per receipt information on page no. 98 of the complaint)
Legal notice for possession, conveyance deed and compensation	30.01.2024 (As per page no. 76 of the complaint)	30.01.2024 (As per page no. 103 of the complaint)
The complainants in the above complaint(s) has sought the following reliefs: <ol style="list-style-type: none"> 1. Direct the respondent to hand over the possession of the allotted unit along with delay interest till date along with the prescribed rate of interest as per the provisions of Act of 2016 read with Rules, 2017. 2. Direct the respondent to register conveyance deed for the said unit FS-51 in favour of the complainant. 3. Impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by the respondent. 4. Impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sections 12, 13, 14 and 16 of the Act of 2016. 5. Direct the respondent to provide detailed account statement against the amount collected from the complainant in lieu of interest, penalty for delayed payments. 6. Issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of Act of 2016 to be read with Rules, 2017. 7. Recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section- 318(4), 316(2) and 316(5) of the Bhartiya Nyaya Sanhita. 8. Direct the respondent to pay the cost of litigation. 		
Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC Total Sale consideration AP Amount paid by the allottee(s)		

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the

allotment of units in the project of the respondent/builder and for not handing over the possession by the due date, seeking delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant/allottee are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4581/2024 titled as Narain Dass V/S Elan Limited** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Unit and project related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	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.	Unit no.	FS-51 (Food Court) (As per page no. 25 of the complaint)



7.	Unit area admeasuring	384sq. ft. (super area) (As per page no. 25 of the complaint)
8.	Revised unit area	441 sq. ft. (As per offer of possession for fit-out on page no. 162 of the reply)
9.	Allotment Letter	27.10.2016 (As per page no. 14 of the complaint)
10.	Date of execution of builder buyer's agreement	01.08.2017 (As per page no. 22 of the complaint)
11.	Possession clause	11.(a) schedule for possession of the said unit. <i>The Developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the Said Building/Said Unit within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement unless there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the Developer or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Consideration and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Developer then not withstanding rights available to the Developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Developer.</i>

		(As per page no. 38 of the complaint)
12.	Grace period	The respondent/promoter has sought the grace period of 12 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. However, as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, the Authority allowed the grace period of 6 months only being qualified.]
13.	Due date of delivery of possession	01.02.2022 (Note: Due date to be calculated 48 months from the date of execution of buyer's agreement i.e., 01.08.2017 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
14.	Total sale consideration	Rs.24,27,264/- (As per payment plan on page no. 53 of the complaint)
15.	Total amount paid by the complainants	Rs.31,34,390/- (As per receipt information at page no. 71 of the complaint)
16.	Offer of possession for fit outs	07.03.2020 (As per page no. 162 of the reply)
17.	Occupation certificate	17.10.2022 (As per page no. 170 of the reply)
18.	Intimation letter for handing over of possession	18.10.2022 (As per page no. 173 of the reply)
19.	Legal notice for possession, conveyance deed and compensation	30.01.2024 (As per page no. 76 of the complaint)

B. Facts of the complaint:

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8. The complainant has made the following submissions:

- I. That the complainant is a law-abiding senior citizen retired from the Ministry of Social Justice and Empowerment.
- II. That the complainant bought/booked a shop in the food court of the project "Elan Mercado" on 30.05.2016. Accordingly, unit no. FS-51, a shop at food court, with initial total carpet area of 384 sq. ft., was allotted to the complainant, vide allotment letter dated 27.10.2016.
- III. That, notably, the said allotment letter was accompanied by a payment schedule as well. The total sale consideration for the shop was stated as Rs.24,27,264/- (excluding taxes). As per the said payment plan of the agreement, the complainant has to pay Rs.4,00,000/- at the time of booking, 35% of BSP (after deducting booking amount) within 45 days of booking, 20% of BSP along with 100% EDC & IDC on completion of super structure, and finally 45% of BSP along with 100% IFMS on offer for possession.
- IV. That from 09.06.2016 to 04.10.2016, the complainant had already made payment of a sum of Rs.8,25,000/- to the respondent. The said total payment of Rs.8,25,000/- was made via 3 separate instruments dated 07.06.2016, 02.08.2016 and 06.09.2016.
- V. That, interestingly, even after obtaining more than 30% of the payment against the said unit, the respondent had not signed the builder buyer's agreement with the complainant, which is in complete contravention of provisions under Section 13 r/w 2(zk) of the Act of 2016. Finally, after almost a year of allotting the unit to the complainant, the respondent signed a BBA with the complainant on 01.08.2017.

- VI. That as per clause 11(a) of the said buyer's agreement dated 01.08.2017, the respondent was duty bound to deliver possession of the said unit within a period of 48 months with an extension of 12 months from the date of the agreement. Accordingly, the respondent was liable to handover possession by 01.08.2021, or latest by 01.08.2022, if extended.
- VII. That after signing the buyer's agreement, the complainant made a further payment of Rs.6,40,624/-, in lieu of "completion of super structure", on 14.12.2018.
- VIII. That on 07.03.2020, the respondent issued a letter to the complainant offering possession for "fit-out" purpose, which is again in contravention of RERA rules. Surprisingly, along with the said offer of possession, the respondent informed the complainant that there was more than 10% increase in the super area and accordingly the complainant was required to make further payment. The respondent further raised a total demand of Rs.17,04,035/-.
- IX. That having no option but to make payment to the respondent, the complainant made a further final payment of Rs.16,68,766/- vide 3 separate instruments all dated 18.03.2020.
- X. That even after making the entire payment in March, 2020 itself, neither did the respondent hand over possession to the complainant nor did they communicate anything from their side for a period of 2 years. Finally, after more than 2 years, the respondent issued a letter dated 18.10.2022 to the complainant, announcing that the respondent had received occupation certificate in respect of the complainant's shop unit FS-51. Vide the said letter, the

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- respondent also informed the complainant that they shall be initiating the process of handing over possession and registration.
- XI. That even after issuing letter dated 18.10.2022, the respondent company did not handover possession to the complainant. It is pertinent to mention here that the complainant had bought 2 units in the said project of the respondent, "Elan Mercado", which were a shop in the food court FS-51 and a shop on the ground floor vide no. GF-0087. Till December, 2022, the complainant had not received possession of any of the units. On 12.12.2022, the complainant sent a representation to the respondent, demanding his rightful compensation for the delay caused in handing over of possession of both of his units.
- XII. That since the respondent did not issue receipts for each of the payments made by the complainant and in order to safeguard his interests, the complainant decided to at least take a "No Dues" letter from the respondent company. After much insistence, the respondent issued a No Dues Certificate on 03.05.2023 to the complainant, demonstrating that there were no dues left to be paid by the complainant. Along with the said No Dues Certificate, the complainant also received a statement of account dated 29.04.2023, which shows that the complainant has made the entire payment. Till date, the complainant has duly paid a sum of Rs.31,34,390-/ including all the taxes and other charges.
- XIII. That to the shock of the complainant, at the time of issuing the no dues letter, the respondent company forced the complainant to make payment against maintenance charges, without even having handed over possession to the complainant. Having no other



- option, the complainant made payment of Rs.29,005/- against the demands of the respondent for maintenance charges.
- XIV. That, in reference to his letter dated 12.12.2022, the complainant once again sent a representation to the respondent on 05.01.2024, once again demanding compensation for the delay caused in handing over of possession of both of his units.
- XV. That upon not receiving any response from the respondent builder and after waiting for a considerable amount of time, the complainant took legal help and got issued a legal notice dated 30.01.2024 to the respondent. However, the respondent neither responded to the said legal notice nor offered possession to the complainant.
- XVI. That the respondent has failed to deliver possession even after passing of more than 4 years of clearing all the payments and dues by the complainant on a timely basis, as and when demanded by the respondent. The complainant has been running from pillar to post despite having made the entire payment for the unit.
- XVII. That the complainant has suffered losses or damages due to false and incorrect statements or commitments made by the respondent for delivering the possession of the unit within stipulated time. Thus, the complainant is entitled to claim the prescribed rate of interest as the respondent failed to give the possession in accordance with the terms of agreement under Section 19(4) of the RERA Act of 2016.
- XVIII. That the respondent has indulged in unfair trade practice and there is deficiency in service on part of the respondents by misleading the complainant. The respondent has also caused great hardship, mental harassment and huge pecuniary loss to the complainant.

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- XIX. That the time of delivery has lapsed a long time ago and the respondent is not ready to consider the claim of the complainant as stated above and has conveniently ignored the same. These claims have arisen due to default and deficiencies in service on the part of the respondent.
- XX. That not only does the future of the complainant's rightful ownership of the property seems clouded, the complainant has been extorted of large sums of money by the respondent. The complainant is also suffering losses as he could have earned his post retirement livelihood from the said shop.
- XXI. That the complainant was, therefore, left with no other option but to approach this Hon'ble Authority. The complainant undertakes that no other case involving the same issues is pending in any other forum.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):

- i. Direct the respondent to hand over the possession of the allotted unit along with delay interest till date along with the prescribed rate of interest as per the provisions of Act of 2016 read with Rules, 2017.
- ii. Direct the respondent to register conveyance deed for the said unit FS-51 in favour of the complainant.
- iii. Impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by the respondent.
- iv. Impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sections 12, 13, 14 and 16 of the Act of 2016.



- v. Direct the respondent to provide detailed account statement against the amount collected from the complainant in lieu of interest, penalty for delayed payments.
 - vi. Issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of Act of 2016 to be read with Rules, 2017.
 - vii. Recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section- 318(4), 316(2) and 316(5) of the Bhartiya Nyaya Sanhita.
 - viii. Direct the respondent to pay the cost of litigation.
10. 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:

11. The respondent has contested the complaint on the following grounds:
- a. That the present complaint is not maintainable in law or on facts. The complainant has no locus standi or cause of action to file the present complaint.
 - b. That the present reply is being filed by Sh. Gaurav Khandelwal on behalf of the respondent i.e., M/s Elan Buildcon Pvt. Ltd. who has been duly authorized vide Board Resolution of the respondent dated 07.01.2025 to file the reply. All averments, claims, allegations and contentions raised in the complaint by the complainant are denied as false and incorrect unless specifically admitted to be true by the respondent. The contents of the complaint that are not being

specifically admitted shall be deemed to have been denied and traversed.

- c. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 01.08.2017, as shall be evident from the submissions made in the following paras of the present reply. The respondents crave leave of this Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement dated 01.08.2017 as well as the terms and conditions for payment of fixed amount, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondents as well as the complainant thereunder.
- d. 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.
- e. That the complainant is estopped from filing the present complaint by their own acts, conduct and acquiescence.
- f. That the project in question, "Elan Mercado", located in sector 80 Gurugram, has been developed by the respondent, Elan Limited over land admeasuring 2.9875 acres situated in Sector 80, Gurugram, which was owned by M/s R. P. Estates Private Limited.

The said land became subject matter of acquisition proceedings in 2004, which ultimately elapsed in August 2007. M/s R. P. Estates Private Limited applied for and was granted license No. 82 of 2009 dated 08.12.2009 in respect of the said land for the development of a commercial colony under Haryana Development and Regulation of Urban Areas Act 1975, by the competent Authority. The landowner, M/s R. P. Estates Private Limited entered into an agreement with ELAN Limited in May 2013, in terms of which the respondent is competent to develop, construct and sell units in the said project. That M/s R. P. Estates Private Limited 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.

g. 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 as mentioned in paras no 37 and 38 of the said judgment.



- h. That based on the observations in Para nos. 37 and 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.
- i. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. Elan Limited developed the land in pursuance to the license granted by the competent Authority. As per direction b) of para 39 of the aforementioned directions, the State extended benefit to the extent of 268 Acres of land (which includes the said land) by declaring the same to be outside the deemed award. The said land was rightly kept outside the deemed award in pursuance to directions passed by the Hon'ble Supreme Court. That neither M/s R P Estates Private Limited nor respondent therein were party to the proceedings before the Hon'ble Supreme Court when the said order was passed.
- j. That, thereafter, vide order dated 13.10.2020, while dealing with an application no. 93822/2020 filed on behalf of the State of Haryana for seeking clarification whether the lands in three cases pertaining to Paradise Systems Pvt. Ltd., Frontier Homes Developers Pvt. Ltd. and Karma Lakeland Ltd. stand covered and form part of the deemed Award or not, the Hon'ble Court passed the following orders:
- k. 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, 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.

- l. 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. Pursuant to the said Order passed by the Hon'ble Supreme Court, 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 (three) 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.
- m. That all the queries pertaining to the project and all issues and concerns concerning the project and further all clarifications as sought for/by the complainant were duly answered/clarified/provided by the representatives of the ELAN group and the documents pertaining to the project were made available to the complainant for inspection and only after having duly satisfied that the complainant took a well informed and conscious call to proceed further with the booking and accept the



allotment of unit in the commercial complex in the project and had opted for a special fixed return payment plan. Thereafter, allotment letter dated 27.10.2016 issued by the respondent in favour of the complainant allotting unit no F'S-51 in the said project admeasuring 384 sq. ft. approx., located on the 3rd floor of the project.

- n. That after completing construction of the project, the respondent made an application on 14.01.2020, to the competent authority for issuance of the occupation certificate with respect to the project. Vide letter dated 15.01.2020, the respondent informed the complainant about the application to the competent authority for issuance of the occupation certificate.
- o. That by letter dated 07.03.2020, the respondent offered possession of the unit to the complainant for fit-outs and settlement of dues. The complainant was informed that the super area of the said unit was revised to 441 sq. ft. from the earlier super area of 384 sq. ft. Accordingly, there was a corresponding decrease in the charges payable by the complainant. The complainant was called upon to clear his outstanding dues as set out in the said letter. The respondent had offered the possession of the unit in the project for fit outs 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, keeping in view the interest of all the allottees in the project.
- p. That, as has been submitted in the preceding paras of the preliminary objections, the issuance of the occupation certificate was delayed on account of litigation pending before the Hon'ble Supreme Court and it is only upon issuance of the occupation

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certificate that the respondent can hand over possession of the units in the project to the allottees. Respondent cannot be held liable for delays caused on account of reasons beyond its power and control.

- q. That in so far as respondent is concerned, 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 the provisions of the Act of 2016. 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. By letter dated 18.10.2022, the complainant was informed about the issuance of the occupation certificate by the competent Authority.
- r. That thus, from the facts and circumstances set out in the preceding paras, it is evident that there is no default or lapse in so far as the respondent is concerned. However, the complainant has failed to take over possession of the said unit in question for reasons best known to himself and has instead proceeded to file the present false and frivolous complaint, which deserves to be dismissed at the very outset.

12. 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.

13. The respondent has filed the written submissions on 18.07.2025, which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the authority:

14. The objection raised by the respondent regarding rejection of complaint on ground of subject matter jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34: Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

15. 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

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be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Finding on objections raised by the respondent:

F.1 Objection regarding force majeure.

16. The respondent has raised an objection that the present complaint is covered in the matter of *Rameshwar and Others Vs. State of Haryana and others, (Civil Appeal No. 8788 of 2015 reported as 2018(6) supreme court cases, 215)* the respondent contended that the said land is also covered in 268 acres. The Hon'ble Supreme Court affirmed that the project was completed on 14.01.2020. Pursuant to the said order passed by the Hon'ble Supreme Court, respondent approached the office of the Town and country planning Department, Haryana for grant of occupation certificate which the subsequently granted on 17.10.2022 i.e., only within 3 months of the passing of the said order by the Hon'ble Supreme Court which clearly indicates that the construction of the project was completed way back in January 2020 and the Town and country planning Department, Haryana had no reasons to further delay the grant of occupation certificate. Further, the issuance of 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 projects to the allottees. There is no default or lapse in so far as respondent is concerned. Further the delay in grant of occupation certificate, despite timely completion of construction of the project was beyond the power and control of the respondent. The respondent has at all times been ready and willing to offer possession of the subject unit in a timely manner.



17. On the documents and submission made by both the parties, the Authority is of the view that the Authority observed that Rule 28(2) of the Rules provides that the Authority shall follow summary procedure for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. Further, as per clause 11(a) of the agreement to sell, the possession was to be offered within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement. Since in the present matter the BBA incorporates qualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage. Therefore, the possession was to be handed over by 01.02.2022. Thus, no additional grace period over and above grace period of 6 months can be given to the respondent/builders. Therefore, the due date shall be 01.02.2022.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to hand over the possession of the allotted unit along with delay interest till date along with the prescribed rate of interest as per the provisions of Act of 2016 read with Rules, 2017.**
- G.II Direct the respondent to provide detailed account statement against the amount collected from the complainant in lieu of interest, penalty for delayed payments.**

18. In the instant complaint, the complainant was allotted a food court unit bearing no. FS-51 (Food Court), for an area admeasuring 384 sq. ft. vide allotment letter dated 27.10.2016 for the total sale consideration of



Rs.24,27,264/-. The buyer's agreement has been executed between the parties on 01.08.2017. As per clause 11(a) of the agreement, the respondent was required to hand over possession of the said premises/unit within a period of 48 months from the date of this agreement i.e., 01.08.2017 with an extension of further 12 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. However, as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, the Authority allowed the grace period of 6 months only being qualified. Therefore, the due date of possession comes out to be 01.02.2022. The respondent has issued offer of fit out of possession of the allotted unit of the complainants on 07.03.2020, without obtaining occupation certificate. As per said letter, the respondent company revised/increased the super area of the unit of the complainant for 384 sq. ft. to 441 sq. ft. i.e., 12.92%. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 17.10.2022. Thereafter, respondent has issued a letter for intimation for handing over of possession letter dated 18.10.2022. Hence, the offer of possession for fit-out dated 07.03.2020 is hereby quashed. The Authority hereby directs the respondent to handover the possession of the allotted unit to the complainant in terms of buyer's agreement dated 01.08.2017.

19. In the present complaint, the complainant intend 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."

20. A builder buyer agreement dated 01.08.2017 was executed between the parties. The due date is calculated as per clause 11(a) of BBA i.e., 48 months plus 12 months grace period from the date of execution of this agreement. The relevant clause is reproduced below:

"11 (a) Schedule for possession of the said unit.

*The Developer based on its project planning and estimates and subject to all just exceptions endeavours to complete **construction of the Said Building/Said Unit within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement unless** there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the Developer or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Consideration and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Developer then notwithstanding rights available to the Developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Developer."*

21. Due date of handing over possession and admissibility of grace

period: As per clause 11(a) of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months with an extensions of further twelve (12) months from the date of this agreement there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the Developer or Force Majeure conditions. Since in the present matter the BBA incorporates qualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this



stage as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020. Therefore, the possession was to be handed over by 01.02.2022.

22. **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."

23. 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., 11.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
24. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over of possession is 01.02.2022 but the intimation for handing over of possession was made on 18.10.2022. Accordingly, the non-compliance



of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established.

25. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 01.02.2022 till the expiry of 2 months from the date of offer of possession(18.10.2022) plus two months i.e., 18.12.2022.

26. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

S.no.	Complaint no.	Due date of possession	Intimation for offer of possession	Period for which the complainant is entitled to DPC
1.	CR/4581/2024	01.02.2022	18.10.2022	w.e.f. 01.02.2022 till 18.12.2022
2.	CR/4582/2024	29.03.2021	18.10.2022	w.e.f. 29.03.2021 till 18.12.2022

27. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges as mentioned above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding amount, if any, after adjustment of delayed possession charges in next 30 days from the date of issuance of revised SOA. The complainant is also duty bound to take possession of the allotted unit in terms of section 19(10) of the Act of 2016.

G.III Direct the respondent to register conveyance deed for the said unit FS-51 in favour of the complainant.

28. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of



2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

29. On consideration of the afore-mentioned submissions and documents placed on record, the Authority observed that the occupation certificate was received way back on 17.10.2022 and intimation for offer of possession was made on 18.10.2022, the respondent is directed to get the conveyance deed executed as per section 17 of the Act of 2016.

G.IV Impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for willful default committed by the respondent.

G.V Impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Sections 12, 13, 14 and 16 of the Act of 2016.

G.VI Issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of Act of 2016 to be read with Rules, 2017.

G.VII Recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section- 318(4), 316(2) and 316(5) of the Bhartiya Nyaya Sanhita.

30. The above-mentioned reliefs sought by the complainant are taken together being inter-connected.

31. No material evidence has been placed on record w.r.t defaults of respondent-builder. Neither it is mentioned in the facts of the complaint nor pressed before the Authority during the proceedings of the day. Thus, no direction to this effect.

G.VIII Direct the respondent to pay the cost of litigation.

32. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation &



litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority:

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

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 01.02.2022 till the date of offer of possession (18.10.2022) plus two months i.e., 18.12.2022 as per proviso to section 18(1) of the Act read with Rule 15 of the Rules, 2017. The due date of possession and the date of entitlement of delay possession charges are detailed in table given in para no. 26 of this order. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues, if any, after adjustment of delayed possession charges within 30 days from the date of issuance of revised SOA.



- iii. The respondent is directed to execute the conveyance deed in terms of section 17(1) of Act of 2016 after payment of requisite stamp duty and registration charges by the complainant.
 - iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
 - v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by **Hon'ble Supreme Court** in **Civil Appeal Nos. 3864-3889/2020** decided on **14.12.2020**.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
36. Files be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2025