

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM****Complaint no.:** 3295 of 2024  
**Order pronounced on:** 10.09.2025

Arun Kumar

**R/o:-** House No. 44, Shri Ram Colony,  
Sector-4, Gurugram.**Complainant**

Versus

Elan Limited

**Regd. office:-** L-1/1100, First Floor, Street No. 25,  
Sangam Vihar, South Delhi- New Delhi- 110062**Respondent****CORAM:**

Ashok Sangwan

**Member****APPEARANCE:**

Akhil Aggarwal (Advocate)

Ishaan Dang (Advocate)

**Complainant  
Respondent****ORDER**

1. The present complaint has been filed by the complainant/allottee 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 to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project related details:**

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

| S. No. | Particulars             | Details   |
|--------|-------------------------|---|
| 1.     | Name of project         | "Elan Mercado"  |
| 2.     | Nature of project       | Commercial  |
| 3.     | Location                | Village-Naurangpur, Sector-80, Gurugram.  |
| 4.     | RERA Registered         | Registered<br>Vide registration no.-189 of 2017<br>Dated-14.09.2017   |
| 5.     | DTCP License            | License no. 82 of 2009<br>Dated-08.12.2009  |
| 6.     | Allotment letter        | 05.10.2016<br>(As on page no. 29 of complaint)  |
| 7.     | Builder buyer agreement | 06.01.2017<br>(As on page no. 32 of com[plaint])  |
| 8.     | Unit no.                | [Earlier] SA-1407, Floor-14 <sup>th</sup><br>(As on page no. 35 of complaint)<br>[Now]SA-916 on 9 <sup>th</sup> floor<br>(As on page no. 67 of complaint) |
| 9.     | Unit area               | 675 sq.ft [Super-Area] [Earlier]<br>(As on page no. 35 of complaint)<br>On the offer of possession for fit-outs the area has been increased to 790sq.ft.  |
| 10.    | Possession clause       | <b>Clause-11</b><br><b>(a) Schedule for possession of the said Unit</b>   |

|     |                         |   |
|-----|-------------------------|---|
|     |                         | <p>Within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement.</p> <p>(As on page no. 45 of complaint)</p>   |
| 11. | Due date of possession  | <p>06.01.2022</p> <p>[Calculated 48 months from date of agreement plus 12 months]</p>   |
| 12. | Sale consideration      | <p>Rs.63,30,550/-</p> <p>(As per payment plan annexed with the Buyer's Agreement on page no. 60 of complaint)</p>   |
| 13. | Amount paid             | <p>Rs.62,86,620/-</p> <p>(As on page no. 227 of reply)</p>  |
| 14. | Letter of assurance     | <p>04.10.2016</p> <p>(As on page no. 83 of complaint)</p>   |
| 15. | Terms of Assured Return | <p><b>Clause 1</b></p> <p><i>That Elan Limited (herein after referred to as "Company"), agrees and undertakes to pay to the applicant, a Fixed Amount of Rs.55,548/- (Rupees Fifty Five Thousand Five Hundred Forty Eight Only) per month, which is subject to Tax Deduction at Source, on the provisional booking in Mercado, on the amount of Rs.52,38,828/- (rupees Fifty Two Lakh Thirty Eight Thousand Eight Hundred Twenty Eight Only) received through Ch. No. 000007 dated 22.08.2016, Ch. No. 000038 dated 15.09.2016, Ch. No. 0---39 dated 16.09.2016 drawn on HDFC Bank &amp; Ch. No. 640395, Ch. No. 640396 dated 01.10.2016 drawn on Punjab National Bank.</i></p> |



|     |   |  |
|-----|---|--|
|     |   | <p><b>Clause 4.</b></p> <p><i>That the Company shall be liable to pay Fixed Assured Return @12% to the applicant till the time of offer of the First Lease at prevailing market rental after offering possession of the unit, Company shall not be responsible for the Lease and payment of fixed return thereafter. After offer of the first lease the Company shall stands completely discharged of its liabilities and shall not be required to pay the fixed return thereafter.</i></p> <p><i>[Emphasis supplied]</i></p> <p>(As on page no. 83-84 of complaint)</p> |
| 16. | Assured return paid till date   | Rs.22,03,502/-   |
| 17. | Offer of possession for fit-outs  | 26.10.2020<br>(As on page no. 68 of complaint)   |
| 18. | Email sent by respondent regarding intention of execution of lease deed | 28.12.2023<br>(As on page no. 105 of complaint)  |
| 19. | Occupation certificate  | 17.10.2022<br>(As on page no. 223 of reply)  |

## B. Facts of the complaint

### 3. The complainant has made the following submissions: -

- I. That the present complaint is in reference to the commercial project named "Elan Mercado" located at Village Naurangpur, Sector-80, Manesar, Gurugram. The project was proposed to be developed, constructed and sold by M/s Elan Ltd.
- II. That based on the claims, assurances and proposals of the respondent, the complainant was lured into buying a unit in the



project. That the respondent made the complainant pay the huge amount of Rs.5,00,000/- as booking amount at the time of booking in 2016. That it is worthwhile to mention here that in complete regard of the statute, the respondent collected a huge amount of Rs.54,74,575/- from the complainant, i.e. more than 80% of the Total Sale Consideration, even before issuance of the allotment letter.

- III. That the respondent finally and much belatedly issued the "Provisional Allotment Letter" to the complainant on 05.10.2016 towards allotment of unit no.SA-1407 admeasuring 675 sq. ft. super area at the Basic Sale Price of Rs.8,190/- per sq. ft. and therefore the total sale consideration amounted to Rs.63,30,550/-. The respondent illegally and with malafide intention took more than 80% of the total sale consideration from the complainant even before issuance of allotment letter and signing and executing the Builder Buyer Agreement.
- IV. That on 05.01.2017 the BBA was executed between the complainant and the respondent. That at this stage the complainant became aware of the totally one sided and biased BBA, the complainant having already paid huge sum of money, i.e. more than 80% of total sale consideration, was left with no option but to sign on the dotted lines.
- V. That the complainant paid more than the Total Sale Consideration as and when the demand for the same was raised. However, it is pertinent to note here that the respondent collected a huge amount of payment which was due at the time of offer of possession after obtaining the Occupation Certificate and also completing the project as per terms of the BBA. However, the respondent illegally offered a pre-mature offer of possession to the complainant without either



obtaining the OC or completing the unit as per the terms of the BBA. That possession for fit-out has no meaning in the present case as the same was the obligation of the respondent as per the BBA.

- VI. That the respondent offered possession under the garb of possession for fit-out on 11.09.2020 when no Occupation Certificate was obtained by the respondent and no possession whatsoever could have been given by the respondent without even obtaining the Occupation Certificate. Furthermore, the respondent illegally raised a demand vide email dated 14.09.2020 which could have only been raised at the time of offer of possession once the unit was complete in all aspects as per the BBA. That the said demand was illegal also because the respondent has been demanding the payments in its personal account instead of the escrow account for the project. Delay in completing the project is evident from this very fact as well since the complainant apprehends that the respondent has been diverting the project money for its own use.
- VII. That the respondent had illegally increased the area of the unit by more than 10% of super area. When the complainant objected to the same, the respondent said that the unit allotted was tentative and forced the complainant to accept the new unit no.SA-916 vide letter dated 23.10.2020 and issued revised offer of possession and demand letter dated 26.10.2020 and 30.10.2020. However, the Unit is incomplete even till date.
- VIII. That the respondent has not offered a valid offer of possession to the complainant even till date and has outrightly failed to give possession of the unit to the complainant as per law and the BBA. As per clause 11 (a) of the BBA, the time for complete construction was stipulated

to be 48 months from the date of execution of BBA. The due date of possession was 05.01.2021. However, the respondent has monumentally failed to complete and give possession of the unit to the complainant as per the BBA even after the lapse of more than 3.5 years. The unit is incomplete as per the BBA even till date despite the fact that the respondent illegally collected the full payment from the complainant way back in 2020 itself.

- IX. That the respondent has not paid any assured return @12% on amount received after December, 2020 as no valid offer of possession as per law and terms of the agreement has been made by the respondent till date. The respondent is also obligated to give 12% return i.e. Rs.64,444/- per month @12% on Rs.64,44,369/- (as per letter of assurance to the complainant from the date of offer of possession till the date of offer of first lease.
- X. That despite repeated request of the complainant that the complainant do not wish to take the parking, email dated 20.01.2020 issued in this regard, the respondent forcefully collected a payment of Rs.4,00,000/- towards the parking in February, 2020. The respondent is obligated to refund the same along with interest @18% p.a. Furthermore, the respondent has been illegally raising maintenance charges to the complainant despite the fact that no valid and legal offer of possession has been made by the respondent till date.
- XI. That as per the letter of assurance the respondent could not have raised any maintenance demand till the offer of first lease. Additionally, the respondent made illegal offer of first lease on 28.12.2023. However, till date, respondent has not shared any



proposed lease agreement. The respondent is duty bound to disclose the details of the said lease to the complainant. Furthermore, it can be clearly seen that a period of 270 days has been provided as the rent free period which clearly shows that the respondent has put the obligation on the proposed lessee to furnish the unit due to which complainant has to suffer huge losses since obligation to furnish the unit is on respondent and without it offer of possession and first lease is not valid.

XII. This has led the complainant to face triple losses since

- a) *Complainant was made to pay charges for fittings, furniture and fixtures when the same was not provided by the respondent,*
- b) *Complainant is made to face the loss of rent as 270 days period of rent free period and same could have been avoided if Respondent had fulfilled its obligations under the BBA and*
- c) *Complainant is forced to accept extremely low rent since obligation of fittings, furniture and fixtures and associated costs is put on the proposed Lessee.*

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

4. The complainant has sought following relief:

- i. Declare the offer of possession dated 11.09.2020 and 26.10.2020 as illegal and null and void ab initio.
- ii. Direct the respondent to pay assured return to the complainant as:

| S.No. | Amount   | Period                             |
|-------|--|------------------------------------|
| 1.    | Rs.55,548/- per month (as per letter of assurance)   | For January, 2020 - February, 2020 |
| 2.    | Rs.58,556/- per month @12% on Rs.58,55,659/- (as per letter of assurance and amount paid as on date) | For March, 2020 -October, 2020     |



|    |  |   |
|----|--|---|
| 3. | Rs.64,444/- per month @12% on Rs.64,44,369/- (as per letter of assurance and amount paid as on date) | November, 2020 till valid offer of possession as per law and provisions of BBA. |
|----|--|---|

alongwith interest @18% from the due date of payment till the date of actual realisation,

- iii. Direct the offer of first lease dated 28.12.2023 as illegal, invalid and pre-mature.
- iv. Direct the respondent to pay return @12, i.e. Rs.64,444/- per month as per the letter of assurance dated 04.10.2016 from the date of offer of valid possession till the date of offer of first lease alongwith proof of validity and proposed lease deeds.
- v. Direct the respondent to refund the parking charges of Rs.4,00,000/- alongwith interest @18% from the date of payment i.e. 13.02.2020 till the date of realisation.
- vi. Direct the respondent to give physical possession of the unit with complete specifications as per BBA to the complainant alongwith all the common areas and facilities in a time-bound manner.
- vii. Direct the respondent to withdraw the illegal offer of possession dated 11.09.2020 and 26.10.2020 and give a legally valid offer of possession to the complainants as per terms of the BBA and law.
- viii. Direct the respondent to lease the unit to as admitted by the respondent in a time bound and transparent manner.
- ix. Direct the respondent to not charge any maintenance charges till the actual possession as per terms of BBA and without any excessive charges.

- x. Transfer all the common areas and facilities to the association of allottees as per section 17 of the Act.
  - xi. Direct the respondent to form a RWA of allottees and also transfer the maintenance of common areas to the RWA of unit owners after making them members and conducting elections as per the provisions of RERA.
  - xii. Direct the respondent to pay damages of Rs.5,00,000/- and Rs.1,00,000/- towards legal expenses.
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 project in question, "Elan Mercado", located in Sector 80 Gurugram, has been developed by the respondent situated in Village Naurangpur, Sector 80, Gurugram. The said land became subject matter of acquisition proceedings in 2004, which ultimately elapsed in August 2007. The landowner, M/s R. P. Estates Pvt. Ltd. entered into an agreement with the respondent M/s. Elan Ltd. in May 2013, in terms of which the respondent is competent to develop, construct and sell units in the said project.
  - II. That the Land owner 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.

III. That vide its judgment in the matter of gameshwar 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. Paras no 37 and 38 of the said judgment are reproduced hereinbelow for ready reference.

*37. 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 licences for construction. In cases, where third party interests have thus intervened, there would be some more concern.

38. The relief to be granted in the matter has therefore to take care of all the aforesaid aspects. 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 subserved. 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 alongwith 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 favour of individual purchasers of flats or apartments who are being left undisturbed while moulding 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.*

- IV. 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<sup>th</sup> August, 2004 till 29<sup>th</sup> January, 2010 and there were specific directions that the lands which were not transferred by the land holders during the period from 27<sup>th</sup> August, 2004 till 29<sup>th</sup> January, 2010 are not governed by these directions as under:

*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.*

- V. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. The respondent 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. It is pertinent to mention herein that neither M/s R P

Estates Pvt. Ltd. nor the respondent herein were party to the proceedings before the Hon'ble Supreme Court when the said order was passed.

- VI. 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:

*"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 injuncted 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."*

- VII. 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 as well as M/s R. P. Estates Pvt. Ltd. had moved an application before the Hon'ble Supreme Court seeking impleadment in the matter.
- VIII. That the Hon'ble Supreme Court vide its Order dated 21.07.2022 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.



- IX. 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 (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.
- X. That the 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.
- XI. That in August 2016, the complainant had independently approached the respondent and had expressed his interest in booking a commercial unit in the commercial complex known as "Elan Mercado" being developed by the respondents in Sector-80, Gurugram, Haryana.
- XII. That the complainant took a well informed and conscious call to book a unit in the project and had opted for a "Special Fixed Return Payment Plan". Thereafter, Allotment letter dated 05.10.2016 was issued by the respondent in favour of the complainant allotting unit no SA-1407 in the said project admeasuring 675 sq.ft. approx., located on the 14th floor of the project.
- XIII. That the respondent issued letter dated 04.10.2016 setting out the terms and conditions for payment of committed amount of Rs .55,548/- per month subject to tax deduction at source, and duly accepted by the complainant. In accordance with paras 1 and 4 of the said letter, the

respondent had agreed to pay to the complainant fixed amount of Rs.55,548/- per month, subject to tax deduction at source, till the time of offer of the First Lease after issuance of offer of possession by the respondent in accordance with the terms and conditions of the Agreement to Sell.

- XIV. That after the issuance of offer of possession, the complainant shall not be entitled for payment of any fixed amount. Para 5 of the said letter further provides that in the event, the complainant obstructs/neglects/defaults/refuses to accept notice of offer of possession and fails to take over possession due to any reason whatsoever, the respondent shall not have any liability or obligation for payment of fixed amount and shall stand absolved and relieved of its obligations. The terms and conditions of payment of fixed amount were duly accepted by the complainant.
- XV. That the respondent duly paid the fixed amount amounting to Rs.22,03,502/-(inclusive of TDS) to the complainant for a period from September 2016 till January, 2020. The respondent forwarded the Buyer's Agreement to the complainant for execution under cover of letter dated 28.12.2016. The Buyer's Agreement was executed between the parties on 06.01.2017.
- XVI. 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. The complainant was also informed that upon the application for the occupation certificate, the complainant would no



longer be entitled to receive committed amounts in terms of the agreement between the parties. Pertinently, no objection was made by the complainant upon receipt of the said letter and subsequent cessation of payment of committed amounts.

- XVII. That by letter dated 11.09.2020, 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 790 sq.ft. from the earlier super area of 675 sq.ft. Accordingly, there was a corresponding increase in the charges payable by the complainant. The complainant was called upon to clear the outstanding dues as set out in the said letter. It is pertinent to mention that the respondent had offered the possession of the units 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.
- XVIII. That the complainant, vide letter dated 20.10.2020 requested to change in unit allotted to him. The complainant requested that unit no SA-0916 located on the 9<sup>th</sup> floor and admeasuring 670 sq.ft. super area approx. be allotted to him instead of unit no SA-1407 as previously allotted.
- XIX. That although under no obligation to do so, the respondent acceded to the request made by the complainant and allotted unit no. SA-916 in favour of the complainant. Offer of possession letter dated 26.10.2020 was issued in favour of the complainant in respect of unit no SA-0916.
- XX. That the respondent had duly completed construction well within the agreed timelines 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 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. As a gesture of goodwill, the respondent has refrained from charging common area maintenance charges for a period of three months from the date of issuance of the occupation certificate (from 17.10.2022 to 16.01.2023) and the complainant was also informed accordingly by the said letter.

7. Copies of all the relevant documents have been filed and placed on 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**

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**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**



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

*Section 11(4)(a)*

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

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

10. So, in view of the provisions of the Act of 2016 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 objections raised by the respondent.**

**F.I Objections regarding force majeure.**

11. 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 no. 1 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.

12. On the documents and submission made by both the parties, the Authority observes 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 Builder Buyer Agreement dated 06.01.2017, 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 unqualified reason for grace period/extended period in the possession clause. Accordingly, the Authority allows this grace period of 12 months to the promoter at this stage. Therefore, the due date comes out to be 06.01.2022.

**G. Findings regarding relief sought by the complainant**

- G.I Declare the offer of possession dated 11.09.2020 and 26.10.2020 as illegal and null and void ab initio.**



**G.II Direct the respondent to pay assured return to the complainant.**

**G.III Direct the respondent to pay return @12, i.e. Rs.64,444/- per month as per the letter of assurance dated 04.10.2016 from the date of offer of valid possession till the date of offer of first lease alongwith proof of validity and proposed lease deeds.**

**G.IV Direct the respondent to give physical possession of the unit with complete specifications as per BBA to the complainant alongwith all the common areas and facilities in a time-bound manner.**

**G.V Direct the respondent to withdraw the illegal offer of possession dated 11.09.2020 and 26.10.2020 and give a legally valid offer of possession to the complainants as per terms of the BBA and law.**

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. On consideration of the documents available on record and submissions made by both the parties, the complainant was allotted a shop/office space bearing no. SA-1407, 14<sup>th</sup> floor, for a super area admeasuring 675 sq. ft. vide allotment letter dated 05.10.2016 for the total sale consideration of Rs.63,30,550/-. The complainant has paid the entire sale consideration of the subject unit. The buyer's agreement has been executed between the parties on 06.01.2017. 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, with an extension of further 12 months. Therefore, the due date of possession comes out to be 06.01.2022. The respondent has issued offer of fit out of possession of the allotted unit of the complainants on 26.10.2020, without obtaining occupation certificate. As per said letter, the respondent company revised/reduce the super area of the unit of the complainant from 675 sq.ft to 790 sq.ft.. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 17.10.2022.

15. After, considering the above said factual and legal circumstances of the case, the offer of possession for fit-out dated 26.10.2020 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 06.01.2017.
16. 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."*

17. A builder buyer agreement dated 06.01.2017 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."*



**18. 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 extension of further twelve (12) months from the date of this agreement in case there be any 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 unqualified reason for grace period/extended period in the possession clause. Accordingly, the Authority allows this grace period of 12 months to the promoter at this stage. Therefore, the possession was to be handed over by 06.01.2022.

**19. 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."*

- 20.** 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., 10.09.2025 is 8.85%.

Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

21. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 06.01.2017, the possession of the subject unit was to be delivered on or before i.e., 06.01.2022. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 17.10.2022. Thereafter, respondent has issued a letter for intimation for handing over of possession letter dated 18.10.2022.
22. The complainant is seeking unpaid assured returns on monthly basis as per the builder buyer agreement read with the terms and conditions at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the provisional booking/agreement. The authority has decided the said issue in complaint bearing no. **8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon.
23. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period. Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay



High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)* as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

24. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottee arises out of the same relationship and is marked by the original Buyer's Agreement.
25. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?
26. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottee on account of terms and conditions of provisions booking. The assured return in this case is payable as per clause 1 read with clause 4 of the terms and conditions of provisions booking. The fixed return cum assured return has been committed by the promoter is an amount of Rs.55,548/- per month on the provisional booking of future projects of the developers, till the date of offer of First lease at the prevailing market rentals after offer possession of the unit. The relevant clause is reproduced below for ready reference:-

1. *The company, agrees and undertakes to pay to the applicant, a fixed amount of Rs.55,548/- (Rupees Fifty Five Thousand Five Hundred Forty Eight Only) per month on the provisional booking of future projects of the developers, on amount of Rs.52,38,828/- (Rupees Fifty Two Lakh Thirty Eight Thousand Eight Hundred Twenty Eight Only) received through cheque no. 000007 dated 22.08.2016, Ch No.000038 dated 15.09.2016, Ch.No. 640396 dated 16.09.2016 drawn on Punjab National Bank.*
  4. *That the Company shall be liable to pay Fixed Assured Return @12% to the applicant till the time of offer of the First Lease at prevailing market rental after offering possession of the unit, Company shall not be responsible for the Lease and payment of fixed return thereafter. After offer of first lease the Company shall stand completely discharged of its liabilities and shall not be required to pay the fixed return thereafter."*
27. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable a Rs.55,548/- per month. By way of fixed return, the promoter has assured the allottee that he would be entitled for this specific amount till the date of issuance of offer of first lease at the prevailing market rental after offering possession of the unit by the concerned developer. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.
28. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till the date of issuance of offer of first lease of the premises, then the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.



29. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of terms and conditions of provisional booking thereto along with interest on such unpaid assured return as per clause 1 read with clause 4 of the terms of terms and conditions of provisional booking dated 22.08.2016, the promoter had agreed to pay to the complainant/allottee an fixed amount Rs.55,548/- per month from the provisional booking of the unit i.e., 22.08.2016 till the date of Offer of possession and thereafter, assured return @12% from the date of offer of possession till the offer of first effective lease.
30. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization
31. The complainant states that the respondent had illegally increased the area of the unit by more than 10% of super area and when the complainant objected to the same, the respondent alleged that the unit was tentative and forced the complainant to accept the new unit bearing no. SA-0916 vide letter dated 23.10.2020 and issued revised offer of possession and demand letter dated 26.10.2020 and 30.10.2020. The respondent in its defence submitted that vide letter dated 20.10.2020, the complainant requested to change the unit allotted to him and requested that unit no. SA-0916 located on the 9<sup>th</sup> floor admeasuring 670 sq.ft super area be allotted to him instead of unit no.SA-1407.
32. Considering the above-mentioned facts, the Authority observes that on the request of the complainant, the respondent changed the unit of the

complainant from SA-1407 to SA-916. The unit re-allocation has been done by the respondent on the request of the complainant vide letter dated 20.10.2020 and the same was accepted by the respondent via letter dated 23.10.2020. Thus, at this point of time reverting back from the complainant's own actions cannot be entertained and thus, the said relief is hereby declined.

**G.V Direct the respondent to refund the parking charges of Rs.4,00,000/- alongwith interest @18% from the date of payment i.e. 13.02.2020 till the date of realisation.**

33. The complainant has alleged that the respondent had forcibly collected payment of Rs.4 Lacs towards parking usage charges and is seeking the refund of the same.
34. The Authority observes that the complainant had specifically opted for the exclusive right to use a car parking space in the booking application form. This is further substantiated by the allotment letter dated 05.10.2016 and the Buyer's Agreement dated 06.01.2017, both of which clearly stipulate that car parking usage charges are to be levied at Rs.4,00,000/-. Had the complainant not intended to avail of the car parking facility, he could have refrained from opting for it at the time of booking, or raised objections either at the stage of allotment or during execution of the Buyer's Agreement. It is noted that the complainant made a request via email dated 20.01.2020, seeking removal of the car parking charges from the balance payment on the ground that the car parking facility was no longer required. The Authority is of the view that this request was made at an unduly belated stage—almost five years after the date of booking. The respondent cannot be compelled to consider or act upon any such request that is contrary to the mutually agreed



terms and conditions as set forth in the Buyer's Agreement. Accordingly, the relief sought in this regard stands declined.

**G.VI. Direct the offer of first lease dated 28.12.2023 as illegal, invalid and pre-mature.**

35. The complainant has submitted that the respondent made an illegal offer of first lease on 28.12.2023, however, till date, respondent has not shared any proposed lease agreement and the rental value is very low.
36. The Authority observes that the offer of first lease was made by the respondent on 28.12.2023 to be complainants after obtaining the Occupation Certificate on 17.10.2022. The details regarding the lease were communicated duly to the complainant on 28.12.2023. As per the written submissions of the respondent (page no. 4), the prospective lease was not concluded. Both the parties failed to establish that any lease deed has been executed inter se them till date.
37. The Authority is of the view that the respondent have failed to get the first lease executed. However, when the said transaction of lease was not executed, the said relief became infructuous.

**G.VIII Direct the respondent to not charge any maintenance charges till the actual possession as per terms of BBA and without any excessive charges.**

38. The complainant has stated that the respondent has been illegally raising maintenance charges to the complainant despite the fact that no valid and legal offer of possession has been made by the respondent till date. The Authority observes that as per the invoices annexed along with the complaint, the maintenance charges have been demanded by the maintenance agency i.e, Ecotown Facility Pvt. Ltd.
39. The Authority is of the view that the maintenance charges are payable from the date of offer of possession. In the present case, the offer of fit outs was

made by the respondent before obtaining the Occupation Certificate. So in the present case, it would be rightful to collect the maintenance charges from the date the complainant was informed by the respondent that the Occupation certificate has been received by the respondent i.e., 18.10.2022. However, as per letter dated 18.10.2022, the respondent informed the complainant that as a gesture of good will, maintenance charges for the period 17.10.2022 to 16.01.2023 shall not be demanded. Thus, the complainant is liable to pay maintenance charges with effect from 17.01.2023.

**G.IX Transfer all the common areas and facilities to the association of allottees as per section 17 of the Act.**

**G.X Direct the respondent to form a RWA of allottees and also transfer the maintenance of common areas to the RWA of unit owners after making them members and conducting elections as per the provisions of RERA.**

40. The complainant did not press for the following relief neither during arguments nor in the complaint itself. Thus, the Authority decides not to adjudicate on the same.

**G.XI Direct the respondent to pay damages of Rs.5,00,000/- and Rs.1,00,000/- towards legal expenses.**

41. The above-mentioned reliefs sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
42. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. (supra)* has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The



adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

**G. Directions of the Authority**

43. 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 function entrusted to the authority under section 34(f):

- I. The respondent/promoter is directed to pay the arrear of unpaid assured return at the agreed rate i.e., Rs.55,548/- per month from the date 22.08.2016 till the date of obtaining occupation certificate as per terms and conditions of the provisional booking. Thereafter, the respondent is directed to pay assured return @12% of Rs.55,548/-till the execution of the First effective lease.
- II. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.
- III. The respondent is directed to issue a revised statement of account of the allotted unit of the complainant after adjustment/refund of the amount in lieu of decrease in super area if any within a period of 30 days from the date of this order. The complainant is directed to pay the outstanding dues if any 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.

- IV. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of the complainants 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 buyer's agreement.
44. Complaint as well as applications, if any, stands disposed off accordingly.
45. File be consigned to registry.



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 10.09.2025



**HARERA**  
**GURUGRAM**