

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

Complaint no.: 5000 of 2023
Date of filing: 09.11.2023
Date of order: 12.08.2025

Anil Kumar

R/o: H No. 74, Harbala ki Dhani, Sector-78
Vill-Rampura, PO-Shikhopur, Distt-Gurgaon-
122004

Complainant

Versus

Elan Limited

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

Corporate office: Golf View Tower, 3rd
Floor, Golf Course Road, Sector-42,
Gurgaon

Respondent

CORAM:

Shri Arun Kumar

Shri Ashok Sangwan

Chairman

Member

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)

Sh. 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 under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project-related details

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

S.No.	Particulars	Details
1.	Name and location of the project	"Elan Mercado", Sector 80, Gurugram
2.	Nature of the project	Commercial
3.	Project area	2.9875 acres
4.	DTCP license no.	82 of 2009 dated 08.12.2009 valid up to 07.12.2019
5.	Name of licensee	RP Estate Pvt. Ltd.
6.	RERA Registered/ not registered	189 of 2017 dated 14.09.2017 (Issued for part of the project by the Interim RERA) valid up to 13.09.2022
7.	Unit no.	GF-0127, Ground Floor (old unit) (As per page no. 57 of the complaint) GF-0129, Ground Floor (new unit) (As per page no. 228 of reply)
8.	Unit area admeasuring	463 sq. ft. (Super area) (old unit) (As per page no. 57 of the complaint) 418 sq. ft. (Super area) (new unit) (As per page no. 228 of reply)
9.	Date of provisional booking	14.08.2013 (As per page no. 184 of the reply)
10.	Assured return clause (As per terms and conditions of provisional booking)	1. The company, agrees and undertakes to pay to the applicant, a fixed amount of Rs.45,000/- per month on the provisional booking of future projects of the developers, on the amount of Rs.31,02,100/- received through cheque dated 06.08.2013 and 25.09.2013, which is subject to tax deduction at source.

		<p>5. The fixed amount shall be paid by the company to the applicant till the date of issuance of offer of possession of the premises by the concerned Developer..... (As per page no. 34, 35 of the complaint)</p>
11.	Allotment letter for unit no. G-0127	<p>21.01.2015 (As per page no. 41 of the complaint)</p>
12.	Date of execution of builder buyer's agreement	<p>01.03.2017 (As per page no. 54 of the complaint)</p>
13.	Possession clause	<p>11 (a) Schedule for possession of the said Unit: The developer based on this 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 extension 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..... (As per page no. 67 of the complaint)</p>
14.	Due date of possession	<p>01.03.2022 (Note: Due date to be calculated 48 months from the date of execution of BBA i.e., 01.03.2017 plus grace period of 12 months)</p>
15.	Total sale consideration	<p>Rs.43,22,073/- (page 82 of complaint) Rs.39,40,878/- (after reduction in size of 45 sq. ft. i.e. Rs.3,81,195/-) (As per page no. 93 of the complaint)</p>
16.	Amount paid by the complainant	<p>Rs.36,59,372/- (i.e. including credit note of Rs.16,984/-) (As per page no. 94 of the complaint) Rs.36,42,388/- (As per page no. 94 of the complaint)</p>
17.	Amount paid by the respondent as assured return till January 2020	<p>Rs.34,65,000/-</p>

		(as submitted by respondent page no. 23 of reply and complainant in its complaint para 12 page 7)
18.	Unit change request letter by complainant	18.08.2020 (page 228 of reply)
19.	Offer of possession for fit-outs for unit no. G-0129 (new unit)	25.08.2020 (As per page no. 229 of the reply)
20.	Reminder letters	05.11.2020, 23.11.2020 and 11.12.2020 (page 232-234 of the reply)
21.	Occupation Certificate	17.10.2022 (page no. 251 of reply Annexure R21)
22.	Occupation certificate intimation to complainant by respondent	18.10.2022 (page no. 254 of reply)
23.	Pre-cancellation notice for unit no. G-0129 (new unit)	24.01.2023 (page 241 of reply)
24.	Reminders to pre-cancellation notice	04.03.2023, 06.04.2023, 05.05.2023, 06.06.2023, 08.08.2023, 14.09.2023, 09.10.2023, 07.11.2023, 05.12.2023 (As per page no. 242 to 250 of the reply)
25.	Email sent by complainant to respondent expressing himself as an allottee of GF-0129 (new unit)	20.10.2023 (page 95 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- That in July 2013, the complainant received a marketing call from a real estate agent who represented himself as an authorized agent of the respondent, for booking in the commercial project being developed by the respondent in the name of "Elan Mercado", at Sector 80, Gurugram-Manesar Urban Complex. Thereafter, the complainant visited the office of the respondent and the project site. The marketing staff of the respondent allured the complainant with the topmost specifications and audio-video presentation.
- That being relied on representation and assurances of the respondent, the complainant decided to book a commercial space in the said project of the respondent, and on 06.08.2013, the complainant applied for the booking of a Shop/unit by submitting an application form. The complainant opted for the

special fixed-return payment plan and the booking was done under the said payment plan. The complainant booked a commercial unit for a total sale consideration of Rs.43,22,073/- and paid the booking amount through cheque no. 104790 dated 06.08.2013 of Rs. 26,39,100/-.

- c) Thereafter, the complainant issued a cheque no. 013341 dated 25.09.2013 of Rs. 4,63,000/- in favor of the respondent, the respondent acknowledged the said payment and issued an acknowledged receipt on 25.09.2013.
- d) That on 14.08.2013, the complainant and respondent entered into an MoU/ agreement of terms and conditions of provisional BOOKING vide letter/MoU dated 14.08.2013. As per the terms and conditions, the respondent agreed and undertook to pay a fixed amount on account of assured return of Rs.45,000/- to the complainant from the date of booking till the actual offer of possession. The respondent gave a post-dated cheque for the arrears of the assured return after deduction of the TDS from August 2013 to 31.03.2014.
- e) That on 21.01.2015 after a delay of 2 years, the respondent party issued an allotment letter confirming the booking of Shop in Elan Mercado, booked by the complainant. As per the said letter a commercial unit bearing no. GF-0127 situated in the project of the respondent i.e., "Elan Mercado", Sector-80, Gurugram, admeasuring super area of 463 sq. ft. was allotted for a total sale consideration of Rs.43,22,073/- including basic sale price and all other charges.
- f) That the complainant continued to pay all the demands as and when raised by the respondent party and following the payment plan opted by the complainant. The complainant has paid a total sum of Rs.32,32,388/- till June 2015.
- g) That after a long follow-up, on 01.03.2017, a pre-printed, unilateral, ex-facie, and arbitrary builder buyer's agreement was executed inter-se the respondent and the complainant. According to Clause 11 of the said agreement, the respondent has to give possession of the commercial unit allotted to the complainant within 48 months plus a grace period of 12 months from the date of execution of the said

BBA. The agreement was executed on 01.03.2017, therefore, the due date of possession was 01.03.2022. The complainant has made a payment of Rs.32,32,388/- viz. more than 74% of the total sale consideration till the execution of the mentioned builder buyer agreement. Therefore, under the compelling circumstances, the complainant signed on BBA.

- h) That the respondent has paid the assured return till January 2020 only. However, the respondent is liable to pay the assured return till the actual offer of possession. The respondent did not offer the possession of the complainant's commercial unit on time and top of that the respondent stopped paying the assured return after January 2020.
- i) That the complainant made efforts to get in touch with the respondent telephonically as well as physically, however, nothing worked. The respondent kept on raising the demands, however, on asking about the possession of the said commercial unit of the complainant, the respondent did not utter a single word. The complainant made several visits to the project site as well as the sales office of the respondent to know the actual stage of construction and the firm date of the possession, but no satisfactory response was ever received by the complainants.
- j) That on 21.12.2020, the respondent sent a demand through an email of Rs. 11,03,712/- in reference to the demand letter dated 25.08.2020, which was never received by the complainant. The respondent in its email dated 21.12.2020, also stated that the said demand was due on "Offer of Possession for Fit-Out. The complainant never received any Offer of possession or possession for fit-out since the same was never provided by the respondent to the complainant. The complainant went to the office of the respondent after receiving the said email dated 21.12.2020 and said to the office bearers of the respondent company that he has not received any offer of possession then how can he make the payment of the demand which has been raised on account of the offer of fit-outs. That upon

asking the complainant, the respondent handed over a copy of the backdated (25.08.2020) "OFFER OF POSSESSION FOR FIT-OUT" letter to the complainant and asked to remit the sum of Rs. 11,03,712/-.

- k) That the respondent cunningly changed the unit of the complainant from Commercial Unit No. GF-0127 to Commercial Unit No. GF-0129, and moreover, the area of the Unit has also been decreased by the respondent from 463 sq. ft. to 418 sq. ft. without any justification and consent of the complainant. The commercial unit bearing no. GF-0127 admeasuring area of 463 sq. ft. was allotted to the complainant and the BBA was also executed in respect to the same, however, the respondent out of the blue changed the unit of the complainant and never informed the complainant about the same.
- l) That the respondent has offered the possession for fit-out in the name of the complainant which is not a valid offer of possession. That there is no term i.e., "FIT-OUT" in existence, hence, the said offer of possession for fit-out does not exist as well and the same is nothing but a way found by the respondent to escape from its all the obligations and liabilities towards the allottees. Moreover, the respondent has not obtained the Occupancy Certificate for its project i.e., Elan Mercado, so how can the respondent even offer the possession, therefore, the said offer of possession/fit-out is illegal and not valid at the same time in the eyes of law.
- m) That, the due date of possession of the complainants' unit was 01.03.2022, and the respondent has not even offered possession on or before the due date of possession. Since 2022, the complainant is following up with the respondent telephonically and visiting the project site as well as the sales office of the respondent and making efforts to get the due Assured Return and possession of the allotted office but all went in vain. Despite several telephonic conversations and requests and personal site visits by the complainant, the respondent failed to

give the assured return from January 2020 and also, has not offered the actual and valid offer of possession.

- n) That the complainant made several phone calls, visited several times to the office of the respondent, and requested to complete the project and hand over physical possession of the unit. The complainant also requested to make the payment of the assured return as promised by the respondent, but all went in vain. The respondent failed to offer the possession of the shop as the tower in which the office of the complainant is situated is yet not ready for occupation.
- o) That the respondent did not take the requests made by the complainant into consideration, did not offer the possession of the complainant's unit, and stopped making the payment of the assured return, which is the right of the complainant, and thereafter, the respondent sent a reminder letter for pre-cancellation of the complainant's unit on 06.06.2023 on account of non-payment of certain dues against the offer of possession. The respondent has not offered any valid and legal offer of possession, therefore the demand raised by the respondent against the offer of possession is illegal, and on non-payment of the same, the respondent has no right to cancel the allotment of the complainant's unit.
- p) That the complainant has an apprehension in his mind that the respondent may cancel the unit of the complainant without any fault of the complainant and all the hard-earned money deposited by the complainant i.e., Rs.32,32,388/- may be embezzled by the respondent, therefore, under the compelling circumstances, the respondent made two payments of Rs.2,10,000/- in Dec 2020 and Rs.2,00,000/- in Mar 2021 through cheque in favour of the respondent, under protest.
- q) Thereafter, the respondent again sent two reminders for pre-cancellation on 08.08.2023 and 14.09.2023. As per the latest statement of account dated 18.10.2023, the complainant has paid a sum of Rs.36,42,388/- out of the total sale consideration viz. more than 84% of the total consideration till March 2021 (prior to the due date of possession), and the respondent did not even offer the

possession and aside from the possession, the respondent started sending pre-cancellation letters to the complainant. It is clearly visible by the misconduct of the respondent that the intentions of the respondent were just to deceive the complainant by not offering the possession and payment of assured return after receiving 84% of the total consideration in hand.

- r) That on 20.10.2023, the complainant sent an email to the respondent in respect to the invalid offer of possession for fit-out, given by the respondent, due assured return from Jan 2020, occupation certificate, and pre-cancellation reminder letters. The complainant in his email asked the respondent to withdraw all the pre-cancellation letters and illegal demand of money w.r.t the offer of possession.
- s) That despite the complainant having paid more than 84% of the actual cost of the flat is ready and willing to pay the remaining amount, the respondent has failed to deliver the possession of the commercial unit on promised time i.e., 01.03.2022, to pay the due assured return from Jan 2020, to provide the occupancy certificate and till date the construction is not complete.
- t) That the work on other amenities, like external and internal services are not yet completed. Now it has been more than 10 years from the date of booking and even though the construction of the towers is not completed, it clearly shows the negligence of the builder. As per project site conditions, it seems that the tower is not going to be completed in the near future, subject to the willingness of the respondent to complete the project.

C. Relief sought by the complainant:

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

- I. Direct the respondent to pay the assured return for every month from 17.01.2020, till the actual offer of possession after obtaining OC.
- II. Restrain the respondent from cancelling the unit of the complainant.
- III. Direct the respondent to hand over physical possession of the fully developed/constructed commercial office/unit bearing no. GF - 0127 with all amenities.
- IV. Direct the respondent to provide a copy of the occupancy certificate.

- V. Direct the respondent to hand over physical possession of unit no. Gf-0127 and execute a conveyance deed.
 - VI. Direct the respondent to provide the original layout plan and revised plan of the project.
 - VII. The complainant is entitled to get an order in his favor to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the BBA and the letter of terms and conditions.
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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds:
- i. That the present complaint is not maintainable in law or on facts. The complaint is not maintainable before the Authority under the Act, 2016 Rules, 2017. The complaint is liable to be dismissed on this ground alone. Even otherwise, the complaint is not maintainable in law and merits dismissal.
 - ii. That the complainant has got no locus standi or cause of action to file the complaint. 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.
 - iii. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. From filing the present complaint. The Authority does not have the jurisdiction to hear and decide the present complaint. Transactions pertaining to payment of assured returns are not covered under RERA and hence beyond the jurisdiction of the Authority. The complaint is liable to be dismissed on this ground as well.

- iv. That the project in question, "Elan Mercado", Sector 80 Gurugram, has been developed by the respondent over land admeasuring 23 Kanals 18 Marlas or 2.9875 Acres situated in Village Naurangpur, Sector 80, Gurugram, Haryana owned by M/s R P Estates Pvt. Ltd. The said land became subject matter of acquisition proceedings in 2004, which ultimately elapsed in August 2007. M/s R P Estates Pvt Ltd. 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 land owner, R P Estates Pvt Ltd entered into an agreement with the respondent in 25th May 2013, in terms of which the respondent is competent to develop, construct and sell units in the said project.
- v. That M/s R P Estates Pvt. Ltd. Was and remained the owner in possession of the said land:
- prior to the Section 4 Notification dated 27.08.2004;
 - during the pendency of the acquisition proceedings i.e. 27.08.2004 to 24.08.2007;
 - at the time when acquisition proceedings stood elapsed on 26.08.2007; and
 - thereafter even on 29.01.2010 when the decision was taken by the State Government in Industries and Commerce Department not to start any acquisition proceedings afresh and to close the acquisition proceedings.
- vi. That vide its judgment in the matter of Rameshwar and others Vs. State of Haryana and others, (Civil Appeal 8788 / 2015 reported as 2018 (6) Supreme Court Cases, 215) , the Hon'ble Supreme Court was pleased to hold that the decision of the State Government dated 24.08.2007 to drop the acquisition proceedings and the subsequent decision dated 29.01.2010 of the Industries and Commerce Department to close the acquisition proceeding as well as the decision to entertain applications for grant of licenses from those who had bought the land after initiation of the acquisition proceedings, to be fraudulent.
- vii. That based on the observations in Para 37 and Para 38, the Hon'ble Supreme Court gave directions in Para 39 (b) wherein the directions in Civil Appeal 8788 /

2015 were made applicable in respect of lands which were transferred by the land holder during the period from 27.08.2004 till 29.01.2010 and there were specific directions that the lands which were not transferred by the land holders during the period from 27.08.2004 till 29.01.2010 are not governed by these directions as under: Para 39(b) is reproduced hereinbelow for ready reference.

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

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

- viii. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. Subsequently respondent no. 1 developed the land in pursuance to the licensed granted by the Competent Authority. As per direction (b) of para 39 of the aforementioned directions, the State extended benefit to the extent of 268 Acres of land (which includes the said land) by declaring the same to be outside the deemed award. The said land was rightly kept outside the deemed award in pursuance to directions passed by the Hon'ble Supreme Court. That neither M/s R P Estates Private Ltd nor respondent no 1 herein were party to the proceedings before the Hon'ble Supreme Court when the said order was passed.
- ix. 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:

*"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."

- x. 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 no 1 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.
- xi. 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 no. 1 approached the office of the Town and Country Planning Department, Haryana for grant of Occupation Certificate which was subsequently granted on 17.10.2022 i.e. only within 3 months of passing of the said order by the Hon'ble Supreme Court which clearly indicates that the construction of the project was complete way back in January, 2020 and Town and Country Planning Department, Haryana had no reasons to further delay the grant of occupation certificate.
- xii. That delay in grant of occupation certificate, despite timely completion of construction of the complex was beyond the power and control of respondent no 1. and 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 respondent no. 1 is concerned.

- xiii. That in August 2013, the complainant had independently approached respondent through his property dealer/broker – Reliable Propmart, whereby the complainant had expressed his interest in booking a commercial unit in the commercial complex known as “Elan Mercado” Sector-80, Gurugram, Haryana.
- xiv. That making detailed enquiries and after independently satisfying himself with regard to all aspects of the project, including but not limited to the entitlement and capability of the respondent to develop the project, and after duly understanding and accepting the applicable terms and conditions governing the allotment and sale of units in the commercial complex in the project, the complainant approached the respondent for allotment of a unit in the project and had opted for a special fixed return payment plan.
- xv. That allotment letter dated 21.01.2015 was issued by the respondent in favor of the complainant allotting unit no GF-0127 in the said project admeasuring 463 sq ft approx., located on the ground floor of the project.
- xvi. That the complainant had agreed and undertaken to make payment as per the payment plan applicable to the complainant. As per the special fixed return payment plan applicable to the complainant, the complainant had undertaken to pay an amount of Rs.4 lacs on booking. 95% of the Basic sale Price (less booking amount) was agreed to be paid within 45 days of booking. On offer of possession, the Complainant had undertaken to pay 5% of the Basic Sale Price, 100% of PLC, 100% EDC & IDC, 100% of Car Parking Usage Charges, IFMS Charges apart from stamp duty, registration charges, administrative charges, interest on delayed payments, and other charges payable at the time of offer of possession as per the Buyer’s Agreement. However, right from the beginning the complainant was irregular with his payments as a result, the respondent issues reminders for payment dated 16.02.2015 and second reminder dated 12.03.2015.
- xvii. That in the meanwhile, the respondent issued letter dated 14.08.2013 setting out the terms and conditions for payment of fixed amount of Rs.45,000/- per month

subject to tax deduction at source, and duly accepted by the complainant. In accordance with paras 1 and 5 of the said letter, the respondent had agreed to pay to the complainant fixed amount of Rs.45,000/- per month, subject to tax deduction at source, till the date of issuance of offer of possession by respondent in accordance with the terms and conditions of the agreement to sell. It was further clarified that after issuance of offer of possession, the complainant shall not be entitled for payment of any fixed amount. Para 6 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.

- xviii. That in accordance with the agreement between the parties, the respondent duly paid the fixed amount amounting to Rs.34,65,000/- (inclusive of TDS) to the complainant for a period from August, 2013 till January, 2020.
- xix. That the buyer's agreement containing the detailed terms and conditions of allotment was willingly and consciously executed by the complainant without raising any objections. 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.
- xx. That 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 not longer be entitled to receive fixed amount/assured returns 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 assured return/fixed amount.

- xxi. That by letter dated 18.08.2020, the complainant requested for allotment of an alternative unit bearing no GF-0129 unit admeasuring 418 sq. ft. super area instead of GF-0127 admeasuring 463 sq ft of super area, also located on the Ground Floor of the project.
- xxii. That vide letter dated 25.08.2020 the respondent offered possession of the alternative unit i.e. unit no GF-0129 to the complainant for fit-outs and settlement of dues. The complainant was informed that the super area of the said unit was 418 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 letter dated 25.08.2020. The respondent has offered the possession of the units in the project for fit outs so that as and when the occupation certificate is issued by the Town and Country Planning Department, Haryana. The commercial operations from the units can be commenced without there being any loss of time, keeping in view the interest of all the allottees.
- xxiii. Since the complainant did not come forward to clear his dues and take possession of the unit, reminders dated 05.11.2020, 23.11.2020 and 11.12.2020 were sent by the respondent. However, the complainant refrained from making payment of outstanding dues and taking possession of the unit.
- xxiv. That the project has been registered under the provisions of the RERA Act, 2016. RERA Registration Certificate bearing Memo No. HRERA -137 (b)/2017 /1056 dated 14.09.2017. The registration of the project is valid till 13.09.2022, however, the same stands extended by 6 months in terms of order dated 26.05.2020 passed by Authority.
- xxv. That in view of the wilful and persistent defaults by the complainant, the respondent issued a Pre Cancellation notice dated 24.01.2023. However, the complainant has failed to take possession of the unit on false and frivolous pretexts and has instead proceeded to file the present frivolous complaint.

- xxvi. That Clause 11 of the Buyer's Agreement, provides that subject to timely payment by the allottee and subject to delays beyond the control of the respondent, the respondent shall offer possession of the unit within 48 months from the date of execution of the Buyer's Agreement, with grace period of 12 months.
- xxvii. That, the issuance of the occupation certificate was delayed on account of litigation pending before the Hon'ble Supreme Court and it is only upon issuance of the occupation certificate that the respondent can hand over possession of the units in the project to the allottees. respondent no. 1 cannot be held liable for delays caused on account of reasons beyond its power and control.
- xxviii. That in so far as the respondent is concerned, 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 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. 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 and the complainant was also informed accordingly by the said letter.
- xxix. That the respondent has duly fulfilled its obligations in terms of the agreement between the parties and also under the provisions of RERA. It is the complainant who is in default and in violation of the buyer's agreement by his failure to make payment of balance amounts and to take possession of the unit after offer of possession has been made by the respondent. The complainant has willfully and intentionally refrained from taking possession of the unit on false and specious pretexts. The complainant cannot be permitted to take advantage of his own defaults and wrongdoing.

- xxx. That the complainant does not have sufficient funds to pay the balance sale consideration and take possession of the unit, which was booked by the complainant as a speculative investment. The complainant does not and indeed never have the intention of residing in the unit or using it for himself. The complainant is attempting to divert the attention of the Authority from the willful defaults on breaches by the complainant in refusing to make payment of the balance sale consideration in taking possession of the unit, by imputing false and baseless allegations against the respondent. The complainant, being a defaulter, is not entitled to any compensation under RERA.
- xxxi. The complainant is in default of the buyer's agreement dated 01.03.2017 and has failed to clear his outstanding dues and take possession of the unit despite repeated requests and reminders from the Respondent. The respondent cannot be expected to wait indefinitely to receive payment from the complainant. The respondent is entitled to cancel the allotment in favor of the complainant as per the terms and conditions of the buyer's agreement.
- xxxii. That at the request of the complainant for reallocation of the unit, unit no. G-0129 has been allotted to the complainant and possession of the same has been offered on 25.08.2020. The complainant is entitled to get possession of unit no. G-0129 until and unless the complainant makes payment of the complete amounts payable under the buyer's agreement and completes the necessary documentation and formalities to enable the respondent to hand over possession. Possession of the fully developed unit with all amenities has already been offered on 25.08.2020 in accordance with the buyer's agreement.
- xxxiii. That the complainant is entitled to receive assured returns after application for occupation certificate is made to the competent authority. The respondent applied on 14.01.2020 and the complainant was duly informed about the same vide letter dated 15.01.2020 and was also informed that in terms of the letter dated 14.08.2013, the complainant shall not be entitled to any assured returns after

14.01.2020. The same was duly accepted by the complainant. The respondent has also paid assured returns amounting to Rs.34,65,000/- in terms of the agreement between the parties.

xxxiv. 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.

7. All other averments made in the complaint were denied in toto.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the Authority:

9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

Section 11(4)(a)

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

or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding maintainability of complaint on account of complainant being the investor.

13. The respondent took a stand that the complainant is investor and not the consumer and therefore, they are not entitled to protection of the Act and thereby not entitled to file the complaint under Section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are the buyers, and have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainants are the allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under Section 2 of the Act, there will be "promoter" and

"allottee" and there cannot be a party having a status of an "investor". Thus, the contention of the promoter that the allottees being the investors are not entitled to protection of this Act also stands rejected.

G. Findings on relief sought by the complainant.

G.I Direct the respondent to pay the assured return for every month from 17.01.2020, till the actual offer of possession after obtaining OC.

15. The complainant contends that he had booked a commercial unit for a total sale consideration of Rs.43,22,073/- with the respondent. Pursuant thereto, a Memorandum of Understanding (MoU) dated 14.08.2013 was executed between the parties, under which the respondent undertook to pay the complainant a fixed assured return of Rs.45,000/- per month from the date of booking until the actual offer of possession. As per the Statement of Account (SoA) dated 18.10.2023, the complainant has paid a sum of Rs.36,42,388/- to the respondent. The due date of possession was stipulated as 01.03.2022. However, the respondent paid the assured return only up to January 2020. Further, no offer of possession or fit-out possession was ever provided to the complainant. The complainant has also alleged that the respondent unilaterally and without consent changed his unit from GF-0127 to GF-0129, and further reduced the area from 463 sq. ft. to 418 sq. ft., without any justification.

16. On the contrary, the respondent submits that it has already paid a sum of Rs.34,65,000/- to the complainant towards assured returns for the period from August 2013 till January 2020. The respondent further states that the complainant himself requested a change of unit to GF-0129 on 18.08.2020, which was accepted, and an offer of possession for fit-outs was made on 25.08.2020. Owing to continued default in payments, a pre-cancellation notice was issued to the complainant on 24.01.2023. The respondent also contends that upon submission of the application for the Occupation Certificate, it was no longer liable to pay assured returns.

17. The factual matrix of the case reveals that vide letter dated 14.08.2013, the respondent issued terms and conditions of provisional booking to the complainant,

wherein under Clauses 1 and 5 it expressly undertook to pay assured returns of Rs.45,000/- per month till the issuance of offer of possession. Subsequently, an allotment letter dated 21.01.2015 was issued for Unit No. GF-0127, followed by execution of a builder-buyer agreement on 01.03.2017 for the same unit, against a total sale consideration of Rs.43,22,073/-, out of which the complainant has paid Rs.36,42,388/-.

18. Further, as per the documents submitted by the parties, it is evident that the complainant vide letter dated 18.08.2020 requested a change in unit to GF-0129, admeasuring approximately 418 sq. ft. to the respondent. Pursuant to this request, the respondent issued a letter of offer of possession for fit-outs on 25.08.2020 for the reallocated unit (GF-0129).
19. The issue primarily revolves around the period during which the complainant is entitled to receive assured returns. The respondent contends that it had informed the complainant by letter dated 15.01.2020 that, since the application for issuance of the occupation certificate had been submitted to the competent authority, its liability to pay assured returns stood discharged. However, it is noted that, as per the express terms and conditions of the provisional booking letter dated 14.08.2013, the respondent's obligation to pay assured returns was until the actual offer of possession, not till the application for the occupation certificate.
20. The respondent obtained the occupation certificate on 17.10.2022 and, by letter dated 18.10.2022, informed the complainant of the same while calling upon him to clear outstanding dues and to take possession. The relevant portion of the letter is reiterated below:

*"We further request you to please make the due payments (if any) **immediately to take over the possession of your above said unit** to avoid any further accrual of delay payment interest charges."*

21. It is further noted that although the complainant had requested for a change in unit from GF-0127 to GF-0129 vide letter dated 18.08.2020. However, no builder-buyer agreement was ever executed between the parties in respect of the reallocated unit,

nor was any new allotment letter issued expressing new terms and conditions for the same. The only documentation substantiating the change in unit is letter dated 18.08.2020 requesting for change in unit and offer of fit out of reallocated unit issued by respondent on 25.08.2020. Additionally, vide letter dated 18.10.2022, the respondent asked the complainant to clear outstanding dues and take the possession. This reallocation, therefore, did not alter or extinguish the original contractual relationship between the parties. The obligations agreed upon in the provisional booking letter dated 14.08.2013 and the builder-buyer agreement dated 01.03.2017 in respect of the originally allotted unit (GF-0127) continued to apply to the reallocated unit (GF-0129), including the respondent's obligation to pay assured returns.

22. The respondent's contention that its liability to pay assured returns ended upon submission of the application for the Occupation Certificate is untenable. As already agreed in the terms and conditions of the provisional booking letter dated 14.08.2013 clause 1 and 5 provides that the assured return of Rs.45,000/- per month would be payable until the issuance of offer of possession. Since the offer of possession was made on 18.10.2022, the respondent's liability to pay assured returns ceased only from that date.
23. In view of the above the respondent remains liable to pay assured returns of Rs.45,000/- per month, as per the terms and conditions of the provisional booking letter dated 14.08.2013, up to the date of offer of possession, i.e., 18.10.2022. The obligations between the parties, including the payment of assured returns, remained unaffected despite the change in unit, as no new contractual terms were executed between the parties. Accordingly, the respondent is obligated to pay unpaid assured returns from February 2020 until 18.10.2022.

G.II Restrain the respondent from cancelling the unit of the complainant.

G.III Direct the respondent to hand over physical possession of the fully developed/constructed commercial office/unit bearing no. GF - 0127 with all amenities.

G.IV Direct the respondent to hand over physical possession of unit no. GF-0127 and execute a conveyance deed.

24. Upon perusal of the documents on record, it is evident that the complainant himself vide letter dated 18.08.2020 sought change in unit from GF-0127 to GF-0129. Further, the complainant vide email dated 20.10.2023 sent to the respondent expressed himself as the allottee of GF-0129.

25. Since the complainant himself had sought and accepted the change of unit, he cannot now claim possession of the earlier unit GF-0127. Accordingly, no directions can be issued for handing over possession of unit GF-0127 or for execution of the conveyance deed in respect of the said unit.

G.V Direct the respondent to provide a copy of the occupancy certificate.

G.VI Direct the respondent to provide the original layout plan and revised plan of the project.

26. The respondent/builder has obtained the occupation certificate on 17.10.2022. As per Section 11(4)(b) of Act of 2016, the respondent/builder is under an obligation to supply a copy of the occupation certificate to the complainant/allottees. The relevant part of section 11 of the Act of 2016 is reproduced as hereunder: -

"11(4) (b) The promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."

27. Even otherwise, it being a public document, the allottees can have access to it from the website of DTCP, Haryana.

G.VII The complainant is entitled to get an order in his favor to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the BBA and the letter of terms and conditions.

28. The complainant herein is seeking an order restraining the respondent from enforcing the unfair clauses unilaterally incorporated in the builder buyer agreement and the letter of terms and conditions. However, it is pertinent to note that the builder buyer agreement was duly executed between the parties on 01.03.2017, wherein the clauses were mutually agreed upon at the time of

execution. Further, the respondent has already obtained the occupation certificate. At this stage, no direction can be issued with respect to the relief sought, and both parties remain contractually bound to adhere to the agreed terms and conditions of the builder buyer agreement.

H.Directions issued by the Authority:

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

- I. The respondent is directed to pay the assured returns of Rs.45,000/- per month, as per the terms of the letter dated 14.08.2013, up to the date of offer of possession, i.e., 18.10.2022 after deducting the amount already paid on account of assured return to the complainant.
 - II. The respondent is directed to pay the outstanding accrued assured return amount till 18.10.2022 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 @ 8.90% p.a. till the date of actual realization.
 - III. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement.
30. Complaint stands disposed of.
31. File be consigned to the registry.



(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2025



(Arun Kumar)

Chairman