

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

Complaint no. : 2746 of 2023
Date of decision : 03.09.2025

1. Satvinder Kaur Bains
2. Satwant Kaur

Both R/o: -M-219, Ground Floor, Mayfield
Garden (Now Orchid Island), Near Artemis
Hospital, Sector-51, Gurugram.

Complainants

Versus

M/s Elan Buildcon Pvt. Ltd.
Office at: 3rd floor, Golf View Corporate Tower,
Golf Course Road, Sector-42, Gurugram,
Haryana.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Gulab Singh Jarodia
Ishaan Dang

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the



Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Miracle", Sector-84, Village-Hayatpur, Gurgaon, Haryana.
2.	Nature of the project	Commercial
3.	Area of project	5.91875 acres
4.	DTCP license	License no. 34 of 2014 Dated-12.06.2014
5.	RERA Registered	Registered Vide registration no. 190 of 2017 Dated:- 14.09.2017
6.	Allotment letter	04.04.2018 (As on page no. 55 of complaint)
7.	Unit no.	FS-03, Floor-2 nd
8.	Unit area	557 sq.ft. [Super-area]
9.	Date of execution of buyer's agreement	Not executed
10.	Possession clause	Not available
11.	Due date of possession	04.04.2021 (Calculated 36 months from date of allotment)



12.	Payment plan	On offer of possession-70% of Basic Sale Price + 100% of IFMS charges + 100% Car Parking - (Usage Rights) + (*Stamp duty, Registration charges & Administrative charges & all other charges as applicable will be charges extra) (As on page no. 56 of complaint)
13.	Total sales consideration	Rs.48,44,860/- (As on page no. 66 of complaint)
14.	Total amount paid by the complainant	Rs.19,03,538/- (As on page no. 63 of complaint)
15.	Occupation certificate	15.03.2023 (As on page no. 77 of reply)
16.	Conditional offer of possession for fit-outs [Note:- unit area decreased from 575 sq.ft. to 557 sq.ft.]	07.09.2021 (As on page no. 60 of complaint)
17.	Reminders to pay outstanding amount due against "on offer of possession for fit-out)	12.10.2021 28.12.2021 08.02.2022 07.03.2022
18.	Final reminder	05.04.2022 09.05.2022 06.06.2022 04.07.2022 05.08.2022 05.09.2022 10.10.2022 03.11.2022

		03.12.2022 03.01.2023 09.02.2023
19.	Pre cancellation letter	16.05.2023 (As on page no. 82 of reply)
20.	Cancellation letter	09.06.2023 (As on page no. 83 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- I. That the complainants booked a food court unit on the second floor in the project "Elan Miracle" situated at Sector-84, Gurugram. Believing the representations made by the respondent's representatives and believing upon them, the complainants applied for the allotment of a shop/unit bearing no.FS-012, having the super area of 575 sq.ft in the project of the respondent.
- II. That on 04.04.2018, a provisional allotment letter was issued by the respondent in favour of the complainants. Vide the said allotment letter, a unit bearing no. FS-003 on Second Floor having a super area of 575 sq. ft. (approx.) was allotted for a sale consideration of Rs.53,89,766/- and the complainants have duly paid an amount of Rs.19,03,538/-.
- III. That the complainants had deposited the required amount as per the payment plan opted by the complainants according to the complainants Builder Buyer Agreement executed between the complainants and the respondent on 21.11.2019. Para no. 7(7.1) of the said Agreement dated 21.11.2019, it is clearly mentioned that the

possession of the said unit/shop shall be handed over to the complainants within a stipulated period of 48 months from the date of Agreement dated 21.11.2019.

- IV. That on 22.03.2023, the complainants received an intimation from the respondent regarding the application for the Occupation certificate. The respondent applied the Occupation Certificate so that it could ask for more payments from the allottees. It is to be noted that the actual Occupation Certificate was granted 2 years later which means that a lot of work was pending on the site and it was not ready and safe at the time of application for the Occupation Certificate.
- V. That on 07.09.2021, the respondent issued the demand letter with possession fit out letter without taking the OC from the competent authority this is totally against the law.
- VI. That due to the illegal acts of the respondent, the complainants had suffered to great mental agony, physical harassment, financial loss, humiliation. There is a gross deficiency of services on the part of the respondent. As per para (F) on page no. 9 of 40 of the BBA, the complainants had been allotted unit no. FS-003 having actual area of 288 sq.ft and super area of 575 sq.ft. The complainants received a letter from the respondent regarding the grant of Occupation Certificate, wherein the respondent have mentioned that the Carpet Area has been reduced to 88.00 sq.ft.

C. Relief sought by the complainants

4. Vide proceedings dated 14.08.2024, the counsel for the complainants filed an application for amendment of relief from that of refund to Assured Return and Delayed possession Charges and the same was allowed by the Authority.
5. **The complainants have sought following relief(s).**

I. Direct the respondent to pay delay possession charges with compound interest @24% per annum till the handing over of the unit.

6. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

7. The respondent has contested the complaint on the following grounds:-

- I. That the complainants had approached the respondent expressing an interest in the purchase of a commercial unit in the commercial complex being developed by the respondent known as "Elan Miracle", situated in Sector -84, Gurugram. The complainants had opted for a special fixed return payment plan.
- II. That thereafter, the complainants were allotted a commercial space tentatively admeasuring 575 sq. ft. super area bearing Kiosk/Unit No. FS-003 on the Second floor. The terms and conditions forming part of the application form were duly understood and accepted by the complainants.
- III. That the Buyer's Agreement was forwarded to the complainants for execution. However, the complainants failed to execute and return the Buyer's Agreement to the respondent. Reminders dated 17.01.2019 and 06.06.2019 whereby the respondent called upon the complainants to come forward for execution and registration of the Buyer's Agreement upon payment of administrative and other charges which were duly received by the complainants. However, the

complainants failed to execute and get the Buyer's Agreement registered.

- IV. That right from the very beginning, the complainants were irregular in making payments as per the applicable payment plan and hence the respondent was constrained to issue reminders to the complainants to clear their outstanding dues.
- V. That vide letter dated 19.06.2021, the respondent informed the complainants that the Occupation certificate for the project has been applied by the respondent on 09.06.2021. The complainants were also informed that the complainants would no longer be entitled to get the fixed amount with effect from the date of application for the Occupation Certificate.
- VI. Vide letter dated 07.09.2021, the respondents sent an Offer of possession for Fit-Outs to the complainants whereby the respondent requested the complainants to take possession of the unit after clearing their outstanding dues. The complainants were informed that there was a decrease in the super area of the unit from 575 sq.ft. to 557 sq.ft. Consequently, the payments to be made by the complainants stood revised due to the decrease in the super area.
- VII. That the complainants did not come forward to take possession of the unit after clearing their outstanding dues, reminders for possession dated 12.10.2021, 28.12.2021, 08.02.2022, 07.03.2022, 05.04.2022, 09.05.2022, 06.06.2022, 04.07.2022, 05.08.2022, 05.09.2022, 10.10.2022, 03.11.2022, 03.12.2022, 03.01.2022, 03.02.2022 were issued to the complainants reminding the complainants to clear their outstanding dues and take possession of the unit.

- VIII. That the respondent is in receipt of the Occupation certificate dated 15.03.2023 and vide letter dated 22.03.2023, the complainants have been informed about receipt of the Occupation certificate. Instead of coming forward to take possession of the unit even after numerous reminders, the complainants continued to ignore the reminders. Consequently, the respondent issued a final reminder dated 14.04.2023 and pre cancellation letter dated 16.05.2023.
- IX. That the complainants eventually issued cancellation letter dated 09.06.2023. Pertinently, the complainants have failed to challenging the cancellation letter dated 09.06.2023, the unit has been legally cancelled.
- X. That in so far as payment of Assured Returns/Fixed Amount is concerned, there is no agreement between the parties for payment of Assured Returns. It is submitted that the complainants do not have any lawful or legitimate grievance qua the respondent which justifies or necessitates the institution of the present complainant and the same is liable to be dismissed with costs.
- E. Jurisdiction of the authority**
8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.
- E.I Territorial jurisdiction**
9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire

Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11(4)(a)

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

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

F. Findings on the relief sought by the complainants

F.I Direct the respondent to pay delay possession charges to the complainant with compound interest @24% per annum till the respondent handover the possession of the unit.

12. In the present complaint, the complainants booked a shop bearing no. FS-03 having super area of 575 sq.ft. Vide , Allotment Letter dated 04.04.2018, the complainants were allotted a shop bearing no. FS-03, on the Second Floor in the project "Elan Miracle" situated in Sector 84 of the respondent for a sale consideration of Rs.48,44,860/-. The Buyer's Agreement has not been executed between the complainants



and respondent. As there is no possession clause because of the non-execution of the Buyer's Agreement, the due date of possession is calculated in terms of the principle laid down under the judgment of the Hon'ble Apex Court in **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018** Hon'ble Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract." In view of the above-mentioned reasoning, the date of the allotment letter dated 04.04.2018 ought to be taken as the date for calculating the due date of possession. Therefore, the due date for handing over the possession of the unit comes out to be 04.04.2021. Thus, the respondent was obligated to complete the construction of the project and hand over possession of the subject unit by 04.04.2021. The Occupation Certificate for the project has been obtained by the respondent from the competent authority on 15.03.2023.

13. The complainants intend to continue with the project and are seeking delay possession charges interest on the amount paid. 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:



"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. -

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: 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."

(Emphasis supplied)

14. **Due date of possession and admissibility of grace period:** As per *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018-SC); MANU/SC/0253/2018*, the possession of the allotted unit was supposed to be offered by 04.04.2021.
15. **Payment of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest. 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]

- (1) 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.

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. 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., 03.09.2025 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

18. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

19. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The possession of the subject unit was to be delivered by 04.04.2021. The respondent has issued an Offer of Possession for Fit-outs on 07.09.2021 whereby the complainants were informed that the Super Area of the unit has been reduced from 575 sq.ft to 557 sq.ft and accordingly demand was raised by the respondent.
20. The Authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:
- a. The possession must be offered after obtaining an occupation certificate/completion certificate.*
 - b. The subject unit must be in a habitable condition.*
 - c. Possession should not be accompanied by unreasonable additional demands.*
21. In the present case, the essential condition for a valid offer of possession has not been met. The Occupation Certificate for the project in which the subject unit is located was issued by the

competent authority on 15.03.2023. However, the respondent had offered possession for the fit-out of the allotted unit prior to obtaining this certificate, specifically on 07.09.2021. The respondent has submitted that the unit of the complainants was cancelled on 09.06.2023 on account of non-payment by the complainants after issuing several reminders and a Pre-cancellation letter dated 16.05.2023. The Authority is of the view that the said cancellation dated 09.06.2023 is bad in law as the cancellation has taken place on account of non-payment of outstanding dues by the complainants but the stage at which the outstanding dues were to be paid was on offer of possession, here in the present complaint the said charges were demanded by the respondent on the issuance of an invalid Offer of possession, made before receiving the Occupation Certificate.

22. Consequently, this offer does not constitute a valid offer of possession. The said cancellation is set aside and accordingly, the respondent is hereby directed to provide possession of the unit to the complainants within 30 days from the date of this order.
23. As per the respondent's letter dated 07.09.2021, the super area of the subject unit was revised from 575 sq. ft. to 557 sq. ft. The carpet area of the unit was unilaterally reduced from 288 sq. ft. to 88.00 sq. ft., which constitutes merely 15% of the revised super area.
24. The Authority is of the view that such a drastic reduction in the carpet area, without justification or prior consent of the complainants, amounts to an arbitrary and unilateral act on the part of the respondent. The respondent is, therefore, directed to allot and deliver a unit of the same specifications and dimensions as originally booked and allotted to the complainants. The complainants ought not to be

made to suffer any loss or prejudice on account of the respondent's unilateral modification in the area of the unit.

25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent no.1 is established. As such, the allottee shall be paid by the respondent interest for every month of delay from the due date of possession i.e., 04.04.2021 till the date of intimation regarding grant of Occupation Certificate from the competent authority was given to the complainants i.e., 22.03.2023 after obtaining occupation certificate from the competent authority at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

26. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The cancellation of the unit dated 09.06.2023 is set aside and the respondent is directed to allot a same size and similarly located unit as was originally booked and allotted to the complainants.
 - The respondent is directed to execute the Builder Buyer Agreement within a period of 30 days of this order and handover possession of the unit to the complainants within the next 30 days, subject to clearing of the outstanding dues by the complainants.
 - The respondent is directed to pay interest for every month of delay from the due date of possession i.e., 04.04.2021 till the date of intimation regarding grant of Occupation Certificate from the competent authority was given to the complainants i.e., 22.03.2023 after obtaining occupation certificate from the competent authority



at prescribed rate i.e., 10.85% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules..

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

27. Complaint stands disposed of.

28. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2025



HARERA
GURUGRAM