

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

Date of Order: 08.07.2025

NAME OF THE BUILDER		ELAN BUILDCON PVT. LTD.	
PROJECT NAME		ELAN MIRCALE	
S. No.	Case No.	Case title	APPEARANCE
1	CR/4554/2021	Deepak Gupta V/s Elan Buildcon Pvt. Ltd.	Sh. Sukhbir Yadav (Advocate for complainants) Sh. J K Dang (Advocate for respondent)
2	CR/498/2023	Switi Gupta V/s Elan Buildcon Pvt. Ltd.	

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

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.,
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, "Elan Mircale, Sector 84 Gurugram" being developed by the same respondent/promoter i.e., **ELAN BUILDCON PVT. LTD.** The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest.

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

Project Name and Location	"Elan Mircale, Sector 84 Gurugram"	
Occupation certificate: - 15.03.2023		
Complaint No.	CR/4554/2021	CR/498/2023
	Date Of filling: 25.11.2021 Reply: 24.03.2022	Date Of filling: 10.02.2023 Reply: 18.08.2023
Unit no. and	G-011 Ground Floor (page 34 of complaint)	G-012 Ground Floor (page 34 of complaint)
Area admeasuring	1104 sq. ft. (super area) 552 sq. ft. (carpet area) (as per agreement for sale page 31 of complainant)	829 sq. ft. (super area) 414.50 sq. ft. (carpet area) (as per agreement for sale page 34 of complainant)
Revised area	1399 sq. ft. (super area) 650.70 sq. ft. (carpet area) (as per offer of possession dated 22.03.2023)	1173 sq. ft. (super area) 540.96 sq. ft. (carpet area) (as per offer of possession email dated 27.03.2023 page 98 of reply)
Allotment letter	15.02.2020 (page no. 43 of complaint)	15.02.2020 (page no. 59 of the reply)
Date of builder buyer agreement	04.11.2017 (Page 32 of complaint)	04.11.2017 (Page 32 of complaint)
Possession clause	8. The possession will be offered by the company by 31.10.2021. In case of any delay in offer of obsession beyond 31.10.2021. an interest of Rs.1,05,754/- will be payable by the company on monthly basis through PDCs with a yearly bank guarantee effective from 1 st November 2021 till the date of offer of possession.	8. The possession will be offered by the company by 31.10.2021. In case of any delay in offer of obsession beyond 31.10.2021. an interest of Rs.79,411/- will be payable by the company on monthly basis through PDCs with a yearly bank guarantee effective from 1 st

	(Page 35 of complaint)	November 2021 till the date of offer of possession. (Page 35 of complaint)
Due date of delivery of possession	30.04.2022 (As per the agreement clause 8 i.e., 31.10.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)	30.04.2022 (As per the agreement clause 8 i.e., 31.10.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
Sale Consideration (SC)	Rs.1,04,74,000/- (as per BBA page 34 of complaint)	Rs.76,82,765/- (as per BBA page 34 of complaint)
Total Amount paid by the complainant(s) (AP)	Rs.65,75,976/- (As per receipt information at page no. 89 of reply)	Rs.46,43,395/- (As per receipt information at page no. 105 of reply)
Offer of possession for fit-outs	07.09.2021 (As per annexure P7 page 46 of the complaint)	07.05.2022 (As per annexure P6 page 46 of the complaint)
Reminder letters	12.10.2021, 12.11.2021, (Page no. 71 and 72 of the reply)	06.06.2022, 04.07.2022, 05.08.2022, 05.09.2022 (Page no. 76, 89,90 and 91 of reply)
Offer of possession	22.03.2023 (as per the list of documents submitted by respondent and as per the submission made by the complainant during proceedings dated 01.04.2025)	27.03.2023 (as per the list of documents submitted by respondent and as per the submission made by the complainant during proceedings dated 01.04.2025)

- The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest.
- It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/4554/2021 Deepak Gupta V/s Elan Buildcon Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Unit and Project related details:

7. 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:

CR/4554/2021 Deepak Gupta V/s Elan Buildcon Pvt. Ltd.

S. No.	Particulars	Details
1	Name of the project	Elan Mircale, Sector 84 Gurugram, Haryana.
2.	Nature of project	Commercial complex
3	DTCP License	34 of 2014 dated 12.06.2014 valid upto 11.06.2019
4	Name of licensee	Bajaj Motors(P) Ltd. and others
5.	RERA Registered/ not registered	Registered vid no. 190 of 2017 dated 14.09.2017 valid up to 13.09.2023
6	Unit no.	G-011 Ground Floor (As per allotment letter dated 15.02.2020 at page no. 43 of the complaint)
7.	Unit admeasuring	1104 sq. ft. (As per allotment letter dated 15.02.2020 at page no. 43 of the complaint)
8.	Increased area	1399 sq. ft. (As per letter of offer of possession dated 22.03.2023)
9.	Allotment Letter	15.02.2020 (Page no. 43 of the complaint)
10.	Date of execution of buyer agreement	04.11.2017 (Page 32 of complaint)
11.	Possession clause	8. <i>The possession will be offered by the company by 31.10.2021. In case of any delay in offer of obsession beyond 31.10.2021. an interest of Rs.1,05,754/- will be payable by the company on monthly basis through PDCs with a yearly</i>

		<i>bank guarantee effective from 1st November 2021 till the date of offer of possession.</i> [Page 35 of complaint]
12.	Due date of delivery of possession	30.04.2022 (As mentioned in the buyer's agreement i.e., 31.10.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020)
13.	Total sale consideration	Rs.1,04,74,000/- (as per BBA page 34 of complaint) Rs.1,31,85,520/- (As per applicant ledger dated 22.03.2022 at page no. 88 of the reply inclusive of increase in area)
14.	Total amount paid by the complainant	Rs.65,75,976/- (As per receipt information at page no. 89 of the reply)
15.	Offer of possession for fit-outs	07.09.2021 (As per annexure P7 page 46 of the complaint)
16.	Reminder letters for making payment	12.10.2021, 12.11.2021, (Page no. 71 and 72 of the reply)
17.	Occupation certificate	15.03.2023 (Page no. 1 of the additional documents filed by the respondent)
18.	Offer of possession	22.03.2023 (Page no. 4 of the additional documents filed by the respondent and submissions made by the complainant during proceedings dated 01.04.2025)

B. Facts of the complaint.

8. The complainant has made the following submissions: -

- I. That, in June 2017, Mr. Deepak Gupta received a marketing call from the office of the respondent who represents himself as Sales Manager of the respondent and marketed the commercial project name and style "Elan Miracle" situated at Sector - 84, Gurugram. The complainant visited the sales office of the respondent and consulted with the marketing staff of the respondent. The Marketing, staff of the respondent showed a rosy picture of the project and allured with proposed specifications and assured for the

timely delivery of the Shop. The marketing staff of the respondent gave a pre-printed application form and assured that possession of the shop will be delivered on 31.10.2021. The respondent has given a marketing Brochure of the project, which stipulates that the project has "the intelligent and functional design approach ensures that all access points are segregated, there are separate lifts and stairs, dedicated drop-off points and well defined and earmarked common facilities".

- II. That, believing on representation and assurance of respondent, the complainant booked a unit bearing No. G - 011 on Ground Floor in Elan Miracle for tentative size admeasuring 1104 sq. ft. on 26.06.2017 and paid booking amount of Rs.10,00,000/- vide cheque No. "095580" dated 26.06.2017, drawn on Yes Bank and signed a pre-printed application form. The shop was purchased under the Special Down Payment Plan for a sale consideration of Rs.1,05,40,240/-.
- III. That on 29.09.2017, an agreement to sell was also executed between the respondent and the complainant in respect of the Unit No. G - 011. On 04.11.2017, the respondent sent a payment receipt in respect of the TDS amount being submitted by the complainant amounting to Rs.52,250/- and the complainant also paid a demand of Rs. 55,10,216/- on account of "On Provisional Booking & Service Tax" and the respondent issued the payment receipt for the same.
- IV. That on 06.12.2017, the respondent issued a payment receipt in favour of the complainant for the payment being done on account of "TDS Payment". On 15.02.2020, respondent issued an allotment letter in name of complainant conforming to the allotment of Unit no. G-011, Ground Floor, for size, admeasuring 1104 sq. ft. in the project "Elan Miracle" situated at sector - 84, Gurugram.

- V. That thereafter the complainant asked the respondent several times for execution of BBA as per the HARERA Model BBA, but the respondent always gave excuses, and till today BBA has not been executed.
- VI. That on 19.06.2021, the respondent sent a letter to the complainant and stated the "we are delighted to share with you the exciting news that we have applied for "Occupation Certificate" to the competent authority on 09.06.2021 for the project ELAN Miracle situated at Sector – 84, Gurugram (Haryana)".
- VII. That the construction activities are still going on the project site and the construction is yet to be completed then how the respondent can apply for Occupation Certificate to the competent authority.
- VIII. That on 07.09.2021, the respondent sent "Letter of offer of possession for Fit-outs and Settlement of dues" and demanded a total amount of Rs.78,63,112/- which includes unreasonable demand of Rs.39,672/- as "Labour Cess", Rs.2,02,034/- as "External Electrification charges" and Rs.9,854/- as "Electricity Connection and Prepaid meter charges". The respondent has also revised the super area of the unit by 288 sq. ft. from 1104 sq. ft. to 1392 sq. t. without any justification and calculation. The notice for possession contains illegal and unjustifiable demands, therefore, not tenable in the eyes of the law.
- IX. That on 22.09.2021, the complainant sent a letter to the respondent and alleged various issues mentioned in the offer of possession letter received by the complainant and stated that "I note that your demand note dated 07.09.2011 has mentioned the Super Area as 1392 sq. ft. against the Super Area of 1104 sq. ft. as per our original Agreement. Similarly, the balance BSP (Pre-GST) that has been demanded is Rs.54,82,528/- against the BSP Rs.30,36,000/- mentioned in the Agreement. Both these values of Super Area and BSP represent an increase of more than 26% over the values in the Agreement. These have further impacted the cost of EDC/IDC and the

IFMS and few other charges which are calculated on the Super Area basis. Accordingly, please provide the common loading that has been applied for my unit and the basis for the Super Area computation. Please provide a certified copy of all documents and communication with the authorities regarding application and processing of OC (Occupancy Certificate). Please provide status of the various amenities that have been enabled that are operational at the project site at the time of offer of possession. Please provide photographs/video of the exterior and interior of the project as well as operational amenities. I understand from your communication that it is already 3 months since you applied for OC. Please provide GST input credit". The complainant also sent an email and alleged various issues regarding the possession letter but the respondent did not paid any heed to the issues of the complainant.

- X. That on 12.10.2021, the complainant sent another reminder letter to the respondent stating "It is rather odd that you are unable to readily provide the basis for the 25% enhanced area for which you have sought a proportionate additional amount in your letter of offer of possession even after one month of the request. I can also visualize the reason for your silence on the matter as being your loss for a valid argument to justify this, as much as I am surprised to have been informed about it by you. You had informed through email on 27th June 2021, that you have applied for the OC to the competent authority for the project Elan Miracle on 6th June 2021, which is more than 4 months ago. However, I had visited the project site a few days ago, and found that it was far from complete and basic amenities were not operational. I question the grounds on which the OC has been applied by you and would like to get complete view on your correspondence with the competent authority on this matter. An OC can be applied even when a major part of the work is still in progress, and I can understand that this has been done by you to evade paying penalty to

customers such as me for whom this becomes applicable from 01 Nov 2021". That on 16.10.2021, the respondent sent an email to the complainant and asked him to pay the demand of Rs.79,28,748/- along with interest. That on 18.10.2021, the complainant also sent an email to the respondent for the reasons mentioned above.

- XI. That the unit is yet not ready for possession and the respondent has raised the demand for the same which is unreasonable and unacceptable. The complainant various times asked for clarifications on the increase in super area and also asked to provide a copy of OC but the respondent did not paid any heed to the requests of the complainants.
- XII. That as per the statement of account issued by the respondent it shows that the complainant has paid Rs.65,75,976/- i.e. 62% of the total sale consideration of the unit.
- XIII. That on 17.10.2021, the complainant visited the project site and was shocked to see that the construction of the unit is yet to be completed and the construction activities were going on the construction site. The complainant also found that the civil, mechanical and electrical & plumbing work of the project was not completed. The basic amenities are also yet not completed. As per the project photographs it seems that construction activities are still going and will take time to complete in all respect and despite that, the respondent raised a demand on the offer of possession which is not acceptable.
- XIV. That the main grievance of the complainant in the present complaint is that despite the complainant having paid more than 62% of the actual cost of the unit and ready and willing to pay the remaining amount (justified) (if any), the respondent has failed to deliver the possession of unit on promised time and till date project is without amenities. Moreover, the demand which the respondent has raised on account of the offer of

possession is not a valid demand as the construction activities are still going on the construction site & the unit is yet not ready.

- XV. That the works on other amenities, like external and internal services are not yet completed. Now it is more than 3 years from the date of booking and even the construction of the towers is not completed as per specifications given in brochure and buyer's agreement, it clearly shows the negligence of the builder. As per project site conditions, it seems that the project would further take more than a year to complete in all respect, subject to the willingness of the respondent to complete the project.
- XVI. That the facts and circumstances as enumerated above would lead to the only conclusion that service is deficient on the part of the respondent party and as such, he is liable to be punished and compensate the complainant.
- XVII. That the complainant sent several emails and made several phone calls to the office of the respondent and asked clarifications on the unjustifiable demands raised in the offer of possession letter and the increase in the Super area but the respondent failed to provide the same and started charging interest on the raised demand. The other amenities are yet not developed/constructed in the project.
- XVIII. That due to the acts of the above and the terms and conditions of the agreement to sell, the complainant has been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- XIX. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainant and others and is prima facie clear on the part of the respondent which makes them liable to answer.

C. Relief sought by the complainant:

9. The complainant has sought following relief:

- i. To grant delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).
- ii. To grant an order in his favour by directing the respondent to provide the clarification on the unreasonable demands raised in the offer of possession letter.
- iii. To direct the respondent to withdraw the demand letter dated 07.09.2021.
- iv. To grant an order in his favor by refraining the respondent party from charging Labour Cess – Rs.39,672/-, External Electrification/DHBVNL Connection Charges Rs.2,02,034/-. (Justification: These charges are not part of Agreement to Sell).
- v. To direct the respondent party to provide the calculation of carpet area and common loading on the subject Shop.
- vi. To direct the respondent party to give GST input tax credit on GST levied.
- vii. To direct the respondent party to provide a copy of OC to the complainant.
- viii. To grant an order in his favor by directing the respondent party to execute the BBA as per Modal BBA format.

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

D. Reply by the respondent.

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

- I. That the complainant 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", Sector -84, Gurugram. The complainant had approached the respondent after making independent enquiries and duly satisfying themselves regarding the viability and suitability of the aforesaid project as per his needs and requirements as well as the capability of the respondent to undertake the project.
- II. That thereafter, the complainant was allotted a commercial space/unit tentatively admeasuring 1104 sq. ft., unit no. G-011 on the ground floor of the project- Elan Miracle, Sector- 84, Gurugram by the respondent, subject, inter alia, to increase or decrease on basis of variation in

calculation of actual super area of the premises which were to be determined at the time of offer of possession of the premises. The terms and conditions forming part of the application form were duly understood and accepted by the complainant.

- III. That unit no. G-011, located on the ground floor of the project was provisionally allotted in favour of the complainant. The complainant and the respondent had entered into an agreement to sell dated 04.11.2017. In terms of clause 1 of the said agreement the complainant accepted the allotment of unit no. G-011 having approximate super area of 1104 sq. ft. and carpet area 552 sq. ft. and that the unit is a double height shop.
- IV. That in terms of clause 8 of the agreement to sell, it was agreed between the parties that possession will be offered by the respondent by 31.10.2021 and in case of any delay in offer of possession beyond 31.10.2021, an interest of Rs.1,05,754/- will be payable by the respondent on monthly basis through PDCS with a yearly bank guarantee effective from 01.11.2021 till the date of offer of possession.
- V. That in terms of clause 10 of the agreement to sell, it was agreed between the parties that the respondent shall offer possession of unit to the complainant on applying for the occupation certificate with the competent government authority.
- VI. That clause 12 of the agreement to sell provides that the complainants shall have the flexibility to pay the amount due on offer of possession within a period of 6 months from the date of offer of possession. in case the occupation certificate is not received within a period of 6 months from the date of offer of possession and subject to the complainant paying the amount due on offer of possession, the respondent would pay a sum of Rs.1,37,250/- per month by way of penalty , till a certified copy of the OC is made available by the respondent to the complainant or till the

complainant takes possession of the unit. Payment of penalty is subject to 100% payment of cost of the unit.

- VII. That the complainant made payment of the booking amount of Rs.10,00,000/- vide cheque no. 095580 dated 26.06.2017, accordingly respondent issued payment receipt dated 04.11.2017.
- VIII. That under cover of letter dated 17.02.2020 the respondent sent 2 copies of builder buyer's agreement to the complainants for execution, however the complainant for reasons best known to him failed to execute the same. That vide letter dated 19.06.2021 the respondent informed the complainant that the occupation certificate for the project in question has been applied by the respondent on 09.06.2021.
- IX. That vide letter dated 07.09.2021 much before the timelines mentioned in agreement to sell dated 04.11.2017, the respondent sent offer of possession for fit-outs to the complainant whereby the respondent requested the complainant to clear dues on or before 28.09.2021. The complainant was informed that there was an increase in the super area of the unit allotted, from 1104 sq. ft. to 1392 sq. ft. consequently, the payments to be made by the complainants stood revised due to the increase in super area. That respondent has offered the possession of the units in the project for fit outs at their end so that as and when the occupation certificate is issued by the Town and Country Planning Department, Haryana, the commercial operations for the units can be commenced without there being any loss of time, therefore, keeping in view the interest of all the allottees in mind the respondent issued offer of possession for fit outs to the allottees in the complex. However, since the complainant did not clear the outstanding dues, respondent vide reminders letters dated 12.10.2021 and 12.11.2021 shared details qua the outstanding and again gave an opportunity to the complainant to clear the pending dues. In terms of clause 28 of the booking application

form, time is the essence with respect to complainant's obligation to pay the sale consideration as provided in the payment schedule and in case of delay in making payment by the complainant, the respondent shall have the right to terminate the provisional allotment/ agreement and forfeit the booking amount.

- X. That the project has been registered under the provisions of the RERA. RERA registration certificate bearing memo no. HRERA -137 (a)/2017 /1072 dated 14.09.2017. The registration of the project is valid till 13.09.2023. Construction at site is complete and the respondent has already applied for grant of occupation certificate before Town and Country Planning Department, Haryana. A bare perusal of the same clearly indicate that the complex as well as unit are fit for habitation and carrying out the fit outs.
- XI. That while issuing the letter dated 07.09.2021 the respondent informed the complainant that super area of the unit in question stands revised from 1104 sq. ft. to 1392 sq. ft. in this regard, the following clauses of the booking application form executed by the complainant,
- XII. That from a perusal of the aforesaid clauses of the application form as well as the agreement to sell, it is evident that the super area of the unit is tentative and that the same is determined upon completion of construction. In case of any increase in super area, the allottees shall have to make payment for such increase and in the event of decrease in super area, the proportionate amount shall stand refunded. the complainant has consented to any additions, amendments, modification of the size, location, dimensions etc. of the unit on account of revision in building plans and have undertaken not to raise any objections to the same. the complainant has conveyed his no objection vide letter dated 15.02.2021 to the revised plans as well as the resultant increase in area, units, height, number of floors, ground coverage etc.

- XIII. That on account of the increase in the super area the carpet area of the unit has increased. The complainant is liable to make payment for increase in super area of the unit in accordance with the terms and conditions of the application form executed by the complainant. The respondent had informed the complainant about the increase in carpet/usage area of the unit in question vide its letter dated 07.09.2021.
- XIV. That after receipt of the offer of possession letter dated 07.09.2021, the complainant never raised any objection to the increase in super area in accordance with clause 31 of the unexecuted buyer's agreement referred to above and clauses 18 and 19 of the application form and is thus deemed to have accepted the increased area. However, the complainant also refrained from making payment of the demanded amounts. Accordingly, in accordance with clauses 18 and 19 of the application form and 1.15 of the unexecuted buyer's agreement, the respondent gave an option to the complainant with an offer of an alternate unit in the project, one without a mezzanine floor. However, the complainant being greedy and with a malafide intention obtain increased area without making payment in respect thereof and to extract maximum benefit from the respondent, have proceeded to file the present complaint before this authority.
- XV. That the contractual relationship between the complainant and the respondent is governed by the application form and the agreement to sell executed by the parties. the complainant cannot set up any claim which is contrary to the agreed terms and conditions between the parties. The complainants were conscious and aware that the respondent was in the process of applying for revision of the building plans with the competent authority and that the dimensions, location, area, etc. of the unit allotted to them might undergo a change. In fact, the complainant has conveyed his no objection vide letter dated 15.02.2021 to the revised plans as well

as the resultant increase in area, units, height, number of floors, ground coverage etc. the complainant is contractually bound to make payment of the demanded amounts and take possession of the unit in question. Thus, the complaint is liable to be dismissed with costs.

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

13. 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.

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

E.I Territorial jurisdiction

15. 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

16. 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.

17. 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 complainants at a later stage.

F. Findings regarding relief sought by the complainants.

F.1 To grant delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).

18. On consideration of the documents available on record and submissions made by both the parties, the complainant was allotted a retail /commercial shop G-011 on ground floor admeasuring 1104 sq. ft. vide allotment letter dated 15.02.2020. The complainant has paid an amount of Rs.65,75,976/- against the total sale consideration of Rs.1,04,74,000/-. The buyer's agreement has been executed between the parties on 04.11.2017. The respondent obtained the occupation certificate in respect of the allotted unit of the complainant on 15.03.2023 and thereafter, issued a letter for intimation regarding grant of occupation certificate on 22.03.2023 further informing to take over the possession of the subject unit.
19. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under: -

"Section 18: - Return of amount and compensation

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

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of

delay, till the handing over of the possession, at such rate as may be prescribed."

20. Clause 8 of the buyer's agreement dated 04.11.2017, provides for handing over possession and the same is reproduced below:

8.

The possession will be offered by the company by 31.10.2021. In case of any delay in offer of possession beyond 31.10.2021 an interest of Rs.1,05,754/- will be payable by the company on monthly basis through PDCs with a yearly bank guarantee effective from 1st November 2021 till the date of offer of possession.

21. **Due date of handing over possession:** As per clause 8 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit by 31.10.2021. Further *as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.* The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 31.10.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date for handing over possession *in view of notification no. 9/3-2020 dated 26.05.2020*, on account of force majeure conditions due to the outbreak of Covid-19 pandemic. So, in such a case the due date for handing over of possession comes out to 30.04.2022.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottee(s) 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%.

23. 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., **08.07.2025** is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate **+2%** i.e., **11.10%**.
24. The definition of term 'interest' as defined under section 2(z) 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.
25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges
26. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered by 31.10.2021. As such the due date of handing over of possession comes out to be 30.04.2022 including grace period of 6 months on account of COVID-19. However, no interest shall be charged from the complainant in case of delayed payment during this 6 months COVID-19 period from 25.03.2020 to 25.09.2020.
27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 15.03.2023. The respondent has offered the

possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 30.04.2022 till the expiry of 2 months from the date of offer of possession.

28. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.04.2022 till offer of possession plus two months, at the prescribed rate i.e., 11.10 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
29. The following table concludes the time period for which the complainant-allottee is entitled to delayed possession charges in terms of proviso to section 18(1) of the Act:

S.no.	Complaint no.	Due date of possession	Offer of possession	Period for which the complainant is entitled to DPC
1.	CR/4554/2021	30.04.2022	22.03.2023	W.e.f. 30.04.2022 till 22.05.2023
2.	CR/498/2023	30.04.2022	27.03.2023	W.e.f. 30.04.2022 till 27.05.2023

- F.II To grant an order in his favour by directing the respondent to provide the clarification on the unreasonable demands raised in the offer of possession letter.**
- F.III To direct the respondent to withdraw the demand letter dated 07.09.2021.**
- F.IV To grant an order in his favor by refraining the respondent party from charging Labour Cess – Rs.39,672/-, External Electrification/DHBNL Connection Charges Rs.2,02,034/- (Justification: These charges are not part of Agreement to Sell).**
30. The complainant has pleaded that respondent vide letter dated 07.09.2021 has demanded an amount of Rs.78,63,112/- accounting to unreasonable demands of Rs.39,672/- as "Labour Cess", Rs.2,02,034/- as "External Electrification charges", Rs.9,854/- as "Electricity Connection and Prepaid meter charges" and on account of increase in area which are unjustified demands.
31. The Authority observes that the respondent vide letter dated 07.09.2021 has raised several demands mentioning that the calculation of the outstanding dues as per increase in area from 1104 sq. ft. to 1392 sq. ft. and accordingly has raised a demand regarding electricity connection and pre-paid meter charges of Rs.9,854/-, external electrification/DHBNL connection charges and HUDA water connection charges of Rs.2,02,034/-, and Labour Cess of Rs.39,672/-. However, as per the clause 2 of the agreement for sale dated 04.11.2017 the complainant was liable to pay Rs.52,92,800/- till the signing of the said agreement and remaining amount of Rs.41,81,200/- inclusive of EDC/IDC, IFMS and parking charges were payable at the time of offer of possession. Herein, the respondent has raised the abovementioned demand vide offer of possession of fit out dated 07.09.2021 i.e. before obtaining the occupation certificate and are not in accordance of the agreed payment plan between the parties. Hereby, the said demand letter is invalid.
32. Further, the complainant has sought relief w.r.t to restrain the respondent from charging the charges of Labour Cess – Rs.39,672/-, External

Electrification/DHBVNL Connection Charges Rs.2,02,034/-. All the demands are dealt accordingly below:

- a) **Electricity Connection & Pre-Paid Meter Charges of Rs.9,854/-, External Electrification/DHBVN connection charges and HUDA water connection charges of Rs.2,02,034/-.**
33. The complainant has pleaded that the respondent vide letter dated 07.09.2021, has raised demand of Rs.9,854/-, on account of Electricity Connection and Pre-Paid Meter Charges, Rs.2,02,034/- for External Electrification/DHBVN connection charges and HUDA water connection charges. The Authority observes that as per clause 3 of the buyer's agreement dated 04.11.2017 executed inter-se parties mentions about all such charges and the same has been agreed to be paid by the complainant.
34. The Authority has already dealt the above mentioned charges in the compliant bearing no. **CR/4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Limited** wherein the Authority has held that the colonizer/promoter would be entitled to recover the actual charges paid to the concerned departments' from the complainant/allottee on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads.
35. Further, the details of the above-mentioned charges charged by the respondent, the respondent shall provide to the complainant and the complainant can verify the same from the concerned department, if required. Thus, when the complainants agreed to pay charges under this head on the condition of the promoter providing the details of expenditure to them and the same to be verified by them, then promoter can legally charge the same from them.

b) Labour Cess of Rs.39,672/-.

36. That the respondent vide letter dated 07.09.2021 has raised an amount of Rs.39,672/- on account of labour cess. The Authority observes that Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint bearing no. **962 of 2019 titled Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited** wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be separately charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount.

c) Increase in the super area from 1104 sq. ft. to 1399 sq. ft. and carpet area from 552 sq. ft. to 650 sq. ft. i.e. increase of 26%.

37. The complainant states that the area of the said unit was increased from 1104 sq. ft. to 1399 sq. ft. and carpet area from 552 sq. ft. to 650 sq. ft. vide offer of possession dated 22.03.2023, without giving any prior intimation to, or by taking any written consent from the allottee. Considering the above-mentioned facts, the Authority observes that the respondent has increased the super area of the subject unit from 1104 sq. ft. to 1399 sq. ft. vide offer of possession letter dated 22.03.2023 with increase in area by 295 sq. ft. i.e. 26.7% without any prior intimation to the complainant.
38. That in **NCDRC consumer case no. 285 of 2018 titled as Pawan Gupta Vs. Experion Developers Private Limited**, it was held that the respondent is not

entitled to charge any amount on account of increase in area. The relevant part of the order has been reproduced hereunder: -

The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the builders/developers to indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.

39. In view of the above, the Authority has clear observation that there was an increase in the super area which was intimated to the complainant at the time of offer of possession for fit-out and not before. The respondent had informed the complainant of increase in usage area of the unit in question vide letter for offer of possession for fitout dated 07.09.2021 and offer of possession letter dated 22.03.2023. In the present matter, the builder buyer agreement was executed between both the parties herein on 04.11.2017 i.e.,

after enactment of the Act, 2016. Moreover, the Model Agreement to Sell (The Rules, 2017) provides that increase in the area can be allowed only upto 5%.

40. In view of the above, the Authority is of the view that the respondent has increased the super area as well as carpet area of the allotted unit by 26% however same is not prescribed as per the Model Agreement to Sell (as per Rules, 2017) and thus, the demand raised by the respondent on account of increase in area is illegal, void and hereby set aside to the extent of charging for increase in carpet area beyond 5% limit as prescribed in the Model Agreement to Sell (as per Rules, 2017) as agreement to sell was executed on 04.11.2017 i.e., after enactment of the Act, 2016 and the Rules of 2017.

F.V To direct the respondent party to provide the calculation of carpet area and common loading on the subject Shop.

41. The Authority is of the view that as per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainant within 30 days of this order.
42. Further, the total sale consideration of the subject unit was calculated by the respondent on the basis of the super area. As per clause 1.2 of the model 'Agreement for Sale' annexed prescribed in the Rules of 2017, the respondent is obligated to calculate the total price for the build-up unit/apartment based on the carpet area. In view of the above, the respondent is directed to calculate and charge the sale consideration of the unit based on the carpet area.

F.VI To direct the respondent party to give GST input tax credit on GST levied.

43. The respondent is directed to charge the GST as per rules and regulations and for the input tax credit, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

44. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.
45. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

F.VII To direct the respondent party to provide a copy of OC to the complainant.

46. 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/completion certificate or both to the complainant/allottee. 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."

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

F.VIII To grant an order in his favor by directing the respondent party to execute the BBA as per Model BBA format.

48. On consideration of the documents available on record, the Authority observes that an agreement for sale was executed between the parties on 04.11.2017. The respondent obtained the Occupation Certificate for the subject unit on 15.03.2023. The complainant has sought a direction for the respondent to execute a builder-buyer agreement in accordance with the format provided under Annexure 'A' of the Rules, 2017.
49. The Authority observes that the respondent has already obtained the Occupation Certificate and offered possession of the unit to the complainant vide letter dated 22.03.2023, and considering that an Agreement for Sale was already executed between the parties on 04.11.2017 with the mutually agreed terms and conditions, the respondent cannot now be directed at this to execute a fresh agreement for sale and revise the terms and conditions already agreed upon.
50. Furthermore, it is pertinent to note that the Agreement for Sale dated 04.11.2017 was executed after the Rules, 2017 came into force. Therefore, as per the said Rules, the agreement should have been in with the agreement prescribed under Annexure 'A'. In view of the same, the Planning Branch of

the Authority is directed to check whether the agreement for sale dated 04.11.2017 executed between parties is in accordance with the format prescribed under Annexure 'A' of the Rules, 2017. If not, suitable action shall be taken as under the provisions of the Act, 2016.

G. Directions of the Authority.

51. 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 is directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 30.04.2022 till offer of possession plus two months as per proviso to section 18(1) of the Act read with rule 15 of the rules. The due date of possession and the date of entitlement are detailed in table given in para 21 of this order. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
- II. The respondent is directed to issue a revised statement of account of the allotted unit of the complainant in terms of the relief allowed under the said order within a period of 30 days from the date of this order. The complainant is directed to pay the outstanding amount within next 30 days after issuing a revised statement of account. After clearing all the outstanding dues, the respondent shall handover the possession of the allotted unit to the complainant. The complainant is also duty bound to take the possession of the subject unit in terms of 19(10) of the Act, 2016.
- III. The respondent is directed to provide the details of charges on account of public utility services (i.e., electricity connection & pre-

paid meter charges, external electrification/DHBVN connection charges & HUDA water connection charges) to the complainant and the complainants after verifying the same, the charges/payments in lieu of it shall pay the same. The respondent is further directed not to charge any labour cess and holding charges.

- IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- V. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- VI. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's agreement. The respondent is ~~dis~~barred from claiming holding charges from the complainant /allottees at any point of time even after being part of apartment buyer's agreement as per law settled by **Hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.**

52. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
53. Files be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 08.07.2025