

**PROCEEDINGS OF THE DAY**
**101**

Day and Date	Tuesday and 22.07.2025
Complaint No.	MA NO. 33/2025 in CR/6379/2024 Case titled as Indraj Yadav and Veer Vikram VS Elan Buildcon Private Limited
Complainant	Indraj Yadav and Veer Vikram
Represented through	Shri V.K. Rao proxy counsel
Respondent	Elan Buildcon Private Limited
Respondent Represented	Shri Ishaan Dang Advocate
Last date of hearing	Appl. u/s 36 of the Act/01.05.2025
Proceeding Recorded by	Naresh Kumari and HR Mehta

**Proceedings-cum-order**

The present complaint has been received on 16.01.2025 along with application u/s 36 of the Act, 2016. An application under Order 1 Rule 10 was filed by the complainant No.2. Reply was received on 24.04.2025 along with reply to the application.

Succinct facts of the case as per complaint and reply are as under:

S. No.	Particulars	Details
1.	Name of the project and location	"Elan Miracle", Sector 84, Gurugram, Haryana
2.	Project area	5.91875 Acres
3.	Project type	Retail/ Commercial
4.	DTCP License	34 of 2014 dated 12.06.2014
	valid up to	11.06.2019
	Licensee name	Bajaj Motors(P) Ltd. and others
5.	RERA Registered/ not registered	Registered vide no. 190 of 2017 dated 14.09.2017 valid up to 13.09.2023
6.	Unit no.	G-161, Ground floor (As per page no. 36 of the complaint)



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नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

7.	Unit area admeasuring	518 sq. ft. (super area) (As per page no. 36 of the complaint)
8.	Application for allotment	26.02.2018 (As per page no. 36 of the complaint)
9.	Allotment Letter	09.03.2018 (page 43 of reply)
10.	Terms and conditions for fixed amount on provisional booking	11.03.2018 (page 45 of reply)
11.	Fixed amount clause	<p>1. <i>That Elan Buildcon Private Limited (herein after referred to as "Company"), agrees to pay to the applicant, a Fixed Amount of Rs. 25,522/- (Rupees Twenty-Five Thousand Five Hundred and Twenty-Two Only) per month</i>, subject to Tax Deduction at Source, on the provisional booking in our upcoming project titled as "Elan Miracle" situated at Sector-84, Gurugram, on the amount of Rs. 22,27,400/- (Rupees Twenty-Two Lakhs Twenty-Seven Thousand Four Hundred Only) received through Ch. No. 309119 dated 26.02.2018 drawn on Sarva Haryana Gramin Bank, Ch. No. 702471 dated 06.04.2018 and Ch. No. 702474 dated 10.04.2018 both Cheques drawn Through State Bank of India.</p> <p>4. <i>The fixed amount with the bank guarantee (as mentioned in clause no.2) shall be paid by the Company to the applicant till the date of issuance of offer of possession by the Company and.....</i> <b>(Emphasis Supplied)</b></p> <p>(page 45-46 of reply)</p>
12.	Date of apartment buyer's buyer agreement	23.07.2019 (page 27 of complaint)
13.	Possession clause	<p><b>7. POSSESSION OF THE UNIT:</b></p> <p><b>7.1 Schedule for Possession of the said Premises/Unit</b> - The Promoter agrees and understands that timely delivery of possession of the said premises / unit to the allottee(s) and the common areas to the association of allottee(s) or the competent</p>



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		authority, as the case may be, is the essence of the Agreement. The Promoter assures to hand over possession of the said premises / unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place within <b>a period of 48 (forty eight) months from the date of this Agreement with an extension of further twelve months</b> , unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure")..... <b>(Emphasis Supplied)</b> (As per page no. 42 of the complaint)
14.	Due date of possession	23.07.2024 (Note: Due date to be calculated 48 months from the date of the execution of agreement i.e., 23.07.2019 plus grace period of 12 months)
15.	Basic Sale Price	Rs.55,68,500/- (As per payment plan on page no. 67 of the complaint)
16.	Total sale consideration	Rs.59,49,230 /- (As per payment plan on page no. 67 of the complaint)
17.	Amount paid by the complainants	Rs.48,83,049/- (82.07% of the sale consideration) (As per e-mail dated 20.12.2024 on page no. 74 of the complaint)
18.	Payment Plan	<b>Special Fixed Return Payment Plan</b> On application of Booking: <b>10% of BSP</b> Within 45 days of booking: <b>30% of BSP</b> On Retail Superstructure: <b>30% of BSP + 100% EDC &amp; IDC</b> On offer of Possession: <b>30% of BSP + 100% of IFMS Charges + other charges</b>
19.	Fixed amount return paid by the respondent	Rs.11,71,038/- (as per ledger submitted by respondent page 50 of reply)
20.	Demand Letter	01.11.2019 (page 97 of reply)



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21.	Intimation regarding grant of OC by respondent to complainant	22.03.2023 (page 106 of reply)
22.	Letter by respondent to complainants w.r.t providing option to acceptance of revised area or offer alternative unit or acceptance of refund with interest	28.06.2024 (page 112 of reply)
23.	Email by complainant no.2 to respondent w.r.t acceptance of change in unit	30.10.2024 (page 128 of reply)
24.	Legal Notice by complainant no.2 to complainant no.1 w.r.t fulfillment of formalities for the new unit i.e. G-085	06.11.2024 (page 132 of reply)
25.	Cancellation notice	19.12.2024 (page 135 of reply)
26.	Email by complainant no.1 to respondent w.r.t denial of change in unit	20.10.2024 (page 141 of reply)
27.	Lease Deed for Unit no. G-161 in favor of M/s Shoppers Stop Ltd.	26.11.2024 (page 154 of reply)
28.	Offer of possession	Not offered
29.	Occupation certificate	15.03.2023 (page 103 of reply)

The counsel for the complainant has moved an application under section 36 of the Act on 16.01.2025 to maintain status quo, further setting aside the intimation of cancellation of the unit and to issue directions to the respondent not to create third party rights till final decision of the matter followed by handing over of physical possession of the unit.

This complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016, by one of the two joint allottees i.e.,

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्हत गठित प्राधिकरण



complainant no. 1 (Mr. Indraaj Yadav) with respect to unit no. G-161, Ground Floor in the project "Elan Miracle" situated at Sector 84, Gurugram being developed by the respondent promoter. However, on 28.06.2024 the respondent issued a letter to the complainants asking them to accept one out of the following three options:

1. Unconditional acceptance of the revised area of the unit.
2. Acceptance of alternate unit within the same project.
3. Unconditional acceptance of the refund of the amount as received by the company for the unit (presently allotted to you) along with the applicable interest as per RERA norms.

Thereafter, complainant no. 2 (Mr. Veer Vikram) vide e-mail dated 30.10.2024 exercised the second option and accepted the alternative unit (G-085). The relevant part of e-mail dated 30.10.2024 is reiterated as under:

***"Both Indraaj (my co-partner) and I had agreed on the allocation of unit (G-085) on 05/08/2024. However, Indraaj has since refused to engage with us regarding this matter....***

***.....***

***I am willing to settle my dues for the unit no. G-085 whenever required."***

Thereafter, Complainant no. 2 sent a legal notice dated 06.11.2024 to complainant no. 1 asking to finalise the procedural formalities for the transfer from unit no. G-161 to unit no. G-085 by paying his portion of outstanding dues or to surrender his interest in the unit. Herein, no reply to such legal notice was given by complainant no. 1.

Therefore, in view of the aforesaid facts, the respondent promoter cancelled the allotment of the complainants with respect to originally allotted unit no. G-161 on 19.12.2024.

However, the complainant no. 1 vide e-mail dated 20.12.2024 expressed his interest in continuing with the originally allotted unit instead of the new unit. The relevant part of e-mail dated 20.12.2024 is reiterated as under:

***"We don't want to change or cancel the booked unit.***

***We want to retain this G-161 unit as per BBA agreement and allotment.***

***Pls. all illegal , arbitrary change or cancelled allotted units without instructions or consent by the allottee Mr. Indraaj Yadav."***



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An application under Order 1 Rule 10 was filed by the complainant no.2 on 05.03.2025 for deletion of his name from the array of parties stating that complainant no.1 has impleaded him without his prior consent, knowledge or authorization, thereby rendering his inclusion as improper and unwarranted. Thus, he prayed for striking off his name from the array of parties.

The Authority finds that herein the complainant no. 1 through the present complaint is seeking possession of the originally allotted unit G-161, alleging that the promoter has unilaterally altered the allotment by substituting a different unit, and prays for a direction to the promoter to hand over the original unit along with compensation. It is an admitted position that the allotment of the said unit was made jointly in the name of both the complainants.

From the material placed on record, it is evident that the complainant no.2 has accepted the alternative unit offered by the promoter on 30.10.2024 and has expressly declined to be part of the present complaint by filing an application under Order 1 Rule 10, CPC, 1908 on 05.03.2025. No power of attorney, no-objection certificate, or any form of authorization has been filed by the complainant no.1 to demonstrate authority to represent the co-allottee i.e., complainant no. 2. Thus, the complaint has been instituted unilaterally, despite the joint nature of the allotment.

In the present case, the relief sought relates to the ownership and possession of a jointly allotted unit G-161, yet only one allottee has approached the Authority, while the other has taken a divergent and contrary position by accepting an alternative unit G-085 and expressing disinterest in pursuing the matter further.

The Authority is constituted under the RERA Act to regulate the real estate sector and to ensure compliance by promoters with their statutory obligations towards allottees. The adjudicatory jurisdiction of this Authority is limited to disputes between allottees and promoters in cases of violations or contraventions of the Act, rules, or regulations framed thereunder. However, where the primary dispute is between joint allottees themselves regarding the rights or preferences over the allotted property, such dispute falls outside the jurisdiction of this Authority. Since the essential dispute pertains to the internal disagreement between the two joint allottees regarding which unit should be accepted, it is clearly in the nature of a civil dispute that requires adjudication before a competent forum.



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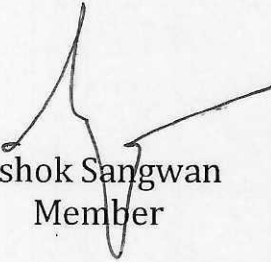
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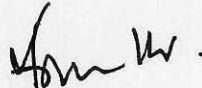
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Accordingly, in view of the absence of consent or participation of the co-allottee/complainant no.2, the lack of authorization, and the nature of the dispute being inter se between co-allottees, this Authority holds that the complaint is not maintainable.

Consequently, the complaint is **dismissed as not maintainable** in its present form before the Authority. However, the complainants are at liberty to file fresh complaint with with common relief and in prescribed format.

The matter stands disposed off. File be consigned to the registry.

  
Ashok Sangwan  
Member

  
Arun Kumar  
Chairman  
22.07.2025