

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

Complaint no. : 1815 of 2024
Date of decision : 23.07.2025

Renu Bala
R/o: -E-2, 106 G21, Society Vatika India Next,
Near Maitri Kiran School, Sector-83, Gurugram.

Complainant**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:
Ankur Berry (Advocate)
Ishaan Dang (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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	ELAN Miracle, Sector 84 , Gurugram
2.	Nature of the project	Commercial
3.	Area of the project	5.91875 acres
4.	Hrera registered	Registered Regd. No. 190 of 2017 Dated 14.09.2017
5.	DTCP license	34 of 2014 Dated 12.06.2014
6.	Allotment letter	10.09.2018 (As on page no. 22 of complaint)
7.	Shop no.	G-153, Type-Retail/Commercial, Floor-Ground (As on page no. 37 of complaint)
8.	Shop admeasuring	385 sq.ft. [Actual area] 770 sq.ft. [Super Area] (As on page no. 37 of complaint)
9.	Builder buyer agreement	27.02.2020

		(As on page no. 28 of complaint)
10.	Addendum to BBA dated 27.02.2020	20.04.2023 (As on page no. 87 of complaint)
11.	Possession clause	CLAUSE 7 POSSESSION OF THE PREMISES/UNIT: 7.1 Schedule for Possession of the said Premises/Unit- <p>The Promoter assures to hand over possession of the said premises/unit along with ready and complete common areas with all specification, amenities and facilities of the project in place within a period of 48(forty eight) months from the date of this Agreement with an extension of further twelve months, 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.</p> <p>[Emphasis supplied]</p> <p>(As on page no. 43 of complaint)</p>
12.	Due date of possession	27.02.2025 [Calculated 48 months from date of agreement + 12 months]
13.	Payment plan	Special Down Payment Plan <ol style="list-style-type: none"> 1. On application of booking-10% of Basic Sale Price 2. Within 30 Days of Booking-10% of Basic Sale Price 3. Within 12 months of booking-15% of Basic Sale Price 4. Within 18 months of booking-100% of EDC/IDC 5. On offer of Possession-65% of Basic Sale Price + 100% of IFMS + 100% of Car Parking-Usage Rights + (*Stamp

		duty, Registration charges & Administrative charges & all other charges as applicable will be charged extra)
14.	Total sale consideration	Rs.51,85,950/- (As on page no. 62 of complaint) Rs.91,39,395/- [Due to increase in the area from 770 sq.ft. to 1357 sq.ft.]
15.	Total amount paid by the complainant	Rs.1,03,99,260/- (As per S.O.A dated 04.03.2024 at page no. 178 of reply)
16.	Letter of assurance	10.09.2018 (As on page no. 25 of complaint)
17.	Assured return	<i>The Company shall pay a fixed amount of Rs.69.00 (Rupees Sixty Nine Only) per sq.ft. per month (less applicable taxes) after the completion of 30 months with a grace period of 6 (six) months from 10th September 2018 i.e w.e.f September 2021 (if Possession is not Offered by September 2021) to the applicant till the time of offer of possession, subject to timely payment of installments as per the payment plan attached herewith and if the applicant does not make the payments as per the attached payment plan then the Company shall also be entitled to charges interest @21% p.a. for first 60 days and interest @24% after 60 days from the due date of installments.</i> The offer of possession shall not be

		<i>dependent upon the grant of completion certificate and/or occupation certificate. The Company shall stand discharged of all liabilities completely after offer of possession (As on page no. 25 of complaint)</i>
18.	Occupation certificate	15.03.2023 (As on page no. 124 of complaint)
19.	Offer of possession	17.05.2023 (As on page no. 93 of complaint)
20.	Email sent by respondent informing the complainant regarding consolidated lease	08.08.2023 (As on page no. 99 of complaint)
21.	Consent of complainant to lease	12.12.2023 (As on page no. 110 of complaint)
22.	Lease deed	20.12.2023 (As on page no. 133 of reply)
23.	Conveyance deed	Not executed

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- I. That the complainant being interested in buying a commercial unit visited the respondent regarding information and amenities in the project namely Elan Miracle. The complainant were lured by the /officials/representatives of the respondent who misrepresented

the information regarding the luxurious amenities at reasonable prices.

- II. That the complainant was lured by the representations made by the respondent and decided to buy commercial unit in the project 'Elan Miracle' of the respondent. The complainants on 28.08.2018 booked the commercial unit by filing the application form and by making a payment of booking amount. Thereafter on 10.09.2018, Allotment letter was issued to the complainants for unit no G-153, ground floor admeasuring super area 770 sq.ft for total sale consideration of Rs. 51,85,950/-
- III. That at the time of issuance of allotment letter, the respondent's representative guaranteed that the Builder Buyer Agreement would be registered within 2-3 weeks. However only after 2 years of booking and allotment of the commercial unit, the respondent on 27.02.2020 signed and executed the Buyers Agreement with the complainant for unit bearing no. 153, Retail/Commercial Block having actual area 385 sq. ft. and super area of 770 sq. ft. on Ground Floor located at village Hayatpur, Sector-84, Gurugram, Haryana.
- IV. That the BBA detailed the actual area and super are of the unit and failed to provide the carpet area of the unit, even though the model agreement of the RERA, specifically necessitates that each unit has to be priced in terms of the carpet area. As per Clause 7.1 of the BBA, the respondent had to offer possession within 48 months from the date of execution of the BBA. However, the whole intention behind delaying the process of execution of BBA for over 2 year after Allotment letter was to delay the possession of the commercial space and buying an extra 2 years time for completion of the project.

- V. That the complainant were looking forward to take possession of the commercial unit as soon as possible but the respondent were throwing one or the other hurdles in front of the complainants. That since the inception, the complainant were actively making payments and visiting the office of the respondent to make sure everything proceeded smoothly and thus chose a payment plan suited to his needs.
- VI. That the complainant has fulfilled every demand and necessary documentation provided by the respondent. From the very starting, the respondent was mischievous and was try to deceive the complainant on one or the other pretext since even though the booking amount of Rs.2,00,000/- was received on 30.08.2018, yet the respondent took various other payments before the execution of the BBA.
- VII. That the respondent mischievously and veraciously thereafter went silent about the status of the project and on 06.05.2022 sent email informing that the super area of the captioned unit stood revised to 1357 sq. ft from the earlier agreed size of 770 sq. ft. The complainant shocked by the such information and attempted to contact the respondent telephonically however, at last, an email dated 14.06.2022 was sent by the complainant to the respondent raising various issues and concerns that needed consideration.
- VIII. The respondent responded to the email of the complainant on 15.06.2022 and promised to resolve the payment issue of the enhanced area and provided the dimensions of the unit of the complainant. On 20.06.2022, the complainant sent another email to the respondent to rectify the time limit for payment of enhanced area from the date of receipt of OC, however on 23.06.2022 vide

email, the respondent refused to accommodate the payment timeline for the enhanced area.

- IX. The complainant with hope of resolving the issue sent email dated 14.08.2022, sent an email detailing the provisions of the BBA and RERA Act, regarding procedure for taking possession and statutory provision namely Rule 1.6 of RERA Rule, 2017 with limit upon the Developer to increase the area of units limited to 5% of the carpet area.

Further, the complainant also demanded the payment of assured return that was promised by the respondent vide letter of assurance issued at the time of allotment.

- X. Thereafter, the respondent went silent and on 27.03.2023, sent an email intimating about the grant of Occupation Certificate. However, the respondent failed to offer possession and did not provide the copy of the OC.
- XI. That the respondent without any prior consent or information to the complainants increased the super area from 770 sq. ft. to 1357 sq. ft., and issued a "Reminder-I" demanding money due against "on offer of possession for fit-out" even though the payment plan had the instalment due only at the time of offer of possession, which could come after the issuance of the Occupation Certificate.
- XII. Further, this increase in super area being absolutely unlawful and unwarranted was objected to by the complainant. Yet instead of being able to prove or justify the size change, the respondent delayed the matter. The respondent, being a core business organization with sole intent to make benefits, used up the sum deposited by the complainant for construction and now when the

retail price of the commercial unit has appreciated has become greedy.

- XIII. That the complainant was left in shock after she discovered that the respondent has illegally, unlawfully, and mischievously increased the super area of the said unit from 770 sq. ft. to 1357 sq. ft., which is almost 90% increase in super area without even taking consent from the complainant. The said huge increase in super area was made without giving the complainant an iota of information regarding the illegal change in super area. It is a well settled proposition of law that promoter cannot unilaterally change the size of the unit without prior informing the allottees.
- XIV. That the complainant does not wish for alternate unit but it is illegal to change the size of the unit and then raise illegal demand on that change of size. Since the area enhancement was excessive, the complainant requested the respondent to provide amended BBA registration vide email dated 03.04.2023 and on 07.04.2023, the complainant communicated that enhanced area ought to be updated in RERA layout plan. Thereafter, an Addendum Agreement was signed and executed between the parties on 12.05.2023 whereby amendments to the BBA were made showing the actual area/super area being changed/amended to carpet area/super area.
- XV. That in terms of applicable law, the complainant had duly submitted the TDS on the commercial unit. That the complainant paid Rs.89,359/- to the Income Tax Department on account of payment for the commercial unit vide Challan No. 01502 dated 05.06.2023. However the same amount was also deposited with the respondent too. Thus the respondent had actually received an

extra amount of Rs.89,359/- which should have returned to the complainant.

- XVI. That on 17.05.2023, the respondent sent the 'Offer of Possession' for the commercial unit claiming that the carpet area of the unit increased to 627.87 sq. ft. and super area was revised from 770 sq. ft to 1357 sq. ft. The respondent also imposed an interest of Rs.64,544/- without providing any details as to why the interest was imposed.
- XVII. That as per the demand of the respondent, the complainant paid all payment and requested for letter of possession vide email dated 11.07.2023. To the utter shock of the complainant, the site-visit to the project brought actual facts of the situation, as the commercial unit of the complainant without ever being handed over, was found to be in possession of third-party as there were posters of "Zudio" brand and the inner separation wall of the unit was nowhere to be seen resulting in situation where the unit size could not be verified. The complainant immediately sent email dated 31.07.2023 to the respondent to get clarity.
- XVIII. The respondent realising the illegal creation of third-party rights immediately on 08.08.2023 sent email claiming that the respondent was in process of executing Letter of Intent (LOI) with "Trent Ltd", a third party for leasing the unit. The respondent also sent the commercial clause for the LOI with third-party which were one sided and lacked the interest of the complainant. The complainant communicated vide email dated 26.09.2023 that the leasing of the unit was being done without the consent of the complainant and the same was blatant disregard of statutory rules. Even after various meeting no resolution could be reached as the respondent failed to

handover the possession or execute the conveyance deed of the unit and threatened the complainant to accept the lease agreement by threatening to stop the execution of conveyance deed which would result in further harassment to the complainant.

- XIX. That even though all payments were made and all documentation was completed by the complainant yet no physical possession or conveyance deed was executed by the respondent. Rather on 11.09.2023, the respondent committed that the conveyance deed execution was to start shortly yet till date the conveyance deed execution has been stalled by the respondent.
- XX. That even though the payments had been made, the respondent issued email dated 18.09.2023, titled as "Reminder-II" for payment of outstanding payment, due on Offer of possession for fit-out, even though as per payment plan any and all payments were to be made at the time of offer of possession which the respondent has failed to give to the complainant. The complainant immediately responded to the email and clarified that due payments were to be released only at the time of registration of property, further this information was also supported by the Bank, disbursing the loan too.
- XXI. That the failure of the respondent in handing over possession of the unit alongwith creation of third party rights by attempting to forcefully lease the unit of the complainant left a bad taste in the mouth and the complainant detailed in the email dated 05.11.2023 the relevant issues and again requested for physical handover of the shop.
- XXII. That the respondent responded to the email on 07.11.2023 and informed the complainant that the third-party had commenced its operations at the site and directed the complainant to handover

signed LOI for beginning the lease rentals. The offer of possession was only issued on 17.05.2023 and as per Clause 49 of the BBA, the respondent had the exclusive right to lease the unit of the complainant till offer of possession only, whereas the respondent already admitted vide email dated 08.08.2023 the LOI with third-party was in process even after the offer of possession. The respondent twisted the arms of the complainant to get consent to the leasing of unit to third party and the same was detailed in email dated 12.12.2023; since the company promised to hand over the possession and get the unit transferred in the name of the complainant. The respondent also agreed to refund the already paid CAM charges vide email dated 28.12.2023.

XXIII. That the respondent sent an email on 30.01.2024, claiming that the Conveyance Deed process will start post purchase of stamp duty. The complainant after purchasing the stamp papers on 06.02.2024 for conveyance deed duly emailed to the respondent for initiating the process of execution of conveyance deed and also provided Bank NOC. Also, the documents regarding MCG were also supplied to the respondent. On 06.02.2024, the complainant was also provided ledger wherein further interest of Rs.95,803/- was imposed without detailing for which period was such interest imposed. The ledger also failed to show any adjustment of assured return due toward the complainant.

XXIV. The complainant further noticing that the TDS amount deducted had not been incorporated in the ledger, requested the respondent to adjust the same and return the amount, sent email on 09.02.2024.

While handing over the documents for execution of Conveyance

Deed, the respondent also got signed a 'Handing over of possession' letter from the complainant claiming the same to be legal requirement for execution of conveyance deed, the same was protested by the complainant, since till date no physical possession has been handed over to the complainant.

- XXV. Since the respondent failed to fulfil its promises, the complainant again sent email dated 22.03.2024, detailing the issues and requested to schedule registration of conveyance deed at the earliest. That all efforts of the complainant were in vain and the complainant kept sending further reminders on 29.03.2024.
- XXVI. That the questioning of the complainant on the issue resulted in the her being refused entry in the office of the respondent and into the commercial unit too. The unit of the complainant never changed and thus the respondent could not have charged large amounts for the alleged increase of the super area from 770 sq. ft. to 1357 sq. ft.
- XXVII. That the respondent is using its dominant position to prevail over the innocent allottee by illegally occupying her unit. On the basis of the above raised submissions it can be concluded that the respondent, has failed to perform its obligations in terms of the letter of assurance dated 10.09.2018, BBA dated 27.02.2020 and statutory obligations defined within the RERA Act.

C. Relief sought by the complainant

4. The complainant has sought following relief(s).
- Direct the respondent to hand over peaceful possession of the commercial unit.
 - Appoint a Local Commission, to visit the project site to measure the unit size as the claim of increase of super area from 770 sq.ft to 1357 sq.ft. cannot be held to be justified.

- iii. Upon the report of the Local Commission, the respondent be directed to refund the extra amount received by it under false claim of area enhancement
 - iv. Direct the respondent to refund the advance payment of maintenance (CAM Charges) in terms of its commitment made vide email dated 28.12.2023.
 - v. Direct the respondent to refund the amount of Rs.89,359/- charged on account of TDS when the same was already paid by the complainant.
 - vi. Direct the respondent to offer possession of the commercial unit in terms of the BBA dated 27.02.2020.
 - vii. Direct the respondent to pay assured return in terms of the Letter of Assurance dated 10.09.2018.
 - viii. Direct the respondent to waive off illegal interest being charged to the complainant.
 - ix. Direct the respondent to pay the rental amounts at market rate for illegally occupying and failing to handover possession of the unit.
 - x. Direct the respondent not to alienate the unit in question.
 - xi. Direct the respondent to produce the building plans showcasing the increase of the super area from 770 sq.ft to 1357 sq.ft.
 - xii. Direct the respondent to remove the lift structure, and construct the removed internal wall, which was never agreed or defined in the building plans and the BBA.
 - xiii. Direct the respondent to execute the Conveyance Deed in favour of the complainant.
5. 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

6. 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 its commercial complex being developed by the respondent known as "ELAN MIRACLE" situated in Sector-84, Gurugram. The complainant had approached the respondent after making independent enquiries and duly satisfying herself regarding the viability and suitability of the aforesaid project as per her needs and requirements as well as the capability of the respondent to undertake the project.
- II. The complainants had opted for a "special down payment plan" in terms of which 10% of the basic sale price was payable on booking, 10 % within 30 days from booking, 15% of the basic sale price within 12 months from the date of booking, 100% of EDC and IDC within 18 months from booking, and 65% of the basic sale price, 100% IFMS, 100% car parking usage charges, stamp duty, registration and administrative charges, applicable taxes, interest on delayed payment, and other amounts was payable at the time of offer of possession.
- III. That the complainant was allotted a retail/commercial space unit tentatively measuring 770 sq. ft. super area bearing unit no.G-153 on the Ground Floor of the project, 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.

- IV. That letter of assurance dated 10.09.2018 was issued in favour of the complainant in terms of which the respondent had undertaken to pay a fixed amount of Rs.69/- per sq ft (less applicable taxes), w.e.f September 2021 if possession was not offered by September 2021, subject to timely payment by the complainant as per the payment plan. It was clarified therein that the offer of possession shall not be dependent upon grant of completion certificate and/or occupation certificate and the respondent shall stand discharged of all liabilities after offer of possession.
- V. That the Buyer's Agreement was executed between the complainant and the respondent on 27.02.2020. The complainant failed to adhere to the applicable payment plan and hence the respondent was constrained to issue reminders for payment. In the meantime, the respondent duly completed construction of the project and made an application to the competent authority on 09.06.2021 for issuance of the Occupation Certificate.
- VI. Vide letter dated 19.06.2021, the respondent informed the complainant that the respondent had applied for the Occupation Certificate on 09.06.2021 in respect of the project in question. Occupation certificate was issued by the competent authority on 15.03.2023.
- VII. That vide letter dated 22.03.2023, the complainant was informed about receipt of the occupation certificate from the DTCP. The complainant was informed that as a gesture of goodwill, the respondent had decided not to charge any common area maintenance charges for a three month period commencing from the date of grant of the occupation certificate i.e. 15.03.2023 till 15.06.2023.

- VIII. That vide offer of possession letter dated 17.05.2023 the complainant was informed that there was an increase in the super area of the unit allotted, from 770 sq ft to 1357 sq ft. Consequently, the payments to be made by the complainant stood revised due to the increase in super area.
- IX. That prior to issuance of offer of possession letter, the complainant was called upon to execute and get registered the addendum to the buyer's agreement. The addendum to the buyer's agreement dated 20.04.2023, willingly and consciously executed by the complainant states the final super area of the unit to be 1357 sq ft approx and the carpet area to be 627.87 sq ft approx. The payment plan also stood amended. The remaining terms and conditions of the buyer's agreement dated 27.02.2018 remained unchanged and binding upon the parties.
- X. That sometime in early August 2023, the respondent conveyed to the complainant that there was a prospective lessee who was interested in obtaining on lease several adjoining units in the project. It was made clear to the complainant that since the contemplated lease involved several units, there would be no scope of individual negotiations as regards the commercial terms. The complainant requested to consider leasing out the unit to the said lessee and gave her in principle approval for the same.
- XI. That the respondent informed the complainant vide email dated 08.08.2023 that the respondent had identified a prospective lessee who was interested in taking the unit of the complainant as well as other units, on a consolidated lease for entire super area on 19219 sq ft. The broad terms and conditions of lease (Term Sheet) were detailed in the said email. The complainant was informed that there

would be Capital Expenditure of Rs 645/- per sq ft plus applicable GST, to be paid in three tranches in the manner set out in the said email. The complainant was called upon to provide her consent for execution of the lease deed and other documents. The complainant was further informed that the Lease Deed with detailed terms and conditions would be shared with the complainant after its execution and registration.

- XII. That after several rounds of discussions, the complainant consented to lease of her unit vide email dated 12.12.2023 subject to certain modifications, which were duly accepted by the respondent vide email dated 28.12.2023. Vide emails dated 16.09.2023 and 18.09.2023, the complainant was informed that registration of Conveyance Deed shall commence shortly and accordingly, the complainant was advised to clear her outstanding dues. The complainant was called upon to come forward for registration of the conveyance deed in her favour. The stamp duty and registration charges and other charges were communicated vide email dated 24.01.2024.
- XIII. The complainant made the payment towards stamp duty etc. and informed the respondent by email dated 06.02.2024. Since the complainant had availed a bank loan for purchase of the unit, the complainant was called upon to provide an NOC from the bank for registration of the conveyance deed.
- XIV. That the respondent is ready and willing and has always been ready and willing to get the conveyance deed registered in favour of the complainant. The complainant for reasons best known to her has proceeded to file the present complaint.

- XV. That the respondent has duly fulfilled its obligations in terms of the agreement between the parties and also under RERA. There is no default or lapse in so far as the respondent is concerned. In terms of Clause 7 of the Buyer's Agreement dated 27.02.2020, possession of the unit was agreed to be offered to the complainant within 48 months from the date of execution of the Buyer's Agreement, with grace period of 12 months and subject to force majeure conditions and events beyond the power and control of the respondent. The respondent has duly offered possession of the unit, complete in all respects in accordance with the Buyer's Agreement, well ahead of the time lines for delivery of possession as set out therein. Hence there is no delay whatsoever on the part of the respondent in offering possession of the unit to the complainant.

E. Jurisdiction of the authority

7. 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

8. 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

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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;

10. 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 complainant:

- F.I. Direct the respondent to handover peaceful physical possession of the commercial unit.**
F.II Appoint a Local Commission, to visit the project site to measure the unit size as the claim of increase of super area from 770 sq.ft to 1357 sq.ft. cannot be held to be justified.
F.III Upon the report of the Local Commission, the respondent be directed to refund the extra amount received by it under false claim of area enhancement

11. In the present case, the complainant booked a unit in the project "Elan Miracle" located at Village Hayatpur, Sector-84, Gurugram, Haryana, being developed by the respondent. The complainant was allotted a commercial unit bearing no. G-153, on Ground Floor, admeasuring carpet area of 271 sq.ft. and super area of 770 sq.ft., vide allotment letter dated 10.09.2018. Vide a Letter of Assurance dated 10.09.2018, the respondent undertook to pay assured return at the rate of Rs.69

per sq.ft. per month from September 2021 till the Offer of Possession, in case the possession is not offered till September 2021. Thereafter, a Builder Buyer Agreement was executed between the complainant and the respondent on 27.02.2020, after a delay of more than one year from the allotment.

12. **Due Date of possession:** As per clause 7.1 of the Builder Buyer Agreement dated 27.02.2020, the respondent undertook to handover possession of the unit to the complainant within 48 months from the date of execution of the Agreement, with an extension of twelve months due to Force Majeure conditions. The grace period of 12 months being unqualified, is granted to the respondent. Thus, the due date of possession, including the grace period of 12 months comes out to be 27.02.2025.
13. In the present complaint, the complainant has sought the physical possession of the allotted unit from the respondent. The Authority observes that, as per the terms of the agreement, the due date for handing over possession was 27.02.2025. The respondent obtained the Occupation Certificate from the competent authority on 15.03.2023 and subsequently issued an Offer of Possession to the complainant on 17.05.2023. In the said Offer of Possession, the respondent communicated that the Super Area of the unit had been revised from 770 sq. ft. to 1357 sq. ft., resulting in an increase in the total sale consideration from Rs.51,85,950/- to Rs.91,39,395/-.
14. As per the Statement of Account dated 04.03.2024 (at page no. 178 of the reply), the complainant has paid a total amount of Rs.1,03,99,260/- to the respondent. It is further noted that an Addendum to the Builder Buyer Agreement was executed between the parties on 12.05.2023,

through which the revision of the Super Area from 770 sq. ft. to 1357 sq. ft. was formalized.

15. In the present complaint, the complainant has sought the appointment of a Local Commissioner to inspect the project site and measure the area of the unit, disputing the respondent's claim regarding the alleged increase in the super area. Upon consideration of the submissions and material on record, the Authority observes that the respondent has failed to produce any credible documentary evidence in support of the purported increase in the super area. Moreover, the respondent has not followed the due procedure as mandated, specifically the requirement of obtaining prior written consent from the allottee before effecting any change in the building plans.
16. It is significant to note that the super area of the unit has been nearly doubled in comparison to the originally allotted area, thereby placing an unjust and disproportionate financial burden upon the complainant. The respondent has not provided any satisfactory explanation or justification for such a substantial increase, nor has any technical or statutory basis been demonstrated to support the change. However, the complainant had expressly consented to the revision in the super area by executing an Addendum to the Buyer's Agreement, thereby affirming acceptance of the increased area. In view of this, the complainant's claim for a refund of the amount paid on account of the increased super area, raised at this belated stage, is devoid of merit and cannot be sustained.
17. The respondent is directed to execute Conveyance Deed in favour of the complainant within 30 days from the date of this order.

F.IV. Direct the respondent to refund the advance payment of maintenance (CAM Charges) in terms of its commitment made

vide email dated 28.12.2023.

18. The Authority notes that the complainant has neither pressed for the said relief during the course of arguments nor clearly articulated the same in the complaint. Furthermore, the email dated 28.12.2023, which appears to be the basis for the said claim, is illegible and cannot be relied upon. In the absence of any cogent pleading or substantiating material, the Authority is unable to adjudicate upon the said relief. However, as per email dated 05.04.2024 (on page no. 81 of the complaint), the respondent had communicated to the complainant that the respondent company has decided to not charge any CAM Charges for a period of three months commencing with effect from date of grant of Occupation Certificate i.e., 15.03.2023 to 15.06.2023. So, the respondent must not charge the complainant for the said period of time.

F.V. Direct the respondent to refund the amount of Rs.89,359/- charged on account of TDS when the same was directly paid by the complainant.

19. The allottee shall be entitled to pursue the said relief before the concerned competent authorities.

F.VI. Direct the respondent to pay assured return in terms of the Letter of assurance dated 10.09.2018.

20. The complainant is seeking assured return in terms of the Letter of Assurance dated 10.09.2018. The letter dated 10.09.2018, regarding the "terms and conditions for fixed amount on provisional booking" can be considered as an "agreement for sale" interpreting the definition of the Agreement for Sale under Section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations

contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. One of the integral parts of this agreement, the letter dated 10.09.2018 is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.***, (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottee.

21. There is a contractual relationship between the complainant and the respondent which is governed by the Builder Buyer Agreement,

executed between them. However, it is seen that the drafting of the clauses in the builder buyer agreement are not only vague and uncertain but so heavily loaded in favour of the promoter and by the allottee in fulfilling formalities and documentations etc as prescribed by the promoter. In the present case, the respondent/builder have misused its dominant position and drafted a clause in the letter containing terms and conditions for fixed return, which are completely vague and against the statutory rights of the complainant/allottee whereby it says that ***the offer of possession is not dependent on the grant of occupation certificate.***

22. 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.*
23. 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 relevant

authority on 15.03.2023 and thereafter, offered possession of the unit to the complainant on 17.05.2023.

24. The Authority directs the respondent to issue a fresh Statement of Accounts (S.O.A) to the complainant and to pay the arrears of assured returns as stipulated in the letter dated 10.09.2018. According to this agreement, the respondent is directed to pay a fixed amount of Rs.69.00/- per sq.ft. per month from 10.09.2021, until the offer of possession i.e., 17.05.2023, after deducting the amounts already paid by the respondent on account of assured returns.

F.VII Direct the respondent to waive off illegal interest being charged on the complainant.

25. The complainant has failed to specify the particular charges on which interest was allegedly levied unlawfully by the respondent. In the absence of such clarity, the Authority is unable to adjudicate upon the said relief.

F.VIII Direct the respondent company to pay the rental amounts at the market rate for illegally occupying and failing to handover the possession of the unit.

26. The complainant has submitted that vide email dated 11.07.2023, she had requested the respondent to issue letter of possession and upon visiting the project site, the complainant was shocked as her unit without being handed over to her, was in possession of a third party as there were posters of the brand "Zudio" and the inner separation walls of the unit were demolished. The complainant immediately on 31.07.2023 sent an email to the respondent. thereafter the respondent vide email dated 08.08.2023 claimed that it was in the process of executing the "Letter of Intent" hereinafter referred to as LOI, with Trent Ltd , a third party, for leasing the unit. Vide email dated

- 26.09.2023, the complainant communicated to the respondent that the leasing of the unit was done without the consent of the complainant.
27. The respondent has submitted that in August 2023, the respondent conveyed to the complainant that there was a prospective lessee who was interested in obtaining on lease several adjoining units in the project and the complainant was informed that since the contemplated lease involved several units, there would be no scope of individual negotiations as regard the commercial terms. After several round of negotiations, the complainant consented to the lease of her unit vide email dated 12.12.2023 at page no. 110 of the complaint, with certain modifications which were duly accepted by the respondent vide email dated 28.12.2023.
28. The Authority observes that at no point did the complainant consent to the terms of any proposed leasing arrangement, she had only made a proposal regarding the alterations of the terms and conditions of the LOI, neither did the respondent sent any affirmation to the said alterations/modifications as suggested by the complainant nor did she authorize the respondent to alter the internal structure of her unit. The respondent's unilateral actions in dismantling the inner partitions are found to be arbitrary and without authority.
29. In view of the above, the Authority directs the respondent to restore the complainant's unit to its original condition in accordance with the specifications outlined in the Buyer's Agreement, and to complete such restoration within a period of 30 days from the date of this order, in case she does not want to lease her unit, the respondent is direct to handover possession of the unit allotted to her within 30 days of this order, as in the Agreement dated 27.02.2020, it has nowhere been agreed between the parties that the physical possession of the unit

would not be handed over to the complainant and the unit is for the leasing purposes only which is to be decided by the respondent. As regarding lease rentals, in case the respondent has not paid the lease rentals to the complainant for the time period from the offer of possession i.e. 17.05.2023, the complainant is entitled to seek compensation from the Adjudicating Officer.

F.IX Direct the respondent not to alienate the unit in question.

30. The respondent is hereby directed not to create third party rights on the unit allotted to the complainant and hand over possession of the subject unit to the complainant within a period of 30 days from the date of this order, as there has already been inordinate delay.

F.X Direct the respondent to to remove the lift structure and construct the removed internal walls, which was never agreed or defined in the building plans and the BBA.

31. The respondent is directed to restore the unit of the complainant to its original condition in accordance with the specifications outline dint he Buyer's Agreement, and to complete such restoration within a period of 30 days from the date of this order.

F.XI Direct the respondent to execute Conveyance deed in favour of complainant without any unfair clauses.

32. The respondent is directed to execute Conveyance Deed in favour of the respondent within 30 days form the date of this order.

G. Directions of the authority

33. 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 respondent is directed to pay a fixed amount of Rs.69.00/- per sq.ft. per month from 10.09.2021, until the offer of possession i.e.,

17.05.2023, after deducting the amounts already paid by the respondent on account of assured returns.

- ii. The respondent is directed to pay arrears of accrued assured return as per the letter of assurance dated 10.09.2018 till the date offer of possession i.e., 17.05.2023 at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @8.90% p.a. till the date of actual realization.
 - iii. The respondent is directed to restore the unit back in its original form as per the specifications of the Buyer's Agreement, within a period of 30 days of this order.
 - iv. The respondent is directed to handover possession of the unit to the complainant within 30 days of this order.
 - v. The respondent is directed not to force the complainant entering into any leasing arrangement of the respondent's choice and also not force the complainant into obtaining NOC from respondent before operating any store of her choice.
 - vi. The respondent is directed to execute Conveyance Deed in favour of the respondent within 30 days of this order.
 - vii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
34. Complaint stands disposed of.
35. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.07.2025