

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

Complaint no. : 4801 of 2023
Date of complaint : 25.10.2023
Date of order : 23.07.2025

1. Hawa Singh Panghal
2. Virendra Panghal

Both R/o: H- 210/493, Gali no. 06, Laxman Vihar,
Near Railway Station, Gurugram-122001.

Complainants

Versus

M/s Elan Buildcon Pvt. Ltd.

R/o: L-1-1100, G/F Sangam Vihar,
Gali no 25, New Delhi.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Gaurav Rawat (Advocate)

JK Dang (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

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

S. No.	Particulars	Details
1.	Name and location of the project	"Elan Miracle", Sector-84, Gurugram Haryana
2.	Project type	Commercial Project
3.	Project area	5.91875 acres
4.	DTCP license no. and validity status	34 of 2014 dated 12.06.2014 valid upto 11.06.2019
5.	RERA Registered/ not registered	Registered 190 of 2017 dated 14.09.2017
6.	Unit no.	LG-001-H, Lower Ground Floor [Page no. 79 of the reply]
7.	Unit area admeasuring (super area)	550 sq. ft. increased to 595 sq. ft. [Page no. 79 of reply]
8.	Allotment Letter	25.09.2017 (page no. 47 of complaint)
9.	Date of builder buyer agreement	25.03.2019 (page no. 70 of reply)
10.	Possession Clause	POSSESSION OF THE PREMISES / UNIT: 7.1 <i>Schedule for Possession of the said Premises / Unit - 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 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</i>



areas with all specifications, 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** ("Force Majeure"). If; however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the said premises / unit, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allottee(s) subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the Promoter to the Allottee(s). The Promoter shall Intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee [subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the Promoter, interest paid or payable by the allottee(s) to the promoter on delayed payments, brokerage(s) / incentive(s) paid by the developer / discount(s) given, taxes / statutory levies paid / payable, if any], the Allottee agrees that he/ she shall not have

		<p><i>any rights, claims etc, against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement. It is however clarified that if the developer offers the possession of the unit before the stipulated timeline as mentioned above, the allottee(s) shall take the possession without any protest or demur.</i></p>
11.	Due date of delivery of possession	25.09.2023 (Calculated from the date of agreement) Note: Grace period allowed
12.	Letter for fixed amount (assured return)	11.09.2017 (Page no. 61 of reply) Note: - That the respondent was agreed pay to the complainants a fixed amount of Rs. 29,917/- per month till the date of issuance of offer of possession.
13.	Total sale consideration	Rs. 56,87,150/- (as per payment plan on page 104 of reply)
14.	Amount paid by the complainants	Rs 30,79,549/- (as per cancellation letter on page no. 171 of reply)
15.	Fixed amount paid/adjusted against demand by respondent (assured return)	Rs. 14,64,114/- upto June 2021 (Page no. 66 of reply)
16.	Offer of possession for fit out	05.02.2022 (as per annexure R-13 on page no. 122 of reply)
17.	Occupation certificate	15.03.2023 (as per annexure R-15 on page no. 127 of reply)
18.	Intimation regarding the grant of OC	22.03.2023 (page 166 of reply)

19.	Reminders by respondent for making payments	07.02.2022, 10.03.2022, 05.04.2022, 08.04.2022, 04.07.2022, 05.08.2022, 05.09.2022, 10.10.2022, 03.11.2022, 03.12.2022, 03.01.2023, 03.02.2023, 17.04.2023, 20.05.2023, 27.03.2023, 14.04.2023
20.	Pre cancellation Letters	16.05.2023 and 20.05.2023 (page no. 168 of reply)
21.	Cancellation Letter	09.06.2023 (page no. 171 of reply)

B. Facts of the complaint:

3. The complainants have made following submissions in the complaint:
- i. The respondent, M/s. Elan Buildcon Private Limited. advertised about its new project namely "Elan Miracle" in Sector 84 of the Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims.
 - ii. The complainants while searching for a commercial was lured by such advertisements and calls from the brokers of the respondent for buying a commercial shop in their project namely Elan Miracle. The respondent company told the complainants about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the national capital region.
 - iii. Relying on various representations and assurances given by the on assurances, belief of such respondent company and complainants, booked a unit in the project by paying a booking amount towards the booking of the said unit bearing no. LG-004-H in sector 84, having super area measuring 550 sq. ft. to the respondent dated 23.06.2017 and the same was acknowledged by the respondent.

- iv. That respondent sent an allotment letter dated 25.09.2017 to the complainants confirming the booking of the unit dated 23.06.2017, allotting a unit no. LG-001-H measuring 550 Sq. Ft in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs.56,87,150.00, which includes basic price plus EDC and IDC, car parking charges, PLC, IFMS and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- v. It is pertinent to mention here that at the time of booking it was assured to the complainants that the construction of the said unit will be completed by December, 2019. Therefore, the due date of possession comes out to be December, 2019.
- vi. It is pertinent to note here that respondent sent aforesaid allotment letter after a delay of more than three months which against the spirit of the RERA Act, 2016.
- vii. That after repeated reminders and follow ups with the respondent. Respondent finally sent terms and conditions for fixed amount on provisional booking as the said unit was booked under special fixed return payment plan to the complainants. It is pertinent to note here that as per said letter respondent undertook to pay fixed amount per month on the total amount paid till completion of the construction of the building.
- viii. As per the demands raised by the respondent, based on the payment plan, the complainants to buy the captioned unit already paid a total sum of Rs.16,16,000.00, towards the said unit against total sale consideration of Rs. 56,87,150/-.
- ix. That after repeated request, emails and reminders respondent failed to get the buyers agreement executed with the complainants. It is

pertinent to mention here that booking of the said unit was done on 23.06.2017, allotment letter was issued on 25.09.2017 and till date the agreement has not been executed.

- x. That it is pertinent to mention here that allotment of the unit was made on 25.09.2017, after coming into force of the RERA Act, 2016 and as per the Act, after coming into force of the Act the respondent is under obligation to get the buyers agreement executed as per the sample agreement provided under the Act, and HARERA Rules, 2017, made thereafter, but in the present case respondent failed to comply with the same.
- xi. That though the payment to be made by the complainants were to be made based on the construction on the ground but unfortunately the demands being raised were not corresponding to the factual construction situation on ground.
- xii. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. It is pertinent to state herein that such arbitrary and illegal practices have been prevalent amongst builders before the advent of RERA, wherein the payment/ demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
- xiii. That during the period the complainants went to the office of respondent several times and requested them to allow them to visit the



site but it was never allowed saying that they do not permit any buyer to visit the site during construction period, once complainants visited the site but was not allowed to enter the site and even there was no proper approached road. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.

- xiv. The complainants contacted the respondent on several occasions and were regularly in touch with the respondent with regard to execution of the builder buyer agreement. The respondent was never able to give any satisfactory response to the complainants regarding the status of the agreement, construction and were never definite about the delivery of the possession.
- xv. It is abundantly clear that the respondent has played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to execute the BBA with the complainants. Hence, the complainants being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.
- xvi. The complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit for commercial purposes. They have not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank.
- xvii. That complainants visited number times to the office of the respondent stating that respondent has failed to pay the fixed return and it has been several months but you have failed to obtain the OC. Further, requesting

- for the execution of the agreement but respondent failed to do so till date.
- xviii. That complainants raised objections on account of non-adjustment of the amount, non-payment of assured return change in payment plan, price and raising the concern/objection that on ground reality status of construction of is not the same as the demand of money raised. Furthermore, requested for the inspection of the unit as per the agreement. That thereafter complainants sent several reminders through telephone to the respondent's company but they were never able to give any satisfactory response regarding the aforesaid issues raised by the complainants.
- xix. In the present case respondent has collected approx. Rs.30,79,549/- till date without executing the builder buyer agreement. It is pertinent to mention here that the respondent instead of complying as per the provisions of the Act, and obtaining the OC, payment of the Fixed return sent cancellation letter dated 09.06.2023 to the complainant forfeiting an amount of Rs. 24,41,688- without providing any justification to same and against the spirit of the RERA Act, 2016.
- xx. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.
- xxi. The complainant after losing all the hope from the respondent company, having their dreams shattered of owning a flat & having basic necessary facility in the vicinity of the project and also losing considerable amount, are constrained to approach this Authority for redressal of their grievance.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
 - i. Direct the respondent to refund of the amount paid to the respondents with interest.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has made following submissions in the reply:
 - i. That the complainants have not come before this Hon'ble Authority with clean hands and has concealed the real and true facts, which are set out in the succeeding paras of the present reply.
 - ii. That the complainants had approached the respondent expressing an interest in the purchase of a commercial unit in the commercial complex known as "Elan Miracle", situated in Sector -84, Gurugram.
 - iii. That after being fully satisfied with all aspects of the unit/project and payment plans offered by the respondent, the complainants made an application for booking a unit in the said project. The complainants had booked the unit after making independent enquiries and fully satisfying themselves regarding the viability and suitability of the aforesaid project as per their needs and had opted for a special fixed return payment plan. The terms and conditions forming part of the application form were duly understood and accepted by the complainants.
 - iv. That thereafter, the complainants were allotted a commercial space unit tentatively ad measuring 550 sq. ft. bearing Unit No. LG-001 H by the respondent, subject, inter alia, to increase or decrease on basis of variation in calculation of actual super area of the premises which was to be determined at the time of offer of possession of the premises.

- v. That the respondent issued letter dated 11.09.2017 setting out the terms and conditions for payment of fixed amount, whereby the respondent agreed to pay to the complainants a fixed amount of Rs.29,917/- per month in accordance with the terms and conditions set out therein. It was clarified in the said letter that offer of possession shall not be dependent upon grant of completion certificate and/or occupation certificate and that the respondent shall stand discharged of its liabilities after offer of possession.
- vi. That the Buyer's Agreement containing detailed terms and conditions of allotment was dispatched by the respondent to the complainants for execution on 02.01.2019. However, the complainants failed to come forward for execution of the Buyer's Agreement and hence reminder dated 25.03.2019 was sent to the complainant.
- vii. That the buyer's agreement was executed by the parties on dated 25.03.2019. It is pertinent to mention herein that the buyer's agreement was willingly and voluntarily executed by the complainants after duly understanding and accepting the terms and conditions thereof which are binding upon him with full force and effect. The registration of the project was valid till 13.09.2023. It is pertinent to mention herein that 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.
- viii. That the complainants conveyed their no objection vide letter dated 15.03.2021 to the revised plans as well as the resultant increase in area, units, height, number of floors, ground coverage etc. 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.
- ix. That vide letter dated 19.06.2021 the complainants were informed that the respondent had applied for the occupation certificate in respect of the project on 09.06.2021. The complainants were informed that the complainants would no longer be entitled to any fixed amount/delay penalty/ down payment rebate, with effect from date of application for the occupation certificate. The complainants were further informed that the final statement of account would be sent by the respondent shortly to initiate the hand over process.
- x. That vide offer of possession letter dated 05.02.2022 and email dated 07.02.2022, the respondent, offered possession of the unit to the complainants for fit-outs and settlement of dues. The complainants were informed that there was an increase in the super area of the Unit allotted, from 550 sq. ft. to 595 sq. ft.
- xi. Consequently, the payments to be made by the complainants stood revised due to the increase in super area. It is pertinent to mention 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 was issued by the Town and Country Planning Department, Haryana, the commercial operations from the units could 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 including the complainant.
- xii. Occupation certificate was issued by the competent authority on 15.03.2023. That in the meanwhile, the respondent had been calling upon the complainants to make balance payment and take possession.



Various reminders for making payment and taking possession were issued by the Respondent. Emails sent to the complainants reminding them to take possession and clear their outstanding dues. Statement of account reflecting the payments made by the complainant and the accrued delayed interest.

- xiii. That by letter dated 22.03.2023, the complainant was informed about receipt of the occupation certificate from the DTCP. That despite various reminders for possession sent to the complainants by the respondent calling upon the complainants to clear their outstanding dues in accordance with the applicable payment plan and to take possession of the unit in accordance with the agreement between the parties, the complainants wilfully refrained from fulfilling their contractual obligations.
- xiv. That the respondent issued a pre-cancellation letter dated 16.05.2023 which was also sent vide email dated 20.05.2023. However, the same were also ignored by the complainants and eventually the respondent cancelled the allotment vide cancellation letter dated 09.06.2023.
- xv. That the respondent has offered innumerable opportunities to the complainants to rectify their defaults, clear his outstanding dues and take possession of the unit but to no avail. In so far as the respondent is concerned, it is pertinent to mention herein that in terms of Clause 7 of the Buyer's Agreement dated 25.03.2019, possession of the unit was agreed to be offered to the complainants 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 complainants. The respondent has duly fulfilled its obligations qua the complainants and it is the complainants who are in default.

7. 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:

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

E. I Territorial jurisdiction

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

E. II Subject-matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

11. Hence, given 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 relief sought by the complainants:

F.I Direct the respondent to refund of the amount paid to the respondents with interest.

12. In the present complaint, the complainants were allotted a unit bearing LG-001, Lower Ground floor admeasuring 550 sq. ft. in the project of the respondent named "Elan Miracle", Sector-84, Gurugram vide allotment letter dated 25.09.2017. Thereafter, a builder buyer agreement was executed between the parties on 25.03.2019 under construction linked payment plan for a total sale consideration of Rs.56,87,150/-, against which the complainants have paid a sum of Rs.30,79,549/- till date. The occupation certificate for the project in question was obtained by the respondent on 15.03.2023, whereas the offer of possession for fit-outs was made by the respondent on 05.02.2022 i.e. prior to receipt of occupation certificate.
13. The complainants have submitted that the unit in question was booked under special fixed return payment plan and the respondent had undertaken to pay fixed amount per month on the total amount paid till completion of the construction of the building. The respondent instead of complying as per the provisions of the Act, and obtaining the OC, payment of the fixed return has sent cancellation letter dated 09.06.2023 to the complainants forfeiting an amount of Rs.24,41,688/- without providing any justification to same. Therefore, the complainants intend to withdraw from the project and are seeking refund of the amount paid by them. The respondent has submitted that the buyer's agreement dated 25.03.2019 was willingly and voluntarily executed by the complainants after duly understanding and accepting the

terms and conditions thereof which are binding upon him with full force and effect. Vide offer of possession letter dated 05.02.2022 and email dated 07.02.2022, the respondent offered possession of the unit to the complainants for fit-outs and settlement of dues. Occupation certificate was issued by the competent authority on 15.03.2023. In the meanwhile, the respondent had been calling upon the complainants to make balance payment and take possession. Various reminders for making payment and taking possession were issued by the respondent. Vide letter dated 22.03.2023, the complainants were informed about receipt of the occupation certificate from the DTCP. However, despite various reminders, the complainants wilfully refrained from fulfilling their contractual obligations. The respondent issued a pre-cancellation letter dated 16.05.2023 which was also sent vide email dated 20.05.2023. However, the same were also ignored by the complainants and eventually the respondent cancelled the allotment vide cancellation letter dated 09.06.2023. Now, the question before the Authority is whether the cancellation made by the respondent is valid or not.

14. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that as per the payment plan agreed between the parties, the complainants have paid an amount of Rs.30,79,549/- against the sale consideration of Rs.56,87,150/- till date. The occupation certificate for the project in question was obtained by the respondent on 15.03.2023, whereas the offer of possession for fit-outs was made by the respondent on 05.02.2022 i.e. prior to receipt of occupation certificate. Therefore, the said offer of possession made before the grant of OC cannot be considered as a valid offer of possession. Further, it is to be noted that the respondent after receipt of occupation certificate on 15.03.2023 has issued an 'intimation regarding grant of occupation certificate' letter dated 22.03.2023 to complainants intimating the complainants regarding receipt of



OC and has requested them to make the balance payment as per the payment plan. Thus, the said letter sent after receipt of occupation certificate can be considered as a valid offer of possession. Thereafter, several reminders were issued to the complainants on 27.03.2023, 14.04.2023, 17.04.2023 to pay the outstanding dues and take possession. However, the complainants failed to make the payment of outstanding dues. Therefore, the respondent was constrained to issue pre-cancellation letters dated 16.05.2023 and 20.05.2023 giving last and final opportunity to the complainants to comply with their obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide cancellation letter dated 09.06.2023. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Further, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 25.03.2019 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal



Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited* (decided on 29.06.2020) and *Mr. Saurav Sanyal VS. M/s IREO Private Limited* (decided on 12.04.2022) and followed in *CC/2766/2017* in case titled as *Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."


15. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.30,79,549/- after deducting 10% of the sale consideration of Rs.56,87,150/- being earnest money along with an interest @10.90% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 09.06.2023 till actual refund of the amount within the timelines provided in Rule 16 of the Rules 2017.
16. The Authority further observes that as per Annexure R-5, the respondent has paid/adjusted an amount of Rs.14,64,114/- to the complainants on account of assured return upto June 2021. Therefore, the said amount is liable be adjusted/deducted from the payable amount. However, it is clarified that the

amount on account of assured return that has been actually paid to the complainants shall be deducted from the payable amount.

G. Directions issued by the Authority:

17. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- i. The respondent is directed to refund the paid-up amount of Rs.30,79,549/- after deducting 10% of the sale consideration of Rs.56,87,150/- being earnest money along with an interest @10.90% p.a. on the refundable amount, from the date cancellation i.e. 09.06.2023, till the actual date of refund of the deposited amount.
 - ii. Out of the amount so assessed, the amount on account of assured return that has been actually paid to the complainants shall be adjusted/deducted from the payable amount.
 - iii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
18. Complaint stands disposed of.
19. File be consigned to the registry.

Dated: 23.07.2025



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram