

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

Complaint no.:
Date of decision:

1370 of 2025
12.11.2025

Shama Malhotra

R/o:- 4/6, Floor-3rd, East Patel Nagar,
Patel Nagar.

Complainant

Versus

M/s Elan Limited.

Registered Office at: 1100/25, Block-I-1,
Sangam Vihar, New Delhi-110062.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Nitin Jaspal (Advocate)

Complainant

Ishan Dang (Advocate)

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 29 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of project	"Elan Mercado"
2.	Nature of project	Serviced apartment
3.	Location	Village-Naurangpur, Sector-80, Gurugram.
4.	RERA Registered	Registered Vide registration no.-189 of 2017 Dated-14.09.2017
5.	DTCP License	License no. 82 of 2009 Dated-08.12.2009
6.	Allotment letter	07.12.2023 (As on page no. 139 of reply)
7.	Builder buyer agreement	Not executed [Sent on 08.12.2023 to the complainant for execution]
8.	Unit no.	SA-811, Floor-8 th (As on page no. 129 of reply)
9.	Unit area	294 sq.ft [Carpet Area] (As on page no. 129 of reply)

10.	Possession clause	Not available
11.	Due date of possession	07.12.2026 [Calculated 36 months from date of allotment]
12.	Payment Plan	1. On application-9% of sale consideration 2. Within 60 days of allotment-41% of Sale Consideration 3. Within 10 months of Allotment-50% of Sale consideration 4. On offer of Possession-100% of IFMS + Others
13.	Sale consideration	Rs.78,41,520/- (As on page no. 129 of complaint)
14.	Amount paid	Rs.39,94,560/- (As per Applicant ledger on page no. 135 of reply)
15.	Memorandum of Understanding	07.12.2023 (As on page no. 132 of reply)
16.	Terms of Assured Return	Clause 1 That Elan Limited (herein after referred to as "Company"), agrees and undertakes to pay to the applicant, a pay to the applicant down payment discount equivalent to Rs.408.00/- (Rupees Four

		Hundred Eight Only) per sq.ft of Super Area in total amount of Rs.2,93,760/- (Rupees Two Lakh Nonety Three Thousand Seven Hundred Sixty Only) shall be disbursed in 12 (Twelve) equally monthly installments on receipt of amount of Rs.39,94,560/- (Rupees Thirty Nine Lakh Ninety Four Thousand Five Hundred Sixty Only)(subject to deduction of applicable taxes) w.e.f 02-Dec-2023 on the provisional booking of unit no. SA-811, on 8th Floor in Elan Mercado. <i>[Emphasis supplied]</i> (As on page no. 132 of reply)
17.	Assured return paid till November 2024	Rs.2,92,970 /- (As per page no. 134 of reply)
18.	Occupation certificate	17.10.2022 (As on page no. 223 of reply)
19.	Offer of possession	10.10.2024 (As on page no. 160 of reply)
20.	Completion certificate	31.01.2025 (As on page no. 165 of reply)

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint:
- I. That the respondent launched a project under the name and style of "Elan Mercado" situated at Sector-80, Village-Narangpur, Gurgaon and were marketing and publicizing to attract prospective buyers through various medium, the complainant approached the respondent to book a unit in the said project.
 - II. The complainant was misled with false assurances of rental returns and was promised a rental income of Rs.65 per sq. ft. However, she received only Rs.23,400, which was later stopped. The complainant invested her life savings expecting rental income and property appreciation, but the project failed to deliver, causing severe financial distress.
 - III. That the complainant invested in the project in September-October 2024, relying on express representations and assurances made by the sales team, regarding a prospective tie-up with reputed hotel chains such as ITC and Radisson (allegedly in the final stages of negotiation), a guaranteed rental income of Rs.65 per sq. ft. from the respondent along with Rs.30 per sq. ft. from the hotel operator (aggregating to Rs.95 per sq. ft.), subject to periodic escalations and substantial long-term capital appreciation of the property. However, the said representations have proven to be false and misleading, as the respondent has unilaterally executed a lease agreement with an unrecognized hotel chain (Priya Hotels), offering a mere Rs.27 per sq. ft., thereby causing severe financial loss, distress, and breach of trust.
 - IV. That the respondent has failed to fulfil its contractual and fiduciary obligations, as the leasing team negligently or wilfully failed to

secure a lease agreement with a reputed hotel chain, contrary to the express representations made at the time of investment; as a result of this deficiency in service and breach of trust, investors, including the complainant have suffered substantial financial losses due to misleading inducements, mismanagement, and poor leasing strategies, while the Sales Team, CRM Team, and Management have remained unresponsive and have wilfully neglected their duty to address legitimate investor grievances despite multiple follow-ups and personal meetings.

- V. That the developer's misrepresentation and failure to fulfill assured rental commitments have resulted in severe financial and emotional distress, as the complainant has sold her 3 BHK flat to invest in this property based on the expectation of guaranteed rental returns and property appreciation. Further, the respondent made 50% upfront payment, with the remaining amount planned through a commercial loan, which was compelled to defer due to the developer's breach of promised rental obligations, thereby causing financial hardship and undue burden; despite this, the developer's CRM team has unjustly imposed interest penalties on the pending 50% payment, despite the fact that the breach originated from the developer's failure to honor its commitments, thereby subjecting the complainant to undue financial liability.

C. Relief sought by the complainant:

4. The complainant has filed the present compliant for seeking following reliefs:
 - i. Refund of the entire amount of Rs.39,94,560/- along with interest as per RERA regulations.

ii. Compensation of three lakh for mental agony, harassment, and financial loss.

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 respondent:

6. The respondent has contested the present complaint on the following grounds:

I. That the project in question, "Elan Mercado", located in Sector 80 Gurugram, has been developed by the respondent, over land admeasuring 23 Kanals 18 Marlas or 2.9875 Acres situated in Village Naurangpur, Sector 80, Gurugram.

II. That it is pertinent to mention herein that M/s R. P. Estates Pvt. Ltd. was and remained the owner in possession of the said land:

- Prior to the Section 4 Notification dated 27.08.2004;
- During the pendency of the acquisition proceedings i.e. 27.08.2004 to 24.08.2007;
- At the time when acquisition proceedings stood elapsed on 26.08.2007; and
- Thereafter even on 29.01.2010 when the decision was taken by the State Government in Industries and Commerce Department not to start any acquisition proceedings afresh and to close the acquisition proceedings.

III. That vide its judgment in the matter of Rameshwar and others Vs. State of Haryana and others, (Civil Appeal 8788 / 2015 reported as 2018 (6) Supreme Court Cases, 215) , the Hon'ble Supreme Court

was pleased to hold that the decision of the State Government dated 24.08.2007 to drop the acquisition proceedings and the subsequent decision dated 29.01.2010 of the Industries and Commerce Department to close the acquisition proceeding as well as the decision to entertain applications for grant of licenses from those who had bought the land after initiation of the acquisition proceedings, to be fraudulent.

- IV. That the said land was rightly kept outside the scope of the aforementioned judgment. The respondent developed the land in pursuance to the license granted by the competent Authority. As per direction b) of para 39 of the aforementioned directions, the State extended benefit to the extent of 268 acres of land (which includes the said land) by declaring the same to be outside the deemed award. The said land was rightly kept outside the deemed award in pursuance to directions passed by the Hon'ble Supreme Court. It is pertinent to mention herein that neither M/s R P Estates Pvt. Ltd. nor the respondent herein were party to the proceedings before the Hon'ble Supreme Court when the said order was passed.
- V. That, thereafter, vide order dated 13.10.2020, while dealing with an application no. 93822/ 2020 filed on behalf of the State of Haryana for seeking clarification whether the lands in three cases pertaining to Paradise Systems Pvt. Ltd., Frontier Homes Developers Pvt. Ltd. and Karma Lakeland Ltd. stand covered and form part of the deemed Award or not, the Hon'ble Court passed the following orders:

"We list the matter for further consideration on 03.11.2020 at 10.30 am. Pending further considerations, no third-party rights shall be created and no fresh development in respect of the entire 268 acres of land shall be undertaken. All three aforesaid developers are enjoined from creating

any fresh third-party rights and going ahead with development of unfinished works at the Site except those related to maintenance and upkeep of the site."

- VI. That the said land is also covered in 268 acres which fall outside the deemed award as is therefore free from acquisition. Though the said land stands covered as per direction given in para (b) of 39 passed by the Hon'ble Supreme Court in its order dated 12.03.2018, in view of the aforesaid order dated 13.10.2020 passed by the Hon'ble Supreme Court, by way of abundant caution, the respondent herein as well as M/s R. P. Estates Pvt. Ltd. had moved an application before the Hon'ble Supreme Court seeking impleadment in the matter.
- VII. That the Hon'ble Supreme Court vide its Order dated 21.07.2022 in paragraph 46 of the said order held that the lands owned by M/s R.P. Estates Pvt. Ltd. should be excluded from the deemed award. The Hon'ble Supreme Court further affirmed that the project was completed on 14.01.2020.
- VIII. Pursuant to the said order, the respondent approached the office of the Town and Country Planning Department, Haryana for grant of Occupation Certificate which was subsequently granted on 17.10.2022 i.e. only within 3 (three) months of passing of the said Order by the Hon'ble Supreme Court which clearly indicates that the construction of the project was complete way back in January, 2020 and Town and Country Planning Department, Haryana had no reasons to further delay the grant of Occupation Certificate.
- IX. That in the facts and circumstances, it is evident that delay in grant of Occupation Certificate, despite timely completion of construction of the Complex was beyond the power and control of the respondent. The present unit was booked on 28.09.2023, after

receiving of Occupation Certificate on 17.10.2022 and a valid offer of possession was sent/issued to the complainant on 10.10.2024 but the complainant failed to take possession of the unit due to reasons best known to her.

- X. That the complainant had independently approached the respondent and had expressed her interest in booking a commercial unit in the commercial complex known as "Elan Mercado" being developed by the respondent in Sector-80, Gurugram, Haryana.
- XI. Thereafter, an Allotment letter dated 07.12.2023 was issued by the respondent in favour of the complainant allotting unit no SA-811 in the said project having carpet area of 294.90 sq.ft approx., located on the 8th floor of the project.
- XII. That the complainant agreed and undertook to make payment as per the payment plan. As per the "special payment plan", the complainant undertook to pay 9% of the sale consideration on booking, 41% of sale consideration within 60 days of allotment, 50 % of sale consideration within 10 months of allotment and on offer of possession, the complainant undertook to pay 100% of IFMS, stamp duty, registration charges, administrative charges, interest on delayed payments ,if any, and other charges payable at the time of offer of possession as per the Buyer's Agreement. However, the complainant has failed to make payment of sale consideration as per the payment plan opted by her.
- XIII. That the respondent issued letter dated 07.12. 2023 setting out the terms and conditions for payment of down payment discount of Rs.2,93,760/- (excluding applicable taxes) to be disbursed in 12 equal monthly instalments on receipt of the amount of

Rs.39,94,560/-, as per the terms and conditions mentioned therein. That in para 4 of the said letter, it is provided that in the event the complainant obstructs/neglects/defaults/refuses to accept notice of offer of possession and fails to take over possession due to any reason whatsoever, the respondent shall not have any liability or obligation for payment of fixed amount and shall stand absolved and relieved of its obligations. The terms and conditions of payment of fixed amount were duly accepted by the complainant.

XIV. That in accordance with the letter dated 07.12.2023, the respondent duly paid the down payment discount amounting to Rs.2,92,970/- (inclusive of TDS) to the complainant.

XV. That the respondent informed the complainant vide letter dated 07.12.2023 that prospective lessees were showing interest in taking on lease the unit allotted to the complainant as a part of a larger lease involving other units in the project, subject to the allottee incurring Capital Expenditure for carrying out interior work as per the requirement of the brands. Hence, the complainant was requested to provide her consent allowing the respondent to

- (i) *Negotiate with the Brands/retailer for leasing the captioned unit along with adjoining units in case approached by any Brand/retailer*
- (ii) *For payment of proportionate amount towards capital expenditure at the tentative rate of approx. Rs. 800/- per sq ft plus applicable GST. The complainant was informed that the exact amount of capital expenditure would be shared with the complainant post execution of the Letter of Intent (LOI) with the concerned Brand/retailer.*

XVI. That the Buyer's Agreement containing the detailed terms and conditions of allotment was sent to the complainant for execution on 08.12.2023. The complainant was called upon to execute and return both copies of the Buyer's Agreement to the respondent. Evidently, the Buyer's Agreement was received by the complainant

as a copy of the same is annexed along with the complaint. However, the complainant has refrained from executing the Buyer's Agreement for reasons best known to herself.

- XVII. That at the time of booking, the construction of the project was already complete and the occupation certificate had been received from the competent authority on 17.10.2022. After completing construction of the project, the respondent made an application on 14.07.2020 to the competent authority for issuance of the Occupation Certificate with respect to the project and the Occupation Certificate was issued on 17.10.2022.
- XVIII. That due to persistent and wilful defaults of the complainant, the respondent was constrained to issued pre cancellation letter dated 08.03.2025, at page 59 of the complaint and the possession of the unit was offered to the complainant by letter dated 10.10.2024. The complainant was called upon to clear her outstanding dues as per the applicable payment plan and complete the requisite formalities/documentation so as to enable the respondent to hand over possession to the complainant.
- XIX. Instead of clearing the outstanding dues, the complainant has proceeded to file the present false and frivolous complaint in order to avoid her contractual obligations of making balance payment in terms of the buyer's agreement presently amounting to Rs.45,95,797/-.
- XX. That the respondent had duly completed construction well within the agreed timelines for delivery of possession and within the period of registration of the project under RERA. The respondent is

also in receipt of the Completion Certificate dated 31.01.2025 from the competent authority.

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

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

9. 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.
10. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

11. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the reliefs sought by the complainant:

F.I. Direct the respondent to refund the entire amount deposited by the complainant along with the prescribed rate of interest.

12. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

13. The complainant submitted an application for the provisional allotment of a serviced apartment in the project namely "Elan Mercado," located at Sector-80, Village Naurangpur, Gurugram, Haryana. An Allotment Letter was executed between the complainant

on 07.12.2023 in respect of unit bearing no. SA-811 on 8th Floor, admeasuring 294 sq.ft. of carpet area for a sale consideration of Rs.78,41,520/-. The Builder Buyer Agreement was sent for execution to the complainant on 08.12.2023 but the same was never executed between the parties. The due date is calculated in terms civil Appeal no. 3533-3534 of 2017 in **M/s. Fortune Infrastructure vs Trevor D'lima and others**, a time period of 36 months is considered to be an adequate time period for making offer of possession to the allottees. Thus, the due date comes out to be 07.12.2026.

14. The respondent has obtained the Occupation Certificate from the competent authority for the project on 17.10.2022 and offered possession of the unit to the complainant on 10.10.2024. The complainants have paid a sum of Rs.39,94,560/- out of the sale consideration of Rs.78,41,520/-.
15. The respondent has issued a letter dated 07.12.2023, setting out the terms and conditions for payment of Down Payment Discount of Rs.2,93,760/- to be disbursed in 12 equal monthly installments. Para 3 of the said letter dated 07.12.2023 clearly provides that if the complainant obstructs/neglects/defaults/refuses to accept notice of offer of possession and fails to take possession due to any reason whatsoever, the respondent shall not have the liability or obligation for payments of fixed amount and shall be absolved or relieved of its obligations.
16. Upon consideration of the documents placed on record and the submissions advanced by the parties, the Authority observes that the complainant has been in continuous default despite being granted several opportunities to make the requisite payments. The

respondent, in response, issued multiple reminders to the complainant on 26.10.2024, 10.12.2024, 04.01.2025, and 06.02.2025, followed by a pre-cancellation notice dated 08.03.2025. It is, however, noted that the respondent has not cancelled the allotted unit as of date.

17. The Authority is of the considered view that the demand raised by the respondent was made at the appropriate stage in accordance with the agreed payment schedule. However, the complainant failed to discharge her corresponding obligation of making timely payments towards the outstanding dues as per the payment plan opted by her. Vide letter dated 07.12.2023, the respondent apprised the complainant that prospective lessees had expressed interest in taking the unit on lease as part of a larger leasing arrangement involving other units in the project, and accordingly sought her consent for the same. It is further observed that at the time of booking, the construction of the project had already been completed and the occupation certificate had been obtained. The Buyer's Agreement was also forwarded to the complainant for execution; however, the same was neither signed nor returned to the respondent.
18. The Authority observes that right under Section 18(1)/19(4) of the Act, 2016 accrues to the allottee **on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein.** The promoter has already invested in the project to complete it and has offered possession of the allotted unit. Now, when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be

in the spirit of the Section 18 of the Act. 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.

19. This view is supported by the judgement of Hon'ble Supreme Court of India in case of **Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. (Civil appeal no. 5785 of 2019)**, wherein the Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. Relevant para of the said order is reproduced under for ready reference:

"(i) We are of the view that allottees at Serial Nos. 1 and 2 in Chart A are obligated to take possession of the apartments, since the construction was completed, and possession offered on 28.06.2019, after the issuance of Occupation Certificate on 31.05.2019. The Developer is however obligated to pay Delay Compensation for the period of delay which has occurred from 27.11.2018 till the date of offer of possession was made to the allottees."

20. In view of the above, no case for refund under Section 18(1) of the Act, 2016 is made out and the present complaint stands dismissed.
21. File be consigned to the registry.

Dated: 12.11.2025

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