

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

Complaint no.: 5429 of 2024
Date of filing of complaint: 14.11.2024
Date of Order: 18.12.2025

Complainants

1. Sunita Rani
2. Jagmohinder Singh
3. Yug Lohchab

All R/o: - Top Floor 1st and 2nd Om Apartment
Bharat Vihar Block C, Near metro pillar 880 B
Kakrola, South West Delhi-110078.

Versus

Respondent

M/s Elan Buildcon Pvt. Ltd.
Office at: 15th Floor, Two Horizon Center, DLF
Phase 5, Golf Course Road, Sector 43, Golf
Course Road, Gurugram.

CORAM:

Shri Phool Singh Saini

Member

APPEARANCE:

Sh. Sanjeev Sharma (Advocate)
Sh. Ishaan 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 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:

S. No.	Particulars	Details
1.	Name of the project and location	"Elan Miracle", Sector 84, Gurugram, Haryana
2.	Project area	5.91875 Acres
3.	Project type	Commercial Colony
4.	DTCP License	34 of 2014 dated 12.06.2014
	valid up to	11.06.2019
	Licensee name	Bajaj Motors(P) Ltd. and others
5.	RERA Registered/ not registered	Registered vide no. 190 of 2017 dated 14.09.2017 valid up to 13.09.2023
6.	Unit no.	FS-090, Second floor (Retail Unit) (As per page no. 49 of the reply)
7.	Unit area admeasuring	518 sq. ft. (super area) (As per page no. 49 of the reply)
8.	Allotment letter	07.06.2023 (As per page no. 18 of the complaint)
9.	Date of execution of builder buyer's agreement	05.07.2023 (As per page no. 43 of the reply)
10.	Possession clause	7. POSSESSION OF THE UNIT: 7.1 Schedule for Possession of the said Premises/Unit - The Promoter assures to offer possession of the said premises/unit within a period of three month from the date of clearance of all dues as per the present agreement and payment plan opted, 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"). It is however clarified



		<i>that if the developer offer the possession of the unit before the stipulated timeline as mentioned above, the allottee(s) shall take the possession without any protest or demur. (As per page no. 56 of the reply)</i>
11.	Due date of possession	Not specified
12.	Basic sale consideration	Rs.56,95,410/- (As per page no. 23 of the complaint)
13.	Total sale consideration	Rs.59,98,440 /- including EDC/IDC (As per page no. 23 of the complaint)
14.	Amount paid by the complainants	Rs.60,76,140/- (As per applicant ledger on page no. 25 of the complaint)
15.	Occupation certificate	15.03.2023 (As per page no. 90 of the reply)
16.	Request for cancellation of unit	19.04.2023 (As per page no. 104 of the reply)
17.	Offer of possession	28.08.2023 (As per page no. 93 of the reply)
18.	Reminder for outstanding amount due against the unit on offer of possession	13.09.2023 (As per page no. 98 of the reply)
19.	Amount paid by the respondent on account of assured return against the unit booked in "Elan Mercado"	Rs.6,77,478/- (As per page no. 103 of the reply)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:
 - I. That complainants approached the respondent and showed their willingness to invest in their project against Assured return as promised by the respondent at the time of collecting money from the complainants since the year 2021. The assured return was promised till possession is handed over to the complainants, but failed.



- II. Meanwhile the complaint had already paid huge amount of Rs. 60,76,140/- to the respondent on the pretext and hope of receiving the pending Assured return as promised and be fooled by respondent, time and again whenever enquired by the complainants.
- III. The complainants pressed for agreement to sell to be executed with all promise in text as they were merely promised orally by the respondent till then. Such one-sided agreement to sell were sent in duplicate to the complainant to sign and dispatch back to the respondent. Seeing such one-sided agreement the complainant refused to sign them and asked respondent to refund the amount back to them along with interest as safeguarded by the RERA act itself.
- IV. That the complainant through this complaint invokes the jurisdiction of this Hon'ble Authority under section 13 and section 19(4) of the RERA act read with rule 8(2) of the act itself which states-

SECTION 13

1. *The Promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*
 2. *The agreement for sale referred to in subsection (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.*
- V. Under section 13 of RERA act an advance payment of 10% can be taken by the promoter as applicable fee. It is true and dismissible as per law but the condition of retaining such money is:



As per rule 8(2) of the act: -

8(2) any application letter allotment letter or any document signed by the allottee prior to the execution of Registration of the agreement for sale shall not be construed or limit Rights and Interests of the allottee under the agreement for sale or under the act or rules for the Regulations made there under.

VI. It is prayed that respondent be directed to refund the amount paid along with interest from the date of such amounts paid to the respondent immediately.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the entire amount paid by the complainants along with the interest till realization of amount.
 - ii. Direct the respondent to pay litigation cost of Rs. 1,50,000/- as legal expenses be made to the complainants.
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 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.
 - II. 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 himself regarding the viability and suitability of the aforesaid project as per their needs and had opted for the payment plan annexed with



allotment letter and the buyer's agreement. The terms and conditions forming part of the application form were duly understood and accepted by the complainants.

- III. Thereafter, the complainants were allotted commercial space /unit with carpet area ad measuring 103.14 sq. ft. (518 sq ft super area) bearing unit no. FS-090 by the respondent.
- IV. That the buyer's agreement containing detailed terms and conditions of allotment was willingly and consciously executed by the complainants after duly understanding and accepting the same. The buyer's agreement is binding upon the complainants with full force and effect.
- V. The project has been registered under the provisions of the RERA. RERA registration certificate bearing memo no. HRERA -137 (a)/2017 /1072 dated 14.09.2017. The registration of the project was valid till 13.09.2023. That construction at site is complete and the Respondent 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. Occupation certificate was issued by the competent authority on 15.03.2023.
- VI. After receipt of occupation certificate vide offer of possession letter dated 28.07.2023, the respondent, offered possession of the unit to the complainants. The respondent called upon the complainants to clear their outstanding dues as per the attached statement and to take possession of the unit.
- VII. However, the complainants failed to do so and hence reminder dated 13.09.2023 was issued by the respondent. Instead of coming forward to fulfill their contractual obligations under the buyer's agreement and



take possession of the unit, and get the conveyance deed registered in their favour, the complainants have filed the present false and frivolous complaint.

- VIII. In terms of clause 7 of the buyer's agreement dated 05.07.2023, possession of the unit was agreed to be offered to the complainants within 3 months from the date of clearance of all dues subject to 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.
- IX. The complainants have deliberately refrained from disclosing the complete factual background of the case. In fact, the complainants had earlier expressed their interest in booking unit no FS-090 in the project and had also made payment of Rs 30 lacs to the Respondent. However, for reasons best known to themselves, the complainants expressed their interest in withdrawing from the project and requested for refund of the amount paid by them.
- X. Although under no obligation to do so, the respondent accepted the request made by the complainants and refunded the amount of Rs 30 lacs paid by the complainants via RTGS on 08.08.2023. However, while the complainant's request for refund was being processed by the respondent, the complainants changed their mind and made an application for allotment of the unit on 08.05.2023 and also proceeded



to execute the buyer's agreement which had already been dispatched to the complainants earlier by the respondent.

XI. The false and frivolous complaint deserves to be dismissed with costs.

E. Jurisdiction of the Authority:

7. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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 complainants:

F.I Direct the respondent to refund the entire amount paid by the complainants along with the interest till realization of amount.

11. The complainants were allotted a unit in the project of respondent "Elan Miracle" in Sector-84, Gurugram for a basic sale consideration of Rs.56,95,410/-. The buyer's agreement was executed on 05.07.2023 itself and the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.60,76,140/-.

12. As per clause 7 of the buyer's agreement dated 05.07.2023, the respondent-promoter assured to offer the possession of the unit within a period of 3 months from the date of clearance of all dues as per the agreement and opted payment plan. The possession clause is reproduced below for the ready reference:

7. POSSESSION OF THE UNIT:

7.1 Schedule for Possession of the said Premises/Unit - The Promoter assures to offer possession of the said premises/unit within a period of three month from the date of clearance of all dues as per the present agreement and payment plan opted, 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"). It is however clarified that if the developer offer the possession of the unit before the stipulated timeline as mentioned above, the allottee(s) shall take the possession without any protest or demur

(Emphasis supplied)

13. As per the applicant ledger on record the complainants have cleared all the dues on 09.10.2023. Therefore, the due date for possession is to be



calculated 3 months from 09.10.2023. Thus, the due date for possession of the unit comes to 09.01.2024.

14. The counsel for the complainants during proceedings of the day dated 20.11.2025 brought to the notice of the Authority that the complainants have made a request to the respondent for cancellation of unit and refund of the paid-up amount on 19.04.2023 and requested for allowing full refund with interest. However, the counsel for the respondent stated that the respondent company has obtained the occupation certificate on 15.03.2023 and the complainants have purchased the unit post OC i.e., on 08.05.2023 (Inadvertently mentioned as 08.05.2025 in proceedings of the day dated 20.11.2025) which depicts that the complainants were aware about the status of the project. He further stated that the complainants have failed to remit their obligation to pay the outstanding dues as per the opted payment plan.
15. The Authority observed that the complainants have opted for special payment plan annexed at page no. 21 of the complaint and as per the payment plan the complainants have to pay 9% of the sale consideration on application of booking and 91% within 45 days of booking. The complainants have booked the unit on 08.05.2023 which means they have to pay the 100% consideration by 23.06.2023 (45 days from the date of booking) but the complainants have cleared the dues on 09.10.2023 which clearly shows that the complainants have failed to pay the outstanding dues. However, the request for the cancellation made by the complainants on 19.04.2023 is not maintainable at this stage as after the cancellation request, the allotment letter has been issued in the name of the complainants on 07.06.2023 and also the buyer's agreement was executed on 05.07.2023 which is signed by the complainants themselves tacitly



shows that the complainants want to continue with the project. The only request for refund was made by the complainants which can be considered by the way of filing of present complaint which was filed on 14.11.2024.

16. Now when the complainant approached the Authority to seek refund, it is observed that under clause 7(e) of the buyer's agreement dated 05.07.2023, the respondent-builder is entitled to forfeit the 15% of the total sale consideration. The relevant portion of the clause is reproduced herein below:

"The allottee shall have the right to cancel/withdraw his allotment in the project as provided in the Act, provided that where the allottee proposes to cancel/withdraw from the project without any fault of the promoter, the promoter herein is entitled to forfeit out of the amount(s) paid by the allottee(s), the earnest money (i.e., 15% of the total sales consideration) along with non-refundable amounts including but not limited to interest paid or payable by the allottee(s) to the promoter on delayed payments, brokerages/incentives paid by the developer/discounts given, return on investment paid/payable by the developer,....."

(Emphasis supplied)

17. The issue with regard to deduction of earnest money on cancellation of a contract arose 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 a 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 this 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."

18. So, keeping in view the law laid down by the Hon'ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent/builder can't retain more than 10% of sale consideration as earnest money on surrender by the complainants-allottee or cancellation by the builder but that was not done. So, the respondent is directed to refund the amount received from the complainant i.e., Rs.60,76,140/- after deducting 10% of the basic sale consideration of Rs.56,95,410/- along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of filing of complaint i.e., 14.11.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.



19. The respondent shall also adjust an amount of Rs.6,77,478/- already paid to the complainants on account of assured return.

F.II Direct the respondent to pay litigation cost of Rs. 1,50,000/- as legal expenses be made to the complainants.

20. They are seeking relief w.r.t. compensation in the above-mentioned reliefs.

The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority

21. 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):

- i. The respondent/promoter is directed to refund the amount i.e., **Rs.60,76,140/-** received by him from the complainants after deduction of 10% of basic sale consideration of Rs. 56,95,410/- as earnest money along with interest at the rate of 10.85% p.a. on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of filing of complaint i.e., 14.11.2024 till the actual date of refund of the amount.



- ii. The respondent shall also adjust an amount of Rs.6,77,478/- already paid to the complainants on account of assured return.
 - iii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
 - iv. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
22. Complaint stands disposed of.
23. File be consigned to registry.

Dated: 18.12.2025



(Phool Singh Saini)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram