

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

<b>Complaint no.</b>	<b>:</b>	<b>5343 of 2024</b>
<b>Date of filing of complaint:</b>		<b>06.11.2024</b>
<b>Date of Order:</b>		<b>27.11.2025</b>

**Complainant**  
 Narain Prakash Gaur  
 R/o: H. No.- 423, GF, Sector-47, Gurugram-  
 122001

Versus

**Respondent**  
 M/s Elan Limited  
**Regd. Office at:** 3<sup>rd</sup> floor, Golf View  
 Corporate Tower, Golf Course Road,  
 Sector-42, Gurugram-122002

**CORAM:**

Shri Phool Singh Saini **Member**

**APPEARANCE:**

Sh. K.K. Kohli (Advocate) **Complainant**

Sh. Ishaan 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 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 allottee 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

<b>S. No.</b>	<b>Particulars</b>	<b>Details</b>
1.	Name of the project	ELAN MERCADO, Sector 80 Gurugram, Haryana.
2.	Nature of project	Commercial complex
3.	DTCP License	82 of 2009 dated 08.12.2009 valid up to 07.12.2019
4.	Name of licensee	RP ESTATE PVT. LTD.
5.	RERA Registered/ not registered	Registered vid no. 189 of 2017 dated 14.09.2017 valid up to 13.09.2023
6.	Unit no.	FF-1117, First Floor (As per page no. 192 of the reply)
7.	Unit area admeasuring	281 sq. ft. (super area) (As per page no. 192 of the reply)
8.	Revised unit area	278 sq. ft. (As per offer of possession for fit-out on page no. 229 of the reply)
9.	Allotment Letter	01.11.2019 (As per page no. 183 of the reply)
10.	Date of execution of builder buyer's agreement	28.02.2020 (As per page no. 189 of the reply)
11.	Possession clause	<b>11.(a) schedule for possession of the said unit.</b> The Developer based on its project planning and estimates and subject to all just exceptions endeavours to complete construction of the Said Building/Said Unit within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement unless there

		<p>shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of the Developer or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Consideration and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Developer then notwithstanding rights available to the Developer elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Developer.</p> <p>(As per page no. 202 of the reply)</p>
12.	Grace period	<p>The respondent/promoter has sought the grace period of 12 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. However, as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, the Authority allowed the grace period of 6 months only being unqualified.]</p>
13.	Due date of delivery of possession	<p>28.08.2024  <b>(Note:</b> Due date to be calculated 48 months from the date of execution of</p>

		buyer's agreement i.e., 28.02.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
14.	Basic sale consideration	Rs.18,44,765/- (As per payment plan on page no. 81 of the complaint)
15.	Total sale consideration	Rs.25,04,479/- (As per payment plan on page no. 217 of the reply)
16.	Total amount paid by the complainant	Rs.11,17,800/- (As per receipt information at page no. 243 of the reply)
17.	Offer of possession for fit outs	07.03.2020 (As per page no. 229 of the reply)
18.	Final notice	05.11.2020 (As per page no. 227 of the reply)
19.	Occupation certificate	17.10.2022 (As per page no. 238 of the reply)
20.	Reminder letters to final notice/ pre-cancellation	05.01.2021, 31.10.2022 & 07.11.2023 (As per page no. 244-246 of the reply)
21.	Cancellation letter	07.02.2024 (As per page no. 247 of the reply)

**B. Facts of the complaint:**

3. That the complainant has made following submissions:
  - I. That in the year 2012, the respondent issued an advertisement announcing a Commercial complex "Mercado" and invited applications from prospective buyers for the purchase of Shop in the aid project. Relying on various representations and assurances given by the respondent and on belief of such assurances, the complainant initially booked a shop in the project and was allotted shop bearing no. FF-1029, having area measuring 363.00 sq. ft. for a total sale consideration

of Rs.21,78,000/- including PLC of Rs.1,63,350/- EDC/IDC of Rs.1,61,898/-, IFMS of Rs.54,450/- and exclusive right to use car parking Rs.4,00,000/-

- II. That the respondent has made a payment of Rs.2,17,800/- vide cheque dated 14.01.2014 and acknowledged vide letter dated 03.04.2014 towards the provisional booking of the unit. Further, the respondent issued a provisional allotment letter on 15.01.2015 wherein the details of the aforesaid unit were mentioned.
- III. That the complainant has made payments to the respondent for the aforesaid unit and a copy of the statement of account is annexed confirming the receipt of Rs.11,17,800/- which is approximately 51% of the cost of the BSP Shop that is Rs.21,78,000/- by 02.09.2019.
- IV. That in February 2020 the complainant was called to the office of the respondent and made to sign a blank builder buyer's agreement. No details were filled in the builder buyer's agreement and the complainant was told that the same would be sent to him after filling the details and after getting the signatures of the authorised signatory. The complainant was further assured that he would be called to get the said BBA registered as is required to be done under Section 13 of the Act of 2016.
- V. That the complainant was subsequently never called for registration of the agreement and was never ever provided a copy of the same and it is only after he repeatedly insisted on a copy of the agreement, he was provided the same during the month of July, 2020.
- VI. That the said builder buyer's agreement had different area mentioned and the area specified was 281 sq. ft. wherein the complainant had



booked a unit of the size of 363 sq. ft. In the year 2014 and even my unit no. has been changed from FF-1029 to FF-1117.

- VII. That it is after 7 years of booking the complainant come to know that my area has been reduced at the whims and fancy of the respondent whereas the complainant always required a shop of a size of around 360 sq. ft. hence had booked one with an area of 363 sq. ft. And so was the unit location changed.
- VIII. That because of this sudden change of the unit area and because of having got a blank agreement signed and then mentioning the date of agreement as 28.02.2020, which is sent to me in July, 2021. The due date of delivery therefore comes to 48 months plus 12 months i.e., 5 years from 28.02.2020 which means by 28.02.2025.
- IX. That the complainant after reading the buyer's agreement lost interest in the unit and hence was not interested in going ahead with the project as he felt cheated by the respondent by first collecting more than 51% of the money and then making the complainant sign an agreement with a reduced size of the unit and also not registering the same which was in total violation of the different provisions of the Act of 2016.
- X. That the complainant has also handed over a copy of a letter dated 10.04.2020 requesting the respondent for the refund of the amount but the respondent's representative refused to give an acknowledgement of the same.
- XI. That immediately on receipt of the builder buyer's agreement in March 2020, the complainant visited the office of the respondent and met Shri Ravish Kapur being the Director of the company and informed him that the complainant was not interested in the unit and hence wanted the refund of the paid-up amount.

XII. That subsequently the complainant met Shri Rajan of the office of the respondent and again requested for the refund of the amount deposited by the complainant. The complainant once again gave a letter on 10.05.2020 for which again he was refused a receipt, for refund of the amount.

XIII. The complainant then received a letter dated 07.03.2020 for settlement of dues wherein the respondent stated that the occupation certificate for the project has been applied for and further stating that the area of the unit has been reduced to 278 sq. ft. but unfortunately, the complainant not being interested in the project once again met Shri Rajan and asked him for the refund of the amount. This was in fact an offer of possession for fit out was made in which the complainant was not interested at all. In any case an offer for fit out has never been considered a proper offer of possession when the same is not backed by the occupation certificate.

XIV. That the respondent than received the occupation certificate and informed the complainant of the same vide their letter dated 18.10.2022. However, this was of no interest to the complainant as the complainant was not interested in this project and had already asked for the refund on 10.04.2020 and 10.05.2020.

XV. That from the above, it is clear that the respondent had clear intentions to exploit the complainant from the very beginning and had coerced him into making payments, while holding of signing of the buyer's agreement until such time, convenient to respondent, leaving the complainant at the mercy of the respondent.

XVI. That the respondent had arbitrarily changed the unit no. and the area of the shop which the complainant had booked in their project without

giving any prior information to the complainant and without obtaining the consent of the complainant.

XVII. That the complainant visited the office of the respondent many a times and were always assured that the buyer's agreement would be sent but it was never sent to the complainant. The Customer Relation Team or the Sales Team was at its best in fooling the innocent complainant and this kept on going for at least more than five years but the buyer's agreement was never ever shown to the complainant what to make a mention of signing the same and registering.

XVIII. That the respondent was not interested in returning the amount of Rs.11,17,800/- collected from the complainant together with the interest and kept on insisting on payments and finally on 09.12.2020 sent a pre-cancellation notice, complainant was threatened to pay or the unit shall be cancelled and the sum deposited thus far be forfeited.

XIX. That the respondent was then sent a reminder to the pre cancellation notice on 06.06.2023. The complainant was once again sent another pre cancellation notice on 14.09.2023. The respondent finally cancelled the unit of the complainant on 07.02.2024.

XX. That repeatedly the complainant had been visiting the office of the respondent and had been requesting for the refund of the amount with interest paid by him to the respondent and during this following up had the following officers of the respondent.

XXI. That the present complaint is within the prescribed period of limitation.

XXII. That the cause of action arose in favour of the complainant and against the respondent on diverse dates. Initially when the Respondent refused to sign the buyer's agreement. It also arose when the respondent

inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the construction of the said space and give possession to the complainant. It continuously arose when the demands against construction were being raised without the buyer's agreement being returned to the respondent and it again arose when in spite of repeated requests by the respondent the amount paid by the complainant was not being refunded by the respondent together with the interest from the date of payment of the amount to the respondent and it finally arose when the respondent forfeited the entire amount of Rs.11,17,800/- paid by the complainant against the said unit.

XXIII. That in the present complaint, the complainant intends to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate.

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s):
  - i. Restrain the respondent from cancelling the allotment till the time the entire amount paid by the complainant is refunded with interest.
  - ii. Restrain the respondent from creating any third-party rights in the said property till the time the entire amount along with interest is refunded.
  - iii. Direct the respondent to refund the entire amount together with interest from each date of payment, the entire amount paid by the complainant being Rs.11,17,800/- at the rate as specified under the Act of 2016 and the Rules, 2017.
  - iv. Direct the respondent not to deduct any amount towards EMD/EDC/IDC/GST/VAT/ another government dues.



- v. Direct the respondent not to deduct any amount towards the commission / sales expenses but for what has been approved by this Honourable Authority in their various judgments.
- vi. Direct the respondent not to deduct any amount towards TDS as no TDS is payable on capital receipts.
- vii. Direct the respondent to restrain from raising any fresh demand as the complainant is not interested in the said unit and desires to withdraw from the project.

**D. Reply by the respondent:**

5. The respondent contested the complaint on the following grounds:
  - I. That the present complaint is not maintainable in law or on facts. The complainant has no locus standi or cause of action to file the present complaint.
  - II. That the present reply is being filed by Sh. Gaurav Khandelwal on behalf of the respondent i.e., M/s Elan Buildcon Pvt. Ltd. who has been duly authorized vide Board Resolution of the respondent dated 12.02.2025 to file the reply. All averments, claims, allegations and contentions raised in the complaint by the complainant are denied as false and incorrect unless specifically admitted to be true by the respondent. The contents of the complaint that are not being specifically admitted shall be deemed to have been denied and traversed.
  - III. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 28.02.2020, as shall be evident from the submissions made in the



following paras of the present reply. The respondents crave leave of this Authority to refer to and rely upon the terms and conditions set out in the buyer's agreement dated 28.02.2020 as well as the terms and conditions for payment of fixed amount, in detail at the time of the hearing of the present complaint, so as to bring out the mutual obligations and the responsibilities of the respondents as well as the complainant thereunder.

- IV. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.
- V. That the complainant is estopped from filing the present complaint by their own acts, conduct and acquiescence.
- VI. That the project in question, "Elan Mercado", located in sector 80 Gurugram, has been developed by the respondent, Elan Limited over land admeasuring 2.9875 acres situated in Sector 80, Gurugram, which was owned by M/s R. P. Estates Private Limited. The said land became subject matter of acquisition proceedings in 2004, which ultimately elapsed in August 2007. M/s R. P. Estates Private Limited applied for and was granted license No. 82 of 2009 dated 08.12.2009 in respect of the said land for the development of a commercial colony under Haryana Development and Regulation of Urban Areas Act 1975, by the competent Authority. The landowner, M/s R. P. Estates Private Limited entered into an agreement with ELAN Limited in May 2013, in terms of

which the respondent is competent to develop, construct and sell units in the said project. That M/s R. P. Estates Private Limited 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.

VII. 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 as mentioned in paras no 37 and 38 of the said judgment.

VIII. That based on the observations in Para nos. 37 and 38, the Hon'ble Supreme Court gave directions in Para 39 (b) wherein the directions in Civil Appeal 8788/2015 were made applicable in respect of lands which were transferred by the land holder during the period from 27.08.2004 till 29.01.2010 and there were specific directions that the lands which were not transferred by the land holders.

IX. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. Elan Limited developed the land in pursuance to the licensed 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. That neither M/s R P Estates Private Limited nor respondent herein were party to the proceedings before the Hon'ble Supreme Court when the said order was passed.

- X. 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.
- XI. 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, respondent herein as well as M/s R. P. Estates Private Limited had moved an application before the Hon'ble Supreme Court seeking impleadment in the matter.
- XII. 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. Pursuant to the said Order passed by the

Hon'ble Supreme Court, 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.

XIII. That all the queries pertaining to the project and all issues and concerns concerning the project and further all clarifications as sought for/by the complainant were duly answered/clarified/provided by the representatives of the respondent and the documents pertaining to the project were made available to the complainant for inspection and only after having duly satisfied that the complainant took a well informed and conscious call to proceed further with the booking and accept the allotment of unit in the commercial complex in the project and had opted for a special fixed return payment plan. Thereafter, allotment letter dated 01.11.2019 issued by the respondent in favour of the complainant allotting unit no FF-1117 in the said project admeasuring 281 sq. ft. approx., located on the 1<sup>st</sup> floor of the project.

XIV. That after completing construction of the project, the respondent made an application on 14.01.2020, to the competent authority for issuance of the occupation certificate with respect to the project. Vide letter dated 15.01.2020, the respondent informed the complainant about the application to the competent authority for issuance of the occupation certificate.



XV. That by letter dated 07.03.2020, the respondent offered possession of the unit to the complainant for fit-outs and settlement of dues. The complainant was informed that the super area of the said unit was revised to 278 sq. ft. from the earlier super area of 281 sq. ft. Accordingly, there was a corresponding decrease in the charges payable by the complainant. The complainant was called upon to clear his outstanding dues as set out in the said letter. The respondent had offered the possession of the unit in the project for fit outs 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, keeping in view the interest of all the allottees in the project.

XVI. That, as has been submitted in the preceding paras of the preliminary objections, the issuance of the occupation certificate was delayed on account of litigation pending before the Hon'ble Supreme Court and it is only upon issuance of the occupation certificate that the respondent can hand over possession of the units in the project to the allottees. Respondent cannot be held liable for delays caused on account of reasons beyond its power and control.

XVII. That in so far as respondent is concerned, respondent had duly completed construction well within the agreed time lines for delivery of possession and within the period of registration of the project under the provisions of the Act of 2016. The application for issuance of occupation certificate was submitted to the competent authority as far back as on 14.01.2020 and the same was issued on 17.10.2022. By letter dated 18.10.2022, the complainant was informed about the issuance of the occupation certificate by the competent Authority.

XVIII. That since the complainant did not come forward to take possession of the unit upon payment of balance amounts payable as per the buyer's agreement, the respondent was constrained to issue reminders for possession, final notice for possession/pre cancellation and reminders for pre cancellation. Despite receipt of the aforementioned communication, the complainant failed to come forward and clear his outstanding dues and take possession of the unit. Accordingly, the respondent was constrained to cancel the allotment of the complainant on 07.02.2024 in accordance with the terms and conditions of the buyer's agreement dated 28.02.2020. It is pertinent to mention herein that after cancellation of the allotment, the complainant is not left with any right, title or interest over the unit in question. Pertinently, the complainant has duly accepted the factum of cancellation and has not even cared to challenge the same by way of the present complaint.

XIX. That thus, from the facts and circumstances set out in the preceding paras, it is evident that there is no default or lapse in so far as the respondent is concerned. However, the complainant has failed to take over possession of the said unit in question for reasons best known to himself and has instead proceeded to file the present false and frivolous complaint, which deserves to be dismissed at the very outset.

6. Copies of all the relevant documents have been filed and placed on the 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:**

7. The respondent has raised a preliminary submission/objection 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**

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;*

##### **Section 34-Functions of the Authority:**

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

8. 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 complainant at a later stage.

**F. Findings on objections raised by the respondent:**

**F.1 Objection regarding force majeure.**

9. The respondent has raised an objection that the present complaint is covered in the matter of *Rameshwar and Others Vs. State of Haryana and others, (Civil Appeal No. 8788 of 2015 reported as 2018(6) supreme court cases, 215)* the respondent contended that the said land is also covered in 268 acres. The Hon'ble Supreme Court affirmed that the project was completed on 14.01.2020. Pursuant to the said order passed by the Hon'ble Supreme Court, respondent approached the office of the Town and country planning Department, Haryana for grant of occupation certificate which the subsequently granted on 17.10.2022 i.e., only within 3 months of the passing of the said order by the Hon'ble Supreme Court which clearly indicates that the construction of the project was completed way back in January 2020 and the Town and country planning Department, Haryana had no reasons to further delay the grant of occupation certificate. Further, the issuance of occupation certificate was delayed on account of litigation pending before the Hon'ble Supreme Court and it is only upon issuance of the occupation certificate that the respondent can hand over possession of the units in the projects to the allottees. There is no default or lapse in so far as respondent is concerned. Further the delay in grant of occupation certificate, despite timely completion of construction of the project was beyond the power and control of the respondent. The respondent has at all times been ready and willing to offer possession of the subject unit in a timely manner.

10. On the documents and submission made by both the parties, the Authority is of the view that the Authority observed that Rule 28(2) of the Rules provides that the Authority shall follow summary procedure

for the purpose of deciding any complaint. However, while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Authority can always work out its own modality depending upon peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. Further, as per clause 11(a) of the agreement to sell, the possession was to be offered within a period of 48 months with an extensions of further twelve (12) months from the date of this agreement. Since in the present matter the BBA incorporates qualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage. Therefore, the possession was to be handed over by 28.08.2024. Thus, no additional grace period over and above grace period of 6 months can be given to the respondent/builders. Therefore, the due date shall be 28.08.2024.

**G. Findings on relief sought by the complainant:**

**G.I Restrain the respondent from cancelling the allotment till the time the entire amount paid by the complainant is refunded with interest.**

11. It is an admitted fact by the complainant as well as the respondent that the unit of the complainant is cancelled on 07.02.2024 prior to filing of this complaint. Thus, the above sought relief is not maintainable.

**G.II Direct the respondent to refund the entire amount together with interest from each date of payment, the entire amount paid by the complainant being Rs.11,17,800/- at the rate as specified under the Act of 2016 and the Rules, 2017.**

**G.III Direct the respondent not to deduct any amount towards EMD/EDC/IDC/GST/VAT/ another government dues.**

**G.IV Direct the respondent not to deduct any amount towards the commission / sales expenses but for what has been approved by this Honourable Authority in their various judgments.**

**G.V Direct the respondent not to deduct any amount towards TDS as no TDS is payable on capital receipts.**

12. The above-mentioned relief(s) sought by the complainant are taken together being inter-connected.

13. The complainant was allotted a unit vide allotment letter dated 01.11.2019 in the project of respondent namely "Elan Mercado" in Sector-80, Gurugram for a total sale consideration of Rs.25,04,479/- A builder buyer's agreement was executed between the parties on 28.02.2020 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.11,17,800/-.

14. The counsel for the complainant vide proceedings of the day dated 27.11.2025 stated that the respondent has violated section 13 of the Act of 2016 as the respondent has received more than 10% of the sale consideration i.e., Rs.25,04,479/- prior to execution of the buyer's agreement and hence the complainant is seeking refund of the paid-up amount along with interest.

15. The counsel for the respondent vide proceedings of the day dated 27.11.2025 mentioned that the unit was cancelled by the respondent on 07.02.2024 on account of non-payment after issuance of multiple reminders. He further stated that the occupation certificate of the unit of the complainant was obtained on 17.10.2022 and the complainant has paid only Rs.11,17,800/- against the sale consideration of Rs.25,04,479/-. Now, the question arises whether the cancellation is valid or not?

16. The complainant has opted for special down payment plan annexed at Annexure-III on page no. 81 of the complaint. As per the opted payment plan, the complainant has to pay 70% of the total sale consideration on completion of the facade and rest amount is to be paid on offer of

possession. Though the respondent has raised a demand letter dated 19.11.2019 for payment of outstanding dues. The respondent has offered a fit-out possession to the complainant on 07.03.2020 and thereafter issued a final reminder for payment of outstanding amount due against offer of possession for fit-out on 05.11.2020. The respondent has received occupation certificate on 17.10.2022 and intimated about the same to the complainant on 18.10.2022. Thereafter, the respondent issued reminder letters dated 31.10.2022 & 07.11.2023 to the final notice but the complainant never responded to the same before issuing the final cancellation notice of the unit on 07.02.2024. The complainant has paid only Rs.11,17,800/- which is 45% of the total sale consideration i.e., Rs.25,04,479/-.

17. As per Section 19 (6) & 19 (7) of the Act, 2016, the complainant-allottee was under an obligation to make timely payment as per the agreed payment plan towards consideration of the allotted unit. In the present complaint, despite being granted several opportunities to comply with his obligations, the complainant failed to discharge his obligation for making timely payment of the outstanding dues and the respondent has obtained the occupation certificate way back on 17.10.2022 i.e., prior to the due date of possession i.e., 28.02.2024. In view of the aforementioned facts, the cancellation of the unit dated 07.02.2024 stands valid.

18. Now when the complainant approached the Authority to seek refund, it is observed that under clause 4 of the buyer's agreement dated 28.02.2020, the respondent-builder is entitled to forfeit the 10% of the total sale consideration. The relevant portion of the clause is reproduced herein below:

*Earnest Money*



*"The Allottee(s) agrees and confirms that out of the total amount(s) paid/payable by the Allottee(s) for the said unit, 10% of the total consideration of the said unit shall be treated as Earnest Money to ensure fulfilment of the terms and conditions as contained in the Application and this agreement....."*

19. 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."*

20. 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 complainant-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.11,17,800/- after deducting 10% of the basic sale consideration i.e., Rs.18,44,765/- 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 cancellation i.e., 07.02.2024 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**G.VI Direct the respondent to restrain from raising any fresh demand as the complainant is not interested in the said unit and desires to withdraw from the project.**

21. The Authority is allowing refund of the paid-up amount as detailed out in para 19 of this order, thus the above sought relief becomes redundant.

#### **H. Directions of the Authority:**

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

i) The respondent/promoter is directed to refund the amount i.e., Rs.11,17,800/- received by him from the complainant after deduction of 10% of basic sale consideration of Rs.18,44,765/- 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 cancellation i.e., 07.02.2024 till the actual date of refund of the amount.

- ii) 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.
- iii) 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 complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

23. Complaint stands disposed of.

24. File be consigned to the registry.



**(Phool Singh Saini)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 27.11.2025