

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

Complaint no.: 2592 of 2023
Order pronounced on: 23.12.2025

Preeti Yadav
R/o:- House No. 1018, Sector-22B,
Gurugram.

Complainant

Versus

1. Elan Limited
Regd. office:- L-1/1100, First Floor, Street No. 25,
Sangam Vihar, South Delhi- New Delhi- 110062.
2. Sandeep Agarwal
3. Ravish Kapoor
4. Akash Kapoor
5. Gaurav Khandelwal
Address: Two Horizon Centre, Floor-15th, DLF
Phase-5, Sector-43, Golf Course Road, Gurugram.

Respondents

CORAM:

Shri. Arun Kumar
Shri. Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Amarjeet Yadav (Advocate)
Ishaan Dang (Advocate)

**Complainant
Respondents**

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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

Sr. No.	Particulars	Details
1.	Name of the project	"Elan Mercado", Sector-80, Village Naurangpur, Gurgaon, Haryana.
2.	Nature of the project	Commercial unit with serviced apartments
3.	Area of project	2.9875 acres
4.	DTCP license	License no. 82 of 2009 Dated-08.12.2009
5.	RERA Registered	Registered Vide registration no. 189 of 2017 Dated:- 14.09.2017
6.	Application Form	01.02.2017 (As on page no. 146 of reply)
7.	Allotment letter	16.03.2017 (As on page no. 56 of complaint)
8.	Unit no.	FF-1054, 1 st Floor (As on page no. 20 of complaint)

9.	Unit area	279 sq.ft. [Super Area] (As on page no. 20 of complaint)
10.	Date of execution of buyer's agreement	19.03.2018 (As on page no. 17 of complaint)
11.	Possession clause	<p>CLAUSE 11</p> <p>(a) Schedule for possession of the Said Unit</p> <p>The Developer based on its project planning and estimates and subject to all just exceptions endeavors to complete construction of the Said Building/Said Unit within a period of 48 months with an extension of further twelve(12) months from the date of this agreement unless there shall be delay or failure due to Govt. department delay or due to any circumstances beyond the power and control of 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</p>



		<p><i>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 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.</i></p> <p>[Emphasis supplied] (As on page no. 30 of complaint)</p>
12.	Due date of possession	<p>19.03.2023</p> <p>[Calculated 48 months from date of execution of the agreement + 12 months]</p>
13.	Payment plan	<p>On offer of possession- 50% of Basic Sale Price + 100% of car parking- Usage Rights (if any) + IFMS charges (*stamp duty, Registration charges & Administrative charges as applicable will be charged extra)</p> <p>(As on page no. 57 of complaint)</p>

14.	Total sales consideration	Rs.26,41,712/- [As per BBA] Rs.26,98,523/- [As per Applicant ledger on page no. 50 of complaint] [Note: Due to area increment from 279 sq.ft to 285 sq.ft.]
15.	Total amount paid by the complainant	Rs.30,02,267/- (As on page no. 51 of complaint)
16.	Letter of Assurance sent by the respondent to the complainant	08.03.2017 (As on page no. 52 of complaint)
17.	Assured Return [Note:- Payment stopped with effect from January, 2020 on the application for occupation certificate was made]	Clause 1 <i>That Elan Limited (herein after referred to as "Company") agrees and undertakes to pay to the applicant, a Fixed Amount of Rs.11,005/- (Rupees Eleven Thousand Five Only)per month, which is subject to Tax Deduction at Source, on the provisional booking in Mercado, as the amount of basic sale price Rs.11,00,478/-(Rupees Eleven Lakhs Four Hundred Seventy Eight Only) received through Ch. No. 778368 dated 31.01.2017, Ch. No. 778369 dated 01.03.2017, Ch. No. 778370 dated 06.03.2017 and 778371 dated 08.03.2017 all cheques</i>

		<p><i>are drawn on State Bank of India.</i></p> <p>Clause 4</p> <p><i>The fixed amount shall be paid by the Company to the applicant till the date of issuance of offer of possession by the Company. The offer of possession is not dependent upon grant of completion certificate and occupation certificate. After issuance of offer of possession by the Company, the applicant shall not be entitled for payment of any fixed amount on the provisional booking by the Company.</i></p> <p><i>(As on page 52-53 of complaint)</i></p>
18.	Assured return paid	<p>Rs. 5,90,701/-</p> <p>[Note:- For the period from march 2017 till January 2020.]</p>
19.	Occupation certificate	<p>17.10.2022</p> <p>(As on page no. 219 of reply)</p>
20.	Conditional offer of possession for fit-outs	<p>07.03.2020</p> <p>(As on page no. 60 of complaint)</p> <p>[Note:- Area of unit changed from 279 sq.ft. to 285 sq.ft.]</p>

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent no. 1 is the company incorporated under companies act and have been managed and operated by the respondent no. 2 to 5. That the respondent no. 2 to 5 are made defendant in the present suit as they are actively involved in the operations and management of respondent no. 1.
- II. That on 01.02.2017, complainant booked a commercial property bearing no.FF-1054 in tower 'Retail' admeasuring super area 279 sq. ft. in 'Elan Mercado' under Special-Fixed Return Payment Plan for which complainant had paid a sum of Rs.30,02,267/-. The complainant had accordingly had been awarded with allotment Letter dated 16.03.2017.
- III. That the complainant had opted for the Special-Fixed Return Payment Plan as per which the complainant was to receive 12% p.a on the amount paid by the complainant per month as fixed return for the property until the possession of the said property was handed over by defendant which till date has not been done. As per the information received from the complainant, the respondent diligently paid the monthly assured return amount till Feb. 2020.
- IV. That a Builder Buyer Agreement dated 19.03.2018 was signed between the respondent no. 1 and the complainant. That the respondents were under obligation to complete the construction and handover the possession of the above mentioned allotted unit within a period of 48 months from the date of signing the said agreement with an extension of further 12 months. As per the said agreement, the respondents were under stipulation to handover the physical possession on or before March 2022.

- V. That in March 2020, the above mentioned respondent's issued a vague letter dated 07.03.2020 for demand on offer of possession for fit-out whereby called the complainant for settlement of dues against the unit. The complainant acting bonafidely, paid the remaining entire amount as per defendant letter dated 07.3.2020.
- VI. That the respondent's after the said letter arbitrarily stopped paying the above mentioned assured return of 12% p.a. on the amount paid by the complainant per month. Initially, the complainant was under impression that the same could be because of Lock-Down due to covid pandemic but the same was not restarted even post covid restrictions.
- VII. That even till date despite of issuance of above mentioned letter dated 07.3.2020, no physical possession has been delivered to the complainant as the construction has not been completed and the property in question is not ready for fit-outs.
- VIII. That the respondent's having malafide intentions stopped the payments of monthly fixed amount and to collect further amount in the name of offer of possession from the complainant, they cleverly issued the offer of possession to the complainant.
- IX. That the property till date even after expiry of more than 33 months from date of offer of possession has not yet been handed over to the complainant. Since the project is not yet ready for fit-outs and the offer of possession issued by respondent is mere an eye-wash therefore in that situation respondents are liable to pay the monthly fixed return on the investment made by the complainant after Feb 2020 till the issuance of legitimate offer of possession. Had the property was handed over to the complainant on time as per above mentioned letter dated 7.3.2020 then the complainant might have used the same for his benefits and

could have earned income from the usage of above mentioned unit. date till actual or legitimate offer of possession is not handed over to the complainant. The respondent is liable to pay a monthly payment of 12% p.a on Rs.30,02,267/- i.e. Rs.30,023/- for last 36 months (i.e., Feb.2020 to till date) which amounts to a total of Rs.10,80,828/-.

- X. That the complainant had sent a legal notice through an Advocate dated-30.01.2023.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
- Direct the respondent to pay Delayed possession charges at the prescribed rate of interest
 - Direct the respondents to pay damages of Rs.5,00,000/- towards legal expenses.
5. On the date of hearing, the Authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent no.1

6. The respondent no. 1 has contested the complaint on the following grounds:-
- That the project in question, "Elan Mercado", located in Sector 80 Gurugram, has been developed by the respondent, situated in Village Naurangpur, Sector 80, Gurugram.
 - 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. Paras no 37 and 38 of the said judgment are reproduced hereinbelow for ready reference.

37. There are certain other elements which need attention at this stage. The Act now stands replaced by "The Right of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013". In terms of Section 24(1)(b) of said 2013 Act, where an award had been made Under Section 11 of the Act, the proceedings under the provisions of the Act would continue as if the Act had not been repealed. Thus, even if a direction is passed that an award be deemed to have been made on 26.08.2007, the provisions of the Act would still continue to operate in respect of such acquisition in question. There is however, one point which may pose some difficulty. Out of 688 acres of land which was covered by Declaration Under Section 6 of the Act in the present matter, majority of the lands were taken over by builders/private entities and as such presently the concerned landholders are not in possession of their holdings. However, in case of certain other lands where no transactions were entered into, as a result of dropping of the acquisition, those land holders are presently in occupation without there being any cloud of acquisition. If we restore status ante where the entirety of 688 acres of land continues to be under acquisition, the interest of such landholders is bound to be put to some prejudice. Those landholders are not parties to this litigation, nor their interest in any manner, is represented in the proceedings. They would now be visited with the prospect of losing their holdings. Those who sold away their holdings to the builders/private entities after the acquisition was initiated, naturally would not be prejudiced at all nor can the builders/private entities who purchased the land after the land was initiated can put up a plea of prejudice. However those who had never sold the holdings and continued to face the prospect of acquisition will certainly be put to prejudice. It is possible that some such landholders may have sold away their holdings or may have applied and secured licences for construction. In cases, where third party interests have thus intervened, there would be some more concern.

38. The relief to be granted in the matter has therefore to take care of all the aforesaid aspects. On one hand, the real and substantial relief to be granted in the matter would be not just restoring the status ante and invalidating of the transactions but the relief ought to be that the process of acquisition is taken to its logical end and the objective that said acquisition was to achieve must be sub-served. On the other hand, even while passing appropriate directions in the nature that there was a deemed Award, the interest of those landholders who had not parted with their holdings and had faced the acquisition and had not participated



in the proceedings ought to be secured. Further, the interest of purchasers of individual apartments is also required to be protected. It is axiomatic that wherever a superior Court finds that the exercise of power by the executive was mala fide or that there was fraud of power, the full and substantial relief must be granted. The principles of restitution and concept of unjust enrichment as explained in cases referred to hereinabove show that no person who directly or indirectly was a party to the fraud of power be allowed to reap or retain any unjust enrichment. Though, it is through the acts on part of the landholders that the builders/private entities were brought on the scene, we don't hold them to be pari delicto alongwith builders/private Respondents. But at the same time they cannot be given benefit of annulment of transactions and restoration of their holdings. The greater victim in the matter was the public interest. The land holders in any case had received considerations which were greater than what was awarded in Awards dated 09.03.2006 and 24.02.2007, which were the most proximate awards in terms of time. However, even when we propose to take the matter to its logical end and say that there was a deemed award, those who had not sold away their holdings and had not in any manner either directly or indirectly, tried to jeopardize the process of acquisition, cannot at this length of time be subjected to any prejudice. We will therefore have to exclude that body of landholders who had not transferred their holdings unlike the writ Petitioners and similarly situated landholders, so also the purchasers of individual apartments from the width of our directions. Though fraud vitiates every resultant action and on that principle every beneficiary/purchaser in subsequent transaction must restore such benefit, an exception has to be made in favour of individual purchasers of flats or apartments who are being left undisturbed while moulding the relief. Any payments made by them can be adjusted towards the amounts payable to the colonizer and their possession can be regularized by HUDA/HSIDC on suitable conditions by making allotment to them. This aspect will stand covered by directions issued hereafter.

- III. That based on the observations in Para 37 and Para 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 during the period from 27.08.2004 till 29.01.2010 are not governed by these directions as under: Para 39(b) is reproduced hereinbelow for ready reference.

39. Having bestowed our attention to various competing elements and issues we deem it appropriate to direct:

.....
(b) The decision dated 24.08.2007 was taken when the matters were already posted for pronouncement of the award on 26.08.2007. Since all the antecedent stages and steps prior thereto were properly and validly undertaken, and since the decision dated 24.08.2007 has been held by us to be an exercise of fraud on power, it is directed that an Award is deemed to have been passed on 26.08.2007 in respect of lands (i) which were covered by declaration Under Section 6 in the present case and (ii) which were transferred by the landholders during the period 27.08.2004 till 29.01.2010. The lands which were not transferred by the landholders during the period from 27.08.2004 till 29.01.2010 are not governed by these directions.

- IV. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. Subsequently respondent no 1 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 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 Private Ltd nor respondent no 1 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 injuncted 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 it is pertinent to mention herein 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 No 1 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.
- 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 passed by the Hon'ble Supreme Court, Respondent No 1 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 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 January 2017, the complainant had independently approached respondent no 1 through her property dealer/broker – Asset Deal, whereby the complainant had expressed her interest in booking a

- commercial unit in the commercial complex known as "Elan Mercado" being developed by respondent no 1 in Sector-80, Gurugram, Haryana.
- X. That making detailed enquiries and after independently satisfying herself with regard to all aspects of the project , the complainant approached respondent no 1 for allotment of a unit in the project and had opted for a Special Fixed Return Payment Plan.
- XI. That the letter dated 08.03.2017 setting out the terms and conditions for payment of fixed amount of Rs.11,005/- per month subject to tax deduction at source. In accordance with paras 1 and 4 of the said letter, respondent no 1 had agreed to pay to the complainant fixed amount of Rs.11,005/- per month, subject to tax deduction at source, till the issuance of offer of possession by respondent no 1. It was further clarified that offer of possession shall not be dependent upon grant of occupation certificate and that after issuance of offer of possession, the complainant shall not be entitled for any fixed amount.
- XII. Para 5 of the said letter further provides 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.
- XIII. That in accordance with the agreement between the parties, respondent no. 1 duly paid the fixed amount amounting to Rs.5,90,701/-(inclusive of TDS)to the complainant for a period from March 2017 till January 2020.

- XIV. That the respondent no 1 forwarded the buyer's Agreement to the complainant for execution under cover of letter dated 03.03.2018. Since the complainant did not execute the Buyer's Agreement, reminder dated 15.03.2018 was sent by respondent no 1.
- XV. That the Buyer's Agreement containing the detailed terms and conditions of allotment was willingly and consciously executed by the complainant without raising any objections. After completing construction of the project, respondent no 1 applied on 14.01.2020 to the competent authority for issuance of the Occupation Certificate with respect to the project.
- XVI. That vide letter dated 15.01.2020, respondent no 1 informed the complainant about the application to the competent authority for issuance of the occupation certificate. The complainant was also informed that upon the application for the occupation certificate, the complainant would no longer be entitled to receive fixed amount/assured returns in terms of the agreement between the parties. Pertinently, no objection was made by the complainant upon receipt of the said letter and subsequent cessation of payment of assured return/fixed amount.
- XVII. That vide letter dated 07.03.2020, the respondent no 1, 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 had increased from 279 sq.ft. to 285 sq.ft. Accordingly, there was a corresponding increase in the charges payable by the complainant.
- XVIII. It is pertinent to mention that respondent no 1 has offered the possession of the unit for fit outs at their end so that as and when the Occupation Certificate is issued by the Town and Country Planning

Department, Haryana, the commercial operations from the units can be commenced without there being any loss of time.

- XIX. Since the complainant did not come forward to clear her dues, reminder dated 14.05.2020 was sent by respondent no 1. However, the complainant refrained from making payment of outstanding dues and taking possession of the unit.
- XX. That Clause 11 of the Buyer's Agreement, provides that the respondent no 1 shall offer possession of the unit within 48 months from the date of execution of the Buyer's Agreement, with grace period of 12 months. 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 respondent no 1 can hand over possession of the units in the project to the allottees.
7. The Authority is of the view that the complainant does not have any contractual relationship with the persons impleaded as respondent no. 2 to 5 and the complaint is not maintainable against respondents no.2 to 5 as they do not fall under the definition of "Promoter" under the Act, 2016.
8. 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**
9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 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

10. 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 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;

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

11. So, in view of the provisions of the Act of 2016 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 the objections raised by the respondent.

F.I Objections regarding force majeure.

12. 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 no. 1 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.

13. On the documents and submission made by both the parties, the Authority observes 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 Builder Buyer Agreement dated 19.03.2018, 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 unqualified reason for grace period/extended period in the possession clause. Accordingly, the Authority allows this grace period of 12 months to the promoter at this stage. Therefore, the due date comes out to be 19.03.2023.

G. Findings regarding relief sought by the complainant

G.I Direct the respondent to pay interest on delayed possession charges.

14. On consideration of the documents available on record and submissions made by both the parties, the complainant was allotted a shop/office space bearing no. FF-1054, 1st floor, for a super area admeasuring 279 sq. ft. vide allotment letter dated 16.03.2017 for the total sale consideration of Rs.26,98,523/-. The complainant has paid an amount of Rs.30,02,267/- against the subject unit. The buyer's agreement has been executed between the parties on 19.03.2018. As per clause 11(a) of the agreement, the respondent was required to hand over possession of the said premises/unit within a period of 48 months from the date of this agreement, with an extension of further 12 months. Therefore, the due date of possession comes out to be 19.03.2023. The respondent has issued offer of fit out of possession of the allotted unit of the complainants on 07.03.2020, without obtaining occupation certificate. As per said letter, the respondent company revised/reduce the super area of the unit of the complainant from 279 sq.ft to 285 sq.ft.. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 17.10.2022.
15. After, considering the above said factual and legal circumstances of the case, the offer of possession for fit-out dated 07.03.2020 is hereby quashed. The Authority hereby directs the respondent to handover the possession of the

allotted unit to the complainant in terms of buyer's agreement dated 19.03.2023.

16. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"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, —

.....

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."

17. A builder buyer agreement dated 19.03.2023 was executed between the parties. The due date is calculated as per clause 11(a) of BBA i.e., 48 months plus 12 months grace period from the date of execution of this agreement. The relevant clause is reproduced below:

"11 (a) Schedule for possession of the said unit.

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 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."

18. **Due date of handing over possession and admissibility of grace period:**

As per clause 11(a) of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 48 months

with an extension of further twelve (12) months from the date of this agreement in case there be any 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. Since in the present matter, the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the Authority allows this grace period of 12 months to the promoter at this stage. Therefore, the possession was to be handed over by 19.03.2023.

19. On consideration of documents available on record and submissions made by the complainants and the respondent, the Authority is of the view that the respondent is not in contravention of the provisions of the Act. The agreement executed between the parties on 19.03.2018, the possession of the subject unit was to be delivered on or before i.e., 19.03.2023. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 17.10.2022. There is no delay whatsoever on the part of the respondent here..
20. Thus, the respondent is directed to handover possession of the unit to the complainants within a period of 30 days of this order. Further, the respondent is directed to execute Conveyance Deed in favour of the complainant within a period of 60 days of this order in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

G.II Direct the respondent to pay damages of Rs.5,00,000/- towards legal expenses.

21. 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. Vs. State of UP & Ors. (supra)* 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

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 promoter as per the function entrusted to the authority under section 34(f):
- I. The respondent/promoter is directed to hand over possession of the unit to the complainant within a period of 30 days of this order.
 - II. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
23. Complaint as well as applications, if any, stands disposed off accordingly.
24. File be consigned to registry.


(Phool Singh Saini)
Member
(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.12.2025