

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

Date of decision : 26.11.2025

NAME OF THE BUILDER	M/s Elan Buildcon Private Limited.		
PROJECT NAME:	Elan Miracle	APPEARANCE	
1.	CR/2175/2025	Damyanti Ahuja & Ashok Ahuja Vs. M/s. Elan Buildcon Private Limited	Advocate Sunil Kumar (Complainant) Advocate Ishaan Dang (Respondent)
2.	CR/2174/2025	Damyanti Ahuja & Ashok Ahuja Vs. M/s. Elan Buildcon Private Limited	Advocate Sunil Kumar (Complainant) Advocate Ishaan Dang (Respondent)

CORAM:
Ashok Sangwan

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules").



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are promoters of the projects, namely, 'Elan Miracle'. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to fulfil the contractual obligations as were agreed between the complainants and the respondent.
3. The details of the complaints, reply status, unit no., date of agreement, plans, due date of possession, offer of possession and relief sought are given in the table below:

Sr. No	Complaint No./Title/Date of filing	Reply Status	Unit no. & Area admeasuring	Date of allotment letter	Date of execution of Builder Buyer Agreement	Due of possession	Offer of possession	Relief Sought
1.	CR/2175/2025 Damya nti Ahuja & Ashok Ahuja V/s Elan Buildcon Private Limited 09.05.2025	10.09.2025	SA-803, Floor-8th, Type-Service Apartment admeasuring Carpet area of 269.70 sq.ft. and super area of 636 sq.ft.	16.03.2018	18.01.2023	18.01.2028	OC-15.03.2023 Offer-07.09.2021 SC-Rs.55,42,740 /- Paid-Rs.59,19,813/-	i. Legal and valid possession of the unit i.e., SA-803 (Studio Apartment) (including all the amenities as committed in the brochure of unit should be awarded to the complainant. As per Section 18(1) and other applicable section(s) of the Act, 2016. ii. Monthly interest on deposited principal amount for delayed period from the due date of possession. iii. Seeking pending Fixed Amount Rs.27,170/- on amount paid Rs.29,64,000/- and further increment

							<p>on paid principal amount Rs.43,59,097/- as compensation. Fixed Return as promised to handed over before 5 years back as execution of Agreement was made after almost 5 years from date of booking i.e. 03.03.2018 and execution of BBA 18.01.2023.</p> <p>iv. Further, seeking instruction to payment of Interest as well as fixed Return as committed for use of hard earned money of the complainants for 5 years from the date of booking to execution of Agreement.</p> <p>V. Direct the respondent to offer fresh possession of the unit as the unit is not habitable as the floor is broken.</p>
2.	CR/2174/2025 Damya nti Ahuja & Ashok Ahuja V/s M/s. Elan Buildco n Private Limited 09.05.2025	10.09.2025	SA-802, Floor-8 th Type- Service Apartme nt admeasu ring Carpet area of 270.55 sq.ft. and super area of 637 sq.ft.	16.03.2018	18.01.2023	18.01.2028	<p>OC - 15.03.2023 Offer- 07.09.2021 SC - Rs.55,51,455/-</p> <p>AP - Rs.55,51,454/-</p> <p>i. Legal and valid possession of the unit i.e., SA-802 (Studio Apartment) (including all the amenities as committed in the brochure of unit should be awarded to the complainant. As per Section 18(1) and other applicable section(s) of the Act, 2016.</p> <p>ii. Monthly interest on deposited principal amount for delayed period from the due date of possession.</p> <p>iii. Seeking pending Fixed Amount Rs.27,170/- on amount paid</p>

								<p>Rs.29,64,000/- and further increment on paid principal amount</p> <p>Rs.43,59,097/- as compensation. Fixed Return as promised to handed over before 5 years back as execution of Agreement was made after almost 5 years from date of booking i.e. 03.03.2018 and execution of BBA 18.01.2023.</p> <p>iv. Further, seeking instruction to payment of Interest as well as fixed Return as committed for use of hard earned money of the complainants for 5 years from the date of booking to execution of Agreement.</p> <p>v. Direct the respondent to offer fresh possession of the unit as the unit is not habitable as the floor is broken.</p>
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4. The aforesaid complaints were filed by the complainants against the respondent on account of failure of the respondent to comply with its contractual obligations, as agreed upon.
5. The facts of all the complaints filed by the complainant/ promoter are also similar. Out of the above-mentioned cases, the particular's of lead case **CR/2175/2025** at serial no. 1 titled as ***Dhamyanti Ahuja and Ashok Ahuja Vs. M/s. Elan Buildcon Private Limited*** are being taken into consideration.

A. Unit and project related details

6. The particulars of unit details, 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:

S.no.	Particulars	Details
1.	Name of the project	Elan Miracle, Sector-84, Gurugram
2.	Nature of project	Commercial colony
3.	RERA registered/not registered	Registered Registration no. 190 of 2017 dated 14.09.2017
	Validity status	13.09.2023
4.	DTPC License no.	34 of 2014 dated 12.06.2014
	Validity status	11.06.2019
	Name of licensee	Bajaj Motors Ltd. & others
5.	Allotment letter	16.03.2018 (As on page no. 46 of reply)
6.	Terms and conditions for fixed amount on provisional booking dated	16.03.2018 (As on page no. 48 of reply)
7.	Unit no.	SA-803, Serviced Apartment, Floor-8th (As on page no. 43 of complaint)
8.	Unit area admeasuring	636 sq.ft [Super Area] 269.70 sq.ft [Carpet Area] (As on page no. 43 of complaint)
9.	Date of builder buyer agreement	18.01.2023 (As on page no. 35 of complaint)
10.	Possession clause	7. Possession of the premises/unit 7.1 Schedule for possession of the said premises/unit



		<p><i>The Promoter agrees and understands that timely delivery of possession of the said premises / unit to the allottee(s) and the common areas to the association of allottee(s) or the competent authority, as the case may be, is the essence of the Agreement. The Promoter assures to hand over possession of the said premises / unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place within a period of 48 (forty eight) months from the date of this Agreement with an extension of further twelve months, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the said premises/ unit, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allottee (s) subject to deduction of non-refundable amounts including but not limited to return on investments paid / payable by the Promoter to the Allottee(s).</i></p> <p>[Emphasis supplied] (As on page no. 49 of complaint)</p>
11.	Due date of possession	<p>18.01.2025</p> <p>[Calculated 48 months from 18.01.2023 + 12 months]</p>

12.	Total sale consideration	Rs.55,42,740/- (As on page no. 69 of complaint)
13.	Amount paid by the complainant	Rs.59,19,813/-
14.	Assured return	That Elan Buildcon Private Limited (hereinafter referred to a "Company"), agrees to pay to the applicant, a Fixed amount of Rs.27,170/- (Rupees Twenty Seven Thousand One Hundred And Seventy Only) per month , subject to Tax Deduction at Source, on the provisional booking in our upcoming project titled as " Elan Miracle ") situated at Sector-84, Gurugram, on the amount of Rs.29,64,000/- (Rupees Twenty Nine Lakhs Sixty Four Thousand Only) received through Ch. No. 687791 & 000018 dated 13.03.2018 drawn on State Bank of India and Kotak Mahindra Bank respectively. (As on page no. 48 of reply)
15.	Offer of possession for fit outs	07.09.2021 (As on page no 1032 of reply)
16.	Reminders	12.10.2021 12.11.2021 28.12.2021 (As on page no. 106-108 of reply)
17.	Final Reminder	08.02.2022 10.03.2022 (As on page no. 109-110 of reply)
18.	Occupation certificate	15.03.2023 (As on page no. 111 of reply)

B. Facts of the complaint

7. The complainants have made the following submissions in the complaint: -

- I. That the respondent launched the project namely, "Elan Miracle", situated at Sector 84, Gurugram, Haryana. The allottees vide application dated 13.03.2018, applied in the said project and had been allotted unit bearing no. SA-803 having carpet area 269.70 sq. ft. (i.e. Super Area 636sq. ft.), Type-Studio Apartment (SA-803), on 8th Floor, for a basic sale price of Rs.48,41,200/- alongwith EDC / IDC: Rs. 3,72,060/-, PLC:Rs.2,41,680/-, IFMS: Rs.95,400/- and the Total Sale Consideration of Rs.55,51,455/-.
- II. The complainants opted for "*Special Fixed Return Payment Plan*". The Agreement was executed between the parties on 18.01.2023, after a lapse of almost 05 years from the date of application.
- III. On 16.03.2018, the letter containing the terms and conditions for Fixed Amount on Provisional Booking was executed between the parties. Further, the complainants have paid an amount of Rs.32,90,040/- to the respondent.
- IV. That the respondent advertised a sanctioned plan, model, map, lay out, specifications and designs etc. of above project and apartments/ shops to be built for delivery to buyers through various advertising means, prospectus and modes to public at large and invited applications from public to invest and buy the apartments, shops etc. in above said project.
- V. That on the basis of the above statements and documents produced by respondent, the complainants impressed by glitz advertisement of the project contacted the company office to get more information about the project, its prospective future benefits and other terms and conditions. The company office requested the allottees to come to its office. The allottees lured by the company's nominee at the company office on 13.03.2018 booked a, Commercial Studio Apartment SA-803 admeasuring Super Area 650 sq. ft. and of Pro-rata share in Common

Area, at rate of Rs.7,600 per sq ft. of Super area (650 sq. ft. area) in this way Total BSP is Rs.48,41,200/- as per the reduced Super Area in "Schedule -B Payment Plan". In the year 2023, but while booking the same, the complainants was informed that 50% loading will be in Carpet and Super Area

- VI. But, after a gap of almost 05 Years from booking date i.e. 13.03.2018 the agreement was executed on 18.01.2023 and surprisingly, the Carpet Area as per Agreement mentioned 269 sq. ft.. Here also the respondent cheated the complainants in respect of promised 50% loading while booking the same unit.
- VII. Here, also after booking and huge amount collected from the gullible and naïve buyers, the respondent's committed breach of the Act, 2016 as before the execution of the Agreement, the respondent cannot charge / demand more than 10% of cost and after execution of the BBA, the respondent have to make the demands in terms of the Payment Plan.
- VIII. That the booking amount of Rs.2,90,040/- was paid by the allottees / complainants in favour of the respondent on 13.03.2018. Thereafter, the complainants paid a total sum of Rs.32,90,040/ -as and when demanded by the respondent from 13.03.2018 to 20.03.2018. In this way, the complainants have paid a sum of Rs.35,80,080/- in advance before the execution of the Agreement i.e. 74 % of total BSP and 64.5 % of TCS in Year March 2018. Later, the Agreement was executed on 18.02.2023, after a lapse of almost 05 years and the respondent have used the amount paid by the allottees for their own benefit and use.
- IX. After special fixed return payment plan, the complete return has not been paid till date by the respondent to the complainants. Further, the respondent agreed to pay to the complainants, a Fixed Amount Rs.27,170/- per month subject to Tax Deduction at Source on amount

paid Rs.29,64,000/-. Further, as per Clause no. 4. *"The Fixed amount with Bank Guarantee shall be paid by the Company to the Applicants till the date of issuance of offer of Possession by the Company and offer of possession shall be given by the company on applying of OC which is still awaited along with pending Fixed Amount."* Further, vide letter dated 19.06.2021, the respondent informed to the complainant that the Occupation Certificate has been applied for the project.

- X. Further, the Builder Buyer Agreement was executed by the respondent between the allottees on 18.01.2023. Hence, with folded hand, being senior citizens, the complainants are seeking justice of "Fixed Return" as committed and offer of possession should be initiated from the date of booking as the agreement was executed after a period of 05 years, with the Possession clause within 48 months from the date of execution of Agreement.
- XI. That the respondent was under an obligation to hand over the possession of the unit within a period of 48 months from the date of agreement i.e., 28.07.2029. The promoter is again in breach of Section 13 of RERA Act, 2016 by demanding more than 10% money before executing the Builder Buyer Agreement. Further, the respondent is also in breach of Section 14 for not adherence to sanctioned plans and project specifications by the Promoter. Therefore, the complainant has filed the present complaint to compensate the loss as the unit is still not habitable and requests for appointment of Local Counsel after making such inquiry by depute or appoint / or call for information, conduct investigation as per the Act. An enquiry should be conducted by the Commission for admeasuring the Carpet Area and possession of the unit to be as same as promised on booking.

XII. The respondent promised the complainants to handover the unit as fully furnished unit. They lied to the complainants that they received Occupation Certificate for the project in the Year 2023 to extract balance of 40% of the Total Price and have not yet offered the unit for possession as the structural construction work is still going on in February, 2025.

C. Relief sought by the complainants

8. The complainants have sought following relief(s).
- i. Legal and valid possession of the unit i.e., SA-803 (Studio Apartment) (including all the amenities as committed in the brochure of unit should be awarded to the complainant. As per Section 18(1) and other applicable section(s) of the Act, 2016.
 - ii. Monthly interest on deposited principal amount for delayed period from the due date of possession.
 - iii. Seeking pending Fixed Amount Rs.27,170/- on amount paid Rs.29,64,000/- and further increment on paid principal amount Rs.43,59,097/- as compensation. Fixed Return as promised to handed over before 5 years back as execution of Agreement was made after almost 5 years from date of booking i.e. 03.03.2018 and execution of BBA 18.01.2023.
 - iv. Further, seeking instruction to payment of Interest as well as fixed Return as committed for use of hard earned money of the complainants for 5 years from the date of booking to execution of Agreement.
 - v. Direct the respondent to offer fresh possession of the unit as the unit is not habitable as the floor is broken.
9. 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

10. The respondent has contested the complaint on the following grounds:-

- I. That the complainants approached the respondent through their property dealer, M/s Om Sai Relators, expressing an interest in the purchase of a Service Apartment in the commercial complex being developed by the respondent known as "*Elan Miracle*", situated in Sector-84, Gurugram.
- II. That the complainants had opted for a "Special Fixed Returns Payment Plan" in terms of which 10% of the basic sale price was payable on booking, 50 % of basic sale price within 45 days of booking, 100% of EDC and IDC within 6 months of booking , 100% PLC on retail super structure and 40% of the basic sale price, 100% IFMS, 100% car parking usage charges, if any, stamp duty, registration and administrative charges, applicable taxes, interest on delayed payment, and other amounts were payable at the time of offer of possession.
- III. That the complainants were allotted unit bearing no SA-803, *tentatively* admeasuring 650 sq. ft. super area, located in the commercial block on the 8th floor of the project by the respondent, subject, *inter alia*, to increase or decrease on basis of variation in calculation of actual Super Area of the premises which were to be determined at the time of offer of possession of the premises. The terms and conditions forming part of the application form were duly understood and accepted by the complainants. The complainants,

inter alia, agreed and undertook to execute the buyer's agreement in the standard format of the respondent.

- IV. That letter dated 16.03.2018 was issued in favour of the complainants setting out the terms and conditions for payment of down payment discount. In terms of the said letter, the respondent had undertaken to pay fixed amount of Rs.27,170/- (less applicable taxes) per month, to the complainants in accordance with the terms and conditions set out in the said letter till the offer of possession which was to be given on applying for the occupation certificate. Therein, it was specifically mentioned that the offer of possession shall not be dependent upon grant of Completion Certificate and/or Occupation Certificate and if the complainants obstructs/neglects/defaults/refused to accept offer of possession, the respondent shall stand discharged of all liabilities towards payment of down payment discount and/or penalty amount.
- V. That pertinently, a sum of Rs.11,41,323/- has been paid by the respondent to the complainants towards down payment discount in terms of the letter dated 16.03.2018.
- VI. That the Buyer's Agreement was forwarded to the complainants for execution but, the complainants failed to do the needful. The complainants were reminded by email dated 14.06.2019 to come forward for execution and registration of the Buyer's Agreement and to make payment of the applicable charges for the same. However, the complainants needlessly delayed execution of the buyer's agreement which was eventually executed on 18.01.2023. Pertinently, the complainants never came forward for registration of the Buyer's Agreement despite several requests by the respondent.

- VII. That the Buyer's Agreement was willingly and consciously executed by the complainants without raising any objections and the terms and conditions thereof which have been willingly and consciously accepted by the complainants, are binding upon the complainants with full force and effect.
- VIII. That although having agreed and undertaken to make timely payments in accordance with the schedule of payment, the complainants failed to adhere to the applicable payment plan and hence the respondent was constrained to issue reminders for payment.
- IX. It is pertinent to mention herein that by letter dated 01.11.2019, the complainants were again reminded about execution of the buyer's agreement. The respondent duly completed construction of the project and made an application to the competent authority on 09.06.2021 for issuance of the Occupation Certificate.
- X. Vide letter dated 19.06.2021, the respondent informed the complainants that the respondent had applied for the Occupation Certificate on 09.06.2021 in respect of the project in question. The complainants were also informed that upon, application for the Occupation Certificate, the complainants would no longer be entitled to receive fixed amount/delay penalty/down payment discount in terms of the agreement between the parties. Pertinently, no objection was made by the complainants upon receipt of the said letter and subsequent cessation of payment of fixed amounts.
- XI. That vide offer of possession letter dated 07.09.2021, the respondent, offered possession of the unit to the complainants for fit outs and called upon to make payment of balance amounts as per the

attached statement. The complainants were informed that the final super area of the unit stood reduced from 650 sq.ft. to 637 sq. ft.

- XII. That since the complainants did not come forward for settlement of their dues, reminders dated 12.10.2021, 12.11.2021, 28.12.2021 and final reminders dated 08.02.2022 and 10.03.2022 were issued to the complainants.
- XIII. That Occupation certificate was issued by the competent authority on 15.03.2023 by letter dated 22.03.2023, the complainants were informed about receipt of the occupation certificate from the DTCP. As a gesture of goodwill, the respondent had decided not to charge any common area maintenance charges for a period of three months commencing from the date of grant of the occupation certificate i.e. 15.03.2023 till 15.06.2023.
- XIV. In the meanwhile, the complainants had approached the respondent and requested to locate a suitable lessee for the unit in question as well as another unit allotted to the complainants in the project, being unit no SA 802, in respect of which complaint no 2174/2024 has been filed and is pending before this Authority. The respondent drew the attention of the complainants to Clause 49 of the buyer's agreement in terms of which after the date of offer of possession, at the request of the allottee, the respondent had the discretion to lease out the unit, on best effort basis only. Although under no obligation to do so, as a gesture of goodwill, the respondent identified a prospective lessee who was interested in obtaining on lease of larger areas which included other units also.
- XV. That sometime in February 2024, the respondent conveyed to the complainants that there was a prospective lessee who was interested in obtaining on lease several adjoining units in the project. Since the

contemplated lease involved several units, there would be no scope of individual negotiations as regards the commercial terms. The complainants requested the respondent to consider leasing out both the units of the complainant to the said lessee and gave their in principle approval for the same vide email dated 01.03.2024.

- XVI. That the respondent informed the complainants vide email dated 01.03.2024 that the respondent had identified a prospective lessee who was interested in taking the unit of the complainant as well as other units, on a consolidated lease for entire super area of 72,286 sq ft. The broad terms and conditions of lease (Term Sheet) were detailed in the said email. The complainants were called upon to give their consent for execution of the lease deed and other documents.
- XVII. The complainants were further informed that the Lease deed with detailed terms and conditions would be shared with the complainants after its execution and registration. The complainants were also informed that after registration of the conveyance deed in their favour, a Deed of Attornment shall be executed between the complainants, the respondent and the prospective lessee after which the complainants would step into the shoes of the lessee and shall be receiving proportionate rent directly from the lessee as per agreed terms. The complainants duly provided their consent vide email dated 01.03.2024 and on the basis of the complainant's consent, the unit has been leased out to the brand "Ramada". Actual physical possession of the unit has been handed over to the lessee.
- XVIII. That the respondent has duly fulfilled its obligations in terms of the agreement between the parties and also under the Act. There is no default or lapse in so far as the respondent is concerned. The complainants have been called upon to clear their outstanding dues

including balance sale consideration, stamp duty, registration charges, common area maintenance (CAM) charges and to get the conveyance deed registered in their favour. However, the complainants, instead of doing the needful have proceeded to file the present false and frivolous complaint.

- XIX. That in terms of Clause 7 of the Buyer's Agreement dated 18.01.2023, possession of the unit was agreed to be offered to the complainants within 48 months from the date of execution of the Buyer's Agreement, with grace period of 12 months and subject to force majeure conditions and events beyond the power and control of the respondent. The respondent has duly offered possession of the unit, complete in all respects in accordance with the Buyer's Agreement, well ahead of the time lines for delivery of possession as set out therein.
- XX. That the respondent has also duly fulfilled its obligations under the Agreement between the parties pertaining to payment of fixed amount in terms of the letter dated 16.03.2018. There is no default or lapse in so far as the respondent is concerned. It is submitted that the complainants does not have any lawful or legitimate grievance qua the respondent which justifies or necessitates the institution of the present frivolous complaint and the same is liable to be dismissed.

E. Jurisdiction of the authority

11. 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

12. 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

13. 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;

14. 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 Legal and valid possession of the unit i.e., SA-803 (Studio Apartment) (including all the amenities as committed in the brochure of unit should be awarded to the complainant. As per Section 18(1) and other applicable section(s) of the Act, 2016.

F.II Further, seeking instruction to payment of Interest as well as fixed Return as committed for use of hard earned money of the complainants for 5 years from the date of booking to execution of Agreement.

F.III Seeking pending Fixed Amount Rs.27,170/- on amount paid Rs.29,64,000/- and further increment on paid principal amount Rs.43,59,097/- as compensation. Fixed Return as promised to handed over before 5 years back as execution of Agreement was made after almost 5 years from date of booking i.e. 03.03.2018 and execution of BBA 18.01.2023.

15. The respondent has submitted in its reply that vide letter dated 16.03.2018, it committed to pay a fixed amount of Rs.27,170/- (less applicable taxes) per month to the complainants in accordance with the terms and conditions set out in the said letter till the offer of possession which was to be given on applying for the Occupation Certificate. Pertinently, a sum of Rs.11,41,323/- has been paid by the respondent to the complainants.
16. The letter dated 16.03.2018 regarding the "*Terms and Conditions for Fixed Amount on Provisional Booking*" can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. One of the integral parts of this agreement, the letter dated 16.03.2018 is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as

per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case **Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.**, (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the real estate regulatory authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees.

17. There is a contractual relationship between the complainants and the respondent which is governed by the Builder Buyer Agreement, executed between them. However, it is seen that the drafting of the clauses in the builder buyer agreement are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees in fulfilling formalities and documentations etc as prescribed by the promoter. In the present case, the respondent/builder have misused its dominant position and drafted a clause in the "letter containing terms and conditions for fixed return", which are completely vague and against the statutory rights of the complainants/allottees whereby it says that ***the offer of possession is not dependent on the grant of occupation certificate.***

18. The Authority would express its views regarding the concept of a "valid offer of possession". It is necessary to clarify this concept because, after a valid and lawful offer of possession, the liability of the promoter for the delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of the promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over of possession. The Authority after a detailed consideration of the matter has concluded that a valid offer of possession must have the following components:

- a. The possession must be offered after obtaining an occupation certificate/completion certificate.*
- b. The subject unit must be in a habitable condition.*
- c. Possession should not be accompanied by unreasonable additional demands.*

19. In the present case, the essential condition for a valid offer of possession has not been met. The occupation certificate for the project in which the subject unit is located was issued by the competent authority on 15.03.2023. However, the respondent had offered possession for the fit-out of the allotted unit prior to obtaining this certificate, specifically on 07.09.2021. Consequently, this offer does not constitute a valid offer of possession. Accordingly, the respondent is hereby directed to provide possession of the unit to the complainants within 30 days from the date of this order, in terms of the specifications (Schedule-C) (Schedule-D) as agreed between the parties in the Builder Buyer Agreement dated 18.01.2023.

20. According to the statement of accounts (As annexed on page no. 52 of reply), the Authority notes that the respondent/promoter paid assured

returns from March 2018 to March, 2020 and thereafter, made an adjustment of the Assured Returns with the demands for the period April 2020 to June 2021. The Authority directs the respondent to issue a fresh Statement of Accounts (S.O.A) to the complainants and to pay the arrears of assured returns as stipulated in the letter dated 16.03.2018. According to this agreement, the respondent is directed to pay a fixed amount of Rs.27,170/- per month from the date of provisional booking, 13.03.2018, until the occupation certificate was obtained, after deducting the amounts already paid by the respondent on account of assured returns.

F.IV Monthly interest on deposited principal amount for delayed period from the due date of possession.

F.V Direct the respondent to offer fresh possession of the unit as the unit is not habitable as the floor is broken

21. The complainants are seeking interest on the amount paid for the delay in handing over of possession by the respondent from the due date of possession. As per clause 7.1 of the Buyer's Agreement dated 18.01.2023, the respondent-promoter undertook to handover the possession of the unit to the complainants within a period of 48 months from the date of execution of this agreement, along with a grace period of 12 months. Thus, the due date of possession comes out to be 18.01.2028. The Occupation certificate has already been obtained by the respondent from the competent authorities on 15.03.2023. There is no delay on the part of the respondent in obtaining the Occupation Certificate and the respondent is directed to provide possession of the unit to the complainants within a period of 30 days.

G. Directions of the authority

22. 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 is directed to pay assured return of Rs.27,170/- per month from 13.03.2018 till the date of obtaining of occupation certificate i.e 15.03.2023, after deducting the amount already paid by the respondent on account of assured return.
- ii. The respondent is directed to pay arrears of accrued assured return as per the letter of assurance dated **16.03.2018** till the date of obtaining occupation certificate at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.85% p.a. till the date of actual realization.
- iii. The respondent is directed to handover possession of the unit to the complainants within a period of 30 days of this order in terms of the specifications (Schedule-C) (Schedule-D) as agreed between the parties in the Builder Buyer Agreement dated 18.01.2023 and execute conveyance deed in 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, within 60 days of this order.
- iv. The respondent shall not charge anything from the complainants which is not the part of the agreement of sale

23. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.



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24. True certified copy of this order shall be placed in the case file of each matter.
25. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.11.2025



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