

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

Complaint no.:
Date of decision:

2581 of 2025
26.11.2025

1. Jatin Saini
2. Mohit Chopra

Both R/o:- Flat no.-07, Sector-4, D.D.A.S.F.S. Flat,
Kakrola, South West Delhi-110078, New Delhi.

Complainants

Versus

M/s Elan Buildcon Pvt. Ltd.

Registered Office at: L-1-1100, G/F,
Sangam Vihar, Gali no.25, New Delhi-110062.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Nishant Jain (Advocate)

Complainants

Ishan Dang (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations

made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Elan Tower Centre
2.	Nature of the project	Commercial
3.	DTCP license	License no. 84 of 2012 Dated-28.08.2012
4.	RERA Registered	Registered Vide registration no. 23 of 2018 Dated-02.02.2018
5.	Allotment letter	16.01.2018 (As on page no. 42 of reply)
6.	Unit no.	Kiosk-0294, Floor-2 nd (As on page no. 55 of reply)
7.	Unit area	300sq.ft. [Super Area] (As on page no. 55 of reply)
8.	Date of execution of buyer's agreement	11.01.2019 (As on page no. 52 of reply)



9.	Possession clause	<p>CLAUSE -11</p> <p>(a) Schedule for possession of the Said Unit</p> <p><i>Within a period of 36 months from the date of this agreement with an extension of 12 months.</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 66 of reply)</i></p>
10.	Due date of possession	<p>11.01.2023</p> <p>[Calculated 36 months from date of execution of the agreement + 12 months]</p>
11.	Payment plan	<p>On offer of possession- 65% of BSP + 100% of IFMS charges + 100% car parking- Usage rights (if any) + (*Stamp duty, Registration charges & Administrative charges & all other charges as applicable will be charged extra)</p> <p>(As on page no. 83 of reply)</p>
12.	Total sale consideration	<p>Rs.30,07,500/-</p> <p>(As per page no. 83 of reply)</p>
13.	Total amount paid by the complainant	<p>Rs. 25,56,376/-</p> <p>(As per S.O.A on page no. 111 of reply)</p>
14.	Occupation Certificate	<p>09.03.2021</p> <p>(As on page no. 104 of reply)</p>
15.	Conditional offer of possession for fit-outs	<p>18.09.2020</p> <p>(As on page no. 98 of reply)</p>

16.	Reminders	20.11.2020 08.12.2020 (As on page no. 102-103 of reply)
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B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:

- I. That the representatives of the respondent approached the complainants and showed a promising image of a commercial project "Elan Town Centre" situated at Sector 67, Village Badshahpur, Gurugram by M/s Elan Buildcon Pvt. Ltd. The representatives of the respondent showed brochure's and assured that the project is registered with RERA and all the plans and Licences have been sanctioned by the concerned departments.
- II. That the complainants were misled by the sales team and representatives of the respondent through false assurances, deceptive marketing tactics, misleading brochures and Letters of Intent (LOIs), which explicitly stated that the commercial project would be leased to reputed brands such as Kwals and brands associated with Kwals like McDonalds, KFC, Burger King, Domino's, Subway, Dunkin Donuts and etc. These assurances in the form of verbal as well as LOIS and brochure were later found as intentionally crafted to deceive the complainants and other such innocent allottees into investing their hard-earned money and lifetime savings in the project of the respondent, believing it to be a secure and lucrative opportunity.
- III. Relying on these grossly misleading representations, the complainants invested a significant amount, even taking loans and

borrowing funds from friends and family, only to later discover that every promise made to them was a sham and a calculated deception.

IV. That the complainants were lured by the respondent and showed the Floor plans of the food court area and represented that the same will be constructed within time. Believing in the representations of the respondent, the complainants filed an application form for allotment of a Kiosk in the food court of the project. An amount of Rs.2,00,000/- was paid by the complainants to the respondent in lieu of booking a Kiosk.

V. That the complainants were allotted a unit in the food court of the said project bearing no. 0294, Elan Town Centre, Sector 67, Village Badshahpur, Gurugram admeasuring 300 sq. ft.

VI. That the complainants paid all the demands as raised by the respondent in timely manner. There was no delay on part of the complainants to pay the due amounts and the complainants have already paid the entire cost of the said unit to the respondents.

VII. That a Builder Buyer Agreement dated 11.01.2019 was duly executed between the complainants and the respondent. The Builder Buyer Agreement contained details of the due date of possession of the said unit. As per Clause 11(a) of the Builder Buyer Agreement, the respondent was under contractual obligations to handover possession of the unit of the complainant on or before 15.01.2021. However, the construction of the unit was not complete till the due date of possession. The respondent has not offered a valid offer of possession of the unit of the complainants till date. The due date of possession of the said unit as per the Builder Buyer Agreement was 15.01.2021.

VIII. That the complainants visited the project site and were shocked and in dismay to look at changes made by the respondent in the project without notice and knowledge of the complainants. After lapse of more than seven years, the reality of the project, stands in stark contrast to the extravagant claims made at the time of purchase. Not only have no reputed brands occupied the said project, but the entire project has been reduced to a state of commercial failure. Instead of a bustling commercial hub as fraudulently projected in the brochure, a warehouse has been set up on the same land covering most of the front area, completely decimating its commercial viability.

IX. That at the time of booking, the respondent showcased a brochure that depicted a lawn at the front of the project, creating an illusion of an upscale and inviting commercial space. However, in a calculated and deceitful move, the respondent has now given it to an unknown person who has constructed a façade obstructing the front of the mall.

X. Despite the grand assurances given at the time of booking, not even a single shop in the food court is occupied, and a mere 40% of the entire project is in use, with the remaining majority left vacant. Moreover, the defined dining area in the brochure of the food court has been leased to Zoreko, which has converted it into a kids play zone. If customers do not even have a place to sit and eat, the entire purpose of the food court becomes unviable, making it inefficient for use. Even if the complainants attempt to lease out their units independently, no food service providers are willing to set up shop in the spaces offered by the respondent.

XI. The unit sizes are impractically small as reduced at the time of completion of the project, making it impossible to operate a functional kitchen, which is essential for any food court establishment. This glaring underutilization of the property is a testament to the dissatisfaction of the complainants and other such unit holders, who, have been misled into making substantial investments. The widespread vacancy also unequivocally demonstrates why the project has failed to attract lessees, contrary to the representations made by the respondent regarding assured leasing to reputed brands. The failure to secure tenants is not a result of external market conditions but rather a direct consequence of the mismanagement and misleading commitments made by the respondent. No notice was given about the said changes to the complainants.

XII. Further, the complainants have been burdened with excessive and unjustified CAM charges for three years, receiving absolutely no benefit in return. The units have not been properly numbered instead unauthorized hoardings have been illegally placed on the property of the complainants, and they have been given no control over their own investment.

XIII. That since, the respondent failed to offer possession till date and has made several changes on the project without notice and knowledge of the complainants, the complainants have sought their right to claim refund from the respondent.

XIV. That the complainants felt cheated and defrauded by the actions of the respondent and sent a Legal Notice dated 12.02.2025 to the respondent demanding refund of their entire paid-up amount along

with interest. However, the respondent has deliberately and with malafide not responded to the said Legal Notice.

XV. That the respondent has utilized the deposited amount of complainants for sufficient time and now the respondent is liable to refund the same with interest. The cause of action for filing of the present complaint arose when the respondent failed to refund the amount of the complainants despite making false and fraudulent representations. The cause of action is continuous one and still subsisting, hence the present complaint.

C. Relief sought by the complainants:

4. The complainants are seeking following reliefs:
 - i. Direct the respondent to refund the amount paid by the complainants along with interest as per RERA rules from the date of payment made by the complainants till actual refund.
 - ii. Direct the respondent to pay litigation charges to the tune of Rs.1,00,000/- alongwith costs in favour of the complainants and against the respondent.
5. On the date of hearing, the Authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

6. The respondent has contested the present complaint on the following grounds:
 - I. That the complainants had approached the respondent for booking of a unit in the commercial project, "Elan Town Centre" located in Sector 67, Village Badshahpur, Gurgaon-Sohna Road, Gurugram. The

complainants had opted for a "Special Possession Linked Payment Plan".

- II. Thereafter, an Allotment Letter dated 16.01.2018 was issued by the respondent in favour of the complainants allotting Kiosk No-0294, admeasuring approximately 300 sq. ft. super area, located on the Second Floor in the said project with the Total Sale Consideration of Rs.30,07,500/- plus other charges payable at the time of offer of possession.
- III. That the Buyer's Agreement was forwarded to the complainants for execution on 04.12.2018. The Buyer's Agreement was willingly and voluntarily executed by the complainants on 11.01.2019 and the terms and conditions thereof are binding upon the complainants with full force and effect.
- IV. That meanwhile, the project in question was registered under the provisions of RERA as an ongoing project. Vide letter dated 11.01.2020, the respondent informed the complainants about the proposed revision of the layout plans of the project and informed the complainants that if they had any objections/suggestions to the revised building plans, the same could be submitted in the office of the competent authority.
- V. That the respondent completed the construction of the project and made an application to the competent authority on 08.05.2020 for issuance of the Occupation Certificate and by letter dated 15.06.2020, the complainants were informed about the same. Possession of the unit was offered to the complainants for the purposes of fit outs vide letter dated 18.09.2020. The complainants were informed that the final super area of the unit stood revised



from 300 sq.ft. (27.87 sq. mtrs.) to 255 sq.ft. (23.69 sq. mtrs.) and that the final dues had been calculated on the basis of the revised area. The complainants were called upon to clear their outstanding dues as per the attached statement.

- VI. That the complainants requested the respondent to locate a suitable lessee for the unit of the complainants, the respondent agreed to try and locate a suitable lessee for the unit of the complainants on best effort basis. The consent to lease dated 28.09.2020 was executed by the complainants in favour of the respondent whereby the complainants unconditionally and irrevocably undertook that the respondent would have the exclusive right to lease out the unit on behalf of the complainants.
- VII. That since the complainants did not come forward to settle their dues as per the offer of possession for fit outs and settlement of dues issued by the respondent, reminders for possession dated 20.11.2020 and 08.12.2020 were issued by the respondent.
- VIII. That the respondent was granted Occupation Certificate dated 09.03.2021 by Town and Country Planning Department Haryana. Vide letter dated 23.03.2021, the complainants were informed about receipt of occupation certificate from the competent authority. The complainants were further informed that as a gesture of goodwill, the respondent decided not to charge any Common Area Maintenance (CAM) charges for a period of three months from the date of obtaining the Occupation Certificate, i.e up till 08.06.2021
- IX. That the complainants were further informed that the respondent would shortly be communicating the details of documents to be executed as well as due payments and common area maintenance

charges to be paid for the handing over of possession and registration of the conveyance deed in favour of the complainants.

X. That by letter dated 29.10.2021, the complainants were called upon to visit the office of the respondent for execution of documents and for payment of stamp duty, registration charges, legal /miscellaneous fee and common area maintenance charges for one year w.e.f. 09.06.2021 and other charges/formalities. However, despite receipt of the said letter, and further follow-ups, the complainants have failed to clear their outstanding dues and complete the requisite formalities and documentation so as to enable the respondent to hand over possession.

XI. That the respondent is ready and willing and has always been ready and willing to get the conveyance deed registered in favour of the complainants. However, the complainants have failed to clear their outstanding dues and complete documentation in order for the respondent to hand over possession and get the conveyance deed registered in their favour.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

9. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
10. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No.***

13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

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

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

F. Findings on the reliefs sought by the complainants:

F.I. Direct the respondent to refund the amount paid by the complainants along with interest as per RERA rules from the date of payment made by the complainants till actual refund.

12. In the present complaint, the complainants 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 as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

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

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

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

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

(Emphasis supplied)

13. The complainant submitted an application for the provisional allotment of a kiosk in the food court in the project namely "Elan Town Centre," located at Sector-67, Village Badshahpur, Gurugram, Haryana. An Allotment Letter was issued in the favor of the complainants on 16.01.2018 in respect of unit bearing no. Kiosk-0294 in Retail on 2nd Floor, admeasuring 300 sq.ft. of super area for a sale consideration of Rs.30,07,500/-. The Builder Buyer Agreement was executed between the complainants and respondent on 11.01.2019. As per clause 11 of the agreement dated 11.01.2019, the possession of the unit was to be handed over to the complainants within a period of 36 months from the date of execution of the agreement along with an extension of 12 months. Thus, the due date comes out to be 11.01.2023.
14. The respondent has obtained the Occupation Certificate from the competent authority for the project on 09.03.2021. The complainants

have paid a sum of Rs.25,56,376/- out of the sale consideration of Rs.30,07,500/-.

15. The complainants contend that, in terms of Clause 11(a) of the Builder Buyer Agreement, the respondent was contractually obliged to hand over possession of the unit on or before 15.01.2021. However, as on the stipulated date, the construction of the unit was incomplete, and no valid offer of possession has been made to the complainants till date. Upon visiting the project site, the complainants discovered that substantial changes had been carried out by the respondent without prior notice or their knowledge. It is submitted that, despite the lapse of more than seven years, the actual condition of the project stands in stark contrast to the representations made at the time of booking. No reputed brands have occupied the project, which has instead deteriorated into a state of commercial failure. Contrary to the respondent's promotional materials depicting a vibrant commercial hub with a landscaped front lawn, a warehouse has been constructed on the front portion of the land, severely undermining the commercial viability of the project. The complainants allege that the respondent has handed over the front area to an unidentified third party, who has erected a façade obstructing the frontage of the mall.
16. It is further submitted that not a single shop in the food court has been occupied, and only about 40% of the project is in use, with the remaining portion lying vacant. The designated dining area in the brochure has been leased out to Zoreko, which has converted it into a children's play zone, thereby defeating the very purpose of a functional food court. The complainants state that no prospective food operators are willing to take the units on lease, as the unit sizes—

reduced at the time of completion—are commercially unviable for establishing a functional kitchen. The complainants assert that the large-scale vacancy in the project reflects the dissatisfaction of the allottees who were induced to invest based on misleading representations. They submit that the failure to secure tenants is not attributable to market conditions but is the direct outcome of the respondent's mismanagement and unfulfilled commitments. No notice of the aforesaid changes was ever issued to the complainants. In view of the respondent's failure to offer possession within the stipulated period and its unilateral alterations to the project without informing the complainants, the complainants claim to be entitled to a refund of the amounts deposited.

17. The respondent submits that the complainants were duly informed that the final super area of the unit had been revised from 300 sq. ft. (27.87 sq. mtrs.) to 255 sq. ft. (23.69 sq. mtrs.), and that the final dues were accordingly recalculated on the basis of the revised area. The complainants were called upon to clear their outstanding dues as reflected in the statement furnished to them. It is further submitted that, upon the complainants' request to identify a suitable lessee for the unit, the respondent agreed to make efforts on a best-effort basis. The complainants thereafter executed a Consent to Lease dated 28.09.2020 in favour of the respondent, wherein they unconditionally and irrevocably authorized the respondent to have the exclusive right to lease out the unit on their behalf. The respondent asserts that it has always been ready and willing to execute and register the conveyance deed in favour of the complainants. However, the complainants have failed to clear their outstanding dues and complete the requisite

documentation, which has prevented the respondent from handing over possession and proceeding with the registration of the conveyance deed.

18. The Authority observes that the principal grievances raised by the complainants pertain to the alleged failure of the project to attract reputed brands and its consequent reduction to a state of commercial non-viability. The complainants further contend that the unit sizes, having been reduced at the time of project completion, are impractically small and inadequate for operating a functional kitchen, which is essential for any food court establishment.
19. The Authority is of the considered view that, insofar as the change in the super area of the unit is concerned, Clause 10 of the Agreement dated 11.01.2019 expressly permits a variation of up to 15%, subject to the promoter informing the allottees of such variation in writing. The clause further stipulates that the allottees must convey their written consent or objections within 30 days of such intimation, failing which the allottee shall be deemed to have accorded unconditional consent to the proposed alterations or modifications.
20. In the present case, the super area of the unit was reduced from 300 sq. ft. to 255 sq. ft., and this change was duly communicated to the complainants through the Letter of Offer of Possession dated 18.09.2020. The sale consideration was revised accordingly. Significantly, rather than raising any objection to the reduction in area, the complainants executed a Consent to Lease in favour of the respondent on 28.09.2020. This conduct clearly indicates that the complainants had implicitly accepted the change in the unit's area.

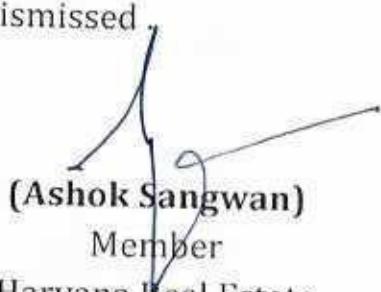
21. The Authority observes that right under Section 18(1)/19(4) of the Act, 2016 accrues to the allottee **on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein**. The promoter has already invested in the project to complete it and has offered possession of the allotted unit. Now, when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the Section 18 of the Act. Further, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate.

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

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

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

Dated: 26.11.2025


(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram