

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

Complaint no. : 6513 of 2024

Order reserved on : 12.09.2025

1. Amrit Lal Jain**2. Ujjwal Jain**Both R/o: H.no B-87, 1ST FLOOR, Nehru Nagar 2,
Ghaziabad 201001**Complainants****Versus****M/s Elan Limited**R/O: 1100/25, block I-1, Sangam Vihar,
New Delhi-110062**Respondent****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Shri Rishabh Jain (Advocate)

Shri JK Dang (Advocate)

**Complainants
Respondent****ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or 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, the due date of proposed handing over of the

possession, and the delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name and location of the project	"Elan Mercado", Sector 80, Gurugram
2.	Nature	Commercial colony
3.	Project area	2.98 acres
4.	DTCP Lincese	82 of 2009 dated 08.12.2009 valid upto 07.12.2019
5.	RERA registered/ not registered	Registered 189 of 2017 dated 14.09.2017 valid upto 13.09.2022
6.	Unit no.	FS-27 (As per page 45 of complaint)
7.	Unit area admeasuring (super area)	393 sq. ft. revised to 313 sq. ft. (As per page 64 of complaint)
8.	Provisional Allotment letter	21.01.2015 (page 45 of complaint)
9.	Provisional booking letter	03.10.2013 (page 41 of complaint)
10.	Agreed fixed amount as per provisional booking letter	Rs. 26,886/- per month on the amount of Rs. 15,57,561/-. The fixed amount shall be paid by the company to the applicant till the date of issuance of offer of possession of the premises. (page 42 of complaint)
11.	Total agreed amount paid by respondent	Rs. 15,43,776/- up to January 2020 (page 176 of reply)
12.	Date of builder buyer agreement	10.05.2016 (page 61 of complaint)
13.	Possession Clause	11(a) <i>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 extension of further 12 months from the date of this agreement unless there shall be delay or failure due to govt. department delay</i>

		<i>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 to pay in time the total consideration and other charges and dues/payments mentioned in this agreement or any failure on the part of allottee to abide by all or any of the terms and conditions of this agreement.</i>
14.	Due date of possession	10.05.2021 (as per possession clause)
15.	Total sale consideration	Rs. 20,91,153/- (as per payment plan on page 91 of complaint) Rs. 16,65,473/- (revised sale consideration as super area was decreased)
16.	Amount paid	Rs.15,59,874/- (as per statement of accounts on page 242 of reply)
17.	Power of attorney	06.05.2019 (page 106 of complaint)
18.	Reminder letters	16.02.2015, 12.03.2015 (page 177-178 of reply)
19.	Reminder for outstanding dues	14.05.2020, 03.06.2020, 04.03.2023, 06.04.2023, 05.05.2023
20.	Final reminder	06.06.2023 (page 232 of reply)
21.	Offer of possession for fit outs	07.03.2020 (page 99 of complaint)
22.	Occupation certificate	17.10.2022 (page 237 of reply)

B. Facts of the complaint:

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

- i. The complainants, Amrit Lal Jain and Ujjwal Jain, are peace loving and law-abiding Indians, who nurtured hitherto an un-realized dream of having their own commercial unit/shop with all facilities and standards, situated around serene and peaceful environment.
- ii. The grievance of the complainants relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the commercial unit no. FS-27 on food court floor, measuring 393 square feet of super area, bought by the complainants paying their hard-earned money in the commercial project 'Elan Mercado' situated at Sector 80, village Naurangpur, Gurugram, Haryana.
- iii. The respondent, Elan Limited is a company duly incorporated under the Companies Act, 1956 as amended up to date and is being sued through its Chairman cum Managing Director. The respondent is carrying out business as builder, promoter and colonizer and is inter alia engaged in development and construction activities.
- iv. In the builder buyer agreement dated 10th may, 2016, it is stated that R.P. Estates Private Limited is the legal and beneficial owner of the land measuring 2.9875 acres situated at Sector 80, village Naurangpur, Gurugram, Haryana. The land owner obtained licence no. 82 of 2009 dated 8th December, 2009 from the Director, Town and Country Planning, Haryana, Chandigarh under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1976 for development of the said land. The respondent developer entered into an agreement dated 25th may, 2013 with the land owner for development of the land and the power of attorney dated 23rd December, 2014 was also executed with the land owner which was duly registered with the Sub-Registrar, Gurugram. Thereafter, the respondent developer obtained the absolute possession of the said land from the land owner for the

construction and development of the commercial project named 'Elan Mercado' on the said land.

- v. The complainant booked a commercial unit in the project with the respondent in August, 2013. The respondent collected a huge amount from gullible and naïve buyers including the complainants from 2013 onwards and kept on promising the complainants that the possession of the commercial unit will be delivered on time.
- vi. Upon booking, the respondent allotted commercial unit no. fs-27 on food court floor in the project to the complainants via the allotment letter dated 21st January, 2015 and the builder buyer agreement was executed on 10th may, 2016 for the said commercial unit having a super area of 393 square feet at a sale consideration of ₹20,91,153/- (excluding car parking charges), as per annexure iii of the agreement. The complainants paid all payable amount, as and when demanded by the respondent, a total of ₹16,15,315/- till march, 2015 i.e. more than seventy seven percent out of the sale consideration of ₹20,91,153/- for the flat.
- vii. The due date of possession of the said commercial unit comes out to be 10th may, 2021, calculated forty-eight months plus grace period of twelve months from the date of the agreement, as per clause 11(a) of the agreement. The respondent, without obtaining occupation certificate from the competent authority, issued an illegal and invalid letter for offer of possession for fit outs on 7th march, 2020 to the complainants. In the letter for offer of possession for fit outs dated 7th march, 2020, the respondent also mentioned that the area of the commercial unit of the complainants has been reduced by 80 square feet i.e. from 393 square feet to 313 square feet and accordingly the sale consideration of the commercial unit was revised. The reduction on area of the commercial unit is done by the respondent without prior approval or intimation to the complainants. however, the respondent developer obtained

the occupation certificate from the competent authority on 17th October, 2022.

- viii. The respondent also executed an agreement dated 3rd October, 2013 with the complainants for the terms and conditions of provisional booking wherein the respondent agreed to pay a fixed amount of ₹26,886/- per month as 'assured return' to the complainants on the amount of ₹15,57,561/- paid by the complainants, up to the date of issuance of offer of possession by the respondent for the said commercial unit. But the respondent stopped paying the fixed amount of assured return to the complainants after applying for occupation certificate on 15th January, 2020. The respondent has failed to abide by the terms and conditions of the agreement dated 3rd October, 2013 as the respondent agreed to pay assured return till issuance of legal offer of possession but wrongfully stopped making payment to the complainant after applying for OC.
- ix. Till date, the respondent had failed to offer legitimate & lawful possession of the commercial unit complete in all respects to the complainants after obtaining occupation certificate. The respondent has been raising illegal and unlawful demands and charging unjustified interest on delayed payments from the complainants without issuing a valid and legal offer of possession. The complainants requested the respondent many times to revoke/cancel/withdraw the illegal and unjustified demands, issue a legal and valid offer of possession and handover the possession of the commercial unit as per the agreement, but to no avail.
- x. The respondent, without obtaining occupation certificate from the competent authority, issued an illegal and invalid letter for offer of possession for fit outs on 7th march, 2020 to the complainants and informed the complainants about the reduction in area of the commercial unit by 80 square feet i.e. from 393 square feet to 313 square feet, which was done

without prior approval or intimation to the complainants. However, the respondent developer obtained the occupation certificate from the competent authority on 17th October, 2022.

- xi. The respondent, even after causing inordinate delay of more than three (3) years and seven (7) months, had miserably failed to make payments of fixed amount of assured return till receipt of OC dated 17th October, 2022 as per the agreement dated 3rd October, 2013, issue the legal and legitimate offer of possession to the complainants after obtaining of OC, and handover the lawful possession to the complainants till date.
- xii. Due to the illegal actions and failures of the respondent to fulfil its obligations, huge delay was caused in handing over the lawful and legitimate possession of the flat to the complainant which caused immense financial loss and mental agony to the complainants and their family members. The complainants had paid more than seventy seven percent in total, a sum of ₹16,15,315/- till march, 2015, as and when demanded by the respondent for the commercial unit.

C. Relief sought by the complainants:

4. The complainants have sought the following relief(s):
 - i. Direct the respondent to complete the development of the said commercial unit fs-27 on food court floor in the project, including all facilities and amenities.
 - ii. Direct the respondent to issue fresh and legal offer of possession of the said commercial unit no. FS-27 to the complainants after completing the development works in the commercial unit and after the receipt of occupation certificate.
 - iii. Direct the respondent to handover the legal and rightful physical possession of the commercial unit to the complainants, after receiving all required approvals from the competent authorities.

- iv. Direct the respondent to pay interest for every month of delay in offering the possession of the commercial unit since 10th may, 2021 to the complainants, on the amount taken from the complainants towards sale consideration for the aforesaid unit, with interest at the prescribed rate as per the act, 2016, till the respondent hands over the legal and rightful possession of the commercial unit to the complainants.
- v. Direct the respondent developer to pay the fixed amount of assured return of ₹26,886/- per month as per the agreement dated 3rd October, 2013, till the legal and valid offer of possession is issued by the respondent to the complainants after receipt of occupation certificate.
- vi. Direct the respondent to reduce/revise the cost of the commercial unit proportionately and raise and collect demands from the complainants accordingly, as the respondent has reduced the super area of the commercial unit by 80 square feet (i.e. 393 square feet to 313 square feet).
- vii. Direct the respondent to justify the carpet area of the allotted commercial unit no. FS-27 vis-à-vis to the final super area of the commercial unit, to the complainants.
- viii. Direct the respondent to not charge anything which is not mentioned in the builder buyer agreement.
- ix. Direct the respondent to revoke/cancel/ withdraw the illegal and unlawful demands raised by the respondent from the date of illegal and invalid offer for possession for fit outs dated 7th march, 2020 which was issued to the complainants before obtaining occupation certificate.
- x. Direct the respondent not to separately charge and demand ₹4,00,000/- towards car parking charges, as car parking is an integral part of the commercial unit and its cost is already included in the basic sale price of the commercial unit, as per the judgement of the Supreme Court of India.

- xi. Direct the respondent not to charge the amount for preferential location charges as the unit is not having any preferential location.
 - xii. Direct the respondent to revoke/cancel/ withdraw the illegal and unlawful demand of maintenance charges raised by the respondent without handing over the legal and lawful possession of the commercial unit to the complainants.
 - xiii. Direct the respondent to execute conveyance deed in favour of the complainants.
 - xiv. Direct the respondent to pay legal expenses of ₹1,00,000/- incurred by the complainants along with other charges.
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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has made following submissions in the reply:
- i. That the complainants have got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 10.05.2016, as shall be evident from the submissions made in the following paras of the present reply.
 - ii. That the present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint can only be adjudicated by the Civil Court. The present complaint deserves to be dismissed on this ground alone.

- iii. That the complainants have failed to disclose the complete factual background of the case and have presented the facts in a distorted manner so as to unduly benefit themselves and the true and correct facts are detailed as under.
- iv. That the project in question, "Elan Mercado", located in Sector 80 Gurugram, has been developed by the respondent, Elan Ltd. over land admeasuring 23 Kanals 18 Marlas or 2.9875 acres situated in Village Naurangpur, Sector 80, Gurugram, which was owned by M/s R. P. Estates Pvt. Ltd. The said land became subject matter of acquisition proceedings in 2004, which ultimately lapsed in August 2007. M/s R. P. Estates Pvt. Ltd. applied for and was granted License No. 82 of 2009 dated 08.12.2009 in respect of the said land for the development of a commercial colony under Haryana Development and Regulation of Urban Areas Act 1975, by the competent authority. The landowner, M/s R. P. Estates Pvt. Ltd. entered into an agreement with the respondent, Elan Ltd. in May 2013, in terms of which the respondent is competent to develop, construct and sell units in the said project.
- v. 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.
- vi. That in terms of the aforementioned direction, the said land was rightly kept outside the scope of the aforementioned judgment. The respondent, Elan Ltd developed the land in pursuance to the license granted by the Competent Authority.

- vii. 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.
- viii. That the Hon'ble Supreme Court vide its Order dated 21.07.2022 (Annexure-R2) in Paragraph 46 of the said order held that the lands owned by M/s R.P. Estates Pvt. Ltd. should be excluded from the deemed award. The Hon'ble Supreme Court further affirmed that the project was completed on 14.01.2020. Pursuant to the said order passed by the Hon'ble Supreme Court, the respondent approached the office of the Town and Country Planning Department, Haryana for grant of occupation certificate which was subsequently granted on 17.10.2022 i.e. only within 3 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 the facts and circumstances, it is evident that delay in grant of occupation certificate, despite timely completion of construction of the complex was beyond the power and control of the respondent. The respondent has at all times been ready and willing to offer possession of the unit in a timely manner. There is no default or lapse in so far as the respondent is concerned.
- x. That coming to the facts of the instant matter, it is submitted that the complainants had independently approached the respondent and had expressed their interest in booking a commercial unit in the commercial complex known as "Elan Mercado" being developed by the Respondents in Sector-80, Gurugram, Haryana.

- xi. That all the queries pertaining to the project and all issues and concerns concerning the project and further all clarifications as sought for/ by the complainants were duly answered /clarified /provided by the representatives of the respondent and the documents pertaining to the project were made available to the complainants for inspection. It was only after the complainants were duly satisfied that the complainants took a well informed and conscious call to book a unit in the project.
- xii. That unit no. FS-27 admeasuring tentative super area of 393 sq ft was allotted in favour of the complainants. Application form dated 19.08.2013 executed by the complainants and the provisional allotment letter dated 21.01.2015 issued in favour of the complainants.
- xiii. That the respondent issued letter dated 03.10.2013 setting out the terms and conditions for payment of committed amount of Rs 26,886/- per month subject to tax deduction at source, and duly accepted by the complainants. It is submitted that in accordance with paras 1 and 5 of the said letter, the respondent had agreed to pay to the complainant fixed amount of Rs 26,886/- per month, subject to tax deduction at source, till the date of issuance of offer of possession by respondent in accordance with the terms and conditions of the agreement to sell. It was further clarified that after issuance of offer of possession, the complainants shall not be entitled for payment of any fixed amount. Para 6 of the said letter further provides that in the event the complainants obstruct/neglect/default/refuse 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.
- xiv. That in accordance with the agreement between the parties, the respondent duly paid the fixed amount amounting to Rs. 20,25,990/-(inclusive of TDS) to the complainants for a period from April 2015 till January, 2020.

- xv. That after completion of construction of the project, an application on 14th January, 2020 to the competent authority for issuance of the occupation certificate with respect to the project.
- xvi. That vide letter dated 15.01.2020, the respondent informed the complainants about the application to the competent authority for issuance of the occupation certificate. The complainants were also informed that upon the application for the occupation certificate, the complainants would no longer be entitled to receive committed amounts 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 committed amounts.
- xvii. That by letter dated 07.03.2020, the respondent offered possession of the unit to the complainants for fit-outs and settlement of dues. The complainants were informed that the super area of the said unit was revised to 313 sq ft from the earlier super area of 393 sq. ft. Accordingly, the BSP, PLC, EDC/IDC & IFMS charges payable by the complainants were revised by the respondent. The complainants were called upon to clear their outstanding dues as set out in the said letter.
- xviii. That however despite receipt of the letter dated 07.03.2020, referred to above, the complainants did not come forward with payment of the amount due and payable by them. The respondent was constrained to issue letters dated 14.05.2020, 03.06.2020, 04.03.2023, 06.04.2023, 05.05.2023 and 06.06.2023 to the complainants calling upon them to discharge their legal, financial and contractual liability but to no avail.
- xix. That in so far as the respondent is concerned, the respondent had duly completed construction well within the agreed timelines for delivery of possession and within the period of registration of the project under RERA. The application for issuance of occupation certificate was submitted to the

competent authority as far back as on 14.01.2020 and the occupation certificate was issued on 17.10.2022.

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

9. 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 the entire Gurugram District for all purposes 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 the 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;

Section 34-Functions of the Authority:

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

11. Hence, given 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 relief sought by the complainants:

- F.I Direct the respondent to complete the development of the said commercial unit FS-27 on food court floor in the project, including all facilities and amenities.**
- F.II Direct the respondent to issue fresh and legal offer of possession of the said commercial unit no. FS-27 to the complainants after completing the development works in the commercial unit and after the receipt of occupation certificate.**
12. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. On consideration of the documents available on record and submissions made by both the parties, the complainants were allotted a shop/office space bearing no. FS-27, in, for an area admeasuring 313 sq. ft. vide allotment letter dated 21.01.2015 for the total sale consideration of Rs.16,65,473/-. The complainants have paid Rs. 15,59,874/-. The buyer's agreement has been executed between the parties on 10.05.2016. 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 10.05.2021. 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 for 393 sq. ft. to 313 sq. ft. i.e., 25.29%. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on

17.10.2022. Thereafter, respondent has issued a letter for intimation for handing over of possession letter dated 18.10.2022.

14. 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 10.05.2016.

F.III Direct the respondent to pay interest for every month of delay in offering the possession of the commercial unit since 10th may, 2021 to the complainants, on the amount taken from the complainants towards sale consideration for the aforesaid unit, with interest at the prescribed rate as per the act, 2016, till the respondent hands over the legal and rightful possession of the commercial unit to the complainants.

15. In the present complaint, the complainants intend 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."*

16. A builder buyer agreement dated 10.05.2016 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."

- 17. 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 extensions of further twelve (12) months from the date of this agreement 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. 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 10.05.2021.
- 18. Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:
- "Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."
- 19.** The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. Consequently, as per

website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 12.09.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

20. On consideration of documents available on record and submissions made by the complainants and the respondent, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The agreement executed between the parties on 10.05.2016, the possession of the subject unit was to be delivered on or before i.e., 10.05.2021. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainants on 17.10.2022. Thereafter, respondent has issued a letter for intimation for handing over of possession letter dated 18.10.2022.

F.IV Direct the respondent developer to pay the fixed amount of assured return of ₹26,886/- per month as per the agreement dated 3rd October, 2013, till the legal and valid offer of possession is issued by the respondent to the complainants after receipt of occupation certificate.

21. The complainants are seeking unpaid assured returns on monthly basis as per the builder buyer agreement read with the terms and conditions at the rates mentioned therein. It is pleaded that the respondent has not complied with the terms and conditions of the provisional booking/agreement. The authority has decided the said issue in complaint bearing no. **8001/2022 titled as Gaurav Kaushik and anr. Vs. Vatika Ltd.** wherein the authority has held that when payment of assured returns is part and parcel of builder buyer's agreement (maybe there is a clause in that document or by way of addendum, memorandum of understanding or terms and conditions of the allotment of a unit), then the builder is liable to pay that amount as agreed upon.
22. The money was taken by the builder as a deposit in advance against allotment of immovable property and its possession was to be offered within a certain period. However, in view of taking sale consideration by way of advance, the builder promised certain amount by way of assured returns for a certain period.

Also, the Act of 2016 has no provision for re-writing of contractual obligations between the parties as held by the Hon'ble Bombay High Court in case ***Neelkamal Realtors Suburban Private Limited and Anr. V/s Union of India & Ors., (supra)*** as quoted earlier. So, the respondent/builder can't take a plea that there was no contractual obligation to pay the amount of assured returns to the allottee after the Act of 2016 came into force or that a new agreement is being executed with regard to that fact. So, on his failure to fulfil that commitment, the allottee has a right to approach the authority for redressal of his grievances by way of filing a complaint.

23. The builder is liable to pay that amount as agreed upon and can't take a plea that it is not liable to pay the amount of assured return. Moreover, an agreement defines the builder/buyer relationship. So, it can be said that the agreement for assured returns between the promoter and allottees arises out of the same relationship and is marked by the original agreement for sale.
24. It is not disputed that the respondent is a real estate developer, and it had not obtained registration under the Act of 2016 for the project in question. However, the project in which the advance has been received by the developer from the allottee is an ongoing project as per section 3(1) of the Act of 2016 and, the same would fall within the jurisdiction of the Authority for giving the desired relief to the complainants besides initiating penal proceedings. So, the amount paid by the complainants to the builder is a regulated deposit accepted by the later from the former against the immovable property to be transferred to the allottee later on. In view of the above, the respondent is liable to pay assured return to the complainant /allottee in terms of the builder buyer agreement read with addendum to the said agreement.
25. However now, the proposition before it is as to whether the allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges?

26. To answer the above proposition, it is worthwhile to consider that the assured return is payable to the allottees on account of terms and conditions of provisions booking. The assured return in this case is payable as per clause 1 read with clause 5 of the terms and conditions of provisions booking. The fixed return cum assured return has been committed by the promoter is an amount of Rs.26,886/- per month on the provisional booking of future projects of the developers, till the date of issuance of offer of possession of the premises by the concerned developer, which is more than reasonable in the present circumstances. The relevant clause is reproduced below for ready reference: -

1. The company agrees and undertakes to pay the applicant, a fixed amount of Rs. 26,886/- per month on the provisional booking of future projects of the Developers, on the amount of Rs. 15,57,561/- received through Cheque No. 496755 dated 19.08.2013 drawn on Dena Bank, Ch. no.763595 dated 30.09.2013 drawn on Axis Bank, Ch. No. 777919 dated 30.09.2013 drawn on ICICI Bank.

5. The fixed amount shall be paid by the company to the applicant till the date of issuance of offer of possession of the premises by the concerned developer.

27. If we compare this assured return with delayed possession charges payable under proviso to section 18(1) of the Act, 2016, the assured return is much better i.e., assured return in this case is payable a Rs.26,886/- per month whereas the delayed possession charges are payable approximately Rs.14,103/- per month. By way of fixed return, the promoter has assured the allottee that he would be entitled for this specific amount till the date of issuance of offer of possession of the premises by the concerned developer. The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as their money is continued to be used by the promoter even after the promised due date and in return, they are to be paid either the assured return or delayed possession charges whichever is higher.

28. Accordingly, the Authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section

18 and assured return is payable even after due date of possession till the date of issuance of offer of possession of the premises, then the allottee shall be entitled to assured return or delayed possession charges, whichever is higher without prejudice to any other remedy including compensation.

29. On consideration of the documents available on the record and submissions made by the parties, the complainant has sought the amount of unpaid amount of assured return as per the terms of terms and conditions of provisional booking thereto along with interest on such unpaid assured return as per clause 1 read with clause 5 of the terms of terms and conditions of provisional booking dated 03.10.2013, the promoter had agreed to pay to the complainant/allottee an fixed amount Rs.26,886/- per month from the provisional booking of future projects of the developer till the date of obtaining occupation certificate of the subject premises. It is matter of record that the amount of assured return was paid by the respondent/promoter from October 2013 till January 2020.
30. The respondent is directed to pay the outstanding accrued assured return amount till date 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. (on proceeding dated 12.09.2025 it was inevitably mentioned that the fixed amount of return has to be paid only upto 07.03.2020 as the project was completed on 14.01.2020).

F.V Direct the respondent to reduce/revise the cost of the commercial unit proportionately and raise and collect demands from the complainants accordingly, as the respondent has reduced the super area of the commercial unit by 80 square feet (i.e. 393 square feet to 313 square feet).

F.VI Direct the respondent to justify the carpet area of the allotted commercial unit no. FS-27 vis-à-vis to the final super area of the commercial unit, to the complainants.

31. The complainant states that the area of the said unit was reduce from 393 sq. ft. to 313 sq. ft. vide offer of possession for fit-out dated 07.03.2020, without giving any prior intimation to, or by taking any written consent from the allottee. The

respondent in its defence submitted that increase in super area was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. As per clause 10, provides with regard to alteration/modification resulting in more than $\pm 15\%$ change in the super area of the said unit or material change in the specifications of the said unit any time prior to and upon the grant of occupation certificate. The Company/Confirming Party shall intimate to the Allottee in writing the changes thereof. Relevant clauses of the agreement are reproduced hereunder:

10. **ALTERATION/MODIFICATION**

In case of any alteration / modifications resulting in change in the Super Area of the Said Unit any time prior to and up on the grant of occupation certificate is $\pm 15\%$, the Developer shall intimate in writing to the Allottee(s) the changes thereof and the resultant change, if any, in the Total Consideration of the Said Unit to be paid by the Allottee(s) and the Allottee(s) agrees to deliver to the Developer written consent or objections to the changes within thirty (30) days from the date of dispatch by the Developer. In case the Allottee (s) does not send his written consent, the Allottee(s) shall be deemed to have given unconditional consent to all such alterations/modifications and for payments, if any, to be paid in consequence thereof. If the Allottee(s) objects in writing indicating his non-consent/objections to such alterations/modifications then in such case alone the Developer may at its sole discretion decide to cancel this Agreement without further notice and refund the money received from the Allottee(s) (less earnest money & non-refundable amounts) within ninety (90) days from the date of receipt of funds by the Developer from resale of the said unit. Upon the decision of the Developer to cancel the Said Unit, the Developer shall be discharged from all its obligations and liabilities under this Agreement and the Allottee(s) shall have no right, interest or claim of any nature whatsoever on the Said Unit and the Parking Space(s), if allotted. Should there be any addition of a Floor or part thereof in the Unit, consequent to the provisions of the Clause-18 of this BBA, then the Actual Area and consequently the Super Area of the said Unit shall stand increased accordingly and the Allottee hereby gives his unconditional acceptance to the same.

32. Considering the above-mentioned facts, the Authority observes that the respondent has reduce the super area of the unit from 393 sq. ft. to 313 sq. ft. vide offer of possession letter for fit-out dated 07.03.2020 with decrease in area of 313 sq. ft. i.e. 20.38 % without any justification or prior intimation to the complainant and the complainant has sought to refund the amount of reduce the super area of the subject unit. In view of the above, the Authority is hereby

directed to the respondent/promoter to refund/adjust the amount in lieu of decrease in super area if any, within a period of 30 days from the date of this order.

F.VII Direct the respondent to not charge anything which is not mentioned in the builder buyer agreement.

F.VIII Direct the respondent to revoke/cancel/ withdraw the illegal and unlawful demands raised by the respondent from the date of illegal and invalid offer for possession for fit outs dated 7th march, 2020 which was issued to the complainants before obtaining occupation certificate.

F.IX Direct the respondent not to separately charge and demand ₹4,00,000/- towards car parking charges, as car parking is an integral part of the commercial unit and its cost is already included in the basic sale price of the commercial unit, as per the judgement of the Supreme Court of India.

F.X Direct the respondent not to charge the amount for preferential location charges as the unit is not having any preferential location.

F.XI Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainants along with other charges.

33. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

34. 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.

F.XII Direct the respondent to revoke/cancel/ withdraw the illegal and unlawful demand of maintenance charges raised by the respondent without handing over the legal and lawful possession of the commercial unit to the complainants.

35. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that

since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission. Since, in the present matter the respondent has obtained the occupation certificate on 17.10.2022 and intimation regarding handing over of possession of the said unit on 18.10.2022 after receiving OC therefore, the complainant is liable to pay the CAM charges.

F.XIII Direct the respondent to execute conveyance deed in favour of the complainants.

36. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title. -

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

37. The authority observes that OC in respect of the project where the subject unit is situated has been obtained by the respondent promoter on 17.10.2022. As on date, conveyance deed cannot be executed in respect of, the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion

certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months alter the receipt of the OC from the concerned authority and upon payment of requisite stamp duty by the complainant as per norms of the state government.

G. Directions issued by the Authority:

38. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- I. The respondent/promoter is directed to pay the arrear of unpaid assured return at the agreed rate i.e., @ Rs.26,886/- per month from the date of provisional booking i.e., 03.10.2013 till the date of obtaining occupation certificate as per terms and conditions of the provisional booking dated 03.10.2013.
- II. The respondent is directed to pay the outstanding accrued assured return amount till date 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 issue a revised statement of account of the allotted unit of the complainant after adjustment/refund of the amount in lieu of decrease in super area if any within a period of 30 days from the date of this order. The complainants are directed to pay the outstanding dues if any next 30 days after issuing a revised statement of account. After clearing all the outstanding dues, the respondent shall handover the possession of the allotted unit to the complainant.
- IV. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the

respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- V. 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.
- VI. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement. The respondent is debarred from claiming holding charges from the complainant/allottee at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.
39. Complaint stands disposed of.
40. File be consigned to the Registry.

Dated: 12.09.2025



(Arun Kumar)

Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram