

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

**Complaint no. : 4365 of 2025**  
**Date of complaint : 19.08.2025**  
**Date of order : 13.02.2026**

1. Gulshan Dua,  
2. Usha Dua,  
**Both R/o: - House no. 548/A/23,**  
DLF Colony, Rohtak, Haryana.

**Complainants**

**Versus**

M/s Elan Buildcon Pvt. Ltd.  
**Having Regd. Office at: 1A, 8<sup>th</sup> Avenue, Bandh**  
Road, Village Jonapur, New Delhi- 110047.

**Respondent**

**CORAM:**  
Arun Kumar

**Chairman**

**APPEARANCE:**  
Himanshu Ahuja  
Ishan Dang

**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 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 unit details, sale consideration, the amount paid by the complainants, 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	03.10.2018 (As on page no. 30 of complaint)
6.	Unit no.	FS-332 (As on page no. 51 of complaint)
7.	Unit area admeasuring	625 sq.ft. [Super Area] (As on page no. 51 of complaint) Revised Area- 672 sq.ft. (page 34 of complaint)
8.	Date of builder buyer agreement	03.10.2019 (As on page no. 42 of complaint)
9.	Terms and conditions for fixed amount on provisional booking dated	04.10.2018 (As on page no. 59 of reply)
10.	Possession clause	<b>7. Possession of the premises/unit</b> <b>7.1 Schedule for possession of the said premises/unit</b> <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</i>

		<p><i>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</i></p> <p><i>(As on page no. 57 of complaint)</i></p>
11.	Due date of possession	<p>03.10.2024</p> <p>[Calculated 48 months from 13.10.2019 + 12 months]</p>
12.	Total sale consideration	<p>Rs.70,59,520/-</p> <p>(As on page no. 108 of reply)</p>
13.	Amount paid by the complainant	<p>[Rs.79,82,213/- - (Rs.5,19,012/- + Rs.1,35,343/-) AR adjustment and Credit note] = <b>Rs.73,27,858/-</b></p> <p>(As on SOA on page no. 109 of reply)</p>
14.	Assured return clause	<p>With reference to your provisional booking dated 01.10.2018, the above provisional booking is subject to following terms and conditions: -</p> <p><b>Clause 1</b></p> <p><i>"That <b>Elan Buildcon Private Limited</b> (hereinafter referred to a "Company"), agrees to pay to the applicant, a Fixed amount of <b>Rs.27,938/-</b>, subject to Tax Deduction at Source, on the provisional booking in our upcoming project titled as "<b>Elan Miracle</b>") situated at Sector-84, Gurugram, on the amount of Rs.22,93,750/- received through RTGS.</i></p> <p><b>Clause 4</b></p> <p><i>The fixed amount shall be paid by the company to the applicant till the date of issuance of offer of possession by the company and offer of possession shall be given by the company on applying of occupation certificate. The offer of possession is not dependent upon grant of occupation certificate and completion certificate. After issuance of offer of possession by the company, the applicant shall not be entitled for payment of any fixed amount on the provisional booking by the company."</i></p>

		(As on page no. 59 and 61 of reply)
15.	Offer of possession for fit outs	07.09.2021 (As on page no 113 of reply)
16.	Occupation certificate	15.03.2023 (As on page no. 116 of reply)
17.	Offer of possession	22.03.2023 (page 119 of reply)

### B. Facts of the complaint

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

- I. That the respondent is the developer/promoter of a Project titled as "ELAN MIRACLE" admeasuring 5.92 acre, situated in Sector-84, Gurugram, Haryana-122001. Being induced by the offer and the representations made by the executive of the respondent to be true and correct, the complainants have jointly booked a unit in the said project and made an initial payment of Rs.9,00,000/-. The payment made towards booking amount can be ascertained from acknowledgment letter issued by respondent.
- II. That after making initial payment towards the said unit, the respondent has allotted unit vide allotment letter dated 03/10/2018 being commercial unit bearing no. FS-332, constructed on Third Floor, admeasuring super area 625 sq. ft. approx. situates in Elan Miracle, Sector-84 Gurugram. After allotment of said unit, the complainants have made payment to respondent company as demanded by respondent company.
- III. That thereby, the respondent company has issued a letter bearing Reference no. 493, which pertains to terms and conditions for fixed amount on provisional booking of said unit. The relevant terms and

conditions as laid down in letter pertaining to provisional booking are as follows: -

- a) That Elan Buildcon Private Limited agrees to pay to the applicant, a fixed amount of Rs. 27,938/- (Rupees Twenty-Seven Thousand Nine Hundred Thirty-Eight Only) per month to per person subject to tax deduction at source, on the provisional booking in our project titled as "Elan Miracle" situated at Sector-84, Gurugram, on the amount of Rs.22,93,750/- received through RTGS/NEFT.
  - b) The company agrees to pay fixed amount to the applicant in arrears on monthly basis on the amount received against basic sale price & prime location charges only. However, post-dated cheques (P.D.C) up to 31st March,2019 shall be handed over to the applicant upon signing and accepting of this letter.
- IV. At the time of allotment of said commercial unit, the respondent had clearly stated that these units are pre-leased so complainants would not need to concern themselves with tenancy related matters. However, despite repeated requests made by complainants, the respondent has not produced or shown any lease agreement till date.
  - V. That on 04.10.2019, a builder buyer agreement was executed between the complainant and respondents.
  - VI. That the complainant has made complete payment on regular basis as per the payment plan as same can be ascertained from account statement and receipts issued by respondent company.
  - VII. That complainant has paid complete consideration amount to respondent company as mentioned above but surprisingly, respondent company had failed to offer physical possession of the said unit, till date as which they supposed to hand over till 04/10/2022.
  - VIII. That not only respondent company had failed to offer physical possession but they had also not even paid fixed amount which is Rs.27,938/- per month to per person which they are legally supposed

to pay till the date of offer of possession of said unit. However, the respondent company had only paid fixed amount return till June, 2021 and after that they had stopped making payment towards fixed amount return on amount paid by complainants. It is reiterated that, as per an agreement, the respondent company was obligated to pay fixed amount return till the offer possession of the said unit.

- IX. That the respondent company had not only failed to pay fixed amount return but issued letter vide dated 07/09/2021 pertaining to offer of possession, without having Occupation Certificate in hand. The fact is very clear that respondent company had issued offer of possession in favor of complainant when the subject unit was very far from completion. This action of respondent company appears to be calculated move to evade their contractual obligation of paying assured returns which are due.
- X. That in the same offer of possession, the respondent company had unilaterally declared that on the basis of final measurement, the super area of said unit stands revised from 625 sq. ft. to 672 sq. ft. and as a result, the respondent company has started demanding additional amount for revised super area.
- XI. That increasing super area, without having occupation certificate in hand is not only arbitrary but also unjustified and due to that, the carpet area of the subject unit has been reduced by over 60% to 65% which is a blatant violation of RERA Rules and allottee rights. No doubt, this reduction affects the usability and value of subject property and constitutes breach of contract.
- XII. That despite not handing physical possession on due date, the respondent company had also cheated the complainant by charging maintenance charges from June, 2023 to March, 2025 which is

aggregating to Rs.1,70,752/-. As per norms laid down, the respondent company cannot collect maintenance charges until actual and physical possession is handed over.

- XIII. That numerous requests have been sent through email to respondent company by complainants for physical inspection and seeking possession of the said unit but all such requests turned of no use.
- XIV. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said unit which amounts to unfair trade practice which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of said unit by not delivering the unit by agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainants to buy the said unit basis its false and frivolous promises and representations about the delivery timelines aforesaid project in gross violation of the rules and law applicable in such cases.
- XV. That the respondent has also raised an illegal demand of Rs.5,40,256/- towards alleged enhancement in super area without any lawful justification or valid consent of the complainant.

**C. Relief sought by the complainants**

4. The complainants have sought following relief(s).
- I. Direct the respondent to pay the assured return as per the agreed terms.
  - II. Direct the respondent to handover possession and to pay delay possession charges.
  - III. Direct the respondent to refund the amount charged towards increase in super area and maintenance charges.
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 the respondent**

6. The respondent has contested the complaint on the following grounds:-
- i. That the complainants, had approached the respondent expressing an interest in the purchase of a commercial unit in the commercial complex which was being developed by the respondent under the name and title of "ELAN MIRACLE" situated in Sector-84, Gurugram, Haryana.
  - ii. That pursuant to the application of the complainants and with the complainants having duly understood the terms and conditions of application, and their contractual obligations, the respondent company considered the application of the complainants and on 03.10.2018 the complainants were allotted unit bearing No FS-332, tentatively admeasuring 625 sq. ft. super area, located in the commercial block on the third 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 unit which were to be determined at the time of offer of possession of the unit.
  - iii. That a letter dated 04.10.2018 was issued by the respondent in favour of the complainants setting out the terms and conditions for payment of fixed amount, as part of the agreed understanding. In terms of the said letter dated 04.10.2018 the respondent had undertaken to pay fixed amount of Rs 27,938/- (less applicable taxes) per month, to the complainants in accordance with the terms and conditions as set out in the said letter till the offer of possession which was to be given on applying for the occupation certificate, this being a very clear arrangement and understanding. It was specifically stated therein

that the offer of possession shall not be dependent upon grant of completion certificate and/or occupation certificate for the project by the competent authority and if the complainants obstructs/ neglects/ defaults/ refuses to accept offer of possession (upon application to the competent authority), the respondent shall stand discharged of all liabilities towards payment of down payment discount and/or penalty amount in terms of the said letter dated 04.10.2018. Therefore, the complainants were very well aware and informed of the agreed contractual understanding that the respondent obligations towards the payment of the agreed fixed amount of Rs.27,938/- (less applicable taxes) per month was only for the period upto the date of the filing/making of the application for the grant of the occupation certificate for the project with the competent authority and the same was in no manner committed and/or agreed to be paid for the period upto the actual grant/receipt of the occupation certificate for the project by the competent authority. The complainants having understood their contractual obligations also gave their unconditional consent for the lease of the unit by the respondent till the offer of possession, on best effort basis.

- iv. That pertinently, a sum of Rs.16,28,198/- (inclusive of TDS) has been paid by the respondent to the complainants towards fixed amount in terms of the letter dated 04.10.2018 of the respondent company and the same is an admitted position
- v. That two original sets of the buyer's agreement in respect of the unit in question were forwarded by the respondent company to the complainants for execution under a cover of letter dated 12.07.2019. Pursuant thereto, the complainants having acquainted themselves with the terms and conditions of the buyer's agreement and having

understood their contractual obligations, took a well conscious and informed call and decision and proceeded further with the execution of the buyer's agreement on 03.10.2019 and also got the same registered on 04.10.2019 in the office of the Sub Registrar, Harsaru, Gurugram, Haryana. It is pertinent to mention herein that the buyer's agreement dated 03.10.2019 (registered on 04.10.2019) was willingly and consciously executed by the complainants without raising any objections and after fully satisfying themselves 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.

- vi. That the respondent duly completed construction of the project and as per the established process made an application to the competent authority i.e. DTCP on 09.06.2021 for the grant and issuance of the occupation certificate for the project.
- vii. That the respondent company vide its letter dated 19.06.2021 to the complainants, duly informed the complainants that the respondent had applied to the competent authority for the grant of the occupation certificate on 09.06.2021 in respect of the project in question. The complainants were also informed that upon the application having been made to the competent authority for the grant of 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, which admittedly was an agreed arrangement and understanding as per the terms and conditions letter dated 04.10.2019. Pertinently, no objection was made by the complainants upon receipt of the said letter dated 09.06.2021 and subsequent cessation of payment of fixed amounts, and therefore,

admittedly the complainants accepted the due adherence of the obligations by the respondent company towards the payment of fixed amounts as per letter dated 04.10.2018.

- viii. That vide offer of possession letter dated 07.09.2021, the respondent, offered possession of the unit to the complainants for fit outs and also called upon to make payment of the balance amounts as per the attached statement thereto. The complainants were informed that the final super area of the unit stood increased from 625 sq. ft. to 672 sq. ft. and that the final demand was raised on the basis of the finally determined super area.
- ix. That further to the application of the respondent company to the competent authority for the grant and issuance of the occupation certificate, the same was issued by the competent authority on 15.03.2023.
- x. That vide the respondent company's letter dated 22.03.2023, the complainants were informed about receipt of the occupation certificate from the DTCP. The complainants were further informed that 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 (both days inclusive).
- xi. That it is submitted that the respondent has duly fulfilled its obligations in terms of the agreement between the parties and also under RERA. There is no default or lapse in so far as the respondent is concerned and the respondent company. 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 in

respect of the unit duly executed and registered in their favour. However, the complainants, instead of doing the needful and completing all the procedural formalities have proceeded to file the present false and frivolous complaint.

- xii. That it is pertinent to mention herein that in terms of Clause 7 of the buyer's agreement dated 03.10.2019, 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 a grace period of 12 months (which expired on 03.10.2024) and subject to force majeure conditions and events beyond the power and control of the respondent and also on the terms and conditions as set out therein. The respondent has duly offered possession of the unit, complete in all respects in accordance with the buyer's agreement, well ahead of the timelines for delivery of possession as set out therein. Hence there is no delay whatsoever on the part of the respondent in offering possession of the unit to the complainants.
- xiii. That the respondent, on its part has also duly fulfilled its obligations under the agreement between the parties pertaining to payment of fixed amount in terms of the letter dated 04.10.2020. There is no default or lapse in so far as the respondent is concerned. It is submitted that the complainants do 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**

7. 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**

8. 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**

9. 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;*

10. 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.

**F. Findings on the relief sought by the complainants**

**F.I Direct the respondent to pay delay possession charges.**

**F.II Direct the respondent to handover physical possession of the unit.**

11. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso 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."*

12. Clause 7 of the buyer's agreement dated 03.10.2019 provides for handing over of possession and is reproduced below:

**"7. POSSESSION OF THE UNIT:**

*7.1 Schedule for Possession of the said Premises/Unit - 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..."*

*(Emphasis supplied)*

13. As per clause 7.1 of the builder buyer agreement dated 03.10.2019, the respondent/promoter undertook to handover possession of the unit to the complainants within 48 months from the date of execution of the agreement, with an extension of twelve months due to force majeure conditions. The said grace period of 12 months being unqualified, is allowed to the respondent. Thus, the due date of possession, including the grace period of 12 months comes out to be 03.10.2024.
14. After considering the documents available on record as well as submission made by the parties, it is determined that as per clause 7.1 of the buyer's agreement, the due date for handing over of possession was 03.10.2024. The occupation certificate regarding the project in question was granted by the concerned authority on 15.03.2023. Thereafter, vide intimation regarding grant of OC letter dated 22.03.2023, the respondent/promoter intimated the complainants regarding grant of OC by the competent authority and has requested them to take the possession immediately after payment of the due installments. The said intimation letter dated 22.03.2023 can a be

termed as a valid offer of possession. Proviso to Section 18(1) of the Act, 2016, provides that in case, the allottee does not intend to withdraw from the project, the promoter is liable to pay interest at the prescribed rate on the amount paid in respect of unit for every month of delay, till the handing over of the possession if it fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or due to discontinuance of business. However, in the present case, the Authority observes that there is no delay on part of the respondent in offering possession of the unit. Accordingly, no case for delay possession charges is made out under Section 18 of the Act.

15. The complainants are further seeking relief with respect to handover of possession. The Authority observes that vide clause 7 of the buyer's agreement dated 21.02.2019, it was agreed between the parties that the unit in question shall to be handed over to the complainants. Further, vide clause 49 of the said agreement, it was agreed that the developer would have the exclusive rights to lease out the said unit till the date of offer of possession only. It was further agreed that the developer's right to lease out the unit on allottee(s) behalf shall lapse automatically on offer of possession if a binding LOI/Term Sheet/MOU/ Lease Deed or any such agreement is not executed till that time. Clause 49 of the buyer's agreement dated 03.10.2019 is reproduced as under for ready reference:

**49. LEASING RIGHTS**

*The Allottee(s) hereby requests the Developer to Lease out the Unit to a Brand(s) for Retail/F&B / Hospitality etc. Usage / Commercial usage, as the case may be and the Developer agrees to do the same on a best efforts basis only. The Allottee /s further clearly understands and agrees that the Developer would have the exclusive rights to Lease out the said Unit till the date of Offer of Possession only:*

*Developer in turn would ensure on a best efforts basis, attractive Lease terms for the Allottee(s). However the Letter of Intent (LOI) / Term Sheet / MOU and*

*subsequent Lease Deed would be directly executed by the Allottee(s) with the Tenant / Brand if the Lease terms are acceptable to the Allottee(s). It is further expressly agreed by the Allottee(s) that the Developer's right to Lease out the Unit on Allottee(s) behalf shall lapse automatically on Offer of Possession if a binding LOI/Term Sheet/ MOU/Lease Deed or any such Agreement is not executed till that time.*

*The Allottee(s) at his / her discretion however can request the Developer post Offer of Possession also for Leasing out his / her Unit and the developer may accept/ reject the same at it's sole discretion.*

16. Admittedly, in the instant case, the unit in question was offered to the complainants on 07.09.2021 and 22.03.2023, but the lease deed has not been executed by the respondent/promoter. The Authority observes that as per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under an obligation to handover possession of the unit and to get the conveyance deed executed in favour of the complainants. Whereas, as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
17. The possession of the subject unit has already been offered to the complainants after obtaining occupation certificate on 15.03.2023. Therefore, the respondent/promoter is directed to handover possession in terms of the agreement dated 03.10.2019 and to get the conveyance deed of the allotted unit executed 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 three months from the date of this order.

#### **F.III Assured Return**

18. The respondent has submitted in its reply that vide letter dated 04.10.2018, it committed to pay a fixed amount of Rs.27,938/- (less applicable taxes) per month to the complainants from the time of provisional booking until the offer of possession was issued to the complainants, which was to be given on applying for the occupation



certificate, this being a very clear arrangement and understanding. It was specifically stated therein that the offer of possession shall not be dependent upon grant of completion certificate and/or occupation certificate for the project by the competent authority. The respondent vide its letter dated 19.06.2021 to the complainants, duly informed the complainants that the respondent had applied to the competent authority for the grant of the occupation certificate on 09.06.2021 in respect of the project in question. The complainants were also informed that upon the application having been made to the competent authority for the grant of 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, which admittedly was an agreed arrangement and understanding as per the terms and conditions letter dated 04.10.2018. Pertinently, no objection was made by the complainants upon receipt of the said letter dated 19.06.2021 and subsequent cessation of payment of fixed amounts, and therefore, admittedly the complainants accepted the due adherence of the obligations by the respondent company towards the payment of fixed amounts as per letter dated 04.10.2018. The complainant has submitted that the respondent company offered possession of the unit on 07.09.2021, without having occupation certificate in hand. The respondent company had only paid fixed amount return till June, 2021 and after that they had stopped making payment towards fixed amount return on amount paid by complainants.

19. The Authority observes that the letter dated 04.10.2018 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 said letter 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 04.10.2018 is the transaction of assured return/fixed return inter-se parties. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return/fixed return between the promoter and allottee arises out of the same relationship.

20. The money was taken by the promoter 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 promoter promised certain amount by way of assured returns/fixed for a certain period. So, on its failure to fulfil that commitment, the allottees has a right to approach the Authority for redressal of their grievances by way of filing a complaint. The promoter is liable to pay that amount as agreed upon. Moreover, an agreement defines the builder-buyer relationship. So, it can be said that the agreement for assured returns/fixed return between the promoter and allottees arises out of the same relationship and is marked by the said "Terms and conditions for fixed amount on provisional booking" dated 04.10.2018.

21. In the present complaint, the fixed return was payable as per Clause 1 and Clause 4 of the "Terms and conditions for fixed amount on provisional booking" dated 04.10.2018, which are reproduced below for the ready reference:

With reference to your provisional booking dated 01.10.2018, the above provisional booking is subject to following terms and conditions: -

**Clause 1**

*"That Elan Buildcon Private Limited (hereinafter referred to a "Company"), agrees to pay to the applicant, a Fixed amount of Rs.27,938/-, 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.22,93,750/- received through RTGS.*

**Clause 4**

*The fixed amount shall be paid by the company to the applicant 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 occupation certificate. The offer of possession is not dependent upon grant of occupation certificate and completion certificate. After issuance of offer of possession by the company, the applicant shall not be entitled for payment of any fixed amount on the provisional booking by the company."*

22. After considering the above, the Authority is of considered view that as per Clause 4 of the said letter dated 04.10.2018, the said fixed amount was liable to be paid to the complainants till offer of possession only and that offer of possession was to be made on the application of occupation certificate to the competent authority. Further, it has been categorically agreed between the parties vide said letter dated 04.10.2018 that the offer of possession shall not be dependent upon grant of occupation certificate and completion certificate and after issuance of offer of possession by the respondent, the complainants shall not be entitled for payment of any fixed amount on the provisional booking. As per record, the application for grant of occupation certificate for the project in question was made by the respondent to the competent authority on

09.06.2021 and intimation regarding the same was provided to the complainants vide letter dated 19.06.2021. Thereafter, vide letter dated 07.09.2021, the possession of the unit in terms of the said letter dated 04.10.2018 was offered to the complainants on 07.09.2021. Therefore, the complainants are entitled to the fixed return at the agreed rate i.e. Rs.27,938/- (inclusive of TDS) per month from the date 01.10.2018 till offer of possession i.e. 07.09.2021 only.

23. In view of the above, the respondent is directed to pay fixed return at the agreed rate i.e. Rs.27,938/- (inclusive of TDS) per month from the date 01.10.2018 till offer of possession i.e. 07.09.2021, after deducting the amount already paid on account of fixed return to the complainants as per the "Terms and conditions for fixed amount on provisional booking" dated 04.10.2018.

**F.IV Direct the respondent to refund the amount charged towards increase in super area and maintenance charges.**

24. The complainants have submitted that the respondent has increased the super area of unit in question from 625 sq. ft. to 672 sq. ft. without giving any justification and as a result, the respondent company has started demanding additional amount for revised super area. The carpet area of the subject unit has been reduced by over 60% to 65% and this reduction affects the usability and value of subject property and constitutes breach of contract. Further, the respondent had also cheated the complainant by charging maintenance charges from June, 2023 to March, 2025 which is aggregating to Rs.1,70,752/-. The respondent has submitted that vide offer of possession letter dated 07.09.2021, the complainants were informed that the final super area of the unit stood increased from 625 sq. ft. to 672 sq. ft. and the final demand was raised on the basis of the finally determined super area. Further, the occupation certificate for the project was obtained by the

respondent on 15.03.2023 and vide letter dated 22.03.2023, the complainants were informed about the same and were further informed that 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. After, considering the documents available on record as well as submissions made by the parties, it is determined that Clause 1.15 of the buyer's agreement dated 03.10.2019 stipulates that the super area of the unit may be subject to variation up to  $\pm 20\%$ . The Authority notes that the said buyer's agreement was executed on 03.10.2019, i.e., subsequent to the coming into force of the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017. However, the said Agreement is not in consonance with the provisions of Section 13(2) of the Act.

25. It is further observed that the respondent, vide offer of possession for fit-out dated 07.09.2021, increased the super area of the unit from 625 sq. ft. to 672 sq. ft., reflecting an enhancement of 47 sq. ft., i.e., 7.52%, without any prior intimation/justification to the complainants. The 'agreement for sale' annexed to the Haryana Real Estate (Regulation and Development) Rules, 2017 provides that any increase in area shall be permissible only up to a maximum of 5%. Accordingly, the respondent is entitled to charge the complainants only for the increase in area up to the permissible limit of 5%, and shall refund any amount received in excess thereof.
26. With regard to the issue of maintenance charges, the Authority observes that the occupation certificate for the project was obtained by the respondent on 15.03.2023, whereas possession of the unit was

offered to the complainants on 22.03.2023. In these circumstances, maintenance charges can be levied by the respondent only from the date of offer of possession, i.e., 22.03.2023, and not for any period prior thereto.

27. In view of the foregoing, the respondent is entitled to charge for the increase in area only up to the extent of 5% and shall refund any excess amount collected from the complainants on this account. Further, the respondent is entitled to charge maintenance charges at the agreed rate from the complainants, from the date of offer of possession i.e. 22.03.2023.

**H. Directions of the authority**

28. 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. No case for delay possession charges is made out.
  - ii. The respondent is directed to handover possession in terms of the agreement dated 03.10.2019 and to get the conveyance deed of the allotted unit executed 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 three months from the date of this order.
  - iii. The respondent is directed to pay fixed return at the agreed rate i.e. Rs.27,938/- (inclusive of TDS) per month from the date 01.10.2018 till offer of possession i.e. 07.09.2021, after deducting the amount already paid on account of fixed return to the complainants as per the "Terms and conditions for fixed amount on provisional booking" dated 04.10.2018.

- iv. 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 @8.80% p.a. till the date of actual realization.
  - v. The respondent can charge for the increase in area only up to the extent of 5% and shall refund any excess amount collected from the complainants on this account. Further, the respondent can charge maintenance charges at the agreed rate from the complainants, from the date of offer of possession i.e. 22.03.2023.
  - vi. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement dated 03.10.2019.
29. Complaint stands disposed of.
30. File be consigned to registry.

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.02.2026