

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

Complaint no.: 871 of 2023
Date of filing of complaint: 14.03.2023
Date of Order: 20.01.2026

1. Devesh Singh
2. Deepti Singh

Complainants

Both R/o: 4, Lodhi Bhawan, Radha Raman
Road, Near Telephone Exchange, Mainpuri,
Mainpuri U.P.-205001.

Versus

M/s Elan Buildcon Pvt. Ltd.
Office at: 3rd Floor, Golf View Corporate Tower,
Golf Course Road, Sector 42, Gurugram-122002.

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Sh. Ajay Kumar (Advocate)
Sh. Ishaan 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 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 and location	"Elan Miracle", Sector 84, Gurugram, Haryana
2.	Project area	5.91875 Acres
3.	Project type	Commercial Colony
4.	DTCP License	34 of 2014 dated 12.06.2014
	valid up to	11.06.2019
	Licensee name	Bajaj Motors(P) Ltd. and others
5.	RERA Registered/ not registered	Registered vide no. 190 of 2017 dated 14.09.2017 valid up to 13.09.2023
6.	Unit no.	FS-016, Second floor, Block-Retail/commercial (As per page no. 37 of the reply)
7.	Unit area	570 sq. ft. (super area) (As per page no. 37 of the reply)
8.	Revised unit area	557 sq. ft. (super area) (As per page no. 57 of the reply)
9.	Date of booking application	26.06.2017 (As per page no. 37 of the reply)
10.	Allotment letter	29.09.2017 (As per page no. 37 of the reply)
11.	Date of apartment buyer's buyer agreement	Annexed but not executed
12.	Possession clause	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

		<p><i>of the Agreement. The Promoter assures to hand over possession of the said premises / unit along with ready and complete common areas with all specifications, amenities and facilities of the project in place within a period of 48 (forty eight) months from the date of this Agreement with an extension of further twelve months, unless there is delay or failure due to war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the said premises/unit, provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the project due to Force Majeure conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the allottee(s) subject to deduction of non-refundable amounts including but not limited to return on investments paid/payable by the Promoter to the Allottee(s). The Promoter shall intimate the allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee (subject to deduction of non-refundable amounts including but not limited to return on investments paid/payable by the Promoter, interest paid or payable by the allottee(s) to the promoter on delayed payments, brokerage(s)</i></p>
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		<p><i>/incentive(s) paid by the developer/discount(s) given, taxes/statutory levies paid/payable, if any]], the Allottee agrees that he/she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement. It is however clarified that if the developer offer the possession of the unit before the stipulated timeline as mentioned above, the allottee(s) shall take the possession without any protest or demur.</i></p> <p>(As per page no. 102 of the reply)</p>
13.	Due date of possession	Not specified
14.	Total sale consideration	Rs.34,32,400 /- (As per allotment letter on page no. 37 of the reply)
15.	Revised total sale consideration	Rs.30,25,549/- (As per page no. 2 of the written submissions filed by the complainants)
16.	Amount paid by the complainants	Rs.27,91,450/- (As per receipt information on page no. 80 of the reply)
17.	Offer of possession for fit out	07.09.2021 (Without obtaining OC) (As per page no. 57 of the reply)
18.	Occupation certificate	15.03.2023 (As per page no. 61 of the reply)
19.	Information regarding OC and taking over the possession	22.03.2023 (As per page no. 83 of the reply)

B. Facts of the complaint:

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

- I. That the complainants have made a request letter to the respondent to book a shop bearing unit no. FS-18, second floor admeasuring 570 sq. ft. for a total sale consideration of Rs.27,91,450/- but on 28.06.2017, the respondent has changed the shop no. FS-016, second floor admeasuring 570 sq. ft. but did not provide the BBA with regard the revised unit and assured that he will send it after some official formalities.
- II. That the complainants have paid to the respondent Rs.3,00,000/- vide cheque dated 26.06.2017, Rs.20,00,000/- vide cheque dated 29.06.2017 and Rs.1,58,000/- vide cheque dated 30.06.2017.
- III. That on 03.10.2017, the respondent has issued a letter of assurance in favour of the complainants and as per the letter of assurance dated 03.10.2017 issued by the respondent, *"The Company shall pay fixed amount of Rs.46.00 (Rupees Forty Six Only) per sq. ft. per month after the completion of 36 months with a grace period of 6 (six) months from 01.10.2017 i.e. w.e.f. 1st April, 2021 to the applicant till the time of offer of possession subject to timely payment of instalment as per the payment plan attached herewith"*. It is submitted that as per the letter of assurance the respondent is liable to pay Rs.26,220/- per month from 01.04.2021 to till the time of offer of possession.
- IV. That on 17.10.2019, the respondent sent final reminder for the outstanding amount due against complainant "Within 1 year of Booking" for payment of Rs.3,33,450/- and as pe the final reminder the complainants had paid Rs.24,58,000/- to the respondent and the respondent has demanded Rs.3,33,450/- as total outstanding amount and same was paid by complainants on 21.11.2019 vide cheque dated 21.11.2019.

- V. That after several telephonic conversation, the respondent did not provide the copy of BBA, so the complainant sent email to the respondent on 17.03.2022 and has demanded copy of builder buyer's agreement but till now respondent did not provided copy of BBA to complainants.
- VI. That till now the complainants have paid Rs.27,91,450/- to the respondent as per the final reminder dated 17.10.2019 issued by the respondent but till now respondent did not hand over the possession of the shop as the same is under construction.
- VII. That till now no offer of possession is given by the respondent to the complainants, hence the complainants are liable for the compensation.
- VIII. That it came in light of the complainants that the area of shop has been decreased by the respondent without consent of the complainants and in this condition the complainants had made almost 92% payment to the respondent.
- IX. That the complainants are entitled for total delay compensation amounts to Rs.5,76,840/- from 01.04.2021 to 01.01.2023 (i.e., @ Rs.570*46= Rs.26,220/- per month) and further Rs.26,220/- per month from February, 2023 to till offer of possession.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to pay Rs.5,76,840/- as delay compensation to the complainants from 01.04.2021 till filing of the complaint.
 - ii. Direct the respondent to pay delay compensation @ Rs.26,220/- per month from date of filing of the present complaint till the time of offer of possession.
 - iii. Direct the respondent to pay interest @24% p.a. on Rs.5,76,840/- from date of filing of complaint till its realization.

- iv. Direct the respondent to pay Rs.55,000/- as litigation expenses
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 present complaint is not maintainable in law or on facts. The complainants have no locus standi or cause of action to file the present complaint.
 - II. That the complainants are estopped from filing the present complaint by their own acts, conduct and acquiescence.
 - III. That the complainants have misinterpreted the provisions of the Act, 2016, and the Rules, 2017 made thereunder as well as the terms and conditions forming part of the application form as well as the letter of assurance dated 03.10.2017 willingly and consciously executed by the parties.
 - IV. 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.
 - V. That the present reply is being filed by Sh. Gaurav Khandelwal, S/o Sh. Vijay Kumar for and on behalf of the respondent M/s Elan Buildcon (P) Ltd. All averments, claims, allegations and contentions raised in the complaint by the complainants are denied as false and incorrect unless specifically admitted to be true by the respondent. The contents of the

complaint that are not being specifically admitted shall be deemed to have been denied and traversed.

- VI. That the complainants have not come before this Hon'ble Authority with clean hands and have concealed the real and true facts and has presented the facts in a distorted manner so as to benefit herself and the true and correct facts are set out in the succeeding paras of the present reply.
- VII. That the complainants had approached the respondent expressing an interest in the purchase of a commercial unit in the commercial complex being developed by the respondent known as "Elan Miracle" situated in Sector-84, Gurugram. In fact, the complainants had through Channel Partner- Realtime Realtors had approached the respondent after making independent enquiries and duly satisfying themselves regarding the viability and suitability of the aforesaid project as per their needs and had opted for a down payment plan.
- VIII. That thereafter, the complainants vide allotment letter dated 29.09.2017 were allotted a commercial space/ unit tentatively admeasuring 570 sq. ft. bearing unit No. FS-16 on second floor of the project, subject, *inter alia*, to increase or decrease on basis of variation in calculation of actual super area of the premises which was to be determined at the time of offer of possession of the premises. The terms and conditions forming part of the application form were duly understood and accepted by the complainants.
- IX. That the respondent issued letter dated 03.10.2017 whereby the respondent agreed to pay to the complainants a fixed amount of Rs.46/- per sq. ft. per month with effect from 01.04.2021 till offer of possession is made to the complainants, subject to timely payment of installments as per the payment plan. It was clarified that offer of possession shall not be

- dependent upon grant of completion certificate and/or occupation certificate and that the respondent shall stand discharged of its liabilities after offer of possession.
- X. That the buyer's agreement containing detailed terms and conditions of allotment was dispatched by the respondent to the complainants for execution on 27.02.2019. However, the complainants failed to come forward for execution of the buyer's agreement for reasons best known to themselves.
- XI. That right from the very beginning, the complainants defaulted in making payment as per the applicable payment plan. Consequently, demand notices and reminders for payment dated 15.06.2018, 18.02.2019, 22.03.2019, 02.08.2019, 06.09.2019 and 17.10.2019 were issued by the respondent to the complainants. The complainants were duly reminded that non receipt of payment by the due date shall attract levy of interest.
- XII. That the project has been registered under the provisions of the RERA, RERA Registration Certificate bearing Memo No. HRERA -137 (a)/2017 /1072 dated 14.09.2017. The registration of the project is valid till 13.09.2023. It is pertinent to mention herein that construction at site is complete and the respondent has already applied for grant of occupation certificate before Town and Country Planning Department Haryana. A bare perusal of the same clearly indicate that the complex as well as unit are fit for habitation and carrying out the fit outs.
- XIII. That vide letter dated 19.06.2021, the complainants were informed that the respondent had applied for the occupation certificate in respect of the project on 09.06.2021. The complainants were further informed that the final statement of account would be sent by the respondent shortly. Vide the said letter the respondent further informed the complainants that the

complainants shall not be entitled to get the fixed amount/ delay penalty/ down payment rebate (if applicable) with effect from the date of application of occupation certificate.

- XIV. That vide offer of possession letter dated 07.09.2021, the respondent, offered possession of the unit to the complainants for fit-outs and settlement of dues. The complainants were informed that there was a decrease in the super area of the unit allotted, from 570 sq. ft. to 557 sq. ft. Consequently, the payments to be made by the complainants stood revised due to the decrease in super area. The respondent has offered the possession of the units in the project for fit outs at their end so that as and when the occupation certificate was issued by the Town and Country Planning Department, Haryana, the commercial operations from the units could be commenced without there being any loss of time, therefore, keeping in view the interest of all the allottees in mind the respondent issued offer of possession for fit outs to the allottees in the complex including the complainants.
- XV. That since the complainants did not come forward to take possession, various reminders for possession were issued by the respondent.
- XVI. That eventually during discussions between the complainants and the respondent, it was agreed that the complainants shall remit an amount of Rs.8,02,922/- to the respondent after adjusting the down payment discount from 01.04.2021 to 08.06.2021 and without interest on or before 15.07.2022 as final payment against offer of possession for fit-outs letter dated 07.09.2021 subject to receiving post-dated cheques on or before 17.06.2022. The agreement between the parties was conveyed to the complainants by email dated 10.06.2022 whereby the complainants were also reminded that the approval by the respondent was based on

the time line indicated in the email, failing which interest shall be leviable as per actual due date for payment and no interest waiver shall be granted.

- XVII. That by letter dated 22.03.2023, the complainants were informed about receipt of the occupation certificate from the DTCP.
- XVIII. That thereafter various reminders for possession dated 14.04.2023 and 16.05.2023 were sent to the complainants by the respondent calling upon the complainants to clear their outstanding dues in accordance with the applicable payment plan and to take possession of the unit in accordance with the agreement between the parties. However, instead of proceeding to take possession, the complainants have filed the present false and frivolous complaint.
- XIX. That in terms of clause 7 of the unexecuted buyer's agreement, possession of the unit was agreed to be offered to the complainants within 48 months from the date of execution of the buyer's agreement, with grace period of 12 months and subject to force majeure conditions and events beyond the power and control of the respondent. The buyer's agreement was never executed by the complainants although the buyer's agreement was dispatched for execution to the complainants by the respondent as far back as on 27.02.2019. Hence there is no delay whatsoever on the part of the respondent in offering possession of the unit to the complainants. The respondent has duly fulfilled its obligations qua the complainants.

E. Jurisdiction of the Authority:

7. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants:

- F.I Direct the respondent to pay Rs.5,76,840/- as delay compensation to the complainants from 01.04.2021 till filing of the complaint.**
- F.II Direct the respondent to pay delay compensation @ Rs.26,220/- per month from date of filing of the present complaint till the time of offer of possession.**
- F.III Direct the respondent to pay interest @24% p.a. on Rs.5,76,840/- from date of filing of complaint till its realization.**

11. The above-mentioned reliefs sought by the complainants are taken together being inter-connected.
12. The complainants were allotted a unit in the project of respondent "Elan Miracle" in Sector-84, Gurugram for a basic sale consideration of Rs.26,13,450/-. Though no buyer's agreement was executed but the complainants started paying the amount due against the allotted unit and paid a total sum of Rs.27,91,450/-. The complainant is seeking relief of delay compensation as promised vide letter dated 03.10.2017.
13. The respondent has submitted in its reply that vide letter dated 03.10.2017, it committed to pay a fixed amount of Rs.46/- per sq. ft. per month to the complainants w.e.f. 01.04.2021 till the offer of possession was issued to the complainants, subject to timely payment of instalments as per the payment plan.
14. During proceedings of the day dated 20.01.2026, it has been recorded that the complainants are seeking delayed possession charges along with interest sought at the time of arguments and on the basis of the said request, the Authority has inadvertently granted the relief of the delayed possession charges along with interest. However, on perusal of the documents placed on record, the Authority has observed that the complainant is seeking relief of delay compensation as promised by the respondent letter dated 03.10.2017.
15. The Authority observes that vide letter dated 03.10.2017 which was the "*letter of assurance*" in reference to the provisional booking application dated 26.06.2017 can be considered as an agreement for sale interpreting the definition of the agreement for "agreement for sale" under section 2(c) of the Act and broadly by taking into consideration the objects of the Act. Therefore, the promoter and allottee would be bound by the obligations contained in the memorandum of understandings and the promoter shall be responsible for

all obligations, responsibilities, and functions to the allottee as per the agreement for sale executed inter-se them under section 11(4)(a) of the Act. An agreement defines the rights and liabilities of both the parties i.e., promoter and the allottee and marks the start of new contractual relationship between them. This contractual relationship gives rise to future agreements and transactions between them. One of the integral parts of this agreement, the letter dated 03.10.2017 is the transaction of assured return inter-se parties. The "agreement for sale" after coming into force of this Act (i.e., Act of 2016) shall be in the prescribed form as per rules but this Act of 2016 does not rewrite the "agreement" entered between promoter and allottee prior to coming into force of the Act as held by the Hon'ble Bombay High Court in case *Neelkamal Realtors Suburban Private Limited and Anr. v/s Union of India & Ors.*, (Writ Petition No. 2737 of 2017) decided on 06.12.2017. Since the agreement defines the buyer-promoter relationship therefore, it can be said that the agreement for assured return between the promoter and allottee arises out of the same relationship. Therefore, it can be said that the Authority has complete jurisdiction to deal with assured return cases as the contractual relationship arise out of agreement for sale only and between the same parties as per the provisions of section 11(4)(a) of the Act of 2016 which provides that the promoter would be responsible for all the obligations under the Act as per the agreement for sale till the execution of conveyance deed of the unit in favour of the allottees.

16. There is a contractual relationship between the complainants and the respondent which is governed by the builder buyer's agreement executed between them. However, it is seen that the drafting of the clauses in the builder buyer's agreement are not only vague and uncertain but so heavily loaded in favour of the promoter and by the allottee in fulfilling formalities

and documentations etc. as prescribed by the promoter. In the present case, the respondent/builder have misused its dominant position and drafted a clause in the letter containing terms and conditions for fixed return, which are completely vague and against the statutory rights of the complainants/allottee whereby it says that ***the offer of possession is not dependent on the grant of occupation certificate.***

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

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

18. In the present case, the essential condition for a valid offer of possession has not been met. The occupation certificate for the project in which the subject unit is located was issued by the relevant authority on 15.03.2023. However, the respondent had offered possession for the fit-outs of the allotted unit prior to obtaining this certificate, specifically on 07.09.2021. Consequently, this offer does not constitute a valid offer of possession. Accordingly, the

respondent is hereby directed to provide possession of the unit to the complainant within 30 days from the date of this order.

19. The offer for fit-out made by the respondent on 07.09.2021 is not a valid offer of possession as the same does not fulfil the essential components of a valid offer of possession. The occupation certificate for the project was obtained on 15.03.2023 and the same was intimated to the complainants on 22.03.2023 to take over the possession. Thus, the same can be considered as a valid offer of possession. Therefore, the Authority hereby directs the respondent to pay the unpaid assured return of Rs.46/- per sq. ft. per month from 03.10.2017 till the date of intimation of OC i.e., 22.03.2023.

F.IV Direct the respondent to pay Rs.55,000/- as litigation expenses.

20. They are seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the Authority

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

- i. The respondent is directed to pay the unpaid delay compensation/assured return of Rs.46/- per sq. ft. per month from

- 03.10.2017 till the date of intimation of obtaining of occupation certificate i.e., 22.03.2023.
- ii. The respondent is directed to pay arrears of accrued delay compensation/assured return as per the letter of assurance dated 03.10.2017 till the date of obtaining occupation certificate at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainants and failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
- iii. The complainants are directed to take the possession of the unit within 30 days from this order on payment of outstanding dues, if any remains after adjustment of payable delay compensation/assured returns and the respondent shall get the conveyance deed executed in next 90 days.
- iv. The respondent shall not charge anything from the complainants which is not the part of the allotment letter dated 29.09.2017 as well as letter of assurance dated 03.10.2017.
22. Complaint stands disposed of.
23. File be consigned to registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 20.01.2026