

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

Complaint no.: 2229 of 2024
Date of filing of complaint: 15.05.2024
Date of order: 20.01.2026

Ajay Verma
R/o: House No.-1329/3, Happy Model School Wali Gali,
Gali No. 6, Rajiv Nagar, Gurgaon-122001.

Complainant

Versus

M/s Elan Ltd.
Regd. 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:

Sushil Yadav (Advocate)
Ishaan Dang (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project and location	Elan Epic, Sector 70, Gurugram, Haryana
2.	Project area	3.525 acres
3.	Project type	Commercial Colony
4.	DTCP License valid up to	148 of 2008 dated 02.08.2008 01.08.2020 (Transferred from Koshi Builders Pvt. Ltd. and Change in Developer from Unitech Ltd. on 23/10/2018)
	Licensee name	M/s Elan Ltd.
5.	RERA Registered/ not registered	Registered vide no. 30 of 2018 dated 06.12.2018 valid up to 31.12.2023
6.	Unit no.	FF-36, First floor (As per page no. 17 of the complaint)
7.	Unit area admeasuring	1072 sq. ft. (super area) & 492 sq. ft. (carpet area) (As per page no. 17 of the complaint)
8.	Revised unit area	1065 sq. ft. (super area) and 501.71 sq. ft. (carpet area) (As per page no. 42 of the complaint) (Note: Unit area has been revised to 1065 sq. ft. from 1072 sq. ft. as per letter of offer of possession for fit-out)
9.	Date of booking application	16.07.2019 (As per page no. 17 of the complaint)
10.	Provisional allotment cum demand letter	19.07.2019 (As per page no. 36 of the complaint)

11.	Date of unit buyer's agreement	19.07.2019 (As per page no. 14 of the complaint)
12.	Possession clause	<p>7. POSSESSION OF THE UNIT:</p> <p>7.1(a) Schedule for possession of the Unit:- The Promoter/Developer proposes to offer possession of the Unit along with Parking Space(s), if applicable, to the Buyer and Common Areas and Facilities to the Association of Buyers or the Competent Authority, <i>as the case may be, within a period of 48 (forty eight) months from the date of this Agreement with a grace period of a maximum of further twelve months, unless there is delay or failure due to reasons of Force Majeure in which case, the Promoter/Developer shall be entitled to necessary extension of time for delivery of possession.</i> Provided that any Force Majeure condition is not of a nature and magnitude which makes it impossible for the Project to be completed. It is however clarified that the above-mentioned timelines are the maximum limits and if the Developer hands over the unit on/before the aforesaid period, the allottee(s) shall take the handover of the unit without any protest or demur and pay all the dues timely. (As per page no. 23 of the complaint)</p>
13.	Due date of possession	19.07.2024 (Note: Due date to be calculated 48 months from the date of execution)

		of agreement i.e., 19.07.2019 plus grace period of 12 months)
14.	Total sale consideration (for unit area 1072 sq. ft.)	Rs.1,12,11,120 /- (As per page no. 35 of the complaint)
15.	Revised sale consideration (for unit area 1065 sq. ft.)	Rs.1,07,40,525/- (As per applicant ledger on page no. 45 of the complaint)
16.	Amount paid by the complainant	Rs.1,07,40,525/- (As per applicant ledger on page no. 45 of the complaint)
17.	Offer of possession for fit-outs and payment of dues	01.07.2023 (As per page no. 42 of the complaint)
18.	Reminders letters	24.07.2023, 18.08.2023, 07.09.2023 & 25.09.2023
19.	Occupation certificate	31.10.2023 (As per page no. 91 of the reply)
20.	Intimation of obtaining of occupation certificate	03.11.2023 (As per page no. 94 of the reply)
21.	Pre-cancellation letter	12.12.2023 (As per page no. 95 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submission:
 1. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "Elan Epic" at Sector-70, Gurugram promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements the complainant, booked a commercial unit admeasuring 1072 sq. ft. Super Area in aforesaid project of the respondent for total sale consideration is Rs.1,12,11,120/- which includes BSP, car parking, IFMS, PLC, EDC, IDC etc. The complainant made payment of Rs.1,22,25,721/- to the respondent vide different cheques on different dates.

- II. That the complainant booked the commercial unit on dated 16.07.2019 and respondent issued the allotment letter dated 19.07.2019 of unit no. FF36 on first floor admeasuring 1072 sq. ft. Super Area along with the right to use parking space. Subsequently, the builder buyer's agreement was executed on 19.07.2019.
- III. That as per para no. 7.1(a) of the builder buyer's agreement, the respondent had agreed to deliver the possession of the unit within 48 months from the date of this agreement with an extension of further period of period of 12 months 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.
- IV. That on 01.07.2023, the respondent sent an illegal offer of possession for fit-out letter to the complainant and raised a demand of Rs.86,37,266/-. The complainant has already paid Rs.40,36,456/- and balance is to be paid at the time of offer of possession and as per the payment schedule for provisional booking dated 19.07.2019. The respondent also sent offer of possession for fit-outs to take the money illegally from the complainant. The complainant made all the payments demanded by the respondent.
- V. That as per the payment plan of terms and conditions for provisional booking dated 19.07.2019 the remaining payment was to be made on the offer of possession but respondent is illegally threatening the complainant to cancel his unit and pressurizing the complainant to pay the remaining payment for the said unit and sent pre-cancellation letter on 12.12.2023.
- VI. That the complainant regularly followed up with the respondent but to no avail. The complainant enquired about the approved layout plan of the building, approved layout plan of the 1st floor, carpet area dimension of the commercial unit in sq. ft. and approximate/proposed common loading on unit (FF36) as the respondent has change the size of the unit i.e., both super

- area and carpet area but all the requests and communication fall on the deaf ears of the respondent and the respondent instead of giving satisfactory answer to the complainant started illegal demand notices to the complainant. The complainant also apprised the respondent that as per the Rules, 2017 the notice for offer of possession for fit-out is not a valid offer of possession.
- VII. That the respondent has also stopped the delay penalty payment to the complainant from 30.04.2023 as per the letter of assurance dated 29.07.2019 that respondent will make payment of Rs.63/- per sq. ft. on super area till the offer of possession as delay penalty.
- VIII. That the respondent is doing structural changes arbitrarily in the said unit without the consent and permission of the complainant and the respondent has also demolished the walls of the said unit.
- IX. That respondent on the several requests of the complainant fails to provide the approved layout plan and carpet area dimension of the said commercial unit and the common loading details of the entire first floor sanctioned by the competent authority to the complainant.
- X. That the respondent with mala-fide and dishonest motives cheated and defrauded the complainant. Despite receiving the payment as per demands raised by the respondent for the said unit and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to give satisfactory answers to the complainant. Thus, the respondent in the given circumstances has voluntarily committed breached terms of the builder buyer's agreement and acted arbitrarily.
- XI. That due to this omission on the part of the respondent the complainant has been suffering from disruption, mental agony and also continues to incur severe financial losses. The respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount and wrongfully gain himself and caused wrongful loss to the complainant.

- XII. That the complainant requested the respondent many times to set-aside illegal demand raised 01.07.2023 with malafide intention, had not paid any heed to his request.
- XIII. That according to the relief claimed by the complainant, this has jurisdiction to try the present complaint. The complainant reserves his right to seek compensation from the promoter for which he shall make separate application before the Adjudicating Officer, if required.
- XIV. That no other compliant/suit is pending or decided by any other court or forum between the same parties on same cause of action.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent pay the delay penalty payment i.e., Rs.63/- per sq. ft. on super area to the complainant from 01.05.2023 till valid offer of possession as delay penalty.
 - ii. Direct the respondent to handover the physical possession of the unit and to execute the conveyance deed for the same.
 - iii. Direct the respondent to construct the walls of the said unit in its original position and restrain the respondent from doing any structural changes in the said unit without the consent and permission of the complainant as respondent has demolished the walls of the said unit.
 - iv. Direct the respondent not to create any third-party interest on the said shop till final decision of the present complaint.
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) (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 complainant has no locus standi or cause of action to file the present complaint.
- ii. That the complainant is estopped from filing the present complaint by his own acts, conduct and acquiescence.
- iii. That the complainant has misinterpreted the provisions of the Act, 2016 and the Rules and Regulations made thereunder.
- 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. Rohit Sharma, on behalf of the respondent M/s Elan Limited. The Board Resolution of the respondent dated 28.08.2024 authorizing Sh. Rohit Sharma to file the reply. All averments, claims, allegations and contentions raised in the complaint of the complainant are denied as false and incorrect unless specifically admitted to be true by the respondent. The contents of the complaint that are contrary to the record and not being specifically admitted may be deemed to have been denied and traversed.
- vi. That the complainant has not come before this Hon'ble Authority with clean hands and has concealed the real and true facts, which are set out in the succeeding paras of the present reply.
- vii. That the complainant had approached the respondent through his broker/agent M/s Oracle Landbase, for booking of unit no. FF36 located on the first floor in the project and had opted for a special payment plan. The complainant had duly executed and submitted application form dated

16.07.2019 and had accepted and understood the terms and conditions forming part of the application form. The complainant had approached the respondent after conducting extensive and independent investigations with regard to all aspects of the project and proceeded to book the unit after being fully satisfied with all aspects of the project including but not limited to the capability of the respondent to undertake development of the project. The complainant, *inter alia*, agreed and undertook to execute the buyer's agreement in the standard format of the respondent company as and when called upon to do so. The complainant further agreed and acknowledged that the provisional allotment in his favour shall take effect only upon execution of the buyer's agreement.

- viii. That provisional allotment letter dated 19.07.2019 was issued in favour of the complainant whereby unit no. FF36 located on the first floor of the project, admeasuring 1072 sq. ft. of super area approx. and carpet area of 492 sq. ft. was allotted in favour of the complainant, for total consideration amounting to Rs.1,12,11,120/-. As per the payment plan opted by the complainant 9% of the basic sale price was payable at the time of booking and 21% of the basic sale price was to be paid within 45 days of booking. On offer of possession, the complainant is liable to pay 70% of the basic sale price, 100% of EDC/IDC, 100% Car Parking Usage Rights, 100% IFMS charges, apart from stamp duty, registration charges, administrative charges, interest on delayed payments of any, and other charges payable under the buyer's agreement to be executed by the complainant.
- ix. That the buyer's agreement was willingly and consciously executed by the complainant on 19.07.2019 after duly understanding and accepting the terms and conditions thereof.
- x. That letter dated 29.07.2019 was issued by the respondent to the complainant, in terms of which the respondent had agreed to pay delay

penalty @ Rs.63/- per sq. ft. per month of super area (subject to deduction of applicable taxes), with effect from February, 2022 till the time of offer of possession as per the terms and conditions set out in the said letter. The respondent has paid an amount of Rs.10,65,326 /- (inclusive of TDS) to the complainant in terms of the aforesaid letter dated 29.07.2019.

- xi. That clause 7 of the buyer's agreement dated 19.07.2019 provides that subject to timely payment of sale consideration by the complainant and subject to force majeure conditions and delays caused due to reasons beyond the power and control of the respondent and time taken by statutory/government authorities in according approvals, possession of the unit was proposed to be handed over within 48 months from the date of the buyer's agreement, with further grace period of 12 months.
- xii. That the respondent duly completed construction of the project in question and applied for occupation certificate before Town and Country Planning, Haryana vide letter dated 25.05.2023. The complainant was informed by letter dated 30.05.2023 about the application for Occupation Certificate to the competent authority. The complainant was also informed that upon application for the occupation certificate, the complainant shall no longer be entitled to get any fixed amount/delay penalty/down payment rebate.
- xiii. That by letter dated 01.07.2023, the complainant was offered possession of the unit for fit-outs. The complainant was also informed that the super area of the unit had decreased from 1072 sq. ft. to 1065 sq. ft. super area and that the final dues had been calculated on the basis of the finally determined super area of 1065 sq. ft. The carpet area of the unit was conveyed to be 501.71 sq. ft. The complainant was called upon to make payment of his outstanding dues as set out in the enclosed statement of account and take possession of the unit. However, the complainant did not come forward to take possession of the unit and clear his outstanding dues. Hence the respondent addressed

reminders for possession dated 24.07.2023, 18.08.2023, 07.09.2023 and final reminder dated 25.09.2023.

- xiv. That the respondent received the occupation certificate from the competent authority on 31.10.2023. The complainant was informed by letter dated 03.11.2023 about issuance of the occupation certificate by the competent authority. The complainant was also informed that as a gesture of goodwill, the respondent had decided not to charge any common area maintenance charges for the period of three months from the date of obtaining the occupation certificate, i.e., from 31.10.2023 till 31.01.2024.
- xv. That the complainant continued to ignore the communications sent by the respondent and refused to take possession of the unit and clear his outstanding dues despite repeated reminders from the respondent. Accordingly, the respondent was compelled to send a pre-cancellation letter dated 12.12.2023 to the complainant, giving the complainant a last and final opportunity for payment of outstanding dues.
- xvi. That the project has been registered under the provisions of the RERA Act, 2016 vide RERA Registration Certificate bearing Memo No. RC/REP/HARERA/GGM/2018/30 dated 06.12.2018. It is submitted that the respondent has duly fulfilled its obligations towards the complainant by completing construction, obtaining the occupation certificate from the competent authority and offering possession within the agreed time lines as set out in the buyer's agreement dated 19.07.2019. However, the complainant is in breach of his contractual obligations by failing to take possession of the unit after payment of balance amounts payable as per the applicable payment plan despite repeated reminders from the respondent. There is no default or lapse in so far as the respondent is concerned. The false and frivolous complaint is liable to be dismissed.

7. Copies of all the relevant documents have been filed and placed on the 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 respondent has raised a preliminary submission/objection 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

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 entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

10. 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;

Section 34-Functions of the Authority:

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

11. 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 regarding relief sought by the complainant:

F.1 Direct the respondent pay the delay penalty payment i.e., Rs.63/- per sq. ft. on super area to the complainant from 01.05.2023 till valid offer of possession as delay penalty.

12. The respondent has submitted in its reply that vide letter dated 29.07.2019, it committed to pay a fixed amount of Rs.63/- per sq. ft. per month to the complainant w.e.f. February, 2022 till the offer of possession was issued to the complainant, subject to timely payment of instalments as per the payment plan. The total sale consideration for the initially allotted space i.e., FF-36 was Rs.1,12,11,120/- and for revised consideration for the allotted space was Rs.1,07,40,525/- of which the complainant has already paid Rs.1,07,40,525/-.
13. The Authority observes that vide letter dated 29.07.2019 which was the "letter of assurance" in reference to the provisional booking application dated 16.07.2019 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 19.07.2019 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.

14. There is a contractual relationship between the complainant 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 is 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.***

15. 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.*
16. 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 31.10.2023. However, the respondent had offered possession for the fit-outs of the allotted unit prior to obtaining this certificate, specifically on 01.07.2023. 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.
17. The respondent has filed its written submissions on 20.01.2026 and submitted that the respondent has paid an amount of Rs.10,65,326/- towards the assured return from February, 2022 till May, 2023.
18. The offer for fit-out made by the respondent on 01.07.2023 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 31.10.2023 and the same was intimated to the complainant on 03.11.2023 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.63/- per sq. ft. per month from February, 2022 till the date of intimation of OC i.e., 03.11.2023 after deducting an amount of Rs.10,65,326/- already paid on account of delay penalty/assured returns.

F.II Direct the respondent to handover the physical possession of the unit and to execute the conveyance deed for the same.

19. In the present complaint, complainant intends to continue with the project and is 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."

20. Clause 7 of buyer's agreement dated 19.07.2019 provides for handing over of possession and is reproduced below:

7. POSSESSION OF THE UNIT:

7.1(a) Schedule for possession of the Unit: The Promoter/Developer proposes to offer possession of the Unit along with Parking Space(s), if applicable, to the Buyer and Common Areas and Facilities to the Association of Buyers or the Competent Authority, as the case may be, within a period of 48 (forty eight) months from the date of this Agreement with a grace period of a maximum of further twelve months, unless there is delay or failure due to reasons of Force Majeure in which case, the Promoter/ Developer shall be entitled to necessary extension of time for delivery of possession. Provided that any Force Majeure condition is not of a nature and magnitude which makes it impossible for the Project to be completed. It is however clarified that the above-mentioned timelines are the maximum limits and if the Developer hands over the unit on/before the aforesaid period, the allottee(s) shall take the handover of the unit without any protest or demur and pay all the dues timely.

(Emphasis supplied)

21. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the

possession of the allotted unit within 48 months from the date of the agreement i.e., 19.07.2019 with grace period of 12 months. Thus, the due date of possession comes to 19.07.2024.

22. In the present complaint, the occupation certificate has been obtained by the respondent on 31.10.2023 and thereafter on 03.11.2023 an intimation regarding obtaining of occupation certificate and to take over the possession has been sent to the complainant. Thus, it can be said that a valid offer of possession has been made by the respondent on 03.11.2023, and under section 19(10) of the Act of 2016, the allottee is under an obligation to take the possession of the unit within a period of two months after receipt of the occupancy certificate issued for the said unit. Thus, the complainant is directed to take the possession of the subject within 30 days from this order on payment of outstanding dues, if any remains after adjustment of payable assured returns by the respondent.
23. In terms of the clause 10 of the buyer's agreement and as per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. 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.
24. As the respondent has already made an offer of possession on 03.11.2023, thus the respondent is directed to get the conveyance deed executed within 90 days from handing over of possession.
- F.III Direct the respondent to construct the walls of the said unit in its original position and restrain the respondent from doing any structural changes in the said unit without the consent and permission of the complainant as respondent has demolished the walls of the said unit.**
25. The above-mentioned relief of the complainant, the respondent is obligated to complete the construction of the project as per the building plan and

layout plan approved by the competent Authority while granting the license to the respondent-builder. Moreover, as per section 14(3) of the Act of 2016, in case any structural defect or any other defect in workmanship, quality or provision of services as per the agreed terms and it is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, the promoter has to rectify such defects within 30 days and in case of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provide under the Act of 2016. Section 14(3) of the Act of 2016 is reproduced below for ready reference:

"In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provide under this Act."

26. In the present complaint, the occupation certificate of the project was received on 31.10.2023 which itself depicts that the project is completed way back in 2023 but the complainant has not taken the possession till date despite the intimation regarding obtaining of occupation certificate on 03.11.2023. Thus, the complainant may approach the Adjudicating officer for compensation as per section 14(3) of the Act of 2016.

F.IV Direct the respondent not to create any third-party interest on the said shop till final decision of the present complaint.

27. As the Authority is allowing the possession of the unit in the para 22 of this order, thus the above-sought relief becomes redundant.

G. Directions of the authority:

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

- i. The respondent is directed to pay the delay penalty/assured return of Rs.63/- per sq. ft. per month from February, 2022 till the date of intimation of obtaining of occupation certificate i.e., 03.11.2023 after deducting an amount of Rs.10,65,326/- already paid on account of delay penalty/assured returns.
 - ii. The respondent is directed to pay arrears of accrued assured return as per the letter of assurance dated 29.07.2019 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 complainant and failing which that amount would be payable with interest @8.80% p.a. till the date of actual realization.
 - iii. The complainant is 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 assured returns and the respondent shall get the conveyance deed executed in next 90 days.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the agreement of sale.
29. Complaint stands disposed of.
30. File be consigned to the registry.


(Phool Singh Saini)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 20.01.2026