

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

Complaint no. : 5430 of 2024
Date of complaint : 14.11.2024
Date of order : 07.04.2026

Sunita Rani and Jagmohinder Singh Lohchab,
Both R/o: - Top Floor 1st and 2nd, Om
Apartment, Bharat Vihar, Block-C, Near Metro
Pillar No. 880B, Kakrola, South West Delhi.

Complainants

Versus

M/s Elan Limited
Having Regd. Office at: 3rd Floor, Golf View
Corporate Tower, Golf Course Road, Sector 42,
Gurugram.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
Sanjeev Sharma (Advocate)
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	ELAN MERCADO, Sector 80 Gurugram, Haryana.
2.	Nature of project	Commercial complex
3.	DTCP License	82 of 2009 dated 08.12.2009 valid up to 07.12.2019
4.	Name of licensee	RP ESTATE PVT. LTD.
5.	RERA Registered/ not registered	Registered vid no. 189 of 2017 dated 14.09.2017 valid up to 13.09.2023
6.	Unit no.	SA-711, 7 th floor (As per page no. 21 of the complaint)
7.	Unit area admeasuring	307.47 sq. ft. (carpet area) (As per page no. 21 of the complaint)
8.	Allotment Letter	27.02.2024 (As per page no. 19 of the complaint)
9.	Date of execution of builder buyer's agreement	Not executed
10.	Possession clause	Not on record
11.	Due date of delivery of possession	Not required as ready to move-in property was offered
12.	Total sale consideration	Rs.78,91,920/- (As per payment plan on page no. 21 of the complaint)
13.	Total amount paid by the complainant (To be confirmed)	Rs.39,99,920/- (As per SOA on page no. 82 of the reply)
14.	Occupation certificate	17.10.2022 (As per page no. 68 of the reply)
15.	Leasing of unit in favour of Priya Living India Pvt. Ltd. for 4 years	27.02.2024 (As per page no. 34 of the complaint)

16.	Offer of possession	19.06.2024 (As per page no. 71 of the reply)
17.	Reminder letters	17.06.2024 & 06.08.2024 (As per page no. 77-78 of the reply)
18.	Final reminder	05.10.2024 & 26.10.2024 (As per page no. 79-80 of the reply)
19.	Pre-cancellation letter	10.12.2024 (As per page no. 83 of the reply)
20.	Reminder to pre-cancellation	04.01.2025 (As per page no. 84 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
- I. That upon the representation made by the respondent and advertisement done in this behalf the respondent was to construct and develop a commercial project in the name and style of "Elan Mercado" located at Sector 80 Gurugram, Haryana.
 - II. That complainants approached the respondent and showed their willingness to invest in their project against assured return as promised by the respondent at the time of collecting money from the complainants since the year 2020. The assured return was promised till possession is handed over to the complainants, but failed.
 - III. That the complainant had already paid huge amount of Rs.79,99,920/- to the respondent on the pretext and hope of receiving the pending assured return as promised and befooled by respondent, time and again whenever enquired by the complainants.
 - IV. That the complainants pressed for agreement to sell to be executed with all promise in text as they were merely promised orally by the respondent till then. Such one-sided agreement to sell were sent in

duplicate to the complainant to sign and dispatch back to the respondent. Seeing such one-sided agreement, the complainant refused to sign them and asked respondent to refund the amount back to them along with interest as safeguarded by the RERA act itself.

- V. That the respondent be directed to refund the amount paid along with interest from the date of such amounts paid to the respondent immediately.

C. Relief sought by the complainants

4. The complainants have sought following relief(s).

I. Direct the respondent to refund the entire paid-up amount along with interest.

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 vide its reply dated 09.05.2025 has contested the complaint on the following grounds: -

- i. That the complainants, along with Yug Lochab had approached the respondent expressing an interest for the purchase of a commercial unit in one of the commercial project to be developed being "Elan Mercado", situated in Sector-80, Gurugram.
- ii. That after being fully satisfied with all aspects of the unit/project and payment plans offered by the respondent, the allottees made an application for booking a serviced apartment in the said project.
- iii. That the allottees were called upon to execute the buyer's agreement in the standard format of the respondent company. However, the allottees delayed the matter on one pretext or the other and also

refrained from payment of sale consideration as per the applicable payment plan. By letter dated 18.10.2022, the allottees were informed about receipt of the occupation certificate from the competent authority, the allottees were called upon to make pending payment within 15 days from the said letter to complete the booking/allotment formalities for taking over possession of the unit, along with other charges/stamp duty/fees/cesses including common area maintenance charges. Since the allottees failed to comply with the aforesaid letter, by letter dated 21.11.2022, the allottees were reminded to clear their pending payments as communicated by letter dated 18.10.2022. The allottees were further informed that if the pending payment was not received by 28.11.2022, the allotment in their favour was liable to be cancelled by the respondent. Since, the allottees did not clear their pending dues by 28.11.2022, the allotment in their favour stood cancelled on 28.11.2022.

- iv. That thereafter, the complainants requested the respondent to allot the unit, i.e. SA -711 located on the 7th floor of the project, in favour of the complainants only without Yug Lochab as one of the allottees.
- v. That the respondent called upon the complainants to execute a fresh application form. Accordingly, application form dated 10.12.2022 was executed and submitted by the complainants. The complainants had booked the unit after making independent enquiries and fully satisfying themselves regarding the viability and suitability of the aforesaid project as per their needs and had opted for the payment plan annexed with allotment letter and the buyer's agreement. The terms and conditions forming part of the application form were duly understood and accepted by the complainants. Thereafter, the complainants were allotted services apartment /unit with carpet area

- admeasuring 307.47 sq. ft. (720 sq. ft. super area) bearing unit No. SA-711, 7th Floor by the respondent.
- vi. That the respondent requested the complainants to return the copies of the buyer's agreement that had been sent to them for execution after executing the same. However, the complainants kept delaying the matter on one pretext or the other.
 - vii. That construction at site is complete and the respondent applied for grant of occupation certificate before Town and Country Planning Department Haryana and occupation certificate was issued by the competent authority on 17.10.2022.
 - viii. That after receipt of occupation certificate vide offer of possession letter dated 19.06.2024, the respondent offered possession of the unit to the complainants. The respondent called upon the complainants to clear their outstanding dues as per the attached statement and to take possession of the unit. However, the complainants failed to do so and hence various reminders dated 17.06.2024, 06.08.2024, 05.10.2024 & 26.10.2024 were issued by the respondent.
 - ix. That under the circumstances, the respondent was constrained to issue a pre cancellation letter dated 10.12.2024 and later also issued a reminder to pre-cancellation letter dated 04.01.2025. However, the complainants continued to ignore the communication addressed to them by the respondent.
 - x. That instead of coming forward to fulfill their contractual obligations and take possession of the unit, and get the conveyance deed registered in their favour, after fulfilling all the procedural formalities and clearing outstanding dues, rather the complainants have filed the present false and frivolous complaint. The respondent has duly completed its contractual obligations towards the complainants. The

unit/project is completed in all respects. The respondent is also in receipt of the completion certificate dated 31.01.2025 from the competent authority.

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 refund the entire paid-up amount along with interest.

11. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest from the date of payment until realization under Section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

“Section 18: - Return of amount and compensation

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

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

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

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

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

(Emphasis supplied)”

12. **Admissibility of refund along with prescribed rate of interest:** The complainants/allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under Rule 15 of the Rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such

benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

13. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
14. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.04.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
15. In the instant case, vide allotment letter dated 27.02.2024, a ready to move-in unit bearing no. SA-711, 7th floor was allotted to the complainants as the Occupation Certificate for the project in question had already been obtained by the respondent from the competent authority on 17.10.2022. Thereafter, vide offer of possession letter dated 19.06.2024, the possession of the unit was offered to the complainants by the respondent subject to payment of outstanding dues. However, the complainants defaulted and have filed the present complaint seeking refund under Section 18(1) of the Act on 14.11.2024.
16. The Authority observes that Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. Further, the right under Section 18(1)/19(4) of the Act, 2016 accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. This is a case where the promoter has already completed the project and after obtaining occupation certificate

has also offered possession of the unit to the complainants on 19.06.2024. However, the complainants now do not wish to continue with the project and are seeking refund of the amount paid. Now, when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the Section 18 of the Act. Further, Section 19(10) of the Act obligates the allottee to take possession of the unit within a period of two months from the date of issuance of occupation certificate. Therefore, in this case, refund can only be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

17. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.39,99,920/- after deducting 10% of the sale consideration of Rs.78,91,920/- being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of filing of complaint i.e., 14.11.2024 till actual refund of

the amount within the timelines provided in Rule 16 of the Haryana Rules 2017.

18. Out of the amount so assessed, the amount paid by the respondent on account of assured return, if any, against the subject unit shall be adjusted/deducted from the refundable amount.

G. Directions of the authority

19. 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 refund the paid-up amount of Rs.39,99,920/- after deducting 10% of the sale consideration of Rs.78,91,920/- being earnest money along with an interest @10.80% p.a. on the refundable amount, from the date of filing of complaint i.e., 14.11.2024, till actual refund of the amount.
- ii. Out of the amount so assessed, the amount paid by the respondent on account of assured return, if any, against the subject unit shall be adjusted/deducted from the refundable amount.
- iii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

20. Complaint stands disposed of.

21. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2026