BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Date of order: 14.08.2026

Name of the Promoter		M/s Elan Limited	
Project Name		Elan Epic	
S.no.	**Complaint No.**	**Complaint title**	**Attendance**
1.	CR/6730/2025	Dinesh Kumar Jaiswal V/s M/s Elan Limited	Gaurav Bhardwaj (Complainant) Ishaan Dang (Respondent)
2.	CR/537/2026	Priyanka Dayal, Priyansha Jayaswal and Premlata V/s M/s Elan Limited	Gaurav Bhardwaj (Complainant) Ishaan Dang (Respondent)

CORAM:	
Arun Kumar	Chairman

ORDER

1. This order shall dispose of both the complaints titled above filed before this Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Elan Epic, Sector- 70, Gurugram, Haryana being developed by the

respondent/promoter i.e., M/s Elan Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver possession of the units in question as per the agreement thus seeking refund of the amount paid along with interest.

3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Elan Epic", Sector- 70, Gurugram, Haryana.
Project area	3.525 acres
Nature of the project	Commercial colony
DTCP license no. and other details	148 of 2008 dated 02.08.2008 Valid up to- 01.08.2020 (Transferred from Koshi Builders Pvt. Ltd. and Change in Developer from Unitech Ltd. on 23/10/2018) Licensee- M/s Elan Ltd.
RERA Registered/ not registered	Registered vide no. 30 of 2018 dated 06.12.2018 Valid up to 31.12.2023
Occupation certificate	31.10.2023
Possession clause	***7.Possession of the Unit:*** ***The Promoter/Developer proposes to hand over 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.*

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	BBA	Due date of possession	Total sale consideration and Total amount paid by the complainant	Relief sought
1.	CR/6730/2025 Dinesh Kumar Jaiswal V/s M/s Elan Limited **DOF:** 12.01.2026 **RR:** 27.03.2026	KIOSK 45, Second floor (Food Court), 558 sq. ft. (super area) (page 42 of complaint) 522 sq. ft. (revised area) (as per letter of offer of possession for fit out page 75 of complaint)	18.02.2020 (page 44 of complaint)	18.02.2025 (calculated from the date of buyer's agreement including grace period of 12 months as per the possession clause)	**TC:** Rs.85,21,690/- (page 68 of complaint) **AP:** Rs.86,68,542/- (page 78 of complaint)	Refund along with prescribed rate of interest
2.	CR/537/2026 Priyanka Dayal, Priyansha Jayaswal and Premlata V/s M/s Elan Limited **DOF:** 10.02.2026 **RR:** 20.03.2026	KIOSK 59, Second floor (Food Court), 572 sq. ft. (super area) (page 51 of complaint) 527 sq. ft. (revised area) (as per letter of offer of possession for fit out page 97 of complaint)	18.02.2020 (page 58 of complaint)	18.02.2025 (calculated from the date of buyer's agreement including grace period of 12 months as per the possession clause)	**TC:** Rs.87,31,609/- (page 80 of complaint) **AP:** Rs.90,75,750/- (page 101 of complaint)	Refund along with prescribed rate of interest

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
RR	Reply received by the respondent
TC	Total consideration
AP	Amount paid by the allottee/s

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case ***CR/6730/2025*** titled as ***Dinesh Kumar Jaiswal V/s M/s Elan Limited*** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

5. 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	148 of 2008 dated 02.08.2008
	valid up to	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.	Unit no.	KIOSK 45, Second floor (Food Court) (page 42 of complaint)
6.	Unit admeasuring	558 sq. ft. (super area) (page 42 of complaint) 522 sq. ft. (revised area) (as per letter of offer of possession for fit out page 75 of complaint) Change in area: 66 sq.ft. reduction 6.66 %
7.	Provisional allotment cum Demand Letter	20.03.2019 (page 42 of complaint)
8.	Unit Buyer agreement	18.02.2020 (page 44 of complaint)
9.	Possession Clause	***7.Possession of the Unit:*** ***The Promoter/Developer proposes to hand over 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.*
10.	Terms and conditions for booking for unit no. KIOSK 45 letter dated	31.03.2022 *"Based on mutual discussion and various meetings held between us, Elan Limited agrees and undertakes to provide the applicant discount equivalent Rs.37/- per sq. ft. per month of super area till the date of offer of possession by the company on the booking of Unit no. KISOK 45 on Second floor in Elan Epic on receipt of an advance amount of Rs.20,00,000/- from the future dues of the aforesaid unit in Elan Epic* ***The said discount shall be adjusted against the demand due 'On offer of possession" as per the payment plan opted by the applicant and accordingly the Sales Consideration shall get revised."*** (page 100 of reply)
11.	Due date of possession	18.02.2025 (calculated from the date of buyer's agreement including grace period of 12 months as per the possession clause)
12.	Payment plan	On application of booking: 9% of BSP Within 45 days of booking: 31% of BSP On casting of ground floor slab:100% PLC

		On offer of possession: 30% of BSP + 100% of IFMS Charges and other charges
13.	Total sale Price	Rs.85,21,690/- (page 68 of complaint)
14.	Amount Paid	Rs.86,68,542/- (page 78 of complaint)
15.	Letter of offer of possession for fit out and payment dues of Rs.2,08,873/-	01.07.2023 (page 76 of complaint)
16.	Intimation regarding grant of OC	03.11.2023 (page 115 of reply)
17.	Occupation certificate	31.10.2023 (page 112 of reply)
18.	Completion certificate	20.12.2024 (page 117 of reply)

B. Facts of the complaint

6. The complainant has made the following submissions in the complaint: -

I. That the respondent advertised about the launch of its new commercial project namely "Elan Epic" located in Sector-70, Gurugram, Haryana. The said respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project will be an ultimate retail cum commercial center specifically designed to provide best in class shopping experience. These promises were advertised as part of the projects allure to prospective buyers and were instrumental in influencing their decision to invest.

II. That accordingly, the respondent on 04.02.2019 sent an allotment letter allotting a unit bearing no. KIOSK 45, in Food Court on 2nd floor admeasuring carpet area 98 sq. ft. and super area 558 sq. ft. in the project in question. The said unit was booked against the total sale consideration of Rs.8,521,690.00/-. Subsequently, the respondent demanded from the complainant to clear the payment of Rs.2,999,786/- including applicable GST on or before 21.03.2019 as per the letter dated 04.02.2019.

III. That subsequently, the builder-buyer agreement dated 18.02.2020 which was executed on 04.02.2019 has been executed in favour of the complainant. It is pertinent to mention that respondent undertook to hand over the possession within a period of 48 months from the date of this agreement.

IV. That subsequently on 03.07.2023, the respondent sent a verification email to the complainant, purporting to confirm the booking details of the unit in question in the said project including inter alia "Offer of Possession for fit-outs and payment of dues". It is further submitted that at the time of execution of the Buyer's Agreement (BBA), the super area of the unit allotted to the complainant was expressly represented, agreed and recorded as 558 sq. ft. However, to the utter shock and surprise of the complainant, upon receipt of the provisional allotment letter, it was revealed that the super area of the said unit had been unilaterally reduced to 522 sq. ft. without any prior notice, intimation, disclosure or explanation whatsoever, and without obtaining the consent or permission of the complainant. Such arbitrary and unilateral reduction in the super area amounts to a clear breach of the terms of the BBA, deficiency in service, and an unfair trade practice, causing serious prejudice and financial loss to the complainant.

V. That believing the false assurances and misleading representations of the respondent in their advertisements and relying upon the goodwill of the respondent company, the complainant booked a unit by making total payment of Rs.90,65,011/-.

VI. That the respondent, in its letter dated 01.07.2023, had acknowledged and reflected a discounted amount of Rs. 2,83,470/- as payable to the complainant. However, despite such acknowledgment, the respondent has failed, neglected, and deliberately omitted to refund the said amount to the complainant till date, thereby causing further financial loss and hardship to the complainant.

VII. That subsequently on 23.05.2024 and 24.05.2024 through an email the complainant raised concerns to the unilateral and unauthorized change in the layout, location and numbering of the allotted commercial units without his knowledge or consent to the respondent, expressly raising serious objections and concerns. The complainant categorically protested against the illegal and arbitrary act of the respondent in unilaterally altering the location, layout and identity of the booked units, thereby materially changing the very basis on which the complainant had invested his hard-earned money.

VIII. That the complainant made it abundantly clear that such unilateral changes were wholly impermissible, unacceptable and constituted a serious breach of the builder-buyer agreement as well as a gross deficiency in service and unfair trade practice. Despite such an unequivocal objection raised as early as on 23.05.2024 and 24.05.2024, the respondent failed and neglected to revert the units to their original allotted location/layout or to offer any satisfactory resolution, thereby compelling the complainant to ultimately seek refund with interest and compensation.

IX. That on 06.06.2024 the complainant discovered further material and unauthorized alterations in the sanctioned layout plan expressly raising serious objections and concerns with respect to the fact that the respondent/builder had illegally sold out and encroached upon the common passage/corridor existing between his allotted units.

X. That subsequently on 17.12.2024, the complainant, after discussions and assurances extended by the senior officials of the respondent during the preceding months, and in a bona fide effort to amicably resolve the long-pending disputes relating to his commercial units KIOSK-45, expressly conveying that he had once again reposed faith and trust in the respondent and was willing and ready to resolve all outstanding issues amicably.

XI. That despite the complainant having repeatedly shown good faith, renewed his trust in the respondent, no passage has been restored. by giving false hopes and hollow promises over several months, the respondent has deliberately misled the complainant, caused him severe financial loss and mental harassment, and placed him in an utterly prejudicial position, leaving him with no option except to refund of his entire amount along with interest and compensation.

XII. That on 18.12.2024 the respondent tendered an unconditional apology for the earlier lapses and deficiencies, expressly admitted the inconvenience caused to the complainant, and once again gave firm reassurances that all previous issues.

XIII. That the respondent further assured the complainant of its commitment to redress all his genuine concerns on priority, requested him to continue reposing faith in the company. Despite these fresh apologies and categorical reassurances extended as late as on 18.12.2024, the respondent has till date failed to take even a single corrective step, thereby rendering the said assurances wholly false, misleading and malafide.

XIV. That subsequently on 02.07.2025 the complainant, being under acute financial distress and mental agony, addressed yet another email to the respondent highlighting his precarious condition and inter-alia stating that he was solely dependent upon the promised 12% assured return to run his household and maintain his family, that the respondent had stopped payment of the said assured return after may 2023 without any prior intimation, thereby pushing him to the verge of starvation, that the respondent had repeatedly committed and assured (i) payment of 12% assured return from the date of agreement, (ii) leasing of the units within three months of completion, (iii) restoration/removal of the illegally sold passage, and (iv) delivery of possession in the original layout, but had miserably failed to fulfil even a single promise despite lapse of several years. The complainant further pointed out that when he personally met the authorised representatives and senior management of the respondent, various excuses were given for non-leasing of his food-court units, but after lapse of more than two years since the project became ready, such explanations clearly appeared to be nothing but a big failure and deliberate excuse on the part of the respondent to avoid its contractual obligations. The complainant once again begged for immediate resumption of the monthly assured return @12%, emphatically stating that the said amount was now critically required to run his household and that its continued non-payment had caused him unimaginable financial stress and hardship.

XV. That the respondent response dated 07.07.2025 came as a shock and betrayal to the complainant who had reposed complete faith in the respondent's repeated oral and written assurances over the years. By blatantly denying its own admitted commitments and shifting the entire blame upon the complainant, the respondent not only committed a fraudulent breach of trust but also resorted to coercive tactics, leaving the complainant stunned, helpless and with no option except to seek immediate refund of his entire principal amount along with interest and compensation.

XVI. That on 17.07.2025 the complainant, completely frustrated and financially ruined by the respondent's continuous betrayal, again sent an email to the respondents wherein he categorically recorded that he had booked the food-court units solely on the strength of the respondent's repeated written and oral commitments of payment of 12% absolute assured return from day one, complete leasing of the units by the respondents itself within three months of project completion, and delivery of possession in the exact location and layout shown at the time of booking; that despite lapse of almost seven years, the units remained completely un-leased, unidentifiable and unlocatable in the food court, the common passage between KIOSK-45 had been illegally sold and blocked, the 12% assured return had been abruptly stopped after May 2023 without any intimation thereby pushing his family into starvation, and that leasing was never the complainant's responsibility but the sole obligation of the respondent which had repeatedly boasted of tie-ups with reputed brands; that repeated excuses given by the respondent's, whenever he visited their office were nothing but a complete failure and deliberate pretext to evade liability; and that he desperately required immediate resumption of the monthly 12% assured return as it was the only source of income for running his household. By this email dated 17.07.2025 the complainant gave the respondent a final opportunity to honour its commitments failing which he clearly warned of legal action, yet the respondent neither responded nor took any corrective step, thereby compelling the complainant to seek refund of his entire invested amount along with interest and compensation.

XVII. That throughout the entire correspondence spanning over two years, the respondent has adopted a uniform and malafide practice of giving only one evasive reply to each and every genuine grievance and reminder raised by the complainant through multiple emails including those dated 23.05.2024, 06.06.2024, 02.07.2025, 17.07.2025, 30.07.2025, 01.11.2025.

XVIII. That the false assurances were extended to the complainants by the representatives of the respondent. Despite the lapse of a reasonable period, no communication or solution to the concerns raised by the complainant was given by the respondent, thereby demonstrating a clear deficiency in service and breach of trust. Such deliberate inaction reflects gross misconduct on the part of the respondent, causing the complainants to suffer both financially and mentally.

XIX. That the complainant, having booked the unit in question in the said project as evidenced by the allotment letter and receipts dated 04.07.2023 reflecting payments totaling Rs. 90,65,011/- seeks refund within the stipulated period.

XX. That the respondent's blatant disregard for the complainant request, wherein the complainant cited various grievances and issues, the respondent failed to acknowledge, process, or revert to said request despite explicit assurances in their email. That the internal team would contact the complainant on priority; this deliberate inaction, persisting as of the current date, has caused undue financial hardship and mental distress to the complainant, who remains burdened with the withheld sum of Rs.90,65,011/- without any resolution, thereby violating principles of consumer protection and entitling the complainant to punitive damages in addition to the full refund with interest.

C. Relief sought by the complainant

7. The complainant has sought following relief(s).

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

8. 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

9. The respondent vide its reply dated 27.03.2026 has contested the complaint on the following grounds: -

i. That the complainant had approached the respondent for booking of unit bearing no. Kiosk-45 located on the Second Floor in the commercial project 'Elan Epic', Sector-70, Gurugram, Haryana. 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 commercial 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 their favour shall take effect only upon execution of the buyer's agreement.

ii. That pursuant to the application dated 01.02.2019 and the same being considered by the respondent, and on the assurances of the complainant to remain bound by his contractual and financial obligations, unit No. Kiosk-45 located on the Second Floor of the project, admeasuring 558 sq. ft. of super area approx. was provisionally allotted for total consideration amounting to Rs.85,21,690/- vide allotment letter dated 04.02.2019 issued by the respondent in favour of the complainant. As per the payment plan specifically opted by the complainants, 9 % of the sale consideration was payable at the time of booking, 31% of the sale consideration was payable within 45 days of booking, 100% of PLC was payable on casting of ground floor slab, 30% of the sale consideration was payable on completion of super structure/terrace slab and the remaining 30% of the sale consideration was to be paid on offer of possession. Furthermore, 100% of IFMS and other charges including but not limited to EDC/IDC, car parking usage rights etc. apart from stamp duty, registration charges, administrative charges, interest on delayed payments (if any) and other charges payable under the buyer's agreement were also to be paid by the complainant on offer of possession. Subsequent to the issuance of the provisional allotment letter on 04.02.2019, the buyer's agreement was willingly and consciously executed by the complainant after duly understanding and accepting the terms and conditions thereof on 04.02.2019.

iii. That as part of further agreed arrangement and understanding it is pertinent to mention that the respondent vide its letter dated 26.02.2019 had agreed to pay to the complainant a down payment discount equivalent to Rs. 1296/- per sq. ft. totaling to Rs.7,23,168/- in 24 equal monthly installments (subject to deduction of applicable taxes). Furthermore, the respondent also agreed that in case of any delay after expiry of 24 months, in that event the respondent would pay a delay penalty of Rs. 54/- per sq. ft. (only in the event of the project being getting delayed). It is submitted that the respondent has already paid an amount of Rs.22,35,105/- towards the fixed return and delay penalty charges to the complainant as per the agreed understanding.

iv. That as a part of the agreed arrangement and understanding, it was further stipulated in the said letter that the complainant shall abide by the payment plan opted by him. It is further clarified in the said letter that in case there is any delay on the part of the complainant to pay any instalment to the respondent then the respondent shall be entitled to first adjust the accumulated interest and then consider the balance amount as installment money and also to stop further payment of the down-payment amount and/or delay penalty amount to which the complainant shall have no objection. It is expressly stated in the aforesaid letter that the super area of the unit in question may vary up to the extent of +/-15% at the time of offer of possession and the complainant gave his unconditional consent to pay the excess amount towards the consideration due to any such upward revision in the super area. The complainant further agreed and appended his signatures duly accepting the terms and conditions as stated therein including the condition that the complainant shall have no right to raise any objection, dispute, claim with respect to area and consideration on account of revision.

v. That the complainant without any demur and protest and after having thoroughly scrutinized the terms and conditions and implication thereof has duly accepted the terms and conditions incorporated in the letter, referred to above and undertook to remain bound by the same. The complainant also declared that he has been absolutely and completely uninfluenced by any other source, person and material and has relied upon his own calculated and deliberated judgment. In fact, the complainant has accepted the down payment discount, referred to above, in pursuance of the letter dated 26.02.2019. As such, the complainant is estopped from challenging the variation in the super area of the unit in question especially after obtaining the down payment discount and also having enjoyed the benefits thereof and also having scrutinized the terms and conditions and having declared and undertaken to remain bound and abide by the said terms and conditions.

vi. That the buyer's agreement was forwarded to the complainants for execution on 19.12.2019. The complainants were called upon to execute both copies of the buyer's agreement and return the same to the respondent for execution. However, the complainants failed to do the needful and accordingly, reminder dated 21.12.2020 was issued to the complainants to execute the buyer's agreement and come forward for its registration and to pay the applicable registration fee, administrative expenses etc. as mentioned in the said letter and also as was agreed to by the complainants as a part of their agreed contractual obligations. However, despite receipt of the said letter and further follow ups through various modes and means, the complainants did not execute the buyer's agreement for reasons best known to themselves and accordingly, the complainants were in breach of their agreed contractual obligations.

vii. That it is submitted that the contentions of the complainant regarding the so-called assured return are misleading, unfounded, baseless and unsustainable in law and on facts, having regard to the arrangement and understanding as set out in the letter dated 26.02.2019 which has been duly accepted without any condition and without any objection and the complainant has already enjoyed the benefits thereof.

viii. That in furtherance of earlier executed and entered upon contractual documentation and the benefits thereof having been extended by the respondent to the complainant, as a part of further deliberations between the complainant and the respondent, the respondent vide its letter dated 31.03.2022, to the complainant further agreed to provide a discount of Rs.37/- per sq. ft. per month of super area of the unit till the date of offer of possession only upon the complainant making an advance payment for an amount of Rs.20,00,000/- from the future dues pertaining to the unit in question. It is further expressed in the said letter that the discount offered by the respondent shall be adjusted against the demand due on "Offer of Possession". It is clarified that in so far as the arrangement and understanding as offered by the respondent and as accepted by the complainant without any demur, protest or objection, it was a clear and express understanding that the offer of possession shall not be dependent on grant of occupation certificate and/or completion certificate and the respondent shall stand discharged of its liability/ obligation as stipulated/ undertaken in the aforesaid letter after submitting the application for occupation certificate for the project to the competent authority. Therefore, the arrangement and understanding between the complainant and the respondent was without any confusion and the complainant had duly accepted the same by appending his signatures on the said letter 31.03.2022.

ix. That moreover, the respondent had offered possession for fit out of the unit to the complainant vide letter dated 01.07.2023 and the same is a matter of record. It was also indicated in the said letter that the super area of the unit in question was revised from 558 sq. ft. to 522 sq. ft. in accordance with the buyer's agreement as well as letter dated 26.02.2019, referred to above. Such revision in the area is admittedly as per the overall arrangement and understanding as agreed between the complainant and the respondent and the complainant is estopped from raising objections in respect thereof at this belated stage.

x. That the respondent further intimated to the complainant that an amount of Rs. 2,08,873/- was due and payable by the complainant at that time. The complainant was called upon to make payment of the outstanding dues as set out in the enclosed statement of account on or before 22.07.2023 and obtain possession of the unit after completing all the procedural formalities. The complainant was further informed that in the event of failure to pay the outstanding amount within the stipulated time then the same shall be payable along with delayed payment charges in accordance with the application form/buyer's agreement. However, the complainant consciously delayed the matter without there being any cogent or plausible explanation for the same.

xi. That the Occupation Certificate in respect of the project was duly granted and issued by the competent authority vide letter dated 31.10.2023. In furtherance thereof, the complainant was duly informed of receipt of the occupation certificate vide its letter dated 03.11.2023, Thereafter, in due course, the respondent further applied to and has received completion certificate bearing Memo no. LC-1851-II-JE(RK)/2024/40748 dated 20.12.2024 issued by the Competent Authority i.e. DTCP.

xii. That as far as the contention of the complainant regarding refund of his amount is concerned, it is submitted that the complainant has availed and appropriated delay penalty charges from the respondent and hence, cannot therefore seek/demand refund of his entire amount. It is noteworthy that the complainant at the time of receipt of the delay penalty charges did not raise any objection/protest and/or made any claim seeking refund of the amount paid by him and is therefore estopped from disputing/agitating upon the same at this belated stage when the respondent has already discharged its contractual and financial obligations. The complainant cannot be legally permitted to whimsically and unilaterally withdraw from the project at this belated stage after having availed and appropriated the financial benefits thereof. It is submitted that after enjoying the financial benefits, the complainant cannot go back and fail to comply with and perform his part of the contract.

E. Jurisdiction of the authority

10. 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

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

11. 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;.*

12. 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 complainant.

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

13. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of

subject unit along with interest 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)"*

14. **Due date of possession:** Clause 7 of the buyer's agreement dated 18.02.2020 provides for handing over of possession and is reproduced below:

> *"**7.Possession of the Unit:***
> ***The Promoter/Developer proposes to hand over 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."*

15. As per clause 7.1 of the unit buyer agreement dated 18.02.2020, the respondent/promoter undertook to handover possession of the unit to the complainant 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 18.02.2025.

16. **Admissibility of refund along with prescribed rate of interest:** The complainant/allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.*

17. 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.

18. 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., 14.08.2026 is **8.80%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%.**

19. In the instant case, the unit was allotted to the complainant vide unit buyer agreement dated 18.02.2020 and the due date for handing over for possession was 18.02.2025. The occupation certificate was received on 31.10.2023 and thereafter, vide intimation regarding occupation certificate letter dated 03.11.2023, the possession of the unit was offered to the complainant by the respondent. However, the complainant

surrendered the unit in question and sought refund of the paid-up amount along with interest vide filing of present complaint dated 12.01.2026.

20. 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 complainant on 03.11.2023. However, the complainant now does not wish to continue with the project and is 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"

21. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.86,68,542/- after deducting 10% of the sale consideration of Rs.85,21,690/- 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., 12.01.2026 till actual refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017.

22. The respondent/promoter vide its reply has contended that it has already paid an amount of Rs.22,35,105/- towards the fixed return and delay penalty charges to the complainant as per the agreed understanding. The complainant cannot be legally permitted to whimsically and unilaterally withdraw from the project at this belated stage after having availed and appropriated the financial benefits thereof. However, it is evident from the statement of account annexed with the reply (page 105 of reply) that the respondent has not, in fact, made any payment to the complainant towards delay penalty. Rather, the said amount towards delay penalty has been adjusted by the respondent against the outstanding dues of the complainant. As far as the contention of the respondent regarding fixed return is concerned, the Authority finds that the issue stands squarely covered by the judgment/order dated 18.05.2026 passed by the Hon'ble Appellate Tribunal in **Appeal No. 677 of 2024, titled *Alok Gupta v. M/s Advance India Projects Ltd.***, wherein the Hon'ble Tribunal, while considering an analogous issue, observed as under:

7. It is evident from the record that the appellant/allottee failed to adhere to the payment schedule under the Builder Buyer Agreement dated 04.11.2017 and *did not make payments towards the outstanding dues. The material on record shows that the respondent-promoter issued several reminders, still the appellant-allottee remained in default. Consequently, the respondent/promoter issued a pre-termination notice dated 07.06.2021 and thereafter cancelled the allotment of the subject unit vide letter dated 24.08.2021.* ***The Authority, after considering rival contentions, came to the conclusion that the appellant-allottee was entitled to refund subject to deduction of 10% of the sale consideration. There is no infirmity with this direction. However, the Authority erred in holding that the amount of assured returns already remitted to the appellant-allottee be adjusted against the refundable amount. This direction cannot be sustained as the grant of assured returns arises from the contractual arrangement between the parties and the respondent-promoter is legally bound to honour such contractual commitments. Clauses in the agreement are considered valid contractual obligations and failure to honour the same, constitutes the breach of contract. The appellant-allottee would have vested right over the assured returns remitted to him, thus, deducting the same from the refundable amount would not be justified. Finding of the Authority to this extent is set aside. Similar is the view taken in Appeal No. 509/2020 titled "Arvind Kumar Gautam and Dr. Renu Gautam vs. UP Real Estate Regulatory Authority and Omaxe India Trade Center Pvt. Ltd." by The Uttar Pradesh Real Estate Appellate Tribunal.***

23. In view of the aforesaid facts and circumstances and authoritative pronouncement of the Hon'ble Appellate Tribunal, the said contention of the respondent/promoter is declined.

G. Directions of the authority

24. 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.86,68,542/- after deducting 10% of the sale consideration of Rs.85,21,690/- being earnest money along with an interest @10.80% p.a. on the refundable amount, from the date of filing of complaint by the allottee i.e., 12.01.2026, till actual refund of the amount.

ii. 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.

25. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

26. Complaints stand disposed of.

27. Files be consigned to registry.

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.08.2026