

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

Complaint no. : 2360 of 2025
Date of complaint : 09.05.2025
Date of order : 19.05.2026

Sushila Devi and Mukesh Aggarwal,
Both R/o: - F-1/80, Sector-16, North West
Delhi, Rohini, Delhi- 110089.

Complainants

Versus

M/s Elan Limited
Having Regd. Office at: 15th Floor, Two
Horizon Centre, Golf Course Road, DLF Phase 5,
Sector-43, Gurugram.
Also at: 3rd Floor, Golf View Corporate Tower,
Golf Course Road, Sector 42, Gurugram.

Respondent

CORAM:
Arun Kumar

Chairman

APPEARANCE:
P.K Pandey (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 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.	TF-010, Third floor (As per page no. no. 66 of reply)
7.	Unit area admeasuring	621 sq. ft. (super area) (As per page no. no. 66 of reply) Decrease in area- 611 sq.ft. (super area) (As per page no. 76 of complaint)
8.	Date of provisional booking	02.03.2020 (As per page no. 26 of the complaint)
9.	Provisional allotment cum demand letter	19.12.2019 (As per page no. 66 of reply)
10.	Date of unit buyer's agreement	Not executed
11.	Due date of possession	31.12.2023 (the project completion date as declared by the promoter while registering the project with the Authority)
12.	Total sale consideration	Rs.1,05,06,775/- (As per page no. 66 of the reply)
13.	Amount paid by the complainant	Rs.50,28,393/- (As per cancellation letter at page no. 84 of the complaint)

14.	Offer of possession for fit-outs and for payment of dues	01.07.2023 (As per page no. 103 of the reply)
15.	Reminders letters	24.07.2023, 18.08.2023, 07.09.2023 & 25.09.2023 (page 107-110 of reply)
16.	Pre-cancellation letter	12.10.2023 (As per page no. 115 of the reply)
17.	Occupation certificate	31.10.2023 (As per page no. 111 of the reply)
18.	Intimation of obtaining of occupation certificate with request for payment of outstanding dues	03.11.2023 (As per page no. 114 of the reply)
19.	Cancellation letter	16.11.2023 (As per page no. 116 of the reply)
20.	Completion certificate	20.12.2024 (As per page no. 121 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
- I. That the complainants on, 09.12.2019, booked a commercial unit in the project named "Elan Epic" of the respondent situated at Sector-70 Gurugram, Haryana by making a payment of Rs.2,00,000/- as booking amount duly acknowledge by the respondent. Thereafter, parties executed the provisional booking agreement dated 02.03.2020. The complainants were allotted commercial unit bearing unit No. TF-010 (Café) on third floor admeasuring approx. 621 sq. ft. (super area) as well as 280 sq. ft. (carpet area) in the said project.
 - II. That the after the booking of the said unit complainants/allottees has paid more than the payment plan opted-special payment plan mentioned in the paragraph 2 of M.O.U/provisional booking agreement dated 02.03.2020. It is submitted that the allotment of above said unit was made in respect

- of complainants/allottees at the rate of Rs.15,000/- per square feet of basic sale price and PLC (Preferential charge was fixed) at rate of 7.5% of basic sale price.
- III. That as per the payment plan opted and agreed by the parties, it was agreed that cumulatively 40 % of basic sale price ("BSP") and 100 % of preferential location charge ("PLC") was to be paid within 12 months from date of booking by complainants/allottees. It is submitted that that complainants/allotees within period of one year i.e. 12 months paid the sum of amount Rs.50,97,497/-
 - IV. That the respondent had not provided receipt all the payments being made by the complainants.
 - V. That at the time of execution of M.O.U/provisional booking agreement, respondent assured the complainant to execute the builder buyer agreement ("BBA")/agreement to sell within the period of two-three months. Thereafter, lockdown was imposed pursuant to Covid-19 pandemic disease and when restrictions was eased down i.e. in month of November-2020, complainants/allottees approached the respondent regarding the execution of BBA/agreement to sell, the respondent before executing the BBA/Agreement to sell issued a demand letter dated 17.11.2020 sought the sum of an amount Rs.13,22,017/- from complainants/allotees.
 - VI. That upon receiving the demand letter of respondent, complainant/allottees immediately pay the amount as asked by respondent on 23-24 and 28 November 2020. That after making the payment as per demand letter of respondent, complainants/allotees asked about the execution and registration of BBA/agreement to sell of the said unit. The respondent sought some time to execute the same.

Thereafter, complainants/allotees repeatedly approached the respondent for execution and registration of BBA/agreement to sell.

- VII. That in response to repeated enquiry of complainants/allotees, respondent on 21.12.2020 issued false and bogus reminder letter to complainants for execution and registration of agreement to sell of the said unit. In response to the said letter complainants/allotees contacted and visited the office of the respondent and signed the BBA/agreement to sell on 24.12.2020. The officials of complainants asked them that they will intimate the complainants after getting the appointment from sub-register for registration of the said agreement to sale. Thereafter, complainants number of times contacted the officials of respondent and middleman/agent enquiring the further steps for registration of BBA/Agreement to sell, but they buying time on pretext of second wave of Covid-19 and lockdown in year 2021.
- VIII. That when normalcy began after second lockdown complainants/allotees again approached and requested for registration, they denied to get the BBA/Agreement to sell registered on pretext or other and even they did not provide the original set of signed BBA/agreement to sell to complainant, despite their request. Upon the numerous request they finally in month of January 2023, provided the photocopy of BBA/agreement to sell. Till date, they had not neither executed nor registered the BBA/agreement to sell nor provided the complete copy of signed BBA/Agreement to sell.
- IX. That further, on perusal of the said agreement to sell/BBA contained various one sided and arbitrary clause, yet the complainants could not negotiate on any of the terms, since the respondent had already collected significant amount of money from the complainants.

- X. That the said agreement did not state any specific date for possession and the respondent verbally assured that the possession of the unit would be offered in around December -2022 after three from date of booking, when the same was not adhered to, the complaints approached multiple times to respondent seeking possession of the said unit, but no avail despite the same the complainants made a total payment of Rs. 50,97,497/- to the respondent since the respondent is neither to getting the registration of agreement to sell/BBA and no possession was offered, the complaint did not make any further payments.
- XI. That the respondent issued the notice of offer of possession dated 1st July 2023 wherein the respondent requested the complainants to clear the pending dues and pay stamp duty charges totalling to Rs.67,10,050/- on or before 22.07.2023 and take the possession of the unit and subsequently further issued a reminder letter dated 24.07.2023, 18.08.2023 and 25.07.2023. It is reiterated here that since the respondent had not executed and registered the BBA/agreement to sell despite receiving the payment timely and possession was not offered as verbally assured in and around December 2022, the complainants did not make any further payment.
- XII. That the respondent issued pre-cancellation notice dated 12.10.2023 as a final opportunity to clear the pending payments. Further, the respondents issued the cancellation notice dated 16.11.2023 wherein respondent has arbitrarily stated that "the amount of Rs.29,67,253/- out of Rs.50,28,393/- paid by you stand forfeited on account of your default, and amounts of Rs. 20,61,140/- are due to be refunded to you by the company" till date even the admitted refund amount is not paid by the respondent.

- XIII. That it is submitted that till the date respondent has refunded the amount paid by the complainants and executed and registered the agreement to sale and compelled the complainants to file present complaint.
- XIV. That as per clause 8 of the provisional booking agreement dated 02.03.2020, in case the complainant fails to adhere to the terms of the notice for offer of possession, as taken place in the present case, the respondent has the right to cancel the booking of the unit and refund the total amount deposited by the complainant after deducting the earnest money of 10% of the total sale consideration.
- XV. That the complaints were left with no other option but file present complaint as respondent had neither adhered to law and to the conditions under clause 8 of the provisional booking agreement and refund the total amount deposited by the complainants after making the requisite deductibles as per the clause to no avail as no further action was even taken by the respondent in this regard.

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 24.09.2025 has contested the complaint on the following grounds: -
- i. That the complainants had approached the respondent, through their broker/agent M/s Atulyam Infratech Pvt. Ltd., expressing their interest in

booking a commercial unit in the project, "Elan Epic", in Sector-70A, Gurugram. All the relevant information and documents pertaining to the project was made available to the complainants for inspection. After being fully satisfied with all aspects of the project, the complainants had duly executed and submitted application form dated 09.12.2019 and had accepted and understood the terms and conditions forming part of the application form. The complainants 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 complainants, *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 complainants further agreed and acknowledged that the provisional allotment in their favour shall take effect only upon execution of the buyer's agreement. The booking and allotment was made by the complainants purely as an investment.

- ii. That provisional allotment letter dated 19.12.2019 was issued in favour of the complainants whereby unit No. TF-010 (CAFÉ) located on the Third Floor of the Project, admeasuring 621 sq ft of super area approx. was allotted in favour of the complainants. As per the special payment plan opted by the complainants, 9% of the basic sale price was payable at the time of booking, 26 % of the basic sale price was to be paid within 45 days of booking and 5% of the basic sale price and 100% of PLC was payable within 12 months from booking. On offer of possession, the complainants were liable to pay 60% 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, if any, and other charges payable under the buyer's agreement to be executed by the complainants.
- iii. That a letter dated 02.03.2020 was issued by the respondent to the complainants, in terms of which the respondent had agreed to pay down payment discount amounting to Rs.5,92,434/- to be disbursed in 18 equal monthly installments, subject to deduction of applicable taxes, as per the terms and conditions set out in the said letter and on the condition that the complainants shall duly abide by and adhere to the agreed terms and conditions. The respondent has paid an amount of Rs.15,80,718 /- (inclusive of TDS) as per the obligation/ liability of the respondent to the complainants in terms of the aforesaid letter dated 02.03.2020.
- iv. 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.
- v. That it is pertinent to mention herein that the timelines for delivery of possession as per the agreed terms with the complainants are to be calculated from the date of execution of the buyer's agreement. Clause 7 of the unexecuted buyer's agreement provides that subject to timely

payment of sale consideration by the complainants 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. In the instant case is an admitted position that the same was never executed and therefore, the complainants were in breach of their agreed contractual obligations.

- vi. That the respondent duly completed construction of the project in question in time and the respondent had applied for occupation certificate before Town and Country Planning, Haryana vide letter dated 25.05.2023. The complainants were informed by letter dated 30.05.2023 about the application for occupation certificate to the competent authority and were also informed that upon application for the occupation certificate, the complainants shall no longer be entitled to get any fixed amount/delay penalty/down payment rebate.
- vii. That by letter dated 01.07.2023, the complainants were offered possession of the unit for fit outs. The complainants were also informed that the super area of the unit had decreased from 621 sq. ft. to 611 sq. ft. super area and that the final dues had been calculated on the basis of the finally determined super area of 611 sq. ft. The carpet area of the unit was conveyed to be 276.74 sq. ft. The complainants were called upon to make payment of their outstanding dues as set out in the enclosed statement of account and take possession of the unit. However, the complainants did not come forward to take possession of the unit and clear their outstanding dues. Further, till the said date the complainants continued to be in breach of their agreed contractual obligations and the buyer's agreement for the unit was never executed. Hence, the respondent

- addressed reminders for possession dated 24.07.2023, 18.08.2023, 07.09.2023 and final reminder dated 25.09.2023.
- viii. That the respondent received the occupation certificate dated 31.10.2023 from the competent authority and the complainants were informed by letter dated 03.11.2023 about issuance of the occupation certificate by the competent authority. The complainants were 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.
- ix. That in the meanwhile, the complainants continued to ignore the communications sent by the respondent regarding execution/registration of the BBA and to clear their outstanding dues despite repeated reminders from the respondent and to take possession of the unit. Accordingly, the respondent was compelled to send a pre-cancellation letter dated 12.10.2023 to the complainants, giving the complainants a last and final opportunity for payment of outstanding dues and taking possession of the allotted unit.
- x. That since the complainants continued to ignore the pre cancellation notice referred to above as well as the previously issued reminders for possession and the follow ups through various modes and means, in view of the persistent, continuous and willful defaults by the complainants, including their failure to execute the buyer's agreement in the standard format of the respondent company, the respondent was constrained to proceed further and cancel the allotment in favour of the complainants under due intimation to the complainants.
- xi. That despite the complainants being in breach of their agreed contractual obligations and having not paid the agreed consideration towards the unit

in terms of the opted payment plan, the respondent has duly fulfilled its obligations towards the complainants by completing construction, obtaining the occupation certificate from the competent authority and offering possession well ahead of the agreed time lines as set out in the unexecuted buyer's agreement. The project in question stands completed and the competent authority has also issued the completion certificate in respect thereof on 20.12.2024. Despite, the complainants being in breach of their agreed contractual obligations, the respondent has duly honoured its part of agreed contractual obligations and accordingly has made payment of down payment discount in terms of the letter dated 02.03.2020. The respondent has also fulfilled its obligations in terms of the letter dated 02.03.2020 by making payment of Rs 15,80,718/- (excluding taxes) towards down payment discount, which fact has been deliberately withheld from this Authority.

- xii. That the complainants are in breach of their contractual obligations by failing to make the payments as per their opted payment plan, execute the buyer's agreement and take possession of the unit despite repeated reminders from the respondent. The complainants are willful and persistent defaulters and the allotment in their favour has been rightly cancelled by the respondent after having given reasonable opportunities to the complainants. There is no default or lapse in so far as the respondent is concerned. The false and frivolous complaint is liable to be dismissed.

E. Jurisdiction of the authority

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the relief sought by the complainants.**F.I. Direct the respondent to 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 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. **Due date of possession:** The Authority observes that in the instant case, the buyer's agreement has not been executed between the parties till date and also the timeline for delivery of possession is not available on record. In view of the above, the Authority is taking the due date of possession as the date that has been declared by the respondent/promoter for completion of project while registering the project with the Authority. The respondent while registering the project had declared the date for completion of project as 31.12.2023. Therefore, the due date of possession comes out to be 31.12.2023.

13. **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.

14. 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.
15. 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., 19.05.2026 is **8.80%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.80%**.
16. The complainants have submitted that the respondent issued the notice of offer of possession dated 1st July 2023 wherein the respondent requested the complainants to clear the pending dues and pay stamp duty charges totalling to Rs.67,10,050/- on or before 22.07.2023 and take the possession of the unit and subsequently further issued a reminder letter dated 24.07.2023, 18.08.2023 and 25.07.2023. It is reiterated here that since the respondent had not executed and registered the BBA/agreement to sell despite receiving the payment timely and possession was not offered as verbally assured in and around December 2022, the complainants did not make any further payment. The respondent issued pre-cancellation notice dated 12.10.2023 as a final opportunity to clear the pending payments. Further, the respondents issued the cancellation notice dated 16.11.2023 wherein respondent has arbitrarily stated that "the amount of Rs.29,67,253/- out of Rs.50,28,393/- paid by you stand forfeited on account of your default, and amounts of Rs.20,61,140/- are due to be refunded to you by the company" till date even the admitted refund amount is not paid by the respondent. Further, as per clause 8 of the provisional booking agreement dated 02.03.2020, in case the complainant fails to adhere to the terms of the notice for offer of possession, as taken place in the present case,

the respondent has the right to cancel the booking of the unit and refund the total amount deposited by the complainant after deducting the earnest money of 10% of the total sale consideration. The respondent has submitted that 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. However, despite receipt of the said letter, 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. By letter dated 01.07.2023, the complainants were offered possession of the unit for fit outs. The complainants were called upon to make payment of their outstanding dues as set out in the enclosed statement of account and take possession of the unit. However, the complainants did not come forward to take possession of the unit and clear their 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. Accordingly, the respondent was compelled to send a pre-cancellation letter dated 12.10.2023 to the complainants, giving the complainants a last and final opportunity for payment of outstanding dues and taking possession of the allotted unit. The respondent received the occupation certificate dated 31.10.2023 from the competent authority and the complainants were informed by letter dated 03.11.2023 about issuance of the occupation certificate by the competent authority. Since, the complainants continued to ignore the pre cancellation notice as well as the previously issued

reminders for possession and the follow ups through various modes and means, in view of the persistent, continuous and willful defaults by the complainants, including their failure to execute the buyer's agreement in the standard format of the respondent company, the respondent was constrained to proceed further and cancel the allotment in favour of the complainants under due intimation to the complainants. Vide proceedings dated 19.05.2026, the counsel for the complainants has submitted that due to ill health of the complainants and financial constraint, the complainants do not wish to continue with the project and are seeking refund of the paid-up amount with interest. The counsel for the respondent has submitted that the respondent has obtained the occupation certificate and completion certificate from the competent authority on 31.10.2023 and 20.12.2024 respectively. The fit out offer of possession was made to the complainants on 01.07.2023 with certain demands. Various reminders were sent to the complainants to make the payment but the complainants did not turn to make the payment even issuing pre-cancellation letter dated 12.10.2023 and finally the respondent cancelled the unit on 16.12.2023. Further an amount of Rs.15,80,718/- has already been paid to the complainants on account of assured return. Now, the question before the authority is whether the cancellation issued vide letter dated 16.11.2023 is valid or not.

17. On consideration of documents available on record and submissions made by both the parties, it is determined that on the basis of provisions of allotment, the complainants have paid an amount of Rs.50,28,393/- against the basic sale consideration of Rs.1,05,06,775/-. The occupation certificate for the project in question was obtained by the respondent on 31.10.2023 and thereafter intimation regarding the receipt of OC and request for payment of outstanding dues for handing over of possession was made by the respondent/promoter vide letter dated 03.11.2023. The said letter can

be termed as a valid offer of possession. Further, as per the payment plan agreed between the parties vide provisional allotment letter dated 19.12.2019, the complainants were obligated to make 40% of BSP plus 100% PLC charges within 12 months of booking and the rest 60% of BSP along with applicable charges were liable to be paid at the time of offer of possession. The fit-out offer of possession and offer of possession was made to the complainants on 01.07.2023 and 03.11.2023 respectively. However, no amount has been paid by the complainants against the outstanding dues post November 2020. It is further observed that the respondent has sent numerous reminders to the complainants for payment of outstanding dues in terms of the payment plan agreed between the parties vide allotment letter dated 19.12.2019. However, the complainants did not come forward to clear their outstanding dues, therefore the respondent was constrained to issue pre-cancellation letter dated 12.10.2023 giving last and final opportunity to the complainants to comply with their obligation to make payment of the amount due. Subsequently, on 03.11.2023, an intimation regarding receipt of occupation certificate along with request for payment of outstanding dues was made to the complainants, but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 16.11.2023. The Authority observes that Section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Considering the above as well as terms and conditions of the payment plan annexed with the allotment letter dated 19.12.2019, the cancellation of the unit is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. Further, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union***

of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited* (decided on 29.06.2020) and *Mr. Saurav Sanyal VS. M/s IREO Private Limited* (decided on 12.04.2022) and followed in *CC/2766/2017* in case titled as *Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that *10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money"*. Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing 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"

18. The Authority observes that although the complainants are entitled to refund of the balance amount after permissible deduction as above, but it would be inequitable and unjust to direct the respondent to pay interest from the date of cancellation i.e. 16.11.2023, particularly in light of the fact that breach of the contract has been done on part of the complainants.

Accordingly, the Authority finds it appropriate to allow interest at prescribed rate on the balance refundable amount from the date of filing of complaint by the allottees i.e. 09.05.2025 till its actual realization.

19. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the amount received by it from the complainants after deducting 10% of the sale consideration of Rs.1,05,06,775/- 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 by the allottees i.e. 09.05.2025, till its realization.
20. Out of the amount so assessed, the amount paid by the respondent on account of assured return against the subject unit shall be adjusted/deducted from the refundable amount.

G. Directions of the authority

21. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to refund the paid-up amount of Rs.50,28,393/- after deducting 10% of the sale consideration of Rs.1,05,06,775/- being earnest money along with an interest @10.80% p.a. on the refundable amount, from the date of filing of complaint by the allottees i.e., 09.05.2025, till actual refund of the amount.
 - ii. Out of the amount so assessed, the amount already credited by the respondent on account of assured return shall be 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.
22. Complaint stands disposed of.
23. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.05.2026



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