

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

Complaint no. : 661 of 2019
First date of hearing : 16.05.2019
Date of decision : 16.05.2019

1.Sumeet Deendayal
2.Priyanka Yadav

Both R/o: Flat No. 4P-804, AWHO
Township, Sector-CHI-1, Greater Noida- **Complainants**
201310

Versus

M/s Experion Developers Pvt. Ltd.,
Address: Plot No.18, Second Floor,
Institutional Area, Sector 32,
Gurugram-122001 **Respondent**

CORAM:

Shri Samir Kumar **Member**
Shri Subhash Chander Kush **Member**

APPEARANCE:

Complainant in person Advocate for the complainants
Shri. Ashok Kumar on behalf
of Shri. Aditya Varma Advocate for the respondent

ORDER

1. A complaint dated 15.02.2019 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 by the complainants Sumeet Deendayal and Priyanka Yadav against the promoter M/s Experion Developers Pvt. Ltd., in respect of allotment letter dated 14.04.2014 for residential unit no. B3/403 ,measuring 2631 sq. ft. of the project 'The Heartsong' located at Sector 108, Gurugram for not rectifying the terms of alleged one sided apartment buyer agreement.

2. Since the apartment buyer agreement dated 19.04.2013 was issued prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the respondent/promoter in terms of the provision of section 34(f) of the Act *ibid*.
3. The particulars of the complaint are as under: -

1.	Name and location of the project	'The Heartsong', Sector 108, Gurugram
2.	Allotted unit no.	D2/0803, tower D2
3.	Nature of real estate project	Group housing colony
4.	DTCP license no.	38 of 2010 dated 14.05.2010

5.	Project area	15.025 acres
6.	Admeasuring super area of the allotted unit	2631 sq. ft.
7.	RERA registered/unregistered	Registered vide no. 113 of 2017 for phase 5
8.	Revised date of completion as per registration certificate	27.08.2019
9.	Date of execution of apartment buyer agreement	19.04.2013
10.	Payment Plan	Construction linked plan
11.	Total consideration amount (as per applicant ledger dated 12.01.2018)	Rs. 1,74,17,970/-
12.	Total amount paid by the complainant (as per applicant ledger dated 12.01.2018)	Rs. 1,74,17,970.20/-
13.	Date of receipt of Occupation certificate	02.05.2018
14.	Notice of offer of possession letter	04.05.2018
15.	Due date of delivery of possession as per clause 10.1 of drafted agreement: - 36 months + 180 days' grace period from the date of agreement	19.10.2016
16.	Delay in possession	2 year 6 months 27 0days

4. The details provided above have been checked as per record available in the case file which has been provided by the complainant and the respondent. An apartment buyer agreement dated 19.04.2013 is available on record for the

aforesaid unit no. D2/0803 in the project namely 'The Heartsong' located at Sector 108, Gurugram. According to the complainant the respondent has failed to rectify the terms of drafted in apartment buyer agreement despite repeated reminders from the complainant.

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondent appeared on 16.05.2019. The case came up for hearing on 16.05.2019. The reply filed by the respondent on 11.03.2019 and the same has been perused by the authority.

Facts of the complaint: -

6. The complainants submitted that the subject apartment was booked on 21.11.2012 by Saroj Yadav and Col. Sudesh Prakash Yadav (Retd) who are parents of the complainants by making a booking payment of Rs 7 Lacs. Accordingly, the flat/unit no.D2-0803, located on 8th floor, in Tower D2, having a super area of 2631 sq. ft., was allotted by the respondent. The buyer agreement was thereafter executed on 19.04.2013. The complainants are IT professionals and were working in USA at the time of booking and signing of apartment buyer

agreementThe complainants permanently relocated to India in Oct 2013 and the apartment was subsequently transferred to them on 23.10.2013.

7. The complainants submitted that as per clause 10.1 on page 18 of the apartment buyer agreement the respondent had assured to handover possession of the flat within 36 months from the date of signing the buyers agreement, with additional grace period of 180 days. Accordingly, as per the apartment buyer agreement even after including the additional 180 days grace period, the possession of the flat was to be handed over by 16.10.2016.

8. The complainants submitted that “The Heartsong” project of the respondent consists of four blocks named A, B, C and D blocks. Each block further has multiple towers. All the four blocks were launched simultaneously and were to be completed at the same time. The respondent completed A and C blocks in 2016 while the B block was completed in 2017. However, the respondent intentionally delayed construction in the D Block (in which apartment D2-0803 of the complainants is located) because this D block contained the large sized apartments and

less than 25% of the apartments had been sold. The respondent received occupation certificate for the D block only on 04.05.2018 and asked the complainants to take possession by 04.06.2018. While offering possession, the respondent did not provide delayed possession interest as per current RERA guidelines but instead gave compensation at the rate of Rs 7.50 per sq. ft. as per para 13.1 on page 20 of the apartment buyer agreement. This delayed possession interest amounts to only around 1.4% simple interest on the amount paid whereas the respondent has charged 18% interest if any payment due from the complainants was delayed by even one day. The complainants have availed a home loan of Rs 1.3 crores for purchasing this apartment and have regularly paid EMI and interest to the bank. Hence the delayed possession interest provided by the complainant is grossly unfair and in direct contravention to the existing RERA law.

9. The complainants submitted that the complainants wrote a detailed letter to the respondent on 26.06.2018 (with copies affixed to their CEO as well as Chairman so that their senior management was also made fully aware) demanding delayed

possession interest as per RERA and also highlighted a large number of unethical actions of the respondent. Besides this letter, there are a large number of emails also written by the complainants demanding delayed possession interest as per RERA law and requesting the respondent to behave in an ethical and transparent manner. However, the respondents refused to give delayed possession interest as per RERA law.

10. The complainants submitted that the complainants had purchased the subject apartment for their self-use and have been working in IT companies in Pune since 2014. Given their time and location constraints, they decided to first take possession of their apartment before entering into any litigation with the respondent. Accordingly, despite the fact that the project is still not complete in all respects, the complainants cleared all dues of the respondent and thereafter got the conveyance deed registered with the Sub Registrar Kadipur, Gurugram vide registration number 4783 dated 06.11.2018. Thereafter physical possession of the apartment was handed over by the respondent on 01.12.2018 after rectifying all defects.

11. The complainants submitted that besides substantially delaying handover of the apartment, the respondent has indulged in a large number of unethical actions as listed below:-

- i. In order to minimize the delayed possession interest, the respondent obtained OC in a tearing hurry without completing all the common areas including basement. Also, internal construction work has still not been completed in a large number of unsold apartments in D Block. Hence, the D Block is still not fully habitable.
- ii. Super Area has been grossly inflated and loading is extremely high (please also refer to RERA case number 530/2018 in this regards).
- iii. EDC/IDC has been over charged based on the grossly inflated super area while it has actually been paid to Haryana Government on the sanctioned FAR (Floor Area Ratio), which is much lower. Thus EDC/IDC was overcharged.
- iv. Construction of D Block in the project was deliberately delayed because less than 25% flats had been sold. Other blocks in the project were handed over upto two years earlier.

- iv. The respondent made all possible attempts to avoid registering the D Block under RERA. OC was prematurely applied for on 05 June 2017 just to avoid RERA registration even when the project was nowhere close to completion.
- vi. Installment was demanded on 11 Aug 2017 without registering the project under RERA. Home loan disbursing banker refused to release payment without proper RERA registration number. The respondent obtained RERA registration only in Oct 2017 after which installment was paid by the banker. However, the respondent levied 18% delayed payment interest even when the fault was entirely theirs.
- vii. Possession was offered on 04 Jun 2018 with lots of labour still working in the common areas as well as inside the apartments. Moreover, maintenance staff was not deployed. The complainants refused to take possession till the project was made fully habitable. The apartment was finally completed internally and possession handed only on 01 Dec 2018. The respondent levied 18% interest even on this period from 04 Jun 2018 till date of clearing all dues. This

18% interest penalty was waived off by the respondent only after legal action was threatened by the complainants.

12. The complainants submitted that the complainants were asked to take possession on 04 Jun 2018 even when the project was not fully liveable can be ascertained from the fact that the monthly maintenance charges were to initially start from 04.06.2018 as can be seen in the final offer of possession. However, due to protests by the home buyers due to non-completion of the project, the respondent later intimated that monthly maintenance will start from 01.11.2018. It is also pertinent to note that out of the approx. 140 apartments in D Block for which possession was offered by the respondent on 04.06.2018, less than 10 buyers had taken possession till 01.12.2018 despite threats by the respondent that they will levy 18% interest on any delay in taking possession. This only goes to prove that possession of the apartments was offered by the respondent in haste without completing the project and making it fully liveable.

13. The complainants submitted that the complainants were paying Service Tax of approximately 4.5% on all demands before July

2017. However, due to the delay in possession caused by the respondent, they were charged GST at 18% on all the demands raised after July 2017. As a result, the complainants had to pay Rs 1,76,439/- extra as GST for no fault of theirs.

14. The complainants submitted that the complainants have studied recent judgments of the Hon'ble Authority on the HRERA website and observed that the delayed possession interest is being granted at the rate of 10.75% till the date on which possession was offered. Detailed calculations of delayed possession interest. Therefore, even though the respondent had prematurely offered possession on 04 June 2018 without fully completing the project, the calculations have been made only till 04 June 2018.

Issues to be decided:-

- i. Whether or not the respondent delayed the project and is liable to pay for the delayed possession alongwith the interest and the same and was delivered without completing common areas?

Reliefs sought:-

- a. Direct the respondent to refund to the complainants a sum of Rs. 23,08,895/- towards delayed possession interest.
- b. Direct the Respondent to refund to complainants a sum of Rs 1,76,439/- towards excess GST that was paid due to delayed possession by the respondent.

Respondent's reply: -

15. The respondent submitted that the present complaint is liable to be dismissed for the reason that no cause of action has accrued to the complainants against the answering respondents. The present complaint is clearly an afterthought. The complainants have taken the possession of the apartment in question on 06.11.2018, and accepted the compensation given by the answering respondent as per the agreed terms of the apartment buyer agreement.
16. The respondent submitted that the respondent has paid/adjusted the delayed compensation amounting to Rs. 3,28,875/- as per the agreed terms of the apartment buyer agreement dated 19.04.2013, which has been accepted by the

complainants and after accepting the same, the complainants have also executed the conveyance deed and taken the possession of the apartment in question.

17. The respondent submitted that the complainants have already taken possession of the apartment in question on 06.11.2018.

The conveyance deed of the apartment has been executed on 06.11.2018.

18. The respondent submitted that it is a settled law that after accepting the delayed compensation as per the agreed terms of the apartment buyer agreement, the complainants cannot take a U-turn and demand more money, beyond the scope of the agreed terms of agreement, on account of delayed compensation through court of law. The complainants after accepting the delayed possession compensation as per the agreed terms of the apartment buyer agreement now cannot challenge the same before the Hon'ble Authority to gain undue profit at the cost of the respondent without having any cause for the same.

19. The respondent submitted that the complainants have no right to claim compensation as the same has been paid to the

complainants by the respondent in accordance with the apartment buyer agreement and has been accepted by the complainants. It is submitted that the complainants have filed this false and frivolous complaint in order to gain unjust enrichment at the cost of the respondent.

20. The respondent submitted that has offered possession to the complainants much prior to the date specified during registration of the project under the Act. The respondent has obtained the occupation certificate for the phase in which the apartment in question is situated on 02.05.2018 and offered the possession to the complainants vide notice of possession dated 04.05.2018 i.e., much prior to the agreed date of completion under the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation & Development) Rules, 2017.

21. The respondent submitted that it is clear that the answering respondent is not liable to pay delayed compensation as per section 18 of the Real Estate (Regulation and Development) Act 2016 read with Section 19 of the Act and Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, since

the respondent would be liable to pay the same as per the provisions of the Act/Rules only after the expiry of the extended date of completion of the phase in which the apartment in question is situated, as per the registration certificate granted by RERA Authority. The completion timelines stand as per the registration certificate granted by RERA Authority under the provisions of the RERA Act for the purposes of any compensation under the RERA Act.

Determination of issues: -

After considering the facts submitted by the complainant and perusal of record on file, the issue wise findings of the authority are given below:

- i. With respect to the **sole issues** raised by the complainants, the authority is of the view that offer of possession were made to the complainants on 04.05.2018, and the complainants were asked to pay the balance payment. However the complainants have asserted that an occupation certificate in respect to the project has been issue, but the same has not been produced on record on dated 02.05.2018.

Also, as per clause 10.1 of apartment buyer agreement, the possession of the said apartment was to be handed over within 36 months plus grace period of 180 days from the date of execution of apartment buyer agreement. The grace period of 180 days has been given to the respondents due to exigencies beyond its control. The clauses regarding the possession of the said unit is reproduced below:

“10.1 the company intends to hand over possession of the apartment within a period of 36 months from the date of this agreement....entitled to a time period of 180 days..”

Accordingly, the due date of possession was 19.10.2016 and the possession has been delayed by two years six months twenty seven days till the offer of possession. The complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f 19.10.2016 till the offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

The complainants have also received an amount of Rs. 3,28,875/- on account of delayed possession charges, as such, complainants are not at all entitled for any further delayed possession charges.

Findings of the authority:-

22. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

23. Arguments heard. Complainants by virtue of this complaint seeks direction from the authority to direct the respondent to pay an amount of Rs. 23,08,895/- on account of delayed possession charges in lieu of purchase of apartment no. D2-0803, tower D2, in the project "The Heartsong", located at Sector 108, Gurugram. Also, possession of the same has already

been offered on 04.05.2018 and conveyance deed in this regard has been executed.

24. During the course of argument, the complainants have made an application in which they stated that they mistakenly asked for the refund amount of Rs. 23,08,895/- as they want delayed interest for the same amount. It has been also admitted by the complainants that they have received the possession of the same apartment which in question. Occupation certificate has been received by respondent on 02.05.2018. It has been stated at the bar by the counsel for the respondent has also issued a letter of delivery of possession dated 04.05.2018 and also pay an amount of Rs. 3,28,875/- for the delayed possession charges.

Since the possession of the flat has already been offered to the complainant on 04.05.2018 and conveyance deed in this regard has also been executed and coming into force of RERA Act,2016, complainants are entitled for delayed possession charges at prescribed rate of interest i.e. 10.65% per annum w.e.f 19.10.2016 to 04.05.2018 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016.

25. The complainants reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

Decision and directions of authority:-

26. The authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the parties:-

- i. The respondent is directed to pay delayed possession charges to the complainants at prescribed rate of interest i.e. 10.65% per annum w.e.f 19.10.2016 to 04.05.2018 as per the provisions of section 18(1) of the Real Estate (Regulation & Development) Act, 2016.
- ii. The respondent has issued a letter of delivery of possession dated 04.05.2018 and also pay an amount of Rs. 3,28,875/- for the delayed possession charges.
- ii. The respondent is entitled to deduct the amount of delayed possession charges already given to the complainant from the amount awarded to him.

27. The complaint is disposed of accordingly.

28. The order is pronounced.

29. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:16.05.2019

Judgement uploaded on 28.05.2019



HARERA
GURUGRAM