

**BEFORE THE HARYANA REAL ESTATE
APPELLATE TRIBUNAL**

Appeal No.379 of 2022
Date of Decision:04.11.2022

M/s Experion Developers Pvt. Ltd., Registered Office: F-9, First Floor, Manish Plaza 1, Plot No.7, MLU Sector 10, Dwarka, New Delhi 11 0075

...Appellant-Promoter

Versus

1. Gopal Krishan Arora, resident of C-1/17, Rana Partap Bagh, New Delhi 110 007
2. Surender Kumar Arora, resident of 297, Sector 8, Ambala City (Haryana) 134 002

...Respondents-Allottees

CORAM:

**SHRI INDERJEET MEHTA,
SHRI ANIL KUMAR GUPTA,**

**MEMBER (JUDICIAL)
MEMBER (TECHNICAL)**

Argued by: Shri R.S. Rai, Ld. Senior Advocate, with
Shri Rajeev Anand, Advocate,
Ld. counsel for appellant-promoter.

Shri Pawan Kumar Mutneja,
Ld. Senior Advocate, with
Ms. Suverna Mutneja, Advocate
Ld. counsel for respondents-allottees.

ORDER:

ANIL KUMAR GUPTA, MEMBER (TECHNICAL):

This appeal has been preferred under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (for

short, 'the Act') by the appellant-promoter against the interim impugned order dated 06.04.2022 passed by the Ld. Haryana Real Estate Regulatory Authority, Gurugram (hereinafter called 'the Authority'), in complaint No.CR/4134/2021 titled as "Gopal Krishan Arora v. Experion Developers Pvt. Ltd." filed by the respondents-allottees. The said order dated 06.04.2022 reads as under:

"On the last date of hearing, the complainant submitted that the LC report is incomplete and has been prepared in the absence of proper sanctioned building plans and cannot be relied upon. Therefore, the promoter was directed to supply copy of original building plans, copy of all revised building plans in between and final revised [sic] [revised] building plans and a table as what is the change in the super area from the original building plans and finally sanctioned building plans.

The counsel for the respondent is seeking time for arguments as the main counsel is not available today. But the promoter/builder has failed to provide the proper and complete details and documents required by LC for submission of his report. Therefore, the respondent is directed to submit the requisite information which was required by the

Local Commission within a period of 15 days failing which further legal action shall be initiated, The counsel for the complainant has requested that OC has already been received in this case and the respondent be directed to offer the possession of the unit as an amount of Rs.1,97,19,159/- has already been paid against the total sale consideration of Rs.2,07,21,247 /- and after adjustment of delayed possession charges, it will be only the respondent who shall be required to make payment as there is delay of one and half year approximately from the due date of possession.

In view of the above, the respondent is directed to hand over the possession of the unit to the complainant within one month. The other issues will be declared on receipt of LC report.

Matter to come up on 11.07.2022 for further proceedings.”

2. The brief factual matrix of the case is that the original allottee, namely, Kuldeep Yadav booked an apartment with the appellant-promoter in its project on 19.06.2012. The original allottee was provisionally allotted apartment No.1103 in Tower No. WT07 in unit category

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“Waving Teak” with sale area of 2650 sq. ft. vide allotment letter dated 04.08.2012. The agreement between the original allottee and the appellant-promoter was executed on 26.12.2012. The original allottee transferred his rights and interest in the apartment to the respondents-allottees in the year 2014. The unit was endorsed in favor of the respondents-allottees vide letter dated 31.03.2014 by the appellant-promoter. The occupation certificate was obtained by the appellant-promoter from the Director, Town and Country Planning on 06.12.2017. The appellant-promoter issued notice of possession dated 08.12.2017 to the respondents-allottees. With the said offer of possession dated 08.12.2017, the appellant-promoter issued a demand notice amounting to Rs.38,14,112/- as per the following details:

Particulars	Amount (Rs.)
Total amount payable towards the unit	2,291,289.00
Charges towards Maintenance	230,123.00
Charges towards Stamp Duty, Registration and Legal Fees	1,232,700.00
Grand Total (1+2+3)	3,814,112.00

3. The respondents-allottees filed a complaint before the Ld. Authority inter alia pleading therein that the demands

raised by the appellant-promoter are not in accordance with the agreement and the same are illegal.

4. Ld. Authority while passing the interim order dated 06.04.2022 directed the appellant-promoter to offer the possession of the unit as an amount of Rs.1,97,19,159/- has already been paid against the total sale consideration of Rs.2,07,21,247/- and after adjustment of delayed possession charges, it will be only the appellant-promoter who shall be required to make payment as there is delay of one and half year approximately from the due date of possession.

5. Aggrieved with the direction given to the appellant-promoter regarding handing over of the possession to the respondents - allottees, the present appeal has been preferred by the appellant.

6. We have heard Shri Randeep Singh Rai, Ld. Senior Advocate, counsel for the appellant-promoter and Shri Pawan Kumar Mutneja, Ld. Senior Advocate, counsel for the respondents-allottees and have meticulously examined the record of the case.

7. Initiating the arguments, Shri Randeep Singh Rai, Ld. Senior Advocate, counsel for the appellant-promoter contended that the appellant-promoter has been directed by the Ld. Authority, vide interim order dated 06.04.2022, to

handover the possession of the apartment to the respondents-allottees without deciding the main issue in the complaint as to whether the demand raised while issuing the letter of offer of possession dated 08.12.2017 is justified and is in accordance with the agreement. As per the said demand letter issued by the appellant, the respondents-allottees is to pay an amount of Rs.38,14,112/-, which is further increasing on account of non-occupation of the unit by the respondents-allottees. If the possession is offered to the respondents-allottees then it will not be possible to recover from them the amount due to the appellant-promoter. He contended that the impugned order may be set aside and the issues in the complaint may be ordered to be decided finally by Ld. authority before ordering for handing over of the possession to the respondents-allottees.

8. Per contra, Shri Pawan Kumar Mutneja, Ld. Senior Advocate, counsel for the respondents-allottees contended that the respondents-allottees have already paid an amount of Rs.1,97,19,159/- against the total sale consideration of Rs.2,07,21,247/-. If delayed possession charges are added to the amount already paid by the respondents-allottees, the total amount paid by them would be much more than the total amount due against them. The demand made by the appellant-promoter along with the notice of possession by

appellant is not correct and the same is not as per the terms of the agreement. He contended that as per the agreement, the possession of the unit has been delayed abnormally and the respondents- allottees even after making huge investment in payments towards the cost of the unit, are still lurching for the possession of the unit. He contended that the appellant in order to cause delay is not cooperating in supplying the sanctioned plans and other information available with it to the Local Commissioner (LC) appointed by the Ld. authority and to the respondents. He contended that in the facts and circumstances of the case, the order of the learned authority in providing the possession to the allottees is correct as this will mitigate the suffering of the respondents- allottees.

9. We have duly considered the aforesaid contentions of the parties.

10. The main question before the Ld. Authority in adjudicating and deciding the complaint is to determine whether the demand raised by the appellant while issuing notice of possession dated 08.12.2017 is correct and the same is as per the terms of the agreement between parties or not and whether any amount is payable by the allottees to the appellant. The Ld. authority without determining the issue before it, passed an interim order for possession on its prima-facia view that the possession has been delayed by the

appellant and because of delayed possession interest the total amount payable by the allottees to the respondents will be more than the amount payable by them.

11. We are aware that the notice for possession was issued way back on 08.12.2017. The possession of the unit is already delayed. However, considering the various issues raked up in the complaint by both the parties and time already elapsed in deciding the complaint, it will be in the fitness of the things that the Ld. Authority expeditiously determine amount payable by the respondents-allottees to the appellant or the amount due to them from the appellant and finally decide the issues in the complaint at the earliest and pass the final order within a period of two months.

12. Regarding the contention of the respondents-allottees that the report from Local Commissioner (LC) is being delayed on account of non-submissions of requisite information by the appellant-promoter to LC and to them, it is directed that the appellant will immediately provide all the requisite information available with them to the LC and to the respondents. It is also directed that both the parties will cooperate in deciding the matter at the earliest.

13. No other point was argued before us by any of the parties.

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14. Thus, keeping in view our aforesaid discussion, the present appeal filed by appellant-promoter is hereby allowed and the interim impugned order dated 06.04.2022 is set aside. Needless to say, that anything observed above will prejudice the mind of the Ld. authority in determining and deciding the issues in complaint.

15. No order as to costs.

16. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Haryana Real Estate Regulatory Authority, Gurugram, for information and necessary compliance.

17. File be consigned to the record.

Announced:
November 04, 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal
Chandigarh

Anil Kumar Gupta
Member (Technical)

Manoj Rana