

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

Complaint no. : 6778 of 2019  
Date of filing complaint: 27.12.2019  
First date of hearing : 22.01.2020  
Date of decision : 14.07.2022

Arun Puri R/O: - B-178, Nirman Vihar, new delhi-110092	<b>Complainant</b>
Versus	
M/s Experion Developers Private Limited Regd. Office at: F-9, 1 <sup>st</sup> Floor, Manish Plaza -1 , Plot No.7 , MLU Sector 10 , Dwarka , New Delhi - 110075	<b>Respondent</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Vaishali Aggarwal (proxy counsel)	<b>Complainant</b>
Shri. Arun Kumar Yadav Advocate	<b>Respondent</b>

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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.	Heads	Information
1.	Project name and location	"THE HEART SONG " , sector - 108 , Gurugram
2.	Nature of the project	Residential- group housing colony
3.	a) DTCP license no	38 of 2010 DATED 14.05.2010
	b) License valid up to	13.05.2022
	c) Name of the licensee	M/s S.K.N. Developers pvt. Ltd. and M/s K.S.N. Real Estate Developers
	d) area	15.025 acres
4.	a) RERA registered/not registered	<b>113 of 2017 dated 28.08.2017 valid upto 27.08.2018</b>
5.	Unit no.	Plot no. B-1/0401
6.	Unit admeasuring	1756 sq. ft.
7.	Date of execution of BBA	02.09.2013
8.	Date of allotment letter	03.12.2012
9.	Total consideration	Rs. 1,13,32,172/-
10.	Total amount paid by the complainants	Rs. 30,27,315/-

11.	Possession clause	<p><b>PROJECT COMPLETION PERIOD</b></p> <p>Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project -plans, the Company intends to hand over possession of the Apartment <b>within a period of 36 (thirty-six) months from the date of this Agreement ("Commitment Period")</b>. The Buyer further agrees that the Company shall additionally be entitled to a time period of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities. However, in case of any default under this Agreement that is not rectified or remedied by the Buyer within the time period as may be stipulated, the Company shall not be bound by such Commitment Period.</p>
12.	building plan	18.09.2012
13.	Due date of delivery of possession	02.09.2016
14.	occupational certificate	02.05.2018
15.	Offer of possession	Not offered
16.	Reminders Letter	<p><b>REMINDER LETTERS</b> - 16.01.2013, 20.02.2013, 16.04.2013, 23.04.2013, 24.04.2013, 17.06.2013</p> <p><b>FINAL</b> - 16.07.2013</p> <p><b>REMINDER LETTERS</b> - 21.04.2014, 23.03.2014, 16.06.2014, 05.08.2014, 02.09.2014, 18.09.2014, 25.09.2014, 17.10.2014, 10.11.2014, 09.12.2014</p> <p><b>FINAL</b> - 01.07.2014, 10.10.2014, 24.11.2014</p>

A

		<b>REMINDER LETTERS</b> - 06.01.2015, 03.02.2015, 11.02.2015, 26.02.2015, 16.03.2015, 08.04.2015, 25.03.2015, 22.06.2015, 15.07.2015, 19.08.2015, 12.10.2015, 10.06.2016, 07.07.2016, 02.08.2016, 31.08.2016 <b>FINAL</b> - 19.01.2015, 13.03.2015, 28.04.2015, 26.10.2015, 16.08.2016, 15.09.2016.
17.	Termination Letter	28.02.2017

### B. Facts of the complaint

3. That the complainant is the allottee in the project of the respondent company, namely, "The Heartsong", Sector-108, Gurgaon, Haryana, who is aggrieved by the illegal cancellation of his unit by the respondent company and subsequent forfeiture of the entire paid amount illegally.
4. The respondent company is engaged in the real estate activities in the Delhi/NCR region since several years. It launched the project, The Heartsong as a group housing project with great amount of advertisement in the print and electronic media. The public was informed that the project was conceptualized by the Woodhams, the famous architecture firm from New Zealand and would offer choice of 2/3/4 BHK apartments with carefully designed apartment spaces. The project was stated to be one of its kind and prospective buyers were assured premium fittings in all the bathrooms, split air conditioners in living room and bedrooms and spacious rooms and balconies.
5. The complainant herein was lured into making the booking in the project by the respondent company. Apart from the above-mentioned assurances of the premium architecture and amenities, there was assurance of timely

12

delivery by the respondent company. The complainant, only relying upon the words had made the payment of the booking amount in the project of the respondent company, namely "The Heartsong" at Sector-108, Gurgaon for an apartment admeasuring 1,756 Sq. ft at the rate of Rs 5,500/- per sq. ft. and the apartment bearing no. B1/0401 was allotted to him on 22.11.2019.

6. That upon the payment of the booking amount, the respondent company issued the provisional allotment letter to the complainant. The complainant was thus assured of the delivery of the booked apartment timely. It was sine qua non for the complainant that the respondent company strictly follows the construction schedule and raise demands for the payment in accordance with the same.
7. That despite regular payments being made by the complainant, the respondent company never came forward with the execution of the buyer agreement for months together although, it kept on demanding and receiving payments from him.
8. That it was only after much efforts from the complainant the buyer's agreement dated 02.09.2013 was executed between the parties though, by that point of time, the respondent company was already in receipt of several lakhs of rupees, thus considerably shifting the advantage and leverage in its favour. Thus the complainant was left with no opportunity or right while dictation of the terms of the agreement and whereas the respondent company had already kept a pre-drafted agreement for the signature of the buyers with itself. The draft of the agreement was totally one-sided, unilateral and arbitrary and it offered no compensation to the complainant in case of the delay in the construction and development of the project.

9. That complainant protested to the unilateral clauses of the buyer agreement, wherein, huge delay penalty was proposed on the complainant in case of delay in payment of the instalment and on the other hand, there was no provision for the compensation to him. The complainant vehemently protested to the same, but the respondent company threatened with the forfeiture of the paid amount and thus forcing him to execute that one sided and unilateral agreement.
10. That the terms of the apartment buyer agreement are unilateral and arbitrary and cannot be read into while deciding the compensation for the complainant. It is submitted that such agreements have already been held to be illegal and arbitrary by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi and the Apex Court in several of their judgments.
11. That the respondent company has indulged in unfair trade practices and illegal practices as firstly, it got executed a unilateral and unfair agreement secondly, it has cancelled his allotment illegally. The complainant was not allowed to make any changes in the terms of the agreement. It is only appropriate that exemplary costs be imposed on the respondent company for indulging in unfair and illegal practices.
12. That the complainant by abusing its dominant position as compared to the complainant and was constrained to put his signatures on the agreement executed between the parties on 02.09.2013. The copy of the apartment buyer agreement is not available with the complainant. Despite many requests, the respondent company has not provided copies of the documents of the complainant lying in its custody.
13. That as per the terms and conditions of the agreement dated 02.09.2013 (clause 10.1), the possession of the apartment was supposed to be



delivered within a period of 36 months of the execution of the agreement and the same was due on 02.09.2016 but till date, the construction and development of the project is incomplete. The complainant made regular payments to the respondent company during the period of commitment, but it failed to construct and deliver the unit to him.

14. The complainant has already made various payments to the tune of Rs 30,27,315/- to the respondent company since 22.11.2012 until 03.06.2015 but subsequently stopped the same as no construction activities were taking place at the site.
15. That the respondent company continued to raise demands from the complainant in the grab of reaching milestone. Since the possession of the apartment was not possible, due to non- completion of the project , so the complainant took a decision to withdraw from the project and seek refund of the paid up amount.
16. That instead of refunding the paid-up amount of the complainant, the respondent company, continued to issue demand letters to him. Even no information was ever shared by the respondent company about the construction and development stage of the project. It is the duty of the developer to share construction updates with the complainant regularly.
17. That instead of completing the construction and development of the project within the assured time period of 36 months, the respondent company cancelled the allotment of the complainant vide letter dated 28.02.2017. Thus, the complainant is entitled to compensation for illegal cancellation and forfeiture of the paid amount for which he reserves the right to initiate separate proceedings.
18. That the conduct of the respondent company is completely arbitrary and illegal, and it falls within the definition of the "unfair practices" as it is

defined under the provisions of the Real Estate (Regulation and Development) Act, 2016. The complainant is entitled to refund of the paid amount along with prescribed rate of interest.

19. In the present case, neither the cancellation of the allotment was as per law nor the forfeiture of the paid amount. It is only appropriate that the entire paid amount of the complainant be refunded with prescribed rate of interest.
20. It is further the case of the complainant that the cancellation dated 28.02.2017 is illegal and arbitrary and the same deserves to be set aside. It is also the case of the complainant that for the illegal forfeiture and retention of the money paid by him, the respondent company is liable to compensation him.
21. In view of the above-mentioned circumstances, it is only appropriate that the present Hon'ble Authority may be pleased to hold that the respondent company has illegally and arbitrary cancelled the allotment of the complainant and the same deserves to be set aside.
22. So, in view of the above-mentioned circumstances, it is only appropriate that the present Hon'ble Authority may be pleased to direct the prescribed rate of interest.

**C. Relief sought by the complainant:**

The complainant has sought the following relief:

- a). The respondent be directed to refund sale consideration sum of Rs. 30,27,315/- respondent company to refund the money paid by the complainant with along with 18% interest

*A*



**D. Reply by the respondent**

**The respondent builder has made following submissions by way of written reply.**

23. That the complaint under section 31 of the act is not maintainable, as the allotment of the complaint was cancelled on 28.02.2017 i.e., prior to applicability of RERA Act/Rules . Thus, the complaint has no cause of action after applicability of RERA Act/Rules.
24. The complaint is a transferee of the original allottee namely Priyanka Choudhary and is habitual defaulter as fully detailed in the preliminary objections. The respondent repeatedly gave time and opportunities for depositing the accrued instalments as per status of structure. The complainant despite having notice and knowledge of the development and stage of the construction wilfully, withheld the instalments and the respondent was left with no option but to cancel the allotment as per the terms of the agreement dated 02.09.2013. The respondent had every right to forfeit the amount as per agreed terms and the complainant is in default of Rs.16,76,561/- towards the forfeited amount.
25. The respondent has constructed / developed the project as per agreed specifications and has obtained occupational certificate for all the own estimation and judgment in deciding to make the booking and has not been influenced by anything and had got the agreement endorsed in his favour. The complaint wilfully failed to make payments being fully aware that the

non-payment on the accrued day would attract the late payment interest which he was liable to pay.

26. The construction of the respective phases of the project was completed in August, 2016 and the respondent had applied for issuance of occupation certificate vide application dated 16.08.2016 and the same was granted by DTCP on 02.03.2017. So, the averments or allegations that the construction was incomplete on the alleged date are false, frivolous and bogus.
27. It was denied that instead of towers/apartments of the project. The complainant has solely relied on his refunding the amount, the complainant continued to be issued demand letters. It is vehemently denied that no information was shared by the respondent company about construction. Every demand letter clearly showed the stage of construction and the demand were raised by the respondent as per the agreed terms and conditions of the agreement and strictly as per the construction link payment plan adopted by the complainant.
28. That the last reminder sent to the complainant on 31.08.2016 clearly shows that the respondent had completed the construction and the final notice was issued on 15.09.2016. When the complainant remained negligent in making the payment of the due installments, then the respondent was left with no option, but to cancel the allotment as per the agreed terms and conditions of the builder buyer's agreement. The said cancellation letter dated 28.02.2017 was issued by the respondent as the complainant miserably failed to make due payments, despite repeated reminders/final

A

notices. The total due amount on the date of final notice was Rs.95,23,732/- and the complainant paid an amount of Rs.30,27,315/-. Rather as per the record of the accounts of the allotted unit , as detailed , hereinabove the complainant had paid only an amount of Rs.28,95,247/- which was forfeited and he is in arrears of Rs.16,76,561/-towards the earnest money. It is denied that the cancelation Was against the covenants of the agreement as alleged. The possession of the unit was due on 02.09.2016. and the complainant failed to abide by the construction timeline. As submitted in the previous paras, the complainant was in arrears of Rs.95,23,732/- towards the payment of instalments and other incidental charges. The respondent company was not obligated to refund the amount as alleged. The construction of the project was completed by the respondent as per terms of the agreement and well within agreed time frame. All the demands were raised by the respondent upon achieving the agreed construction milestone,. However , the complainant miserably failed to fulfill his contractual obligations and accordingly, as per agreed terms of the agreement, his allotment was cancelled, and the amount paid by him was forfeited by the respondent. It is submitted that in case of default by the allottee/complainant , the respondent is entitled to forfeit the amount as per agreed terms of the agreement executed between the parties, that includes the earnest money, delayed payment interest, brokerage, taxes and other applicable charges. The complainant is not entitled for refund of any amount whatsoever. Copies of all the relevant documents have been filed

A

and placed on the record Their authenticity is not in dispute. Hence, the complainant can be decided based on these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

29. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. 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**

30. 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 completed territorial jurisdiction to deal with the present complaint.

**E. II Subject-matter jurisdiction**

31. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the relief sought by the complainants.**

**F. I To give necessary directions to the respondent for return of the payment made by the complainant of Rs. 30,27,315/- along with interest of 18 %.**

The respondent has contended that the complainant made defaults in making various payments and as a result thereof, it had to issue reminders dated 16.01.2013, 20.02.2013, 16.04.2013, 23.04.2013, 24.04.2013, 17.06.2013, 16.07.2013, 21.04.2014, 23.03.2014, 16.06.2014, 05.08.2014, 02.09.2014, 18.09.2014, 25.09.2014, 17.10.2014, 10.11.2014, 09.12.2014, 01.07.2014, 10.10.2014, 24.11.2014, 06.01.2015, 03.02.2015, 11.02.2015, 26.02.2015, 16.03.2015, 08.04.2015, 25.03.2015, 22.06.2015, 15.07.2015, 19.08.2015, 12.10.2015, 10.06.2016, 07.07.2016, 02.08.2016, 31.08.2016, 19.01.2015, 13.03.2015, 28.04.2015, 26.10.2015, 16.08.2016 and 15.09.2016., respectively .It is further submitted that the complainant still failed to clear the dues resulting in cancellation of his unit vide letter 28.02.2017 . The relevant clause agreed upon between the parties while executing buyers agreement dated 02.09.2013 is reproduced below:

2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the sale consideration amount being bad and against the principles of natural justice. Thus, keeping in view the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainant, the respondent did not return any amount and retained the total amount paid by him. The respondent /promoter is directed to return the amount of Rs. 30,27,315 /- after deducting 10% being earnest money of the total sale consideration along with interest at the rate of 9.70% p.a. from the date of cancellation i.e, 28.02.2017 till the actual date of refund of that amount..

**G. Directions of the Authority:**

34. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to return the amount of Rs. 30,27,315 /- after deducting 10% being earnest money of the total sale consideration along with interest at the rate of 9.70% p.a. from the date of cancellation i.e, 28.02.2017 till the actual date of refund of that 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.

ra



35. Complaint stands disposed of.
36. File be consigned to the Registry.

v.1 - 3  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

**Haryana Real Estate Regulatory Authority, Gurugram**  
**Dated:14.07.2022**



**HARERA**  
**GURUGRAM**

