

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

Complaint no.: 6442 of 2022
Date of filling:- 19.10.2022
Date of Decision:- 29.11.2023

Sh. Nand Jee Singh

Address:- Flat No. G-1, Plot No.841/A, Pradhan Hive,
5th Cross Road, 10th Main Road, Indiranagar Stage-2,
Bangalore-560038

Complainant

Versus

M/s. Experion Developers Pvt. Ltd.

Address:- F-9, First Floor, Manish Plaza-I, MLU,
Sector-10, Dwarka, New Delhi-110075

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sagar Bhatia
Shri Arun Kumar yadav

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant 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 thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

2. The particulars of the project, the details of 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.N.	Particulars	Details
1.	Name of the project	"The Westerlies", Sector- 108, Gurugram
2.	Nature of project	Residential plotted colony
3.	Plot no.	B4-04, Tower B4
4.	Unit measuring	587 sq. Yds.
5.	Date of booking	30.03.2022
6.	Allotment	04.04.2022
7.	Date of execution of Floor buyer's agreement	Not executed
8.	Possession clause	Cannot be ascertained.
9.	Due date of possession	04.04.2025 (calculated from the date of allotment letter i.e., 04.04.2022)
10.	Total sale consideration	Rs.4,00,10,610/-
11.	Total amount paid by the complainant	Rs. 80,02,161/- (As per customer ledger at page no. 79 of the reply)
12.	Occupation certificate dated	Not obtained
13.	Offer of possession	Not offered

14	Final notice	12.05.2022
15.	cancellation Letter	22.07.2022

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:

- i. That the present complaint primarily pertains to unilateral cancellation of the allotted unit by the respondent, without giving a fair opportunity to the complainant to sign & execute Agreement for Sale (herein after referred as AFS), as per the laid down procedures/guidelines. That the allotted unit has been unilaterally cancelled, despite of repeated attempts made by the complainant to execute AFS for the same.
- ii. That the complainant is aggrieved by such an act of the respondent and therefore, has approached this Hon'ble Authority for relief, against arbitrary act of the respondent by such cancelling the allotted plot. It is also relevant to mention herein that such an act is not in accordance with the terms of the proposed agreement for sale. Hence, is unilateral and without any sufficient cause.
- iii. That the Respondent having collaborated land admeasuring 44.178 acres situated within the revenue estate of village Dharampur, Tehsil & District Gurgaon, Haryana (hereinafter referred to as the "Land") in order to develop a residential plotted Colony named as Westerlies on the said land had obtained License No. 57 of 2013 dated 11.07.2013 from the Director

General, Town & Country Planning, Government of Haryana, under the provisions of the Haryana Development & Regulation of Urban Areas Act, 1975. And thereafter selling plots to intending buyers.

- iv. That the Complainant being motivated by one of the channel partners of the respondent Mr. Hansdeep Singh, had agreed to obtain allotment of a plot admeasuring 587.31 Sq. Yards, bearing number B4-04, Westerlies during the month of February'2022, while he was on an official tour to Gurugram. and accordingly, he had signed a blank application form in good faith and handed over to Mr. Hansdeep Singh to complete the balance allotment formalities, Thereafter the Complainant returned to Jharkhand, the then place of posting.
- v. That initially the allotment was intended to be taken in the joint names of the complainant & his wife Mrs. Kavita Singh. But later on, it was decided by the complainant to obtain allotment in his sole name only. Accordingly, the modified application form was sent to the Respondent thru' email on 30.03.2022. That based upon the modified application form & booking amount deposited by the applicant, a provisional Allotment Letter was issued on 04.04.2022 in favour of Complainant (Mr. Nand Jee Singh) along with receipts for booking amount of Rs.39,61,089/- An intimation for deposit of Rs.31,104/- to the bank account of Mr. Sunil, towards stamp duty for registration of AFS was also issued by Respondent along with Provisional Allotment Letter. That a final notice dated 12.05.2022 for payment towards stamp duty for AFS

issued by Respondent, to deposit Rs.31,104/- in the bank account of Mr. Sunil within 30 days i.e., till 11.06.2022.

- vi. That on 10.06.2022 Complainant deposited Rs.31,104/- towards stamp duty to the bank account of Mr. Sunil & intimation email was also sent to the Respondent thru' email along with a request to schedule the AFS in July'22, during upcoming visit to Gurgaon. That on 10.06.2022 an acknowledgement was also issued by the respondent, further giving consent for execution for AFS in July'22. It is relevant to mention herein that on 16.06.2022 an email was received from the Respondent for scheduling execution of AFS on 01.07.2022 tentatively, further, it stated that the time slot will be intimated at a later date. That it is relevant to mention herein that the Complainant on 21.06.2022, joined Bangalore Office of NTPC Ltd. after shifting from Jharkhand and Joining Order No. J-0974/22 dated: 22.06.2022 was also issued by M/s NTPC Ltd. i.e., the employer of the complainant. That on 01.07.2022 an email was mailed by the Complainant to Respondent requesting them for executing AFS on 28th/ 29th July, as he is now posted in Bangalore. That the Respondent replied to the said mail on 01.07.2022, that the date for execution of AFS is on 08.07.2022 itself. Further, threatening the Complainant that if the same is not executed then the, allotted unit shall be cancelled and the booking amount will be forfeited.
- vii. That an email was sent on 04.07.2022 to the Respondent by the Complainant, justifying his inability in coming to Gurgaon, due to recent transfers in job and out-station posting at Bangalore (along

with copies of Transfer & Joining orders) and requesting for scheduling AFS on 29.07.2022.

- viii. That in order to show its bonafide the Complainant also approached Mr. Varun Oberoi (representative of the Respondent), head of CRM in the office of Respondent, on 05.07.2022 on WhatsApp, seeking help in the execution AFS. That on 08.07.2022, Ms. Chama Preet from the office of Respondent had telephonic discussions with the Complainant regarding execution of AFS immediately. That upon detailed discussions, the Complainant had agreed for execution of AFS on 13/07/2022, provided appointment is confirmed in advance by the Respondent. An Email was also sent to Respondent requesting scheduling of AFS on 13/07/2022 and advance intimation.
- ix. That it is worth mentioning that till 24.07.022 no response was received from the Respondent pertaining to the execution of AFS. It is pertinent to mention herein that on 25.07.2022 an abrupt email was issued by the Respondent along with a cancellation letter as an attachment intimating cancellation of the booking & forfeiting the whole booking amount paid by the Complainant.
- x. That such an act of the Respondent is arbitrary, unlawful and not in consonance with the rules set forth by the Authority. That the Respondent has failed to issue a show cause notice to the Complainant for delay in execution of AFS, further the Respondent has failed to give an appropriate extension of time in executing the same. On the contrary, had issued a letter stating that they had cancelled and forfeited the booking amount to hide

their own malafide. Issuance of such cancellation Letter by the Respondent was not less than any Shock & Mental Harassment for the Complainant.

- xi. That on 28.07.2022, the complainant visited the office of Respondent, had a detailed deliberation with Ms. Prachi Gupta (CRM executive of the Respondent) and then both had agreed for execution of AFS on 29.07.2022. As per the requirements of Ms. Prachi Gupta (representative of the respondent), the date was also confirmed through an email written by the Complainant, while sitting in front of her, further requesting for a copy of AFS in advance, before executing the same in the Hon'ble Court. It is also relevant to mention herein that on 28.07.2022, the above-mentioned person (Ms. Prachi Gupta) had confirmed the schedule for execution of AFS on 29.07.2022. More so, the Respondent intentionally sent a blank format of AFS, in place of a complete AFS document. That on 29.07.2022, the complainant contacted Mr. Abhishek, the legal representative of Respondent for getting a final copy of AFS on WhatsApp, before going to Court, but to utter surprise, he refused and advised the complainant to contact Ms. Prachi Gupta only. That by seeing the act of the Respondent, the Complainant was apprehensive enough to directly go to the court for execution of AFS, without properly examining the contents of AFS. Hence, the complainant wrote a detailed email to Ms. Prachi Gupta/Respondent, seeking final copy of AFS in advance and postpone the AFS for few days, while he was going to continue in Gurgaon.

- xii. That time and again the Complainant has requested the Respondent to provide the copy of the AFS through email's, over the telephonic conversation and also in person. Further, the Respondent with their lackadaisical approach has not adhered to the request of the Complainant. Subsequently, the Respondent has not only failed to respond to the complainant, but also, has failed to execute the AFS on 29.07.2022. That on 31.07.2022, with an intent to execute AFS on 01/08/2022, the complainant again approached the legal representative of the Respondent Mr. Abhishek for a copy of final AFS through phone & WhatsApp, but he did not respond.
- xiii. That again on 01.08.2022, the Complainant wrote another email to the Respondent (Ms. Prachi Gupta, representative of the Respondent), for providing a copy of AFS and to execute the same on 02.08.2022 and further, informing them that the complainant has a flight to Bangalore for the same day evening and also attached the copy of the air tickets. It was also stated by the Complainant, that if the same is not executed then, the Respondent shall be solely be responsible for any further delay in execution of AFS.
- xiv. That again on 29.08.2022, the Complainant wrote another email to the Respondent, stating that *"I am again coming to Gurgaon on 07.09.2022 (Copy of flight ticket is attached for ready reference), especially to execute the AFS on 08.09.2022 and proceed further."*. That the complainant has again requested for the final copy of AFS, along with a copy of the customer. It is pertinent to mention

herein that the Respondent thru' email dated 30.08.2022 had confirmed the date for execution of AFS on 08.09.2022 and provided a copy of customer ledger up till 30.08.2022. That as per the said copy of customer ledger, all the payments were up-to-date and nothing was due on Complainant. That on 30.08.2022, the Complainant confirmed for the execution of AFS and again requested for the final copy of AFS. It is to note that thru' an email on 31.08.2022, a soft copy of draft AFS was provided by Respondent for the first time and comments if any, were asked within 7 days from the complainant. More So, the Complainant has re-confirmed the schedule date for execution of AFS. To which the Respondent had replied that the time slot will be confirmed two days prior to the date of execution i.e. 08.09.2022.

- xv. It is humbly submitted that on 04.09.2022, the Complainant raised queries upon the draft copy of the AFS and requested for clarifications, corrections and other relevant information pertaining to allotment. It is pertinent to note that the modifications asked by the Complainant, were very much relevant to be incorporated in the proposed AFS. A copy of email dated 04.09.2022 by the Complainant highlighting changes required in draft AFS and seeking some relevant information. It is not of place to mention herein that on 07.09.2022 the Complainant reached Gurgaon for execution, but there was no response from the Respondent. That by getting no revert from the Respondent, the Complainant again wrote an email on 08.09.2022 to the Respondent requesting them to schedule for an execution of AFS

and further apprised that the Complainant has a return ticket to Bangalore on 11.09.2022 therefore, the execution of an AFS should be done 09.09.2022. but, to utter surprise and dismay, still there was no responses from the Respondent.

- xvi. That seeing the lackadaisical approach of the Respondent, the Complainant on 10.09.2022 approached the CEO of the Respondent i.e., Mr. Routhu Nagaraju on his WhatsApp and apprised him about the incident and subsequently requested him for resolution, to which he assured to look into the matter on 12.09.2022. thus, the complainant had to postpone his return to Bangalore for 13.09.2022, in anticipation that the AFS shall be executed by then. It is relevant to mention herein that on 12.09.2022, the Complainant received an email from the Respondent reiterating that his allotment stands cancelled and the booking amount is forfeited. It is humbly submitted that the Respondent has been dilly delaying the execution of AFS for hiding their own malafide and further has cancelled the allotment which is contrary to the law. That on 13.09.2022 the Complainant, personally visited the corporate office of the Respondent and requested a personal meeting with the CEO to sort the issue. But all the efforts of the Complainant were in vain and the Respondent stated that his allotment now stands cancelled and the Complainant was returned home, without providing the efficacious remedy.
- xvii. That on 15.09.2022 the Complainant again wrote an email to the Respondent requesting them to restore the allotment and execute

the AFS in favour of the Complainant. But to no avail, the Respondent did not pay any heed to the request of the Complainant. It is also relevant to mention here that on 20.09.2022 the Complainant again requested the Respondent on email to kindly restore the allotment and execute the AFS. It is pertinent to note that thru' his email dated:15.09.2022, the Complainant had very clearly explained that he has neither violated any conditions for default nor under any default, under any of the provisions stipulated in the proposed AFS nor any demand for payment is due, hence the allotment should not be cancelled. It is worth mentioning herein that on 21.09.2022, Respondent wrote an email regarding the refund of the booking amount of Rs.40,01,100/- through cheque no 312740, dated 19.09.2022 drawn on Axis Bank Subject to signing of the receipt of "full and final" payment in lieu of booking amount of the allotment.

- xviii. That the complainant immediately replied to the email dated 21.09.2022 from the respondent, refusing to accept the cancellation of allotment & refund of booking amount. The complainant again asked for restoration of allotment & execution of AFS and further intimated his intent of filling a complaint in HRERA (alongwith a copy of Performa-B), if the matter is not sorted out by 27.09.2022. It is humbly submitted that, to hide the illegal and unlawful act of the Respondent. The Respondent on 23.09.2022 intimated the Complainant through mail that the Booking amount paid by the Complainant is refunded in the bank

account of the Complainant directly, further, provided with the details of the RTGS and a format for providing a "full and final" receipt against the booking amount, to which the Complainant has never agreed upon. That the Respondent has been working arbitrarily and according to their own whims and fancies. It is also submitted that the Respondent has no respect for the law.

- xix. That the cause of action accrued in favor of the Complainant and against the Respondent on 22.07.2022 when a cancellation letter was issued in unjustified manner. That the cause of action accrued in favor of the Complainant and against the Respondent on 28.07.2022 when final copy of Agreement for Sale was not made available before going to court for registration. That the cause of action accrued in favor of the Complainant and against the Respondent on 01.08.2022, 02.08.2022, 08.09.2022, 09.09.2022 & 13.09.2022 when neither final copy of Agreement for Sale was not made available nor appointment was scheduled, despite of written request by the Respondent. That the cause of action accrued in favor of the Complainant and against the Respondent on 21.09.2022 when the responded intimated about unilateral refund of the booking amount thru' a cheque & cancellation of the allotted unit. That the cause of action also accrued in favor of the Complainant and against the Respondent on 23.09.2022 when the respondent unilaterally transferred the booking amount to the bank account of complainant thru' RTGS, without his consent/knowledge & cancelled the allotment.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):
- i. Direct the respondent to withdraw the cancellation letter and restore the plot in favor of the complainant.
 - ii. Direct the respondent to hand over the final printed copy of the ABA and executed the BBA in favour of the complainant.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:
- i. That the respondent vide letter dated 04.04.2022 intimated the complainant about receipt of the booking application form and further requested vide letter of even date for execution and registration of agreement to sell, so as to adhere to the agreed payment plan wherein the complainant was required to pay 85% of the total sale consideration within 60 days of the booking i.e. 23.04.2022. The complainant was informed at the time of making booking application that time is essence of this contract and he has to clear the payment milestones on time otherwise, the allotment would be cancelled.
 - ii. That even after receipt of the above said letters, the complainant did not take any steps to complete the formalities so as to adhere to the payment plan duly agreed at the time of application form as well as allotment of the plot and intentionally did not come forward for execution and registration for agreement for sale as the complainant was well aware of the fact that without execution of agreement for sale, the respondent could not raise demand of the next installment which was required to be paid positively

within 60 days and the complainant intentionally with malafide intent did not come forward to execute and register the agreement for sale. The respondent was left with no option but to issue a reminder on 27.04.2022 asking the complainant to complete the formalities of agreement for sale and to make the next installment which had already become due. The respondent also sent reminders to the complainant vide emails dated 06.05.2022 and 10.05.2022, however the complainant kept delaying the execution on one pretext or the other. Even after the reminders the complainant took no step whatsoever and the final notice for execution and registration of agreement for sale was issued on 12.05.2022 copy of the said letter dated 12.05.2022 along with postal receipts.

- iii. That thereafter, the respondent sent further emails dated 10.06.2022 to confirm the complainant's availability for execution of the agreement and thereafter further emails were sent by the respondent on 14.06.2022 and 01.07.2022 for fixing the date of execution of the agreement. However, the complainant on one pretext or the other kept avoiding executing the agreement.
- iv. That it seems that the complainant had no sufficient funds for making the payment of next installment which became due on 60th day of booking of the plot i.e., 23.04.2022 and it seems that the complainant was looking for a buyer to resell the plot in question to harvest the price increase and was intentionally not making the payment as the complainant was fully aware that the respondent legally cannot ask for next installment till the

complainant sign and register the agreement to sell, even though the complainant was available for execution and registration of the agreement for sale, but the complainant intentionally with malafide intent did not come forward and paid no heed to the repeated request of the respondent and did not come forward for execution and registration of agreement for sale, hence the respondent had no option but to take necessary steps and cancel the allotment of the complainant as per the terms and conditions of the booking application form and hence the respondent issued cancellation letter dated 22.07.2022.

- v. That upon the request of the complainant, another opportunity was afforded to the complainant by the respondent to come forward to execute the agreement for sale vide email dated 28.07.2022. However, the complainant failed to come forward to execute the agreement for sale. The respondent, being a customer centric organization, upon the request of the complainant gave another opportunity to the complainant vide email 30.08.2022 to come forward to execute the agreement for sale. The complainant instead of fulfilling its obligations to execute the agreement, raised frivolous issues vide email dated 30.08.2022, which were duly responded to by the respondent vide email dated 31.08.2022. However, seeing the continued default on part of the complainant despite the multiple opportunities being provided to the complainant to rectify his default, the respondent was constrained to give effect to the cancellation of allotment.

Accordingly, the complainant was informed of the same vide email dated 12.09.2022.

- vi. That thereafter, the whole amount of Rs.40,01,100/- paid by the complainant was refunded to him after cancellation of the allotment. That the present complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant has not approached this Hon'ble Authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, fictitious, baseless and unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gain from the respondent. The instant complaint is not maintainable in the eyes of law, is devoid of merits, therefore, is fit to be dismissed in limine.

E. Jurisdiction of the authority

6. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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

8. Section 11(4)(a) of the Act 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) *The promoter shall-*

- (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.

9. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant:

- G.I Direct the respondent to withdraw the cancellation letter and restore the plot in favor of the complainant.

- G.II Direct the respondent to hand over the final printed copy of the ABA and executed the BBA in favour of the complainant.
10. In the present complaint, the complainant is contending that the subject unit/plot bearing no. B4-04, Tower-B4 in the project "The westerlies" was allotted by the respondent in favour of the complainant vide allotment letter dated 04.04.2022 for a sale consideration of Rs. 4,00,10,610/- and he had paid a sum of Rs. 80,02,161/- which is approx. 20% of the sale consideration. Thereafter, the no flat buyer agreement has been executed inter se parties till date. Further, it is submitted that the cancellation letter dated 22.07.2022 which has been appended with the reply of the respondent was received by the complainant. The counsel for the complainant further invites attention to mail dated 25.07.2022 and stated that vide letter dated 12.05.2022 he had been given one month time to deposit the stamp duty charges i.e., up to 12.06.2022 and stamp duty was duly paid on 10.06.2022. He had requested to fix the date for execution of the agreement on 29.07.2022 due to his transfer from Jharkhand to Bangalore vide email dated 04.07.2022. However, the respondent unilaterally cancelled the allotment. He further stated that the request for draft the agreement was also not acceded by the respondent.
11. The counsel for the respondent states that the complainant was liable to pay 85% of the total sale consideration within a period of 60 days of allotment. However, the same could not be demanded before signing of the BBA. The complainant was delaying the execution of the BBA despite reminders and therefore, after giving a final notice

on 12.05.2022 and further emails the allotment was cancelled and the entire amount paid by the complainant was refunded without deductions.

12. Now the proposition before the authority is whether the cancellation made by the respondent vide letter dated 22.07.2022 is valid or not.

13. The authority is of the view that the cancellation letter was made vide letter dated 22.07.2022 is not a valid for the following reasons. **Firstly**, the complainant requested to the respondent to fix the date for execution of the agreement on 29.07.2022 due to his transfer from Jharkhand to Bangalore vide email dated 04.07.2022. The respondent did not respond to the request made by the complainant and unilaterally cancelled the allotted unit on 22.07.2022. **Secondly**, before entering into an agreement, the respondent received more than 20% of the sale consideration from the complainant against the allotted unit. There is express violation of the provisions of the Act on the part of the promoter as it has received more than 10% of the sale consideration as advance without executing agreement for sale. The Authority is well within its powers to deal with the issue when a complaint is filed by an aggrieved allottee, to regulate the real estate sector. Thus, the authority is of the view that the cancellation made vide letter dated 22.07.2022 was not valid and is hereby set aside.

14. In the present case, the respondent/promoter has accepted more than 10% of the cost of the apartment as advance payment without first entering into written agreement for sale and has hereby violated the provisions laid down under Section 13(1) of the Act. Section 13(1) of the Act is reproduced below for ready reference:-

Section 13: No deposit or advance to be taken by promoter without

first entering into agreement for sale.

13. (1) *A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*
- (2) *The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.*

15. In view of the above, the authority is observed that there is violation of section 13(1) of the Act of 2016, and a notice be issued to the respondent under section 61 of the Act for violation of Section 13 of the Act. Separate proceedings in this regard be initiated by the planning branch. A copy of this order be forwarded to the registration branch of the authority for further necessary action in the matter. The termination made by the respondent vide letter dated 22.07.2022 is hereby set aside and directed to restore the allotted unit of the complainant within a period of 30 days from the date of this order and issue a fresh statement of account as per builder buyer's agreement.

16. **Due date of handing over possession:** In the present matter, no BBA has been executed till the date between the parties. Therefore, the due date is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as *Fortune Infrastructure and Ors.*

Versus Trevor D 'Lima and Ors (12.03.2018) wherein the Apex Court observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.** In view of the above-mentioned reasoning, the date of signing of allotment letter dated 04.04.2022, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 04.04.2025.

17. That as per section 19(6) and 19(7) of the Act every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act. In view of the same, the respondent-promoter is directed to execute the buyer's agreement with the complainant within a period of next 30 days from the date of this order. In case the complainant still fails to sign the BBA within prescribed time the respondent shall be free to proceed with the cancellation of the subject unit allotted to the allottee as per the buyers agreement and as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulation 11(5) of 2018 and the complainant/allottee shall make

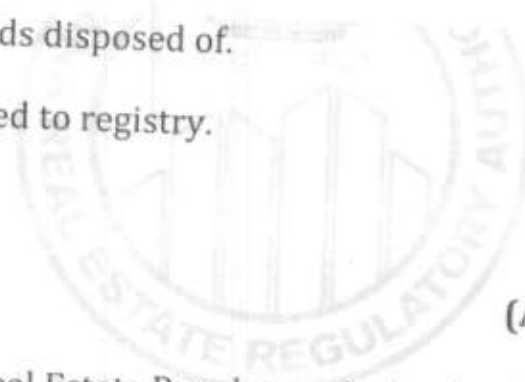
the requisite payments within a period of 2 months of the fresh demand raised by the respondent as per agreed buyer's agreement.

H. Directions of the authority

18. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The termination made by the respondent vide letter dated 22.07.2022 is hereby set aside and directed to restore the allotted unit of the complainant within a period of 30 days from the date of this order and issue a fresh statement of account as per builder buyer's agreement.
- ii. The respondent is further directed to execute the flat buyer agreement with the complainant within a period of next 30 days from the date of this order. In case the complainant still fails to sign the BBA within prescribed time the respondent shall be free to proceed with the cancellation of the subject unit allotted to the allottee as per the buyer's agreement and as per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulation 11(5) of 2018.
- iii. The complainant/allottee shall make the requisite payments of the subject apartment as per the provisions of section 19(6) and (7) of the Act, within a period of 2 months of the fresh demand raised by the respondent.

- iv. Also, a notice be issued to the respondent under section 61 of the Act for violation of Section 13 of the Act. Separate proceedings in this regard be initiated by the planning branch. A copy of this order be forwarded to the registration branch of the authority for further necessary action in the matter.
- v. The respondent is not entitled to charge any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
19. Complaint stands disposed of.
20. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.11.2023

HARERA
GURUGRAM