

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

Complaint no.: 7980 of 2022
Date of decision: 25.01.2024

Sh. Baljeet Asthana
R/o: - EC-97, Maya Enclave, Hari Nagar, Delhi- 110064
(India)

Complainant

Versus

M/s Experion Developer Private Limited.
Regd. office at: - F-9, 1st Floor, Manish Plaza 1, Plot No. 7,
MLU, Sector- 10, Dwarka, New Delhi- 110075
Also at: - 2nd floor, Plot no. 18, Institutional Area, Sector- 32,
Gurugram- 122001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Harshit Batra and Ms. Tanya (Advocates)
Shri Gunjan Kumar and Ms. Ankita Saikia (Advocates)

Complainant
Respondent

ORDER

1. This 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

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A. Unit and project related details

2. The particulars of unit details, 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. No.	Particulars	Details
1.	Name of the project	"The Westerlies", Sector-108, Gurugram
2.	Nature of the project	Residential plotted colony
3.	DTCP License no.	57 of 2013 dated 11.07.2013 valid up to 10.07.2024
4.	Name of licensee	SNK Developers Pvt. Ltd. (New Name: Experion Reality) and 13 others
5.	RERA registered/ not registered	16 of 2020 dated 2.06.2020 valid up to 10.07.2024
6.	Plot no.	Plot no. F1/75, [Page no. 47 of the complaint]
7.	Unit area admeasuring	181.79 sq. Yds. (152 sq. meter) [Page no. 47 of the complaint]
8.	Date of booking application	07.06.2022 [Page no. 47 of the complaint]
9.	Date of intimation letter regarding booking	16.06.2022
10.	Date of apartment buyer agreement	Not executed
11.	Possession clause	Cannot be ascertained
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs.1,80,15,389/- [As per schedule of payment at page no. 48 of the complaint]
14.	Amount paid by the complainant as per receipt information	Rs.18,17,704/-
15.	Cancellation letter	18.10.2022 Page no. 68 of reply

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16.	Legal notice sent by the complainant with regard to set aside the cancellation letter dated 18.10.2022	01.12.2022 (Page no. 58 of the complaint)
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B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant is a citizen of India and resident of EC-97, Maya Enclave, Hari Nagar, Delhi - 110064, India. He had invested his entire life savings and booked a plot in the project namely "*The Westerlies*" being developed by the respondent within the territory of Gurugram.
- II. That the respondent company is duly incorporated under the companies Act, 1956, engaged in the business of construction and development in the real estate sector and claims to be one of the leading real estate companies. Respondent through its marketing representative approached the complainant advertising about the project in question. The marketing representatives, for and on behalf of the respondent, made tall claims with regard to the project and the respondent, and further lured the complainant for booking a plot in the above said project of the respondent. He made a payment of booking amount Rs.1,00,000/- on 29.05.2022 as demanded by the respondent for the respective plot being developed in the aforesaid project.
- III. Thereafter, believing upon the representations and assurances made by the respondent the complainant vide application form dated 07.06.2022, booked a plot admeasuring 181.79 sq. Yrds in the said project for a total sale

consideration of Rs.1,80,15,389/- and adjusted the earlier amount of Rs.1,00,000/- for further registration.

- IV. That the complainant further made a payment of Rs.9,00,800/- and Rs.8,00,800/- vide cheque no. 000045, dated 07.06.2022 and 058609 dated 09.06.2022 respectively, as and when demanded by the respondent for the said plot. Thereafter, the respondent issued three receipts dated 16.06.2022 aggregating to the payment of Rs.18,01,600/- paid by her against the said plot allotted in the aforesaid project.
- V. Despite, after receiving 10% of the total sale consideration the respondent herein failed to execute any builder buyer agreement which ought to have been executed in accordance with the provisions of section 13 Act of 2016.
- VI. That subsequently, the respondent vide intimation for acceptance of application form cum welcome letter dated 16.06.2016, confirmed the allotment plot bearing no. F1/75, admeasuring 152 sq. meters in favour of the complainant. Respondent vide letter dated 16.06.2022, called upon the complainant to make an additional payment of Rs.16,104/- towards the stamp duty, legal fees and registration fees to further enable the respondent to further enable the respondent to proceed with the execution and registration of the agreement for sale.
- VII. The complainant, upon the trust and faith of the respondent further paid the additional amount of Rs.16,104/- as demanded by it and subsequently intimated the respondent regarding the said payment vide email dated 22.07.2022 and even shared the details of the same vide email dated

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29.07.2022. That vide said communication the respondent informed the complainant that execution of agreement for sale shall commenced after 02.08.2022.

- VIII. That upon receiving the letter dated 15.09.2022 from the respondent for execution of the agreement for sale, the complainant vide email dated 21.09.2022, intimated the respondent that the complainant is unavailable due to medical emergencies and shall suitably be available by the first week of November 2022. The request of the complainant was acknowledged and accepted on 21.09.2022 and the respondent further requested the complainant to execute the agreement at the earliest.
- IX. That at this stage, it is pertinent to highlight that in the letter dated 13.07.2022 of the respondent did not mention any specific date for execution of the agreement. It merely required the payment of Rs.16,104/- Upon receiving the same, vide email dated 19.07.2022, the fact of non-receipt of previous letters was communicated to the respondent vide email dated 19.07.2022. Consequently, within 3 days, the requisite sum was disbursed by the complainant, which was acknowledged and accepted by the respondent. Thereafter, the complainant was requested to execute the agreement after August, 2022. Accordingly, the complainant informed that she shall be available for execution of the agreement on 26.10.2022, however, after having accepted the payment, the booking was unilaterally, arbitrarily and wrongfully terminated by the respondent.

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- X. That the respondent being in a dominant position arbitrarily and illegally cancelled the plot allotted to the complainant on unfair and frivolous grounds for not making the payment of the registration fees which the respondent himself had acknowledged vide email dated 29.07.2022. Moreover, the fact of willingness of the complainant to execute the agreement is ex facie evident from a bare perusal of the documents. That vide said cancellation letter the complainant came to know that the entire hard earned money paid by the complainant has been forfeited by the respondent illegally and only an amount of Rs.61/- is stand refundable post cancellation. However, the respondent failed realize the fact that despite receiving an amount of Rs.18,01,600/- + Rs.16,104/- = Rs.18,17,704/-, the complainant had complete adhered to all the requirements and request to the respondent and there existed no reason for cancellation of the unit.
- XI. That the complainant was unaware of the same. Evidently, there were no corresponding email communication. Complainant, vide email dated 22.10.2022 and 27.10.2022, intimated the respondent that complainant is available and requested the respondent to schedule registration of the agreement for sale on 26.10.2022. That upon not receiving any response from the respondent, the complainant being aggrieved visited the office of the respondent and further met one of the manager namely Mr. Oberoi who assured that agreement for sale shall be executed to the earliest. It is pertinent to note herein that the complainant is always been willing to execute the agreement and make the requisite payments.

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- XII. That on 11.11.2022, the complainant had categorically referred to the last meeting wherein it was agreed that the agreement shall be executed. Upon no reply being received by the Respondent, another reminder was sent by the complainant on 14.11.2022. Despite visiting the office of the respondent, and clear and unequivocal understanding that the agreement shall be executed, not only did the respondent fail to execute the agreement for sale but had also been unbothered to reply to the requests of the complainant. Further, the complainant served a legal notice dated 01.12.2022, calling upon the respondent to revoke the unfair and arbitrary cancellation. A time of 15 days was given to the respondent to recall the arbitrary and unlawful cancellation letter and to reinstate the unit, however, to utmost surprise of the complainant, the respondent had wilfully chosen to shy away from its obligations.
- XIII. That the complainant has been running behind the respondent for the execution of the agreement for sale and for revoking the cancellation letter issued with respect to the plot in question, however, the request of the complainant was utterly refused and ignored by the respondent. Such act and omission the complainant has not only suffered loss of money, loss of time, loss of resources but has also aggrieved of harassment, mental stress and agony.
- XIV. That after the receipt of the legal notice, the respondent wrongfully and unilaterally transferred a sum of Rs.18,01,600/- via RTGS (KKBKR52022122300607115) on 23.12.2012. It is pertinent to note that

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the complainant requested the respondent to reinstate the unit, in the legal notice. However, despite ensuring compliance of the same, the respondent unilaterally and *malafidely* transferred the money of the complainant. It is also pertinent to mention that no letter/intimation/etc. was given for such transfer.

- XV. That it is reiterated that the complainant is willing to execute the agreement and make the payments as per the agreed plan and hence requests to reinstate the unit after setting aside the arbitrary and unlawful cancellation of the unit. Respondent has utterly failed to fulfil its obligations to execute the agreement despite the request of the complainant and unlawfully cancelled the allotment after agreeing for execution of the agreement and taking requisite money, and has caused huge losses to the complainant, hence the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to revoke the cancellation letter dated 18.10.2022, as the same is arbitrary and illegal and to reinstate the allotment of the plot.
 - ii. Direct the respondent to execute the agreement for sale for the plot in question and to register the same before the competent authority.
 - iii. Direct the respondent not to raise any demand which was never intimated to the complainant at the time of booking and/or allotment.
 - iv. To impose penalty upon the respondent as per the provisions of section 61 of the Act for violation of section 13, 14 and 16 of the Act.

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- v. To conduct enquiry under section 35 of the Act against the respondents.
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 respondent

6. The respondent by way of written reply made following submissions:-
- I. That the present reply to the complaint is being filed on behalf of M/s Experion Developers Pvt. Ltd. through its authorized signatory Mr. Sanjeet Kumar Thakur, who is duly authorized to act on behalf of the respondent vide board resolution dated 17.05.2022. The respondent is a real estate company engaged in the business of the development and construction of real estate projects and is one of the reputed companies in the real estate sector.
- II. That the complainant is a real estate investor who buys properties in luxurious projects. Upon hearing the good reputation of the respondent in delivering luxurious projects, he approached the representatives of the respondent of its own free will and expressed her interest in buying **multiple plots** in the project "The Westerlies" at Sector-108, Gurugram, and Haryana. Thereafter, the complainant after examining all the approvals, plans and necessary documents related to the project in question, submitted a booking application form dated 30.05.2022, after carefully reading and understanding all the terms and conditions of allotment contained therein.

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- III. The booking of plot no. F1/75 admeasuring 152 sq. meter in the project "The Westerlies" at Sector-108, Gurugram, Haryana was confirmed vide Letter dated 16.06.2022. It is also pertinent to mention that it was categorically mentioned in the said letter that the agreement for sale of the plot shall be executed on receiving 10 % of the total sale price of the plot. Therefore, it was within the knowledge of the complainant that she was obligated to execute the agreement for sale of the plot upon payment of 10% of the total sale price of the plot.
- IV. That keeping in view the provisions of the Act, 2016 and rules and regulations framed thereunder, it was mutually decided between the complainant and the respondent that the agreement for sale of the plot shall be executed on receipt of 10% of the total sale price of the plot.
- V. That the complainant had submitted an application form for allotment of a residential plot in the project "The Westerlies". The said application form the agreed total sale price of the plot in question was Rs.18,088,105/-. That the complainant in addition to the application form had also approved and signed a letter pertaining to payment plan wherein it is specifically agreed and mentioned that the total sale price of the plot in question was Rs.1,80,88,105/-. That in lieu of the total sale price of the plot in question, the complainant had paid Rs.18,01,600/- in three instalments.
- VI. That the respondent being a responsible developer who is passionately committed to delivering the plots to its buyers in a timely manner, vide another letter dated 16.06.2022 requested the complainant to pay the

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stamp duty, registration fees and legal fees for execution and registration of the agreement for sale in terms of the agreed terms and conditions and as per the provisions of the Act, 2016.

VII. That the complainant despite in receipt of the letter dated 16.06.2022 failed to execute the agreement for sale and further failed to pay the requisite charges for registration of the said agreement. Therefore, the respondent sent a reminder letter dated 28.06.2022 requesting the complainant to make payment of requisite charges for executing and registration of the agreement for sale. She again failed to pay the requisite charges for registration and execution of the agreement for sale, despite receiving the reminder letter dated 28.06.2022. Therefore, the respondent was constrained to issue a final notice dated 13.07.2022 requesting the complainant to pay the stamp duty and other requisite charges for execution and registration of agreement for sale within 30 days from the issuance of final notice dated 13.07.2022. Furthermore, the respondent vide the said letter intimated the complainant that non-payment of the stamp duty and further delay in execution and registration of agreement for sale shall result in cancellation of the booking and thereafter the company shall be entitled to forfeit the earnest money.

VIII. That the respondent after sending the final notice dated 13.07.2022 patiently waited for the complainant to pay the stamp duty and other charges. That the complainant vide email dated 22.07.2022, informed the respondent that she had made the payment of stamp duty and other

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applicable charges however, she did not provide any proof of payment. Therefore, the respondent on the same date i.e., 22.07.2022 sent an email requesting the complainant to share the payment details.

IX. That in response to the email of the respondent, the complainant vide email dated 29.07.2022 provided the proof of payment. The respondent immediately on the same date vide email dated 29.07.2022 informed the complainant that for the purpose of executing and registering the agreement for Sale at the office of registrar, the available slots are from 02.08.2022 onwards, and requested the complainant to confirm a date as per her convenience for executing/registering the agreement for sale. However, the complainant neither provided any date nor came forward for executing/registering the agreement for sale. Therefore, the respondent instead of cancelling the booking of the complainant, afforded one more opportunity to the complainant and sent a reminder letter dated 15.09.2022 requesting the complainant to execute the agreement for sale within 15 days and vide the said letter it was also conveyed to the complainant non-execution of the agreement for sale within 15 days from the issuance of the said letter would result in cancellation of booking.

X. That for the convenience of the Authority a table is provided herein below showcasing the reminders/final notice sent to the complainant for fulfilling her obligation of paying the stamp duty and other charges and executing the agreement to sale thereof:

S. No.	Particulars	Date	DTDC Consignment No.
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			Speed Post no.
i.	Letter for Execution and Registration of Agreement of Sale	16.06.2022	Z76997521
ii.	Reminder Letter	28.06.2022	Z76997717
iii.	Final Notice	13.07.2022	Z77642880 ED036491916IN
iv.	Reminder Letter	15.09.2022	Z38225119 EB343411837IN

That all these reminder/final notices fell on deaf ears and despite receiving the aforementioned reminder/final notices the complainant has failed to come forward for executing the agreement for sale. That the said act of the complainant clearly indicates the mendacious intention of the complainant.

- XI. That it was agreed by the complainant while executing the booking application that upon non-payment of stamp duty, registration charges, and failure in execution/registration of the agreement for sale by the complainant, the booking shall stand cancelled and the entire amount paid by the complainant shall be forfeited. That the same is recorded in clause 17 of the booking application form dated 30.05.2022. Further, she was duty-bound to execute and register the agreement for sale as per the agreed terms of the booking form as well as per the provisions of the Act, 2016. However, the complainant despite receiving multiple reminders and final notices failed to execute the same. That the respondent patiently waited for approximately 4 months for the complainant to execute/register the agreement for sale, thereafter the respondent was constrained to issue a cancellation letter dated 18.10.2022 whereby the booking of the



complainant was cancelled. It is thus evident that the cancellation of allotment by the respondent has been done in accordance with the terms of the booking application and the Act, 2016.

- XII. Despite paying the stamp duty, registration charges, and legal charges on 22.07.2022, she did not come forward for executing the agreement for sale, and it was only after a lapse of approximately 2 months that the complainant sent an email dated 21.09.2022 informing the respondent that she will allegedly be travelling and will be back by the first week of November 2022 only. The complainant with an ulterior motive had been avoiding the execution of the agreement for sale and had sent the email dated 21.09.2022, containing untruthful and deceitful facts about her whereabouts.
- XIII. It is important to bring it to the knowledge of this Authority that the complainant is a real estate investor and has booked one more plot bearing no. D2-25 in the same project "Westerlies" of the respondent. It is noted herein that the presence of the complainant herein in the country can be verified from the below mentioned chain of events which occurred between 21.09.2022 (i.e., the date on which the complainant alleged that she is travelling and was not available) to 18.10.2022. These chain of events pertain to the plot D2-25 booked by her in the same project.

S. No.	Date	Event
1.	22.09.2022	Banker verification letter - That the said letter was signed by the complainant on 22.09.2022 which also bears the stamp and signature of HDFC Bank personnel. <i>A copy of Banker Verification Letter dated 22.09.2022 is annexed herewith and marked as Annexure R/12.</i>

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2.	26.09.2022	<p>That on 26.09.2022 the complainant signed following documents:</p> <ol style="list-style-type: none">Customer Information LetterAcknowledgment letter of transfer of documents of plot no. D2-25Undertaking -Cum-Indemnity BondAffidavit for transfer of plot D2-25 <p><i>A copy of Customer Information Letter dated 26.09.2022, Acknowledgment letter dated 26.09.2022 for transfer of documents of plot no. D2-25, Undertaking-Cum-Indemnity Bond dated 26.09.2022 and Affidavit for transfer of plot D2-25 are annexed herewith and marked as Annexure R/13 (Colly.)</i></p>
3.	18.10.2022	<p>Execution of agreement for sale for plot no. D2-25 at the office of registrar (Kadipur)</p> <p><i>A copy of Agreement for Sale of the Plot D2-25 is annexed herewith and marked as Annexure R/14.</i></p>

XIV. That the presence of the complainant can also be verified from the photograph which is captured at the office of the sub-registrar at the time of execution of the agreement for sale. That a bare perusal of the agreement for sale dated 18.10.2022, it can be verified that the complainant was present in the town. It is noted herein that the complainant with an ulterior motive of extracting illegitimate monetary benefits from the respondent kept delaying the execution of the agreement for sale of the plot in question and further the complainant with a malafide intention had sent an email dated 21.09.2022 stating that she was travelling and would be back by first week of November, whereas, the correct material fact is that the complainant was available in town in the month of September and October and if she wanted she could have executed the agreement for sale.

XV. That the total sale price was Rs.1,80,88,105/- out of which the complainant had paid Rs.18,01,600/-, which is 9.96% of the total sale price of the plot.

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It is reiterated herein that it was agreed between the parties that the agreement for sale would be executed/registered after payment of 10% of the total sale price. That the respondent after receiving approximately 10% of the total sale consideration made multiple requests to the complainant to execute/ register the agreement for sale for the plot in question. However, the complainant never came forward for executing the same. The complainant had categorically agreed that upon failure of the complainant in executing/registering the agreement for sale, the respondent shall be entitled to cancel the booking and forfeit the entire amount paid by the complainant.

- XVI. Despite agreeing to the forfeiture by the complainant, the respondent company as a gesture of goodwill refunded the entire amount paid by the complainant against the total sale consideration of the plot, to the tune of Rs.18,01,600/- to the complainant through RTGS dated 22.12.2022.
- XVII. That when it occurred to the complainant that the real estate market of Delhi-NCR experienced a resurgence, and property prices have touched a decade high, the complainant in order to encash this opportunity and extract illegitimate monetary benefits from the respondent, had filed the present Complaint seeking revocation of cancellation letter dated 18.10.2022, despite receiving refund of the total amount paid by her, without any deductions.
- XVIII. That the refund of the entire amount was made on 23.12.2022 which has been acknowledged by the complainant in para 24 of its complaint.

Thereafter, the complaint was filed and notice issued on 04.01.2023.

Therefore, it is safe to conclude that the present complaint is an after-thought of the complainant and the only motive behind the same is the illegal and illegitimate extraction of monetary benefit.

XIX. Hence, in view of the aforementioned submissions, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of this Authority. That the present complaint is an utter abuse of the process of law and hence deserves to be dismissed.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

8. The complainant and respondent have filed the written submissions on 23.02.2024 and 15.02.2024 respectively which are taken on record. No additional facts apart from the complaint or reply have been stated the written submissions.

E. Jurisdiction of the Authority:

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial Jurisdiction:

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

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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:

11. 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;

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.

12. 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 complainant at a later stage.

F Findings on the objections raised by the respondent

F.I Objection regarding maintainability of complaint on account of complainant being investor.

13. The respondent took a stand that the complainant is investor and not consumer and therefore, she is not entitled to the protection of the Act and

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thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and they have paid total price of Rs.18,17,704/- to the promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

14. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

- G.I Direct the respondent to revoke the cancellation letter dated 18.10.2022, as the same is arbitrary and illegal and to reinstate the allotment of the plot.**

- G.II Direct the respondent to execute the agreement for sale for the plot in question and to register the same before the competent authority.**
- G.III Direct the respondent not to raise any demand which was never intimated to the complainant at the time of booking and/or allotment.**

15. In the present complaint the complainant is seeking relief w.r.t set aside the cancellation letter dated 18.10.2022 and execution of agreement to sell. The complainant was allotted a plot bearing no. F1/75, for an area admeasuring 152 sq. meters in the project named "The Westerlies" situated at Sector-109, Gurugram vide booking cum welcome letter dated 16.06.2022. The total sale consideration of plot was Rs.1,80,15,389/- and the complainant has paid a sum of Rs.18,17,704/- towards the said plot.
16. The respondent has sent various reminders letters for execution of agreement to sell to the complainant on 16.06.2022, 28.06.2022, 13.07.2022, 15.09.2022 respectively, but the agreement to sell was not executed due to non-availability of the complainant as she will be available in the month of November 2022. It is matter on record that the complainant has also executed another agreement to sell in the same project being developed by the same respondent/promoter on 18.10.2022, for plot no. D2-25 at the office of registrar (Kadipur), the copy of the said agreement to sell has annexed with the respondent in its reply. It is pertinent to here that she knows about all the facts and circumstances and intentionally delayed the execution of buyer's agreement. The respondent tired of the neglectful behavior of the complainant, cancelled the allotted unit of the complainant vide cancellation letter dated 18.10.2022. Thereafter, the complainant sent legal notice on 01.12.2022, with regard to revoke/set aside the cancellation letter dated

18.10.2022. Thereafter, the respondent refunded the entire deposited amount of the complainant i.e., Rs.18,01,600/- through RTGS on 22.12.2022.

17. After, considering the documents available on record as well as submissions made by the parties, the Authority is satisfied that the complainant is at default and the respondent has rightly terminated the booking on failure of the complainant to come forward to complete the booking formalities and finalize the allotment and has also refunded the full amount received by it i.e., Rs.18,01,600/- to the complainant. Further, section 13(1) of the Act of 2016, provides the promoter shall not accept a sum of more than 10% of the sale consideration without executing the buyer's agreement which is reproduce as under for ready reference: -

13. No deposit or advance to be taken by promoter without first entering into agreement for sale. —

(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.

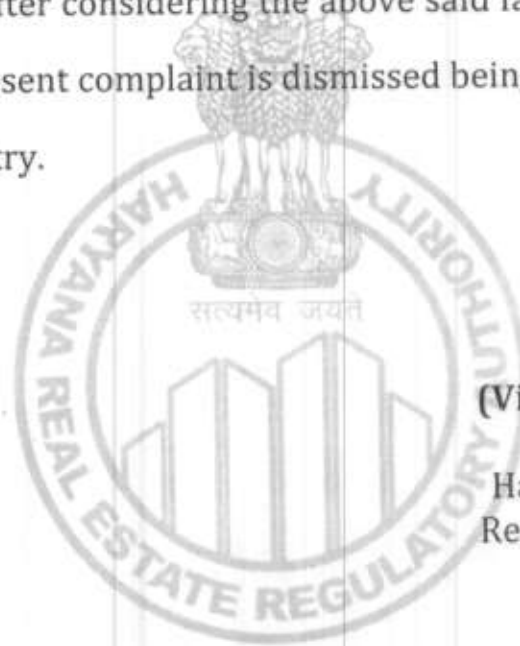
(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development 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.


18. Moreover, proviso to section 13 (1) provides that the promoter cannot be accept a sum of more than 10% of the total sale consideration without executing the agreement to sell. Therefore, the subsequent demand can be

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raised from the respondent/promoter after execution of the buyer's agreement. However, in the instant case, the complainant does not come forward to finalize the booking formalities and to execute the buyer's agreement. The complainant needed to be vigilant before purchasing the unit and at this stage no other relief can be granted in their favour for their negligence. The due procedure of law cannot be allowed to be misused by the litigants. Therefore, after considering the above said facts, the cancellation is held valid and the present complaint is dismissed being devoid of merits. File be consigned to registry.

Dated: 25.01.2024



v.1 - 
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM