

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No. 52 of 2024

Date of Decision: July 07,2025

Experion Developers Pvt. Ltd. Through its authorized signatory
Mr. Sanjeet Kumar Thakur, registered office, F-9, First Floor,
Manish Plaza-1, Plot No. 7 Mlu, Sector 10, Dwarka, New Delhi-
110075

Appellant.

Versus

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

Respondent

Present : Mr. Chetan Mittal, Senior Advocate assisted by
Mr. Kunal Mulwani, Mr. Rajeev Anand,
Mr. Ritvik Garg, Mr. Vandil Jain, Advocates
with Ms. Puja Tiwari, authorized representative
for the appellant.

Mr. Sagar Bhatia, Advocate with
Mr. Digvijay Singh Chauhan, Advocate for the
respondent.

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

ORDER:

RAJAN GUPTA, CHAIRMAN:

Present appeal is directed against order dated
29.11.2023, passed by the Authority¹. Operative part thereof
reads as under:

*“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*

¹ Haryana Real Estate Regulatory Authority, Gurugram

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 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."

2. At the out-set, it may be pointed that there appears to be an inadvertent typographical error in paragraph No. 10 of the order passed by the Authority, wherein it has been mentioned that the allottee paid a sum of Rs.80,02,161/- to the promoter. During the course of arguments, both the parties

admitted that actual amount is of Rs.40,01,100/- which was later refunded.

3. It appears that in February, 2022, the respondent-allottee applied for a plot measuring 587.31 square yards in project “The Westerlies”, floated by the appellant in Sector 108, Gurugram for total sale consideration of Rs.4,00,10,610/-, out of which the respondent paid Rs.40,01,100/-. Provisional allotment letter was issued to the respondent on 04.04.2022. Till 24.07.2022, despite requests by the allottee, no response was received from the promoter-appellant regarding execution of AFS². Vide letter dated 22.07.2022, the promoter cancelled the unit and refunded the amount. The respondent-allottee, thus, preferred the instant complaint before the Authority.

4. An e-mail dated 28.07.2022 was sent by Experion to the allottee informing him that his appointment for completing ‘AFS registration’ formalities had been confirmed for 29.07.2022 at 2.30 PM. Relevant part of the letter is reproduced hereunder for ready reference:

“Greetings from Experion.

This is with reference to your email below, basis your commitment we have scheduled AFS (Agreement For Sale) registration for the captioned plot as per the schedule mentioned below.

Your appointment for completing ‘AFS registration’ formalities is confirmed for 29th July, 2022 (Friday) at 2.30 PM.

You can refer the below coordinates of our lawyer for reaching the registrar’s office on the day of Registration:

² Agreement for Sale

*Mr. Nihal Singh Dhariwal
5-6 Punchayat Bhawan
Court Road, Railway Road,
Jacob Pura Gurgaon-122007”*

5. However, correspondence on record (particularly emails dated 28.07.2022, 30.08.2022 and 31.08.2022) indicate that even after the said cancellation, the promoter continued to engage with the allottee and granted further dates for execution of AFS and confirmed appointment slots for registration, last being 29.07.2022. These facts, particularly the act of booking registration slots and urging the respondent to execute AFS post cancellation, are indicative of the appellant's willingness to proceed with the transaction. It is also admitted that letter dated 12.09.2022 merely reaffirmed the earlier cancellation, without constituting a fresh cancellation as per law. In such circumstances, relevance of cancellation letter dated 22.07.2022 is lost.

6. This conduct, wherein the appellant continued to engage and sought execution of agreement from the respondent after issuance of the cancellation letter, amounts to a waiver of the initial termination. In such cases, the original allotment loses its efficacy unless a fresh cancellation is issued in accordance with contractual and statutory provisions.

7. In light of this, the Authority was justified in concluding that the termination letter dated 22.07.2022 had lost its significance. In absence of a fresh and independent termination based on the conduct of the appellant post communication dated 22.07.2022, the cancellation cannot be upheld.

8. The continued conduct of the appellant in pursuing execution of the agreement for sale even after issuance of the cancellation letter clearly demonstrates an intention to proceed with the contractual relationship, thereby rendering the said cancellation legally ineffective. The letter dated 12.09.2022 merely reiterates the earlier position and cannot be treated as a fresh or independent cancellation in law.

9. In view of above, the Tribunal finds no legal infirmity with the order/decreed passed by the Authority. Same is hereby upheld. The parties are directed to act in terms of the decree passed by the Authority within a period of 30 days of uploading of this order.

10. The appeal is hereby dismissed.

11. Copy of this order be sent to the parties/their counsel and the Authority.

12. File be consigned to records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

(Rakesh Manocha)
Member (Technical)

July 07, 2025
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