

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

Complaint no. : 5104 of 2024
Date of order : 16.07.2025

1. Dinesh Chandra Suri
2. Sangeeta Suri
Address: C-625, Opposite Gurudwara,
New Friends Colony, South Delhi.

Complainants

Versus

M/s Experion Developers Pvt. Ltd.
Office at: - F-9, First Floor, Manish Plaza-1,
Plot No.-7, MLU Sector-10, Dwarka, New Delhi-
110075.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Naveen Single (Advocate)
Harshit Batra (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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. 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 project	"The Heartsong"
2.	Nature of project	Group Housing Colony
3.	Location of project	Sector-108, Gurugram
4.	RERA Registered	Registered Vide registration no. 306 of 2017 Dated-17.10.2017
5.	DTCP License	License no. 38 of 2010 Dated-14.05.2010
6.	Allotment Letter	12.12.2012 (As on page no. 13 of complaint)
7.	Unit no.	B8/0601
8.	Unit area	2003 sq.ft.
9.	Apartment-Buyer's Agreement	30.08.2013 (As on page no. 22 of complaint)
10.	Endorsement letter [The co-allottee i.e., Mrs. Sangeeta Suri endorsed in	10.01.2014 (As on page no. 61 of complaint)

	place of co-allottee Mrs Kamla Suri]	
11.	Possession clause	<p>Clause 10</p> <p>Project completion period</p> <p><i>10.1 Subject to Force Majeure, timely payment of the Total Sale Cosnideration 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 within a period of 36 (Thirty Six) months from the date of this Agreement ("Commitment Period"). 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 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.</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 58 of reply)</i></p>
12.	Due date of possession	01.03.2017

		(Calculated 36 months from date of execution of the agreement plus 180 days grace period) [Note: The same has been inadvertently mentioned as 10.07.2017 in the proceedings dated 02.07.2025]
	Basic Sale consideration	Rs.1,10,16,500/- (As per payment schedule on page no. 54 of complaint)
14.	Amount paid	Rs.34,49,512/-
15.	Cancellation	27.04.2017 (As on page no. 77 of complaint)
16.	Amount forfeited	Rs.18,62,666/- [Refunded Rs.15,90,102/- on 04.10.2022 and the same have been duly encashed by the complainant]
17.	Occupation certificate	01.06.2017 (As on page no. 221 of reply)
18.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the on 05.12.2012, complainants Mr. Dinesh Suri & Ms. Kamla Suri booked a flat in the project named "The Heart Song" situated in Sector 108, Gurugram. Consequently, the Flat bearing unit no. B8/0601 having super

area of 2003 sq. ft. was allotted to the complainants vide provisional allotment letter dated 12.12.2012.

- II. That on 30.08.2013, the Builder Buyer Agreement was signed between the parties. The total sale consideration for the unit was Rs.12,417,775/- and the complainants have made all the payments on time as per the above-mentioned payment plan and has paid Rs.34,49,212/- in total to the respondent till date. The name of Mrs. Kamla Suri has been replaced with Mrs. Sangeeta Suri on 14.01.2014 as the second applicant.
- III. That a copy of the account ledger provided by the respondent-promoter indicates a payment of Rs.34,49,212/- made by the complainants. In 2014, the mother of the complainant, Mr. Dinesh Suri, experienced a serious medical emergency, placing a significant financial burden on the complainant. They requested the respondent to either provide a smaller unit by adjusting the amount of Rs.34,49,212.00, with the remaining balance. However, the respondent disregarded the complainant's request and sent a final notice on 29.03.2017 and then sent cancellation letter on 27.04.2017.
- IV. That the petitioners are suffering because the unit they booked was cancelled on 27.04.2017, and the money they paid to the respondent-promoter has not been returned. Furthermore, the respondent-promoter sold the petitioners' cancelled unit at a higher price but is yet to refund the petitioners' hard-earned money.
- V. That after several visits and phone calls to the respondent's office, they assured the complainant that the full amount paid would be refunded. However, they ultimately refunded only Rs.15,90,102/- through two cheques, each for Rs.7,95,051/-.

VI. That since October 2022, the petitioners have repeatedly visited and called the respondent's office to recover their remaining amount of Rs.18,59,110/-, but their efforts have been in vain

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

- i. Direct the respondent promoter to refund the entire amount of Rs.18,59,110/- along with interest as per the HARERA rules no. 15 from dates of respective instalments/ realization of the sale consideration by the respondent-promoter.
 - ii. Direct the respondent to pay litigation cost of Rs.2,00,000/- to the complainants.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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 the respondent.

6. The respondent has contested the complaint on the following grounds: -

- I. That the complainant no. 1 along with the erstwhile purchaser, Mrs Kamla Suri, having an interest in the real estate project developed by the respondent known under the name and style of "The Heartsong", at Sector 108, Gurugram, Haryana approached the respondent seeking allotment of a unit in the project.
- II. That the complainant no. 1 and Mrs Kamla Suri applied for booking of one unit in the said project and this request was accepted by the respondent and a provisional allotment letter dated 12.12.2012 was issued in favour of complainant no. 1 with Mrs Kamla Suri as joint allottee.

- III. That subsequently, an Apartment Buyer's Agreement was executed between the parties on 30.08.2013. After the execution of the Agreement, the respondent received a request for substitution of the name of the joint-allottee from Mrs Kamla Suri to Mrs. Sangeeta Suri. That however, the complainants had failed to adhere to the said payment plan. Upon the default of the complainants, the respondent sent various reminders and notices, despite there being no obligation whatsoever, of the respondent to issue any such reminders, as per clause 4.9 of the Agreement. Despite having received the reminders, the complainants defaulted in making the due and complete payment.
- IV. That out of the total sales consideration of the unit of 1,27,93,762/-, the complainants had only made a payment of Rs.34,49,212 i.e., 27.77%, *ex facie* evidencing that the complainants had stood in the state of constant default. A list of the Payment Request Letters, Payment Request Reminders and Final Notices are as under:

Particular	Date
Final Notice	29.03.2017
2 nd Reminder Notice	15.03.2017
Reminder	17.02.2017
Payment Request Letter	19.01.2017
Final Notice	25.04.2016
2 nd Reminder Notice	11.04.2016
Reminder	18.03.2016
Payment Request Letter	19.02.2016
Final Notice	28.01.2016
2 nd Reminder Notice	13.01.2016
Reminder	21.12.2015
Payment Request Letter	23.11.2015
2 nd Reminder Notice	25.09.2015



Final Notice	07.09.2015
Reminder	04.09.2015
2 nd Reminder Notice	24.08.2015
Payment Request Letter	04.08.2015
Reminder	31.07.2015
Payment Request letter	01.07.2015
Final notice	30.06.2015
Reminder notice	16.06.2015
Reminder	25.05.2015
Final Notice	04.05.2015
Payment Request Letter	21.04.2015
2 nd Reminder Notice	20.04.2015
Reminder	27.03.2015
Final Notice	10.03.2015
Payment Request Letter	24.02.2015
2 nd Reminder Notice	23.02.2015
Reminder	03.02.2015
Payment Request Letter	30.12.2014
Final Notice	04.12.2014
2 nd Reminder Notice	19.11.2014
Reminder	27.10.2014
Payment Request Letter	30.09.2014
Final Notice	10.07.2013
Reminder	17.06.2013
Reminder	24.05.2013
Payment Request Letter	23.04.2013
Final notice	04.04.2013
Reminder	20.02.2013
Payment Request Letter	16.01.2013
Call Notice	12.12.2012

- V. That the complainants are habitual defaulters who have been in default of payments since 2014, as is evident from the table above. The complainants had made the last payment on 26.12.2013 and by not making the due payments, not only have the complainants violated the Agreement but also the Act, 2016, under which, the complainants were obligated to make payment and despite repeated reminders and various opportunities, miserably failed to do. Accordingly, the complainants stood in fundamental breach of the Agreement as well as the RERA Act.
- VI. That in such circumstances, the respondent had a complete right to terminate the allotment of the complainants in case the default existed beyond a period of 60 days, in accordance with clause 4.8 of the Agreement.
- VII. That as noted above, the last payment was made by the complainants on 26.12.2013. The respondent had issued numerous reminders, following with the last and final opportunity to the complainants on 29.03.2017, however, the complainants miserably failed in making the due payments, leading to the final termination of the Unit on 27.04.2017.
- VIII. That it is of essence to note that the said termination was never challenged by the complainants, at any point in time. That upon the termination of the unit, no amount was left payable/refundable by the respondent to the complainant. Rather, the forfeited amount (including earnest money, any amounts paid towards statutory taxes, levies and charges, interest paid and accrued on delayed payments and commission/brokerage/margin paid by the Company), in accordance with the clause 5.1, was more than the amount paid by the complainants.
- IX. That despite the forfeiture amount being higher than the paid amount, the respondent being a customer-oriented company, without admitting any default on its part, whatsoever, after the implementation of the Act,

forfeited only the earnest money, i.e., Rs. 18,62,666.25./-. That after such forfeiture, the refund of a sum of Rs.15,90,102 was made by the respondent, as admitted by the complainant in the complaint, in full and final satisfaction of any claim that the complainant may have. That at this stage, it is pertinent to note that the refund was made vide cheque, which were duly encashed by the complainant, without any protest whatsoever. However, the present complaint has been filed at a belated stage, with the sole purpose to harass the respondent.

- X. That as per clause 10.1 of the Agreement, it was agreed that subject to force majeure conditions and the timely payments on part of the complainants, the respondent intended to handover the possession in 36 months from the agreement with grace period of 180 days. That however, despite the inordinate delay caused by the complainants, in making the due payments, the respondent had successfully completed the project and obtained the Occupation Certificate on 01.06.2017.
 - XI. That the complaint has been filed after 7 years, 5 months, 17 days from the date of cancellation of the unit and is hopelessly barred by limitation. The unit in question was terminated on 27.04.2017 and the complaint was filed on 14.10.2024 i.e., after an unsubstantiated delay of 7 years 5 months 17 days.
 - XII. That the termination of the unit was finally effected on 27.04.2017, i.e., prior to the implementation of the RERA Act, 2016 or the HRERA Rules, 2017 and therefore, no right of the parties remained thereafter. The relationship between the parties was concluded on such date and no amount remained payable by either party to the other.
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 submission made by the parties.

E. Jurisdiction of the authority

8. 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

9. 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 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

10. 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;

11. 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.

F. Findings on the objections raised by the respondent.

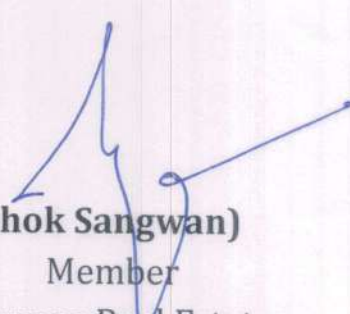
F.I. Whether the complaint is barred by limitation or not?

12. In the present complaint, the Apartment Buyer's Agreement was executed on 30.08.2013. As per clause 10 of the agreement, the respondent was to offer the possession of the unit to the allottees by 30.08.2016. The respondent is also entitled to the grace period of 180 days. Thus, the due date comes out to be 01.03.2017.
13. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority has observed that the Buyer's Agreement between the complainants and the respondent was executed on 30.08.2013. According to the terms of this agreement, possession of the unit was to be offered within 36 months from the date of execution of the Buyer's Agreement plus an additional 180 days grace period is allowed to the respondent, in terms of the agreement. Therefore, the due date for possession, considering the grace period was 01.03.2017. The respondent obtained the occupation certificate for the relevant tower on 01.06.2017. On account of non-payment of the outstanding dues on behalf of the complainants, the respondent terminated the unit of the complainants on 27.04.2017, after serving various reminders to the complainants. After cancellation of the unit, the respondent forfeited the earnest money and refunded the balance amount to the complainants vide two cheques dated 04.10.2022 amounting to Rs.15,90,102/-, the same is reflected in the Customer Ledger and also been admitted by the complainants and the same had been duly encashed by the complainants. The Cause of action last arose at the stage of cancellation of the unit i.e., 27.04.2017 and the complainants have filed the present complaint on 18.10.2024 i.e., after a delay of 7 years 6 months 21 days.
14. The Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act

of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

15. In the present matter the cause of action arose on 27.04.2017 when the cancellation of the unit was done by the respondent. The complainants have filed the present complaint on 18.10.2024 which is 7 years 6months and 21 days from the date of cause of action and in the meantime, there is no documentary proof wherein the complainants have objected on the refund granted by the respondent.
16. In view of the above, the Authority is of the view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.
17. Consequently, the complaint is dismissed being barred by limitation.
18. File be consigned to the registry.

Dated: 16.07.2025



(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram