

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

Complaint no. : 1412 of 2023
First date of hearing: 28.04.2023
Date of decision: 21.03.2025

Ashok Kumar Parmar

R/o: 27-A, Rajpur Road, Civil Lines
North Delhi, 110054, Delhi, India

Complainant

Versus

M/s Experion Developers Pvt. Ltd.

Office: F-9, First Floor, Manish Plaza 1
Plot No. 7, MLU, Sector 10
Dwarka, New Delhi, 110075

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Complainant in person with
Ms. Pallavi Parmar
Sh. Dhruv Kapoor

Counsel for Complainant
Counsel for Respondent

ORDER

1. The present complaint dated 28.03.2023 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 provisions of the Act or the Rules and regulations

made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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	WindChants, Sector-112, Gurugram
2.	Nature of the project	Residential Group Housing
3.	RERA Registered/ not registered	73 of 2017 dated 21.08.2017
4.	License no. and validity	21 of 2008 dated 08.02.2008, 28 of 2012 dated 07.04.2012
5.	Unit no.	1701, type- Waving Teak, floor no. 17, tower/block WT-04 <i>(WT-04 is as per marketing nomenclature and same tower has been named as tower-T-8 in the sanctioned plan and occupation certificate)</i>
6.	Unit area admeasuring	2732 sq. ft.
7.	Date of booking	30.09.2020
8.	Date of Agreement to Sale	08.03.2021 [Page 23 of complaint]
9.	Payment Plan	Time Linked Plan
10.	Payment default by Allottee Clause	<i>"5.1 ...The Allottee hereby specifies agrees that in case of cancellation of allotment, on account of any default by the Allottee, the Promoter shall be entitled to forfeit the Booking Amount and Delay Payment Charges on the delayed payment."</i>

		<p>"5.3 In the event the Allottee defaults of any amount payable in respect of the Apartment in terms hereof, the default payment shall attract 'Delayed Payment Charges' from the date when such amounts become due for payment until the date of receipt by the Promoter. Notwithstanding the payment of Delayed Payment Charges, in the event any payment is delayed beyond a period of 60 (sixty) days from its due date, the same shall be deemed to be a breach of this AFS and the Promoter shall be entitled to call upon the Allottee to rectify the breach by making payment of outstanding dues along with Delay Payment Charges accrued thereon within period of 30 (thirty) days. In the event the Allottee fails to make the payment the payment of the outstanding dues along with Delay Payment Charges accrued thereon within the stipulated period of 30(thirty) days, the Promoter shall be entitled to cancel Allotment and terminate this AFS in accordance herewith."</p> <p>[Page 60 of reply]</p>
11.	Possession clause	<p>7 Possession & Conveyance</p> <p>"7.1...the Promoter shall offer of possession of the Apartment to the Allottee as per payment plan schedule C, as opted by the Allottee."</p> <p>As per Annexure C - Payment Plan respondent-promoter to make offer of possession within 24 months of booking i.e. 30.09.2020.</p> <p>[Page 62 & 77 of reply]</p>
12.	Due date of possession	<p>30.09.2022</p> <p>[Calculated from the date of booking i.e., 30.09.2020]</p>
13.	Total sale consideration	<p>Rs.4,15,16,948/-</p> <p>[stated by respondent in proceedings dated 01.09.2023]</p>

		Rs.4,16,82,813/- [Page 77 of reply as per payment plan]
14.	Amount paid by the complainant	Rs.1,28,03,390/- [stated by respondent in proceedings dated 01.09.2023]
15.	Occupation certificate /Completion certificate	29.08.2022 [stated by respondent in proceedings dated 01.09.2023] 24.12.2018 [OC of the concerned unit in 17th floor at tower-8 as per page-84 of Reply]
16.	Offer of possession	12.10.2022 [Pg.93 of Reply]
17.	Possession reminders dated	24.11.2022, 07.12.2022 and 26.12.2022
18.	Final notice dated	06.01.2023
19.	Pre-Cancellation	15.02.2023 [Page 109 of reply]
20.	Complaint sent a legal notice to the respondent for not to cancel the unit on	13.03.2023
21.	Cancellation notice dated	15.03.2023 [Page 111 of reply]
22.	Possession Reminders issued post offer of possession	24.11.2022, 07.12.2022, 26.12.2022, 06.01.2023, 15.02.2023 [Page 98-107 of reply]
23.	Emails sent by complainant to respondent seeking time to pay the balance amount	27.11.2022 & 20.01.2023

24.	Amount refunded by respondent on 15.09.2023	Rs.86,51,695/- <i>[including Rs.20,000/- paid by complainant on 14.03.2023]</i> [as stated by respondent counsel in proceedings dated 06.09.2024]
25.	Forfeited amount towards earnest money that is 10% of total consideration	Rs.41,51,694/-

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - i. That on 21.08.2017 the Respondent registered the specific phase of the project under the provisions of the Real Estate Act with the Haryana Real Estate Regulatory Authority at Gurugram under registration number 73 of 2017.
 - ii. That on 30.09.2020 the complainant applied to the respondent for allotment of residential apartment in project vide application and had been allotted apartment bearing no. 1701, type- waving teak, 17th floor. WT-04 building having carpet area of 253.90 sq. metre. along with car parking no. 2266, 2272 and 2277 in Sector-112 Gurugram, Haryana for which the total sale price agreed was INR 41,516,948.00 (Four Crores Fifteen lakhs sixteen thousand nine hundred forty-eight) at the rate of INR 1,63,516/-pr. sq. mtr. of carpet area inclusive of three car parking spaces.
 - iii. That on 08.03.2021, a builder buyer agreement was executed between the parties. The complainant paid a sum of Rs. 41,51,695/- as booking amount to the respondent in two transactions dated 10.11.2020. That on 12.10.2022, the respondent sent a notice of possession to the complainant. That on 24.11.2022, the respondent sent a reminder for possession named as possession reminder 1 to the complainant.

- iv. That on 27.11.22 the complainant acknowledged the notice of possession and requested for a meeting with the concerned officials of experion developers pvt. ltd. That on 07.12.2022, the respondent sent another reminder for possession named to the complainant. That on 06.01.2023, the respondent sent a final notice of possession to the complainant directing payment of remaining amount i.e. Rs. 3,33,79,422/-. That on 20.01.2023, the complainant made a request to the respondent to extend the time period for the payment of remaining dues as he has been suffering physically the after effects of covid and has also suffered a lot of financial loss during the pandemic which he has not been able to recover. He emphasized that he has every intention to retain the apartment and make the entire payment as well as the interest accrued till date. This request was denied by the Respondent the very same day without even giving a chance for a meeting to the Complainant.
- v. On 06.02.2023 the complainant sent a letter to the respondent confirming his resolve to keep the apartment and also paid an amount of Rs. 25,00,000/- towards the payment of the apartment for which he did not receive any receipt or confirmation.
- vi. That on 15.02.2023, the respondent sent a pre-cancellation notice to the complainant to make payment of Rs. 3,08,79,422 along with payment delay charges of Rs. 9,11,343 accrued till date. That on 13.03.2023, the complainant through his counsel sent a legal notice to experion developers Pvt. Ltd. To not cancel the possession. That the complainant also made a payment of Rs. 20,00,000 towards the Respondent on 13.03.2023 to confirm his resolve to keep the Apartment. That on 15.03.2023, the respondent sent a cancellation letter to the complainant after several attempts by the complainant to resolve the matter

amicably and showing his good faith in the respondent to understand his situation and give him extra time to make the payment. The respondent has claimed to have cancelled the possession of the apartment booked by the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

I. Pass an order and necessary direction in terms of Section 11, 18, 31 and 36 of the RERA Act declaring such cancellation to be illegal while setting aside the cancellation letter dated 15.03.2023 sent by the respondent.

II. Direct the Respondent to give the Complainant sufficient time of further ten to twelve months (in view of the applicability and benefit of Force majeure clause 13 of BBA to the Complainant as well dealing with Covid Pandemic 2019 for 20 months in the intermittent period) to make the remaining payment on such terms and conditions as the authority may deem fit and proper in the facts and circumstances of the case.

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 respondent company is not in receipt of the complete set of the complaint and annexures, filed by the complainant herein. That despite requests by the respondent, the complainant has not provided the complete set of the complaint was filed before this authority. That

accordingly, the respondent company is filing the present reply, while reserving its right to file a detailed response/ reply, whenever the respondent company is provided with a complete set of the subject complaint along with the annexures, filed and relied by the complainant.

- ii. That the present reply has been signed, verified and filed by Sanjeet Kumar Thakur, who has been authorized vide a resolution dated 17.05.2022, passed by the Board of Directors of the Respondent. That further the authorised representative is also aware of facts and circumstances of the present case on the basis of information, derived from the records of the respondent, maintained during its normal course of business.
- iii. Pertinent to mention that admittedly, the Respondent Company was constrained to cancel the allotment of the Complainant vide its cancellation letter dated 15.03.2023 as the Complainant, even after the receipt of notice of possession dated 12.10.2022 and repeated reminders and requests vide letters dated 24.11.2022, 07.12.2022, 26.12.2022 and 06.01.2023 (Final Notice), 15.02.2023 (Pre-Cancellation Notice) by the Respondent Company, miserably failed to make payment of the due amount, and also did not complete the formalities of execution of necessary documents and handing over of the possession of the said unit. That the said cancellation has been done by the respondent company as per terms and conditions of the agreement for sale dated 08.03.2021, executed between the parties and hence as per Section 11(5) of RERA, the subject complaint is liable to be rejected by this authority in favour of the respondent and against the complainant.

- iv. That admittedly, the complainant is aware of the terms of the agreement for sale dated 08.03.2021 and the said cancellation dated 15.03.2023 and still he has failed to explain any circumstances for his admitted default in making payment of the due amount, and hence in view of section 11(5) of RERA, the present complaint is not maintainable and liable to be rejected by this Authority in favour of the respondent and against the complainant.
- v. That the allegations in the subject complaint are not only false and frivolous, but also misconceived and defamatory in the nature, and further have been levelled with the sole motive of harassing the respondent in view of the fact that the complainant, deliberately and dishonestly, has concealed and suppressed true and correct facts of the present matter with malafide intent to mislead this authority, and hence the subject complaint is liable to be dismissed with heavy exemplary cost in favour of the respondent.
- vi. That before adverting to the preliminary objections and the submissions on merits of the subject complaint, the Respondent seeks leave of this Authority to iterate certain preliminary submissions, which capture the actual sequence of events, which transpired between the Complainant and the Respondent, and which are necessary for disposal of the subject complaint. That the true and correct facts of the present matter are stated herein below:
- (i) That thereafter an Agreement for Sale dated 08.03.2021 was duly executed between the complainant and the respondent for purchase of the said unit.
- (ii) That in terms of the said Agreement, the Complainant agreed to purchase the said unit for total sale consideration of Rs. 4,15,16,948.00/-. Pertinent to mention that IFMSD and

Maintenance Charges, GST/ Taxes as applicable, Stamp Duty/ Registration Fee etc. were payable additionally by the Complainant.

- (iii) That as per the said Agreement, the Complainant agreed to make payment of the above-mentioned amount as per the Payment Plan. Further, it was also agreed that in the event the Allottee defaulted in making payment as per the payment plan, the default payment shall attract 'Delay Payment Charges' and further in the event any payment was delayed beyond a period of 60 days from its due date, the same was to be deemed a breach of the Agreement and the Promoter was entitled to call upon the Allottee to rectify the breach by making payment of the outstanding dues along with Delay Payment Charges within a period of 30 days and further, in the event the Allottee failed to make the payment of the outstanding dues along with the Delay Payment Charges within the said period of 30 days, the Promoter was entitled to cancel the Allotment and terminate the Agreement for Sale.
- (iv) It was further agreed that 10% of the total price of the unit shall constitute the Booking Amount and in case of cancellation of the allotment for no fault of the promoter, the Promoter shall be entitled to forfeit the entire Booking Amount.
- (v) That the Plaintiff was granted Occupancy Certificates from DTCP vide its communications dated 06.12.2017, 23.07.2018, 24.12.2018, 09.03.2022 and 29.08.2022 qua the developed phase of the said Project. The occupation certificate with respect to the unit of the Complainant was received on 24.12.2018.
- (vi) That the Respondent, vide its letter dated 12.10.2022, offered the possession of the said unit to the Complainant, within the time

period as prescribed. That along with the said offer of possession, the Respondent also provided the final statement of account, and demanded Rs. 3,33,79,423.00/- towards total sale consideration, Rs. 48,651/- towards maintenance charges and Rs. 24,91,100.00/- towards stamp duty, registration charges and legal fees from the complainant, and requested the complainant to make the payment of the said amounts and complete the documentation on or before 11.11.2022.

- (vii) That admittedly, the Complainant defaulted in making payment of the aforesaid amount and complete the formalities for execution of the conveyance deed and handing over possession of the said unit and hence the Respondent was constrained to issue a Possession Reminder - 1 letter dated 24.11.2022 to the Complainant. That thereafter, the Complainant sent a letter dated 27.11.2022, acknowledging the receipt of the possession letter dated 12.10.2022 as well as the reminder letter dated 24.11.2022, sent by the respondent and further the complainant admitted his default in making the payment and requested to meet with the someone in the management to work out the modalities of payments to be made to the respondent company.
- (viii) That as the complainant was not coming forward to make the remaining payment and complete formalities for execution of conveyance deed and handing over the possession, the respondent was constrained to issue possession reminder-2 letter dated 07.12.2022 and possession reminder-3 letter dated 26.12.2022 to the complainant. However, despite receipt of the said letters, the complainant neither paid the balance amount nor did he come forward to complete the said formalities qua the said unit.

- (ix) That thereafter, the Respondent, vide its Final Notice dated 06.01.2023, informed the Complainant that despite repeated reminders, the Complainant had failed to make the payment of the balance amount and complete formalities as stated hereinabove and as such the Complainant was in breach of the terms of the Agreement for Sale. However, being the customer centric company, the Respondent offered another opportunity to the Complainant to make the payment of the balance amount and complete formalities, within a period of 30 days, failing which the allotment of the unit was to be cancelled.
- (x) Thereafter, on 20.01.2023, the Complainant sent a letter acknowledging the Final Notice dated 06.01.2023, wherein the Complainant again admitted his default in making the payment and asked the Respondent to extend the time for making the balance payment. The Respondent replied to the said letter of the Complainant vide its email dated 20.01.2023 and informed him that the payment demands were raised as per the payment plan opted by the Complainant at the time of booking the said unit. The respondent company also told the complainant that it was not possible for the respondent company to extend the due date for the final payment as per the agreement for sale dated 08.03.2021 and further the respondent requested the complainant to clear the outstanding dues at the earliest in order to avoid further accrual of late payment charges.
- (xi) That despite receipt of all the reminders and Final Notice dated 06.01.2023, the Complainant neither came forward to make payment of the due amount nor he completed the formalities of execution of conveyance deed and handing over of the possession

of the said unit. That as such, the Respondent issued a pre-Cancellation letter dated 15.02.2023, whereby giving the Complainant last and final opportunity for making the due payment of entire outstanding amount of Rs. 3,08,79,422.58/- along with delay payment charges of Rs. 9,11,343/- accrued till 15.02.2023, within a period of 15 days, failing which the allotment in favour of the Complainant was to be cancelled.

- (xii) That despite the receipt of the Pre-Cancellation Notice dated 15.02.2023, the Complainant failed to make the payment of the balance sale consideration and defaulted in complying with the contractual obligations as agreed and as such, the Respondent was constrained to cancel the allotment qua the said unit in favour of the Complainant and it was informed to the Complainant that out of the total amount of Rs. 1,08,03,390.42/- paid by the Complainant till date, an amount of Rs. 41,51,694.73, was forfeited towards earnest money, delayed payment interest and other applicable charges per the terms of the agreement for sale. Without prejudice to the submissions made by the respondent that the complainant did not make the entire payment despite repeated reminder and as such the respondent was constrained to cancel the allotment of the complainant, it is submitted that the Complainant made a part payment of Rs. 20,00,000/- only, which was received by the Respondent only on 14.03.2023. It is submitted that the Respondent undertakes to refund the said amount of Rs. 20,00,000/- as well in addition to an amount of Rs. 66,51,695.69/-
- (xiii) That admittedly, the complainant is aware of the terms of the agreement for sale dated 08.03.2021 and the said cancellation dated 15.03.2023 and still he has failed to explain any

circumstances for his admitted default in making payment of the due amount, and hence in view of section 11(5) of RERA, the present complaint is not maintainable and liable to be rejected by this Authority in favour of the respondent and against the complainant.

- (xiv) That thereafter, the Complainant, in order to seek non-maintainable reliefs from this Authority, has filed the present false and frivolous complaint against the Respondent, and which is liable to be rejected by this Authority in favour of the Respondent and against the Complainant.
- (xv) That the present complaint is also not maintainable before this Authority, as subject complaint suffers from non-joinder of necessary parties and thus the same is liable to be rejected by this Authority on this ground alone. Without prejudice to the aforesaid, the Respondent denies each and every allegation raised in the instant complaint unless specifically admitted hereinafter. Without prejudice to the generality of the aforesaid denial, the Respondent hereby seeks to submit a para-wise response to the averments made in the complaint.

7. Copies of all the relevant documents have been filed and placed on 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 has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has 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) 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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed

by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*, wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the hon'ble supreme court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

G Findings on the relief sought by the complainant.

- G.I Pass an order and necessary direction in terms of Section 11, 18, 31 and 36 of the RERA Act declaring such cancellation to be illegal while setting aside the cancellation letter dated 15.03.2023 sent by the respondent.
- G.II Direct the Respondent to give the Complainant sufficient time of further ten to twelve months (in view of the applicability and benefit of Force

majeure clause 13 of BBA to the Complainant as well dealing with Covid Pandemic 2019 for 20 months in the intermittent period) to make the remaining payment on such terms and conditions as the authority may deem fit and proper in the facts and circumstances of the case.

14. That the counsel for the complainant states that he acknowledged the notice of possession dated 27.11.2022 and, vide the same communication, requested for a meeting with the concerned officials of the respondent company, i.e., Experion developer Pvt. Ltd. That thereafter, on 07.12.2022, the respondent issued a reminder notice for taking possession of the subject unit. That subsequently, on 06.01.2023, the respondent issued a final notice of possession directing the complainant to pay the outstanding amount of ₹3,33,79,422/-.
15. That on 20.01.2023, the complainant submitted a request to the respondent seeking extension of time for payment of the outstanding dues, citing that he has been physically suffering from the after-effects of COVID-19 and had also incurred substantial financial losses during the pandemic period, from which he has not yet recovered. The complainant clearly expressed his bona fide intention to retain the apartment and make the full payment along with the interest accrued till date.
16. However, the said request was arbitrarily rejected by the respondent on the very same day, without affording the complainant an opportunity of personal hearing or discussion.
17. That the counsel for the respondent states that vide letter dated 12.10.2022, the respondent offered possession of the subject unit to the complainant within the time period as stipulated. Along with the said offer of possession, the respondent also issued the final statement of account and raised a demand of ₹3,33,79,423/- towards the total sale consideration, ₹48,651/- towards maintenance charges, and ₹24,91,100/- towards stamp duty,

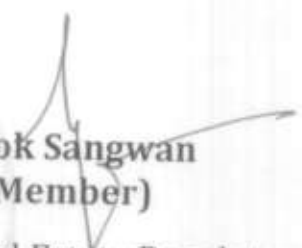
registration charges, and legal expenses. The complainant was accordingly requested to make payment of the aforesaid amounts and complete all requisite formalities on or before 11.11.2022.

18. That despite issuance of multiple reminders, the complainant failed to comply with the above requirements. Accordingly, the respondent, vide final notice dated 06.01.2023, informed the complainant that despite repeated communications, the complainant had failed to remit the outstanding dues and complete the necessary documentation, thereby breaching the terms and conditions of the agreement for sale.
19. That subsequently, vide letter dated 20.01.2023, the complainant acknowledged receipt of the final notice dated 06.01.2023 and admitted his default in making the due payments, while also requesting the respondent for an extension of time to remit the balance amount. The respondent, vide email dated 20.01.2023, responded to the said communication and apprised the complainant that the demand for payment was raised strictly in accordance with the payment plan opted by the complainant at the time of booking the said unit. The respondent further stated that in view of the terms of the agreement for sale dated 08.03.2021, it was not possible to grant any extension and once again requested the complainant to clear the outstanding dues forthwith to avoid further accrual of delayed payment charges.
20. That in view of the continued default, the respondent issued a pre-cancellation notice dated 15.02.2023, thereby affording the complainant a final opportunity to pay the outstanding amount of ₹3,08,79,422.58/- along with delayed payment charges amounting to ₹9,11,343/- accrued till 15.02.2023, within a period of fifteen (15) days, failing which the allotment in favour of the complainant was liable to be cancelled. As the complainant failed to comply despite repeated reminders, the respondent proceeded to cancel the allotment of the said unit on 15.03.2023.

21. That in view of the submissions made and the material placed on record, the Authority proceeds to adjudicate the present complaint.
22. In the present complaint, the complainant is seeking relief for setting aside the cancellation letter dated 15.03.2023 and has prayed for extension of time by a further period of ten to twelve months to enable him to pay the balance amount. It is stated that the complainant was allotted unit no. 1701, Tower 17, having a super area of 2732 sq. ft., in the project titled "WindChants," situated at Sector-112, Gurugram, vide Booking-cum-Welcome Letter dated 30.09.2020. Subsequently, the builder buyer agreement was executed between the parties on 08.03.2021. The total sale consideration for the said unit was ₹4,15,16,948/-, out of which the Complainant has paid a sum of ₹1,28,03,390/-.
23. That the occupation certificate (OC) in respect of the project was obtained by the respondent from the competent authority on 24.12.2018. Thereafter, possession was offered to the complainant vide letter dated 12.10.2022. Despite repeated reminders dated 24.11.2022, 07.12.2022, and 26.12.2022, the complainant failed to make the balance payment. Consequently, the respondent issued a pre-cancellation notice on 15.02.2023 and, upon non-compliance, cancelled the allotment on 15.03.2023 in accordance with due process of law.
24. That following the cancellation, the respondent refunded the amount of ₹86,51,695/- to the complainant through RTGS on 15.09.2023, after deducting 10% of the sale consideration as earnest money in terms of the agreement.
25. Upon a perusal of the documents placed on record and the submissions advanced by both parties, the Authority is of the considered view that the complainant was in default of the terms and conditions of the agreement. The respondent has rightly exercised its right to cancel the allotment owing

to the complainant's failure to fulfill the booking formalities and make the requisite payments despite repeated opportunities. The refund of ₹86,51,695/- was also made to the complainant post deduction of earnest money in accordance with the agreement. It is also observed that the complainant failed to clear the outstanding dues even after possession was offered.

26. The legal process cannot be permitted to be abused by any litigant to delay or defeat contractual obligations. In light of the facts and circumstances of the present case, the cancellation of allotment by the respondent is held to be valid and justified. Accordingly, the present complaint is dismissed being devoid of merit. File be consigned to the Registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory
Authority, Gurugram
Dated: 21.03.2025

HARERA
GURUGRAM