

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM.**

**Complaint No. 5145 of 2023
Date of Decision: 04.08.2025**

1. Mrs. Anupama Joshi W/o Mr. Yashwant Joshi, 2. Mrs. Purnima Agrawal W/o Shailendra Kumar Agrawal, residents of Gurgaon One Apartments, Tower Gt-1, Flat No. 6A, Old Delhi Gurgaon Road, near Maruti Factory, Sector-22, Mullahera (65), Gurgaon-122015, Haryana, India, (ii) First Floor, 108, New Rajdhani Enclave, Vikas Marg, Delhi-110092.

.....Complainants.

Versus

Experion Developers Private Limited, resident of F-9, First Floor, Manish Plaza 1, Plot No. 7, MLU, Sector 10, Dwarka, New Delhi-110075 and Plot No. 18, Second Floor, Institutional Area Sector 32, Gurugram, Haryana-122001.

.....Respondent.

APPEARANCE

For Complainants:	Mr. Saumyen Das, Advocate.
For Respondent:	Mr. Venket Rao, Advocate.

ORDER

This is a complaint filed by Mrs. Anupama Joshi W/o Mr. Yashwant Joshi and Mrs. Purnima Agrawal, (allottees), under section 31 of The Real Estate (Regulation and Development) Act,

16
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2016 (in brief The Act of 2016) read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 against Experion Developers Private Limited (promoter/ developer).

2. The brief facts of the complainant's case are that they (complainants) had booked an Apartment bearing no. 0802 having carpet area of 202.46 square meters (equivalent to 2,179.28 square feet) and Sale Area of 327.48 square meter (equivalent to 3,525 square feet), on 8th Floor in Tower WT-04 in block Waving Teak, in the Project known as "Windchants", in Sector 112, Gurugram (herein after referred to as the "said Property") relying upon promise and undertakings in the advertisements given by the respondent in various leading newspapers about their forthcoming project "Windchants" promising advantages like world class amenities and timely completion of the project, etc.

3. That they (complainants) had paid Rs.24,38,362/- by way of two instalments on 15.07.2012 of Rs.11,00,000/- and on 01.08.2012 of Rs.13,38,692/- which was around 10% of the sale consideration of the said Apartment, but the Apartment Buyer's Agreement (ABA) was executed by the respondent in favour of the

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complainants after four months' delay on 26.12.2012 and such delay being totally on account of the respondent.

4. That they (complainants) found ABA dated 26.12.2012 consisting of very stringent and biased contractual terms which are illegal, arbitrary, unilateral, one sided and discriminatory in nature, because every clause of agreement is drafted in a one-sided way. When the complainants opposed the terms and conditions of the said ABA, the respondent clearly stated that this Agreement is standard and final, and no changes shall be entertained by the respondent. As per said Agreement, the respondent could charge interest on delayed payment @ 18% p.a., but the respondent will compensate only at the rate of Rs.7.50/- per sq. ft. per month in case of delay in possession of the said Apartment by the company.

5. The respondent/promoter failed to pay Rs.53,92,451.96 to the complainants towards interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 27.06.2016 till the date of offer of possession i.e. 27.12.2018 as provided under the Act and Rules and the respondent only adjusted delay compensation @ Rs.7.50 per sq. ft. of Sale Area as per Clause no. 13.1 of the Buyer's

Agreement, which amounted to only Rs.5,83,520/- or 1.27% simple interest, whereas the respondent has charged interest @ 18% per annum on the delayed payments as per Clause no.4.8 of the ABA. Hence, the delayed possession interest provided by the respondent being contrary to the Act and Rules is also grossly unfair.

6. That the respondent unilaterally, illegally, arbitrarily and illegally increased the area of the allotted unit from 3,525 sq. ft. to 3,647 sq. ft. and accordingly, a demand notice dated 27.09.2017 illegally demanding an amount of Rs.8,80,949.64 for the increased area was sent by the respondent to the complainants through email dated 04.10.2017. It is submitted that the complainants were neither informed nor their consent was obtained for enhancement of area. That the area of the apartment was increased after the sanction of building plan and which building plans were sanctioned prior to the date of booking and allotment of the said apartment by the complainants. Thus, the alleged increase in area of the said apartment is clearly an after-thought, illegal and to simply put extortion by the respondent as the complainants had paid huge amount out of their hard earned money thus were left with no option but to accept the said

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increased area and pay the said illegal additional demand of Rs.8,80,949.64/-.

7. The complainant submits that the penalty clause of ABA for delay in delivery of possession is unjust and inequitable and contrary to the express provisions of the Act and the Rules made thereunder. The complainant had paid to the respondent an amount of approximately of Rs.2,21,11,093/- till the committed date of possession i.e. till 26.06.2016. Thereafter the complainant had paid to the respondent an amount of approximately of Rs.20,73,652/- from the committed date of possession till the date of offer of possession i.e. 27.12.2018. The balance amount of sale consideration was paid by the complainant to the respondent after 27.12.2018. The respondent also illegally recovered two years advance maintenance charges from the complainants instead of monthly advance maintenance charges.

8. That since the complainants had paid almost complete amount of the total sale consideration to the respondent, the complainants had no other option but were constrained to take possession of the said Apartment. The complainants had cleared all the dues of the respondent and got the Conveyance Deed executed and registered on 19.10.2021.

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9. That since the respondent failed to pay the delay possession charges under the Act and Rules, therefore the complainants had filed the above complaint against the respondent. That a legal notice dated 04.03.2023 was issued on behalf of the complainants to the respondent for compliance of the said directions of this Hon'ble Authority, but the respondent has not complied the same till date despite receipt of the notice on 10.03.2023.

10. That there was a delay of around 3 years from the due date of possession of the said Apartment and the respondent has miserably failed to hand over the possession of the said Apartment as per the terms and conditions of ABA dated 26.12.2012.

11. Citing facts as described above, the complainants have sought following reliefs: -

i. To direct the respondent to pay Rs.24,00,000/- along with interest at the rate of 18% per annum from 01.03.2019 till the date of realization of the full amount to the complainants towards compensation on account of rental loss to the complainants from June 2016 to February 2019.

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ii. To direct the respondent to pay Rs.10,00,000/- to the complainants towards compensation for mental and physical agony caused to the complainants due to delay on the part of respondent in completing the project.

iii. Cost of litigation of Rs.5,75,000/- be also awarded in favour of the complainants and against the respondent.

iv. Any other relief which the Hon'ble Adjudicating Officer may deem fit and proper in the facts and circumstances of the present case.

12. The respondent contested the claim of complainants by filing a written reply. The respondent denied and rebutted all the averments and contentions as raised by the complainants. It is averred that this complaint is not maintainable in the eyes of law, being devoid of merits. It is fit to be dismissed in limine. The Adjudicating Officer lacks jurisdiction to grant refund as per the provisions of the RERA Act, 2016. Ld. Adjudicating Officer is not empowered to alter, modify or overrule the judgments/orders passed the Ld. Authority since issues raised in present complaint have already been adjudicated. This instant complaint is barred by law of limitation.

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13. That complainants are owners of the subject unit therefore cannot file a complaint before the RERA Authorities/Adjudicating Officer. After execution of the conveyance deed, the obligation of the promoters/developers under the RERA Act, 2016 and the agreement for sale stands absolved.

14. That there is no evidence with respect to payment of litigation cost and alleged mental and physical agony caused to the complainants, due to the delay in the completion of the project. The complainants are not entitled to claim rental loss under the scheme of the RERA Act, 2016. That complainants failed to disclose under which provisions they are seeking compensation and what contravention or violation, the respondent has committed.

15. That it is a settled position of law that interest awarded in case of delayed possession charges or refund is compensation in nature. Section 18 of the Act of 2016 does not provide for compensation in case of allottee, wishes to continue with the project. That complainants have not come with clean hands and they have concealed material facts. That the complainants have voluntarily purchased a residential unit. That


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the construction of the project hampered due to force majeure situations beyond the control of the respondent.

16. Contending all this, the respondent has prayed to dismiss the complaint.

17. Both parties filed affidavits in support of their claims.

18. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

19. It is contended by learned counsel for the respondent that the complainants have already taken possession of their unit. A conveyance deed has also been executed. In such a circumstance, there remains no relationship of promoter and allottee between his client (respondent) and the complainants. The latter have no locus standi to file any complaint against the respondent.

20. According to complainants, the respondent did not hand over possession of subject unit in agreed time, compelled the same to pay for increase in area which was increased without their consent or intimation. Similarly, they were forced to pay two years advance maintenance charges for which they never agreed. If true, all these allegations give locus standi to the complainants to approach the Authority or Adjudicating Officer for redressal. It does not matter much that possession of subject unit has been

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handed over or conveyance deed has also been executed. I am not consonance with learned counsel for respondent in this regard.

21. Admittedly present complainants approached the Authority seeking delay payment compensation for not receiving possession of their unit in agreed time. The Authority allowed said complaint no. 5075 of 2021 by passing an order dated 07.09.2022 and directed the respondent to pay interest at the prescribed rate i.e. 10% per annum for every month of delay on the amount paid by the complainants from the due date of possession i.e. 27.06.2016 till 27.02.2019 i.e. expiry of 2 months from the date of offer of possession (27.12.2018).

22. Section 18 (1) of The Real Estate (Regulation and Development) Act 2016, provides that if promoter fails to complete or unable to give possession of an apartment, plot or building, -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein-----, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest at such rate as may


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be prescribed in this behalf **including compensation, in the manner as provided under this Act.**

No reason to allow any compensation in this regard.

23. The plea of complainants that they were asked to pay for increase in the area, ^{and} The respondent never sought their permission, and they were never informed about increase in their area, ^{and} This fact is not controverted on behalf of respondent.

24. Section 14 of Act of 2016 cast ^{and} duty upon the promoter to adhere to the sanctioned plans and project specifications. Sub-section (2) bars the promoter from making any additions and alteration in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein. Although proviso added here allows some minor additions and alterations as required by the allottee, but this provision explains that minor additions or alterations excludes structural change including an addition to the area---. It is not claim of respondent even that same got consent of the allottee ^{and} i.e. complainants before change in the area or they were informed even. In such a circumstance, it was violation of the Section 14 of the Act and respondent is liable to compensate the complainants in this regard. Even complainants did not dispute that area was actually

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increased by the promoter/respondent. Even if allottees paid the amount, it is not proper to direct the respondent to refund that amount as it is not denied that area was actually increased. However, when respondent did not take consent or ^{even} informed the allottees/complainants and the complainants were forced to make payment, same i.e. respondent is directed to pay a sum of Rs.1 lakh to compensate the complainants for not taking their consent in this regard.

25. The respondent did not dispute during arguments ^{the} fact that allottees/complainants were asked to pay two years maintenance charges and there was no such agreement between the parties. When there was no such agreement and respondent forced the complainants to pay two years maintenance charges, all this was in violation of Section 18 (3) of the Act. Respondent is thus directed to pay a sum of Rs.1 lakh to compensate the complainants for this wrong.

26. Apparently the respondent raised illegal demands by way of two years maintenance charges and increase in area without their consent, all this caused mental harassment and agony to the complainants. The latter (complainants) have sought a sum of Rs.10 lacs as compensation in this regard. This amount

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
appears to be excessive. Same are awarded a sum of Rs.1 lakh for mental harassment and agony to be paid by the respondent.

27. The complainants have sought litigation cost of Rs.5,75,000/- to be awarded in their favour. However, no receipt of payment made to their counsel is filed by the complainants. From the record, it is apparent that they were represented by an Advocate during proceedings of this case. A sum of Rs.50,000/- is allowed to them as litigation expenses.

28. The complaint is thus disposed of. The respondent is directed to pay the aforesaid amounts to the complainants along with interest at rate of Rs.10.50% per annum, from the date of this order till the date of realization of amount.

29. File be consigned to record room.

Announced in open Court today i.e. 04.08.2025.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.

Present: Mr. Saumyen Das, Advocate for complainants.
Mr. Venket Rao, Advocate for respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
04.08.2025