

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

Complaint no.: 2402 of 2024
Date of complaint: 19.06.2024
Date of order: 05.08.2025

1. Aditya Chowdhary
2. Bhawna Mathur
Both R/o: - 35B/D, 1B Janakpuri,
New Delhi-110058

Complainants

Versus

1. Experion Developers Pvt. Ltd.
Regd. Office: 8th Floor, Wing B,
Milestone Experion Centre, Sector
15, Part 2, Sector 15 Gurugram
Haryana 122001

2. Sophia Constructions Limited
Regd. Office: M-62 & 63, First floor,
Connaught place

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

Chairman
Member

APPEARANCE:

Shri Digvijay Rana (Advocate)
Shri Venket Rao (Advocate)
Shri Rahul Yadav (Advocate)

Complainants
Respondent no.1
Respondent no.2

ORDER

1. The present 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*.

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.	Project Area	44.1780 acres
3.	DTCP license no. and validity	57 of 2013 dated 11.07.2013 valid up to 11.09.2024
4.	Name of licensee	Experion Developers Pvt. Ltd. and others
5.	RERA registration and validity	38 of 2023 dated 02.02.2023 valid up to 11.09.2024
6.	Plot no.	F4/05 (page 14 of complaint)
7.	Area of the plot	251.16 sq. yds. (As per page no. 14 of the complaint)
8.	Allotment letter in favor of complainant by R2	09.08.2017 (page 16 of complaint)
9.	Plot buyer's agreement b/w R1 and R2	17.08.2017 (page 42 of complaint)
10.	Date of execution of agreement to sell b/w R2 and complainant	08.09.2017 (page 30 of complaint)
11.	Possession clause as per Plot buyer's agreement b/w R1 and R2	VIII. COMPLETION OF THE PROJECT 1. Subject to the terms and conditions of this agreement, the developer estimates completing the internal development works of the project in accordance with the conditions of the license and applicable laws within 2 years from the date of execution of this agreement or the date of receipt of the last of all the project approvals for the commencement of development of the project from the competent Authorities, whichever is later (" Commitment Period "). The buyer further agrees and understands that the developer shall be entitled to a further period of 6 (six) months

		<p>("Grace Period") after the expiry of the said commitment period.</p> <p>"Commitment Period" shall have the meaning as is ascribed to it under Article VIII(1) of this agreement.</p> <p>(Emphasis supplied)</p> <p>(As per page no. 42 of the complaint)</p>
12.	Due date of possession as per Plot buyer's agreement b/w R1 and R2	<p>17.02.2020</p> <p>(Note: Due date calculated 2 years from the date of plot buyer's agreement i.e., 17.08.2017 plus 6 months grace period)</p>
13.	Total sale consideration	<p>Rs.1,37,07,057/-</p> <p>(As per page 32 of the complaint)</p>
14.	Total amount paid by the complainant	<p>Rs.1,04,04,041/-</p> <p>(page 88 of complaint)</p>
15.	Part completion certificate	<p>30.01.2024</p> <p>(As per page 32 of reply by respondent no. 1)</p>
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made following submissions: -

- I. That the complaint, in January 2017, booked the residential plot in the respondents project plot no. F4/05 admeasuring total carpet area of 210 sq. mts. and gave huge money as booking amount before enforcement of agreement to sell in respect of which the receipt issued by the respondent no. 2 in favour of the payment of the said plot to the complainant receipt/bill no. 60 of amount Rs.27,40,000/- on dated 10.01.2017 paid by complainant to respondent no.2 by cheque bearing no. 539006 and vide another receipt/bill no. 493 of Rs.10,00,000/- on dated 02.04.2024 and vide another receipt/bill no. 494 of Rs.20,00,000/- on dated 03.04.2024 and vide another receipt/bill no. 523 of Rs.20,00,000/- on dated 04.04.2024 and vide another receipt/bill no. 523 of Rs.20,00,000/- on dated 04.04.2024 and vide another receipt/bill no. 527 of Rs.19,00,000/- on dated 04.04.2024 and vide another receipt/bill no. 530 of Rs.6,60,000/- on dated 05.04.2024 and Rs.1,04,041/- as TDS in the financial year 2024-2024, a sum of total Rs. 1,04,04,041/-

- II. That on 08.09.2017 respondent no.2 and the complainant made an agreement to sell in which the total consideration amount, area of plot and location of plot is mentioned. That the said plot was booked under the residential plot, as such the total sales consideration payable by the complainant to the respondents against the said plot was agreed at Rs.1,37,07,057/-. The complainant as a result of the above paid a total sum of Rs.1,04,04,041/- out of the total consideration amount of the subject plot.
- III. That as per the terms and conditions at Article VIII (1) of the PBA, the respondents were liable to be deliver the possession of the plot in question on 10.08.2022. But the respondents have failed to deliver the possession on the said date. Hence, there is delay of 50 months excluding the grace period of six month in the possession of the plot. As per Article VIII (1) of the PBA, the respondents are liable to pay the compensation at the rate of Rs.200/- per square meter per month on 210 sq. meter of the plot in question to the complainant, which come total of Rs.21,00,000/-
- IV. Thereafter, the complainant has sent a written notice on dated 13.05.2024 to respondents after receiving final demand raised cum possession letter dated 06.05.2024 from respondent no. 2 for adjustment of delay compensation as mentioned in the Article-VIII (1) of PBA dated 17.08.2017 but the respondent no. 2 has refused to adjust or give the compensation amount and forcing the complainants to make the entire balance payment of Rs.33,59,812/- without any adjustment of the aforesaid compensation amount of Rs.21,00,000/-. The complainants are ready to pay the balance amount of Rs.12,59,812/- after the adjusting the compensation to the respondents but the respondents are lingering the matter from one pretext to another and did not sent any revised calculation report.

V. After receiving the final demand raised letter dated 06.05.2024 from respondent, and also applied for permission to mortgage for the aforesaid Plot by the ICICI bank

C. Relief sought by the complainant:

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

- I. Direct the respondent to handover the legal possession of the subjected plot with the proper dimensions being plot no. F4/05 Westerlies in Sector 108, Gurugram.
- II. Direct the respondents jointly or severally compensate to the complainant for delay in possession by adjustment in final payment as per Article VIII(1) of agreement to sell which is Rs.21,00,000/- along with interest and increasing amount till the final possession of plot.

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 no.1.

6. The respondent no.1 has contested the complaint on the following grounds: -

- i. That prior to the service of the complaint or issuance of notice in the present complaint, the respondent no.1 did not have any knowledge of the alleged agreement and transaction entered into between the complainant and the respondent no. 2. The complainant has unnecessarily dragged the respondent no.1 into false and frivolous litigation, basis the agreement which was not even in the knowledge of the respondent no.1.
- ii. That the complainants have no locus standi to claim any relief against the respondent no.1 as the agreement to sell dated 08.09.2017 is executed between the complainants and the respondent no.2 and only respondent no.2 is accountable towards the complainants for any commitments undertaken by the respondent no.2. The respondent no.1 has neither endorsed any such commitments of the respondent no.2 in favour of the complainants nor has the respondent no.1 received any sort of benefits from the said agreement.

- iii. That the entire dispute resulting in the filing of the present complaint and the reliefs sought therein is only basis the agreement to sell dated 08.09.2017 executed between the complainant and the respondent no.2. The said agreement is specifically executed between the complainant and the respondent no.2. The respondent no. 1 was not a party to the said agreement nor the consent of the respondent no.1 was sought before execution of the said agreement. The terms and conditions contained therein are absolutely alien to the respondent no.1. Also, a perusal of the said agreement it can be seen that there are no obligations or liabilities which have been bestowed upon the respondent no.1.
- iv. That in the agreement to sell dated 08.09.2017, it has been categorically mentioned that, the respondent no.2 is the seller, the respondent no.2 has sold the subject plot from its own saleable share in the project "The Westerlies, Seller i.e., the respondent no.2 is entitled to receive the consideration and execute all the documents as may be required.
- v. That from a mere perusal of the aforementioned clauses of the agreement to sell dated 08.09.2017, it can be seen that there are no obligations or liabilities that have been bestowed upon the respondent no.1. The complainants have unnecessarily dragged the respondent no.1 into the false and frivolous litigation, basis an agreement which was not even in the knowledge of the respondent no.1 prior to the present complaint.
- vi. That as per the well-established principle of law of "privity of contract", only parties to a contract/agreement are allowed to sue each other to enforce their rights and liabilities and no stranger is allowed to confer obligations upon any person who is not a party to the contract/agreement. Furthermore, the respondent no. 1 has no role to play in what seems to be a dispute between the respondent 2 and the complainant.

- vii. The respondent no. 1 is a stranger to the agreement to sell dated 08.09.2017, having no involvement or obligations towards the complainant. Therefore, no action can be brought against the respondent no.1 by the complainants.
- viii. That vide its letter dated 08.04.2024 and 06.05.2024, the respondent no.2 has solely taken the obligation and written for sanction of home loan to the complainants with respect to the plot bearing no. F4/05, admeasuring 210 sq. yds, as well as has granted permission to mortgage the same, without the consent/endorsement and signatures of the respondent no.1. Hence, respondent no. 1 is a stranger to the agreement to sell dated 08.09.2017 as well as letters dated 08.04.2024 and 06.05.2024, having absolutely no involvement or obligations towards the complainants and hence has been unnecessarily dragged into the frivolous ligation by the complainants.
- ix. That as per Recital A, B and clause 1 of the agreement, the respondent no.2 and complainant without any involvement, consent or knowledge of the respondent no.1 have mutually agreed to enter into a transaction of sale-purchase of the plot.
- x. That the complainant in its complaint is alleging to have paid an amount of Rs.1,04,04,041/- towards the sale consideration of the plot in question. The complainant nowhere alleges that any part of the said payment has been paid to the respondent no. 1 or the respondent no. 1 was entitled to any portion of the said sale consideration.
- xi. That the complainants in para (f) of the complaint, has specifically acknowledged and admitted that the obligation of delivery of the possession of the subject plot, is that of the respondent no.2 only, specifically because of the agreement to sell between the complainants and the respondent no.2. The respondent no.1 is a stranger to the agreement having made no promises or having no obligations to be fulfilled against the complainants. In fact in the entire complaint there are no averments to substantiated in what

capacity the respondent no.1 is accountable to adhere to the terms and conditions of the agreement to sell dated 08.09.2017. The agreement to sell dated 08.09.2017 has been executed between the complainants and the respondent no.2 without the consent of the respondent no.1 and in gross violation of the agreements executed between the respondent no.1 and respondent no.2.

- xii. That since the agreement to sell dated 08.09.2017 has been executed only between the complainants and the respondent no.2, thus the complainants herein have no locus standi to raise any issues with the respondent No.1 as the dispute is between the complainants and the respondent No.2, which is specifically arising from the agreement to sell dated 10.02.2020 executed between the complainants and the respondent no.2. Further, only respondent no.2 is accountable towards the complainants. Thus, the respondent no. 1 is a stranger to a dispute between the complainants and the respondent no.2 having no locus standi in the judicial proceedings.
- xiii. That under a collaboration agreement dated 31.10.2012, the respondent no.1 and respondent no.2 along with some other landowners have granted the respondent no.1 the exclusive rights to develop the land admeasuring 102.62375 acres. An area admeasuring 6.283125 acres out of the total land is owned by the respondent no.2, and for the said area the respondent no.2 has given the development rights to the respondent no.1.
- xiv. That under the collaboration agreement, all the landowners including the respondent no.2 were entitled to get their share of plots allotted to them. Accordingly, per the agreed terms and conditions of the collaboration agreement, the respondent no.1 has allotted the subject plot to the respondent no.2 for which a plot buyer agreement dated 17.08.2017 has been executed between the respondent no.1 and 2. The said PBA is not a standard builder-allottee agreement rather, it is an extension of the

collaboration agreement. This is evident from recital D of the PBA, which clearly mentioned that the respondent no.1 has allotted the subject plot to the respondent no. 2 as per the terms and conditions of the collaboration agreement.

- xv. That in the PBA which is an extension of the collaboration agreement, the relationship between the respondent no.1 and respondent no.2 is not that of a promoter-allottee relationship, rather the respondent no.2 is a collaborator who has agreed to get his land developed through the respondent no.1, for the purposes of booking, selling and allotment in strict compliances of the applicable laws including the Act, 2016.
- xvi. That as the collaboration agreement is not a builder-buyer agreement, rather a commercial agreement wherein different landowners including the respondent no.2 collaborated to get their land developed into residential plots, therefore, under the said collaboration agreement, the parties to the said agreement including the respondent no.2 have specifically not bestowed upon the respondent no.1 any liability with respect to payment of delayed penalty charges for the delay in delivery of possession of the plots. Hence, there is no obligation in the terms of the collaboration agreement for payment of delayed possession charges to any party by the respondent no.1
- xvii. As per clause 5. of the agreement to sell dated 08.09.2017 it is also agreed between the complainant and the respondent no.2 that the agreement to sell shall not supersede the PBA and shall be read in conjunction with the PBA for all intents and purposes.
- xviii. That as per clause 1 Article XI- transfer by the buyer of the PBA the respondent no.2 could have transferred the rights and obligations under the PBA only in terms of the collaboration agreement and applicable laws. Further, all transfers are subject to payment of all dues to the respondent no.1 and execution of necessary documentation by the respondent no.2 in

the standard format(s) of the respondent no.1. However, the standard transfer documentation of the respondent no.1 was never executed nor till date has been submitted to the respondent no.1

- xix. Further, as per Clause 2 of Article XI of the PBA, it was mutually agreed between the respondent no.1 and respondent no.2 that before the PBA is endorsed or transferred, the respondent no.2 shall provide an unqualified and unconditional no objection certificate to the respondent no.1 acknowledging that the respondent no.2 has received the entire sale consideration from the transferee and no other dues are payable to the respondent no.2. If the said NOC is not provided then the respondent no.1 shall be entitled to refuse the transfer and no dispute, protest or claim for any compensation shall be raised by the respondent no.2 or his transferee. In fact, the respondent no.2 has also agreed, confirmed and undertaken to keep the respondent no.1 saved, indemnified and harmless at all times from any liability and/or any adverse consequence due to any transfer done by the respondent no.2. Till date no NOC has been provided to the respondent no.1 and hence the transfer is in gross violation of the terms of collaboration agreement and PBA.
- xx. As per clause 4 and clause 6 of Article XI it is also agreed by the respondent no.2 that any transfer made by the respondent no.2 shall be subject to the consent of the respondent no.1 and all transfer should be endorsed and recorded in Schedule - V of the PBA and shall only be allowed after completion of necessary documentation as prescribed by the respondent no.1. However, the respondent has not sought any consent prior to transfer of the said PBA to the complainant.
- xxi. That in clause 7 of the Article XI - respondent no.2 has specifically agreed that any dispute, claim etc. between the respondent no.2 and its transferee shall be inter-se resolved to the exclusion of the respondent no.1.

- xxii. That despite being under a bounden duty to complete certain documentation and take prior consent of the respondent no.1 for transferring its rights and interest under the PBA, the respondent no.2 in an utter violation of Article ix of the PBA has sold the subject plot to the complainant and till date has not come forward for completion of the requisite formalities for endorsement of the subject plot in the name of present complainant. In fact, the respondent no.1 only got to know about the transfer from the complaint.
- xxiii. That the endorsement form at Schedule IV of the PBA is still blank and no signatures have been taken of any of the parties, including that of the respondent no.1
- xxiv. Therefore, the grievances of the complainants with respect to handing over of the plot and alleged delay are not maintainable against the respondent no.1. Furthermore, if the respondent no.2 has any dispute with respect to handing over of possession of the plot to the respondent no.2 by the respondent no.1, which arises out of the collaboration agreement, then the same does not come within the purview of the Act, 2016 as the said collaboration agreement is a commercial agreement and if there is any dispute with respect to the same, then the same had be resolved through a civil court. That it was mutually decided between the respondent no.1 and the respondent no.2 that in the case of any dispute the same shall be adjudicated through courts at New Delhi.
- xxv. That the respondent no.2 as per the agreed terms of the collaboration agreement was duty bound to follow the applicable laws i.e., the Act, 2016 to make any kind of booking or re-allotment. The respondent no. 2 in utter breach of the terms and conditions of the collaboration agreement and violation of the applicable laws i.e., the Act, 2016 has entered into an agreement to sell of the plot in question in favour of complainant.

- xxvi. That from a mere perusal of the letter dated 04.03.2024 it is evident that the respondent no. 2 vide the said letter has apprised the complainant that the subject plot is ready for possession and has also apprised about the grant of the partial completion certificate for the project “The Westerlies” and further requested the complainant to clear the outstanding dues of Rs.33,59,812/-.
- xxvii. However, the complainant with a malafide intention of extracting unjust enrichment from the respondent no.1 sent the letter to the respondent no.1 on 30.03.2024. The said letter is sent to the respondent no.1 only as an afterthought to drag the respondent no.1 into unnecessary litigation and to extract unjust enrichment from the respondent no.1. The said letter is primarily addressed to respondent no.2 only and all the alleged grievances are against the respondent no.2 only.
- xxviii. That the respondent no.1 has developed the project “The Westerlies” in separate phases under the collaboration agreement executed between the respondent no. 1 and other parties including respondent no. 2 herein. Under the collaboration agreement, all the parties thereto had their respective share in the land on which the entire project “The Westerlies” is being developed and the respective parties were entitled to sell/ create third parties rights on their share of land subject to fulfilment of certain clauses of the collaboration agreement as detailed herein above. That the respondent no.1 as per its obligation under the collaboration agreement has developed the project in separate phases and has obtained the completion certificate. The subject plot falls under the share of the respondent no.2 and a part completion certificate dated 30.01.2024 for the said portion of land has already been issued by the competent authority vide memo no. LC-2755-PA(VA)-2024/3494. In fact, the respondent no.1 has already informed the

respondent no.2 about the receipt of the completion certificate and procedure thereafter.

7. All other averments made in the complaint were denied in toto.

E. Reply by the respondent no.2.

8. The respondent no.2 has contested the complaint on the following grounds: -

- i. That the present complaint qua the respondent no.2 is not maintainable before the Authority for the reason that the respondent no.2 is neither the developer nor the promoter of the project under dispute, and also is not a real estate agent as such the respondent no.2 do not fall under the purview of the Act, 2016.
- ii. That the respondent no.2 is itself an allottee of the project under dispute. As such this Authority does not have jurisdiction to adjudicate the present complaint qua the respondent no.2. That dispute if any, qua the respondent no.2 can only be raised before civil courts and not before this Authority in terms of the agreement to sell dated 08.09.2017.
- iii. That the complainants have filed the present complaint u/s 18 of the Act 2016 i.e. Violation by Promoter to give possession of an apartment, that a bare perusal of Section 18 of the Act 2016, clarifies the fact that the same is only applicable upon a promoter who fails to discharge its obligation against an allottee in terms of the agreement entered amongst themselves. However, the respondent no.2 does not fall under the ambit of Section 18 of Act, 2016 as the respondent no.2 is neither a promoter nor a developer of the project in question, but itself is an allottee as such cannot be entertained for being non-maintainable against the respondent.
- iv. That the complainant through the present complaint is seeking relief under Section 35,36,37 and 38 of the RERA Act, 2016 for contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

However, the same does not apply upon the respondent no.2 as no such violation has been done by the respondent no.2, hence no relief/claim under the said sections can be granted against the respondent no.2.

- v. That the basis of the present complaint mainly relies on agreement to Sell dated 08.09.2017 which got executed between the complainant (i.e. Buyer) and the respondent no.2 (i.e. Seller). However, the said ATS is an independent agreement wherein the respondent no.2 being an allottee of the plot under question entered into an arrangement with the complainant to sell the said plot allotted by the respondent no.1 under the terms and conditions as agreed upon under the ATS.
- vi. That under the said ATS the parties i.e. the complainant and the respondent no.2 have specifically agreed that the courts of Haryana shall have the jurisdiction in all matters arising out of the said ATS.
- vii. That the ATS through which the respondent no.2 agreed to sell the plot in question to the complainant is to be read along the plot buyer agreement dated 05.09.2017 through which the respondent no.1 allotted the subject PLOT to the respondent no.2. The complainant from the beginning was well aware of the fact that the terms of the ATS shall not supersede the terms of the PBA and shall be read in conjunction with the PBA for all intent and purposes. As such the claim of the complainant with respect to offer of possession does not arise as no specific period was agreed upon between the parties to ATS.
- viii. That as per the agreed terms and conditions under Article VIII (1) of the PBA possession of the Plot was to be offered by the developer of the Project i.e. respondent no.1 and not by respondent no.2 as alleged by the complainant.
- ix. That basis of the above, it is the respondent no.1 who was to deliver the possession of the plot to the respondent no.2 on or before 10.08.2022,

however, the respondent no.1 has failed to deliver the possession of the plot to the respondent no.2 within the stipulated period as such has violated the provisions of the Act qua the respondent no.2 who is the existing allottee of the plot as on the date.

- x. That the respondent no.2 was to facilitate the execution of sale deed by the developer in favor of the complainant upon the developer offering possession of the plot to the respondent no.2. That it is an admitted fact that the respondent no.1 is responsible for offering the possession to the respondent no.2 as per the terms and conditions of the Plot Buyers Agreement, and upon failure the respondent no.1 is liable to pay delay penalty to the respondent no.2 as detailed therein
 - xi. That the complainants in their complaint has alleged delay in offering possession of the plot purchased under ATS and is seeking compensation for delay possession. However, the complainant has failed to establish its entitlement for the said compensation from this Authority.
 - xii. That the complainant since inception were well aware of the fact that all the terms and conditions of ATS executed for the plot in dispute was to be read in conjunction with the plot buyer agreement entered between the respondent no 1 and 2.
 - xiii. That the basis of the present complaint is that there is a delay in delivery of possession of the plot in question to the complainant, however it is pertinent to mention herein that the possession of the plot was to be handed over by the respondent no.1 and not by the respondent no.2.
 - xiv. That the present complaint which is arising from the agreement to Sale dated 08.09.2017 entered into between the complainant and the respondent no.2 with respect to the plot in question, does not fall under the purview of this Authority. Hence, not maintainable
9. All other averments made in the complaint were denied in toto.

10. 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.

F. Jurisdiction of the authority

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

E.I Territorial jurisdiction

12. 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

13. 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.

14. 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.

G. Relief sought by the complainant.

G.I Direct the respondent to handover the legal possession of the subjected plot with the proper dimension being plot no.F4/05 Westerlies in Sector 108, Gurugram.

G.II Direct the respondents jointly or severally compensate to the complainant for delay in possession by adjustment in final payment as per Article VIII (1) of agreement to sell which is Rs.7,56,000/- along with interest and increasing amount till the final possession of plot.

15. The complainant herein contends that she booked a residential plot no. F4/05 in January 2017 in the project "The Westerlies," and paid a total of Rs.1,04,04,041/- out of the agreed sale consideration of Rs.1,37,07,057/-. As per Article VIII (1) of the plot buyer agreement, the possession was due on 10.08.2022 but was delayed by 50 months. Further, on 13.05.2024 complainants have sent a notice to respondents after receiving final demand raised cum possession letter dated 06.05.2024 from respondent no. 2 for adjustment of delay compensation as mentioned in the Article-VIII (1) of PBA dated 17.08.2017 but the respondent no. 2 has refused to adjust or give the compensation amount and is forcing the complainants to make the entire balance payment of Rs.33,59,812/- without any adjustment of the compensation amount of Rs.21,00,000/-

16. On contrary respondent no. 1 asserts that it is not a party to the agreement to sell and has no obligations toward the complainant. Further submits that the respondent no.2 despite being under a bounden duty to complete certain documentation and take prior consent of the respondent no.1 for transferring its rights and interest under the PBA, the respondent no.2 in an utter violation of Article IX of the PBA has sold the subject plot to the complainant and till date has not come forward for completion of the requisite formalities for endorsement of the subject plot in the name of present complainant. Also, the respondent no.1 only got to know about the said transfer through the present complaint

17. Further, respondent no. 2 contends that the complaint is not maintainable before the Authority because it is neither a promoter, developer, nor a real estate agent, but merely an allottee under the plot buyer's agreement with respondent no. 1. The delay in possession is attributable to respondent no. 1, who was responsible for delivering possession under the PBA.
18. The factual matrix of the case reveals that the plot no. F4/05 was originally allotted by respondent no.1 to respondent no.2 under a Plot Buyer Agreement dated 17.08.2017. As per Clause VIII of the said agreement, possession was to be handed over by the respondent within a period of two years from the date of execution of the buyer's agreement or from the last date of project approvals, whichever is later, along with a grace period of six months.
19. It is further pertinent to note that this allotment was not based on any sale consideration but flowed from a Collaboration Agreement dated 31.10.2012. The relevant clause of the said agreement is reiterated below:
- D.*
"Pursuant to the Collaboration Agreement dated 31.10.2012 executed between the Developer and the Buyer ('Collaboration Agreement'), the Developer has allotted to the Buyer Plot No. F4/05, admeasuring 251.16 sq. yds. or 210 sq. mtrs. approximately ('Plot') in the said Project."
20. Subsequently, respondent no.2 entered into an agreement to sell dated 08.09.2017 with the complainants for the subject unit for an agreed sale consideration of Rs.1,37,07,057/-, against which the complainant has paid a sum of Rs.1,04,04,041/- to respondent no.2. However, the said agreement to sell did not specify any time period for handing over possession of the subject unit. Also, no sale consideration was paid to respondent no.1.
21. The delay period interest under Section 18(1) of the Act, 2016 arises where an allottee has paid consideration to the promoter but possession is not delivered within the agreed timeframe. In the present case, the complainant has not paid any sale consideration to respondent no.1/promoter. All payments were made

only to respondent no.2 under a separate Agreement to Sell. Therefore, the relief sought for delay period interest cannot be granted in the present case.

22. However, the respondents are liable to hand over possession of the subject unit to the complainant, as they have stepped into the shoes of respondent no.2 through the agreement to sell dated 08.09.2017.

H.Directions of the Authority.

23. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

I. The respondents are directed to offer the possession of the unit to the complainants within 30 days as the part completion certificate has already been obtained on 30.01.2024 and further to execute the conveyance deed in favor of complainants after payment of stamp duty charges and registration charges as per the applicable local laws.

24. Complaint as well as applications, if any, stand disposed off accordingly.

25. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Arun Kumar)

Chairman

Dated: 05.08.2025