

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.336 of 2023
Date of Decision:27.08.2025

M/s. Experion Developers Pvt. Ltd., 8th Floor, Wing-B, Milestone
Experion Centre, Sector 15, Part-2, Gurugram, Haryana- 122001

....Appellant

Versus

Mukesh Sharma, House No. CA/42A, Shalimar Bagh, New Delhi-
110088.

...Respondent

CORAM:

Justice Rajan Gupta
Rakesh Manocha

Chairman
Member (Technical)

Present: Mr.Yashvir Singh Balhara, Advocate for the appellant.
Mr.Mukesh Sharma, respondent in person with Mr.Vikash
Kumar, Advocate.

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal has been directed against order dated 02.02.2023
passed by the Authority¹ at Gurugram. Operative part thereof reads as
under:

*“52.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 functions entrusted to
the Authority under Section 34(f) of the Act of 2016:*

- (i) The respondent/promoter is directed to refund the
amount received from the complainant i.e.
Rs.20,73,670/- along with interest at the rate
of 10.60% p.a. as prescribed under rule 15 of the
Haryana Real Estate (Regulation and Development)
Rules, 2017 from the date of each payment till the
actual date of refund of amount.*
- (ii) A period of 90 days is given to the respondent to
comply with the directions given in this order and
failing which legal consequences would follow.*

53. Complaint stands disposed of.

¹Haryana Real Estate Regulatory Authority, Gurugram

54. File be consigned to the registry.

2. Factual matrix of the case is that respondent was allotted a residential unit in the appellant's project in the year 2012 for a total consideration of Rs.82,95,076/-. Respondent paid a sum of Rs. 20,73,670/- towards the booking and initial instalments. Admittedly, no Builder-Buyer Agreement (BBA) was ever executed between the parties and consequently, no definite due date for possession could be ascertained. The Authority, in its wisdom, relied upon the timelines of similar complaints with respect to the same project to approximate the due date of possession as 19.10.2016.

3. Due to prolonged delay in the completion of the project and the absence of any BBA, the respondent-allottee ceased to make further payments and issued a legal notice on 11.01.2017, expressing his intent to surrender the unit and withdraw from the project. The appellant-promoter issued reminders for payment of the outstanding dues, but the respondent-allottee persisted with his decision to withdraw from the project. The project subsequently received Occupation Certificate (OC) on 02.03.2017. After surrender of unit by the respondent-allottee, instead of initiating the refund proceedings, the appellant-promoter cancelled the allotment on 29.07.2017 due to non-payment of balance amount by the respondent-allottee. It is pertinent to note that all these events transpired prior to the enforcement of the RERA Act and the Haryana Real Estate (Regulation and Development) Rules, 2017.

4. Since the appellant-promoter failed to refund any amount to the respondent-allottee, he filed a complaint before the Authority on 05.05.2022, seeking refund of the amount paid along with interest. The Authority, after hearing both parties, allowed the complaint and granted the relief as reproduced in Para 1 of this order.

5. Aggrieved by the said order, the appellant has approached this Tribunal.

6. Learned counsel for the appellant-promoter contends that the cancellation was effected only after issuing multiple reminders for non-payment of dues, and since the project had obtained Occupation Certificate by the time of cancellation, the appellant-promoter is entitled to deduct 10% of the total sale consideration. He argues that the impugned order overlooks these aspects and fails to appreciate respondent's default in payments.

7. Per contra, learned counsel for the respondent-allottee supports the impugned order, emphasizing appellant's default in not executing the BBA, causing inordinate delay in completing the project and crucially, failing to refund the amount after surrender of unit in question despite repeated requests. He asserts that respondent-allottee could not be expected to wait indefinitely for possession and he decided to withdraw from the project under such circumstances.

8. We have heard learned counsel for the parties, perused the record, and considered the material placed before us.

9. At the outset, it is undisputed that no BBA was ever executed between the parties, which hinders the determination of timelines for possession and obligations. The Authority's approximation of the due date based on similar complaints in respect of same project is reasonable in the absence of any contrary evidence from the side of the appellant-promoter.

10. The sequence of events reveals that respondent's withdrawal from the project in January 2017 was prompted by delay and the subsequent issuance of Occupation Certificate in March 2017 does not retroactively cure appellant's earlier defaults. The cancellation in July 2017, purportedly for non-payment of balance amount, was not followed by any refund, which further constitutes a clear breach of principles of natural justice and equity. The Act, though prospective in its regulatory

framework, allows for complaints regarding ongoing defaults, such as non-refund of paid up amount as is in the present case.

11. The appellant's plea for a 10% deduction is untenable in the light of facts of the present case as such deductions are typically permissible where the allottee is in clear default, but here, the absence of a BBA and the appellant's failure to refund after withdrawal from the project by the respondent-allottee and further cancellation, tilts the balance in favor of the respondent-allottee. The respondent-allottee cannot be faulted for halting payments in the face of uncertainty and delays and the appellant's retention of the funds after surrender of unit and even after cancellation, amounts to unjust enrichment.

12. In light of above, we find no merit in the appeal. The impugned order of the Authority is well-reasoned and does not suffer from any legal infirmity warranting interference.

13. Thus, the appeal is hereby dismissed.

14. The amount deposited by the appellant/promoter i.e. Rs.43,06,536/- with this Tribunal to comply with the provisions of Section 43(5) of the Act, along with interest accrued thereon, be remitted to the Ld. Authority at Gurugram for disbursement to the respondent-allottee in accordance with law and Rules.

15. Copy of this order be sent to the parties/their counsel and the Ld. Authority for compliance.

16. File be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

RakeshManocha
Member (Technical)
(joined through VC)

August 27, 2025
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