

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

Date of Order: 19.08.2025

NAME OF THE BUILDER		Experion Developers Private Limited
PROJECT NAME		Milestone Experion Centre
S. No.	Case No.	Case title
1.	CR/1840/2022	Clarion Properties Limited V/S Experion Developers Private Limited & ors.
2.	CR/1842/2022	Clarion Properties Limited V/S Experion Developers Private Limited & ors.
3.	CR/1841/2022	Clarion Properties Limited V/S Experion Developers Private Limited & ors.
4.	CR/1856/2022	Clarion Properties Limited V/S Experion Developers Private Limited & ors.
5.	CR/1849/2022	Clarion Properties Limited V/S Experion Developers Private Limited & ors.
6.	CR/1857/2022	Clarion Properties Limited V/S Experion Developers Private Limited & ors.
7.	CR/1851/2022	Clarion Properties Limited V/S Experion Developers Private Limited & ors.
8.	CR/1859/2022	Clarion Properties Limited V/S Experion Developers Private Limited & ors.

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

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 to the allottee as per the agreement for sale executed inter-se them.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **"Milestone Experion Centre"** being developed by the same respondent/promoter i.e., **Experion Developers Private Limited** The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay possession charges along with interest.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

S.No	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA between complainant and respondent no.2	Total Sale Consideration
1.	CR/1840/2022 Clarion Properties Limited V/S Experion Developers Private Limited & ors. D.OF. :02.05.2022 Reply R1: 24.05.2024 Reply R2: 14.06.2024	Unit no. 1, 3 rd floor Built up area 542.824 sq. ft. and Super area 810.19 sq. ft.	05.05.2017 (Page no. 123 of complaint)	T.S: Rs.53,47,266/- (as per agreement dated 05.05.2017 page 124 of complaint)

2.	CR/1842/2022 Clarion Properties Limited V/S Experion Developers Private Limited & ors. D.OF. :04.05.2022 Reply R1: 24.05.2024 Reply R2: 14.06.2024	Unit no. 3, 3 rd floor Built up area 597.93522 sq. ft. and Super area 892.45 sq. ft	05.05.2017 (Page no. 123 of complaint)	T.S: Rs.58,90,157/- (as per agreement dated 05.05.2017 page 124 of complaint)
3.	CR/1841/2022 Clarion Properties Limited V/S Experion Developers Private Limited & ors. D.OF. :04.05.2022 Reply R1: 24.05.2024 Reply R2: 14.06.2024	Unit no. 2, 3 rd floor Built up area 553.625 sq. ft. and Super area 825.78 sq. ft.	05.05.2017 (Page no. 123 of complaint)	T.S: Rs.54,50,118/-
4.	CR/1856/2022 Clarion Properties Limited V/S Experion Developers Private Limited & ors. D.OF. :04.05.2022 Reply R1: 24.05.2024 Reply R2: 14.06.2024	Unit no. 6, 3 rd floor Built up area 603.74774 sq. ft. and Super area 901.12 sq. ft.	05.05.2017 (Page no. 123 of complaint)	T.S: Rs.59,47,415/-
5.	CR/1849/2022 Clarion Properties Limited V/S Experion Developers Private Limited & ors.	Unit no. 4, 3 rd floor Built up area 606.43871 sq. ft. and super area 905.14 sq. ft	05.05.2017 (Page no. 123 of complaint)	T.S: Rs.59,73,924/-

	D.OF. :04.05.2022 Reply R1: 24.05.2024 Reply R2: 14.06.2024			
6.	CR/1857/2022 Clarion Properties Limited V/S Experion Developers Private Limited & ors. D.OF. :04.05.2022 Reply R1: 24.05.2024 Reply R2: 14.06.2024	Unit no. 7, 3 rd floor Built up area 638.08461 sq. ft. and Super area 952.37 sq. ft	05.05.2017 (Page no. 123 of complaint)	T.S: Rs.62,85,662/-
7.	CR/1851/2022 Clarion Properties Limited V/S Experion Developers Private Limited & ors. D.OF. :04.05.2022 Reply R1: 24.05.2024 Reply R2: 14.06.2024	Unit no. 5, 3 rd floor Built up area 597.28939 sq. ft. and Super area 891.48 sq. ft.	05.05.2017 (Page no. 123 of complaint)	T.S:Rs.58,83,795/-
8.	CR/1859/2022 Clarion Properties Limited V/S Experion Developers Private Limited & ors. D.OF. :04.05.2022 Reply R1: 24.05.2024 Reply R2: 14.06.2024	Unit no. 8, 3 rd floor Built up area 494.27877 sq. ft. and super area 737.47 sq. ft	05.05.2017 (Page no. 123 of complaint)	T.S:Rs.48,69,055/-

The complainants in the above complaints have sought the following reliefs:

1. To execute the conveyance deed/sale deed for the unit in favour of the complainant
2. Interest for every month of delay at the prevailing rate.
3. Pay minimum guaranteed lease in terms of the letter dated 01.12.2017 calculated till date of execution of conveyance deed.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
TSC	Total sale consideration

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1840/2022 Clarion Properties Limited V/s Experion Developers Private Limited** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.

A. Unit and Project related details:

7. The particulars of the project, the details of 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:

CR/1840/2022 Clarion Properties Limited V/s Experion Developers Private Limited

S. No.	Particulars	Details
1.	Name of the project	Milestone Experion Centre, Sector 15, Part-II
2.	Nature of project	Commercial Complex
3.	Project area	3.95 acres
4.	DTCP license	i. 63 of 2008 dated 20.3.2008 valid up to 19.03.2020 ii. 92 of 2010 dated 30.10.2010 valid up to 29.10.2020



5.	RERA registered/ or not	Registered vide registration no. 329 of 2017 dated 23.10.2017 Valid up to 22.10.2018
6.	Development agreement b/w Respondent no. 1 and 2	21.08.2015 (page no. 22 of complaint)
7.	Addendum no. 1 to development agreement dated 21.08.2015	24.11.2015 (page no. 85 of complaint)
8.	Addendum no. 2 to development agreement dated 21.08.2015	05.02.2016 (page no. 104 of complaint)
9.	Agreement to sell b/w complainant and respondent no.2	05.05.2017 (page no. 123 of complaint)
10.	Unit no.	1, Tower II, 3 rd floor (Page 124 of complaint)
11.	Unit area admeasuring	542.824 sq. ft. (built up area) 810.19 sq. ft. (super area) (Page 124 of complaint)
12.	Possession clause	<i>4. The expected/estimated time of completion as calculated by the owner /developer is excepted to be 12 months at the most as calculated from the date of this agreement i.e., 05.05.2017. The due date of handing over the unit to the allottee in the completed complex thus comes to 04.05.2018, post which the allottee shall be entitled to get the conveyance deed/sale deed of the area/unit's owned by it, registered in their favour in the office of the concerned sub registrar at Gurgaon.</i> (Page no. 125 of the complaint)
13.	Due date of possession	04.05.2018 (As mentioned in possession clause 4)
14.	Total sale consideration	Rs.53,47,266/- (as per BBA on Page 124 of complaint)
15.	Amount paid	Rs.53,47,266/- (As alleged by the complainant at page 13 of the complaint)
16.	Guaranteed Lease deed letter by respondent no.2	05.05.2017 (Page no. 132 of the complainant)
17.	Guaranteed Lease clause as per letter dated 05.05.2017	<i>.....That the referred unit shall be put on lease to the prospective lessee and in pursuance of which, you shall be entitled to minimum lease guarantee calculated @</i>

		<i>Rs.100/- per sq. ft. per month w.e.f. 01.12.2017 If any shortfall in the lease rentals below Rs. 100/- (Rupees One Hundred Only), per sq. ft. per month shall be the compensated by the undersigned/Owner to the Allottee.</i> <i>In the event, the said Unit is not put/taken on lease basis, for any reason whatsoever, you shall be paid a monthly assured amount calculated @ Rs. 100/- (Rupees One Hundred Only, per sq. ft. per month with effect from 01.12.2017</i> (page no. 132 of complaint)
18.	Occupation certificate	15.01.2019 (page no. 133 of complaint)

B. Facts of the complaint.

8. The complainant has made the following submissions: -

- I. That the respondent no.2 along with other land owners entered into a development agreement dated 21.08.2015 with respondent no.1 company. Thereafter two amendments were also executed of the said development agreement which are dated 24.11.2015 and 05.02.2016 for development of the Commercial Complex "Milestone Experion Centre" Sector-15, Part-II, Gurgaon, Haryana.
- II. That the respondents no.2 for self and as authorized by his wife respondent no.3, being the "Co-Owner/Developer", had entered into an Agreement to Sell dated 05.05.2017 with the complainant in respect of the Unit bearing no. 1, having built up area of 542.82 sq. ft./50.43 sq. mtrs. And the super area of 810.19sq.ft./75.27 sq. mtrs., on Floor-3, in Tower-II, to which he was entitled to hold as an owner as a part of his share that he owned in the Commercial Complex "Milestone Experion Centre" Sector-15, Part-II, Gurgaon, Haryana, on a Free hold basis along with the right to use common areas and common facilities in the complex. The Complex was stated to be developed on the land that he owned along with Mr. Anumod Sharma S/o. Mr. Vishnu Dutt Sharma,

Ms. Vandana D/o. Mr. Vishnu Dutt Sharma and also, M/s. Apra Motels, M/s. Apra Automobiles Pvt. Ltd., (in which he and his wife Mrs. Mamta Sharma are the only two partners).He had represented to complainant company that Mrs. Mamta Sharma had duly authorized him to execute the said Agreement to Sell in favor of complainant company.

- III. That at the time respondents no.2 had approached complainant company to execute the agreement to sell, he had represented that he had obtained license from Town & Country Planning Dept., Haryana Govt. Vide No. 63 of 2008 issued on 20.03.2008 which stood renewed as on the date of the said Agreement and had further represented that the Director, Town and Country Planning, Haryana had granted permission for Change of Land Use(CLU) for a "Commercial Complex" vide its letter bearing No. 63 dated 20-03-2008, whereby he was permitted to setup the said Commercial Complex. He had also represented to complainant that he had also obtained requisite Building Plan approvals and undertook the development and construction of said commercial Complex.
- IV. That the respondents no.2 had also represented that the land on which the complex was being developed was free from charges, lien or encumbrances and had a clear and marketable title.
- V. That based on respondents no.2 representations and the offer made by him, complainant company had agreed to purchase the subject unit for a total sale consideration of Rs.53,47,266/- whereupon the agreement to sell dated 05.05.2017 was executed between the parties. The entire sale consideration was duly paid and acknowledged by him.
- VI. That vide the said agreement/ATS, the date of handing over of the possession of the unit to the allottee in the completed complex was agreed as 04.05.2018, post which, the allottee was entitled to get the conveyance deed / sale deed of the unit's owned by it, registered in its favor in the office of the concerned sub-registrar at Gurgaon. It was also agreed that if the Owner fails to hand-over the

possession of the unit and get the conveyance deed/sale deed executed in favor of the allottee, within the stipulated time, then the owner shall be liable to pay interest on the monies paid by the allottee at that point of time to be calculated @ 18% per annum accruing from the date of handing over the possession for the period of delay.

- VII. That in pursuance to the terms of the above referred agreement to sell, respondents no.2 also provided a guaranteed lease with effect from 01.12.2017 via a separate letter of even date i.e.05.05.2017. In terms of the said letter dated 05.05.2017, it was undertaken and confirmed by him that the said unit would be put on lease to a prospective lessee and the allottee will be entitled to minimum lease guarantee calculated @ Rs. 100/- per sq. ft. per month with effect from 01.12.2017. It was also agreed that in case of any shortfall in the lease rentals below Rs.100/- per sq. ft. per month, the same shall be compensated by him to the allottee. In the event, the said unit is not put/taken on lease basis, for any reason whatsoever, the allottee shall be paid a monthly assured amount calculated @Rs.100/- per sq. ft. per month with effect from 01.12.2017.
- VIII. Pursuant to development of said project the competent authority after due inspection and verification has granted occupation certificate no. ZP-757-VOL II/AD (RA)/2019/1199 dated 15.01.2019.
- IX. That despite several requests and intimation by complainant, respondent no.2 have deliberately neither come forward for execution of the sale deed for the subject unit or the payment of guarantee lease, and he had failed to do so in utter negligence and violation of the said agreement.
- X. That the complainant sent a notice dated 14.02.2022 to the respondent no. 2 for specific performance for execution of sale deed/conveyance deed in favor of complainant. Thereafter, the complainant also sent reminder to the said letter on 14.03.2022. However, till date despite receiving entire payments against the said unit the respondents have neither offered the possession nor

executed the conveyance deed/sale deed in favor of the complainant in utter violation of the terms of agreement to sell.

C. Relief sought by the complainant:

9. The complainant has sought following relief:
 - I. Execute the Conveyance Deed/Sale Deed for the said unit in favor of the complainant.
 - II. Interest for every month of delay at the prevailing rate.
 - III. Pay minimum guaranteed lease in terms of letter dated 05.05.2017 with effect from 01.12.2017 calculated till date of execution of conveyance deed.
10. 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.

11. The respondent no.1 has contested the complaint on the following grounds: -
 - I. That after service of the present Complaint and other complaints bearing complaint nos. 1841 of 2022, 1842 of 2022, 1849 of 2022, 1851 of 2022, 1856 of 2022, 1857 of 2022 and 1859 of 2022 instituted by the complainant against the respondent no.1, respondent no. 2 and 3, it came to the knowledge of the respondent no. 1 that the complainant being a real estate company has entered into 8 agreement to sale with the respondent no. 2 and 3 for purchasing commercial unit/space in Tower II of the Complex on the land falling under License No. 63 of 2008 dated 20.03.2008.
 - II. That upon going through the present complaint and agreement to sell dated 05.05.2017 it came to the knowledge of the respondent no. 1 that the present Complaint is filed against Unit bearing No.1, in Tower-II of the Complex which was to be built on land falling under the aforementioned License i.e., 63 of 2008.
 - III. That the prior to service of the complaint or issuance of notice in the present complaint, the respondent no.1 did not had any knowledge of the alleged transaction entered into between the complainant and the respondent no. 2 and 3. The complainant have 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.

- IV. That from a mere perusal of the complaint and the Agreement to Sell dated 05.05.2017, it is evident that the complainant being a real estate company to invest in the real estate sector of Gurugram had allegedly entered into a commercial transaction to purchase a commercial space in a "Commercial Complex" on the land bearing License No. 63 of 2008 which the respondent no. 2 and 3 were in the process of constructing, developing and setting up. Further, as per Clause 1 of the agreement to sell dated 05.05.2017, the complainant have allegedly paid an amount of Rs.16,87,500/- in favor of CAPL Hotels & Spa Pvt. Ltd., which is neither a party to the agreement to sell dated 05.05.2017 nor has been a made a party in the present complaint.
- V. That the entire dispute resulting in filing of the present complaint and reliefs being sought therein is only basis the agreement to sell dated 05.05.2017 executed between the complainant and the respondent nos. 2 and 3. The said agreement is specifically executed between the complainant and the respondent no. 2 and 3. The respondent no. 1 was not a party to 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.
- 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 2-3 and the complainant. In the instant case, respondent no. 1 is a stranger to the agreement dated 05.05.2017 having no involvement or obligations towards the complainants.

- VII. That in the case of Kapilaben & Ors. Versus Ashok Kumar Jayantilal Sheth Through POA Gopalbhai Madhusudan Patel & Ors. (CIVIL APPEAL NOS. 10683-86 OF 2014) the Hon'ble Apex Court has held specific performance cannot be granted against a party who is not a party to a contract basis the doctrine of privity of contract.
- VIII. That by applying the supra principle in the present case, it is submitted that:
- a. no agreement has been executed between the Complainant and the Respondents No.1;
 - b. there is no privity of contract or commercial relation between the Complainant and the Respondent No.1;
 - c. no consideration of any kind whatsoever has been paid by the Complainant to the Respondent No.1;
 - d. No allotment has been made by the Respondent No.1 in favor of the Complainant.
- IX. Therefore, the respondent no. 1 is liable to be deleted from the array of parties in the present complaint as there is no privity of contract between the complainant and the respondent No.1. Furthermore, the respondent no.1 is completely unaware of any transaction between the complainant and respondent no. 2-3 and cannot be held liable or accountable for any action of the respondent no.2-3. Also, a perusal of the complaint reveals that no specific allegation or averments have been made against the respondent no. 1. Hence, the respondent no. 1 deserves to be deleted from the array of parties as the instant complaint is not maintainable against respondent no.1.
- X. That as per the agreement dated 05.05.2017, the respondent no. 2 and 3 are the developers and are responsible for the construction, development of the Complex and handing over of the Subject Unit.
- XI. That as per Clause 4 of the agreement dated 05.05.2017, the developers/Owners i.e., respondent no. 2 and 3 undertook to hand over the subject unit under the agreement within 12 months from the date of the agreement dated 05.05.2017 i.e., by 04.05.2018.

- XII. That in Clause 7 of the said Agreement, it was categorically agreed between the complainant and respondent no. 2 and 3 that the possession of the subject unit shall be handed over/ given by the owner i.e., respondent no. 2 and 3.
- XIII. That under the agreement dated 05.05.2017, the developers/owners i.e., respondent no. 2 and 3 undertook to compensate the complainant in case of delay in handing over of the possession or execution of the conveyance deed.
- XIV. That as per Clause 1 of the agreement to sell dated 05.05.2017, the complainant have allegedly paid an amount of Rs.16,87,500/- in favor of CAPL Hotels & Spa Pvt. Ltd., which is neither a party to the agreement to sell dated 05.05.2017 nor has been a made a party in the present complaint.
- XV. That in Column 17 of the CRA Format of the complaint the complainant stated that it has cumulatively paid an amount of Rs.4,57,61,238/- towards purchasing/booking of 8 units from respondent no.2 and 3 allocated area in the project. However, the complainant has only mentioned the RTGS details/Cheque no. of the alleged payments but nowhere in the entire complaint has annexed the actual payment proofs to substantiate that the alleged payments have been made to the respondent no. 2 and 3 or to any other person. The complainant, without bringing on record any actual proof of payment, claims to have paid the entire total sale consideration of the subject unit.
- XVI. That from a mere perusal of the aforementioned clauses and terms and conditions of the agreement dated 05.05.2017, it is evident that the respondent No. 1 has no role in the transactions/agreement entered into between the complainants and the respondent nos. 2 and 3 as:
- a. The Agreement was executed between the complainant and the respondent nos. 2 and 3;
 - b. Respondent Nos. 2 and 3 are the developers in the said agreement;
 - c. The obligation to hand over the possession is that of the Respondent Nos. 2 and 3;
 - d. Sale consideration of the subject unit is paid to some other party which is neither a party to the Agreement dated 05.05.2017 nor has been made a party in the present Complaint;

- e. The obligation to pay compensation in case of delay in handing over of possession and execution of conveyance deed is also of the Respondent Nos. 2 and 3.

XVII. Therefore, it is evident that under the agreement dated 05.05.2017 all the obligations and liabilities were bestowed upon the respondent nos. 2 and 3. Thus, the respondent no. 1 is a stranger to the agreement dated 05.05.2017 and since no cause of action has arisen against the respondent no.1, therefore, the respondent no.1 is not a necessary party.

XVIII. That it was well within the knowledge of the complainant at the time of execution of the agreement to sale dated 05.05.2017 that the unit allotted by the respondent no. 2 and 3 to the Complainant falls within the allocation of share of the respondent no.2 and 3 in the commercial complex being developed on the land falling under License no. 63 of 2008. This has been very clearly stated in the opening paragraph of the Agreement to Sale dated 05.05.2017 itself, wherein it is categorically stated *"Mr. Anubhav Sharma S/o Mr. Vishnu Dutt Sharma resident of K-80, Haus Khas Enclave, Delhi 110017 (herein after referred to as "Owner"), who is hereby selling from his own share, in the 'Commercial Complex Project' coming up on"*

XIX. Further, the Complainant itself has acknowledged the fact that the allotment of the Unit in question is from the share of the Respondent no.2 and 3 in its Complaint at Para 3 of the Brief Facts. It is clearly stated by the Complainants that the Respondent Nos.2 & 3 had entered into the Agreement to Sale dated 05.05.2017 and allotted the Unit which the Respondent No. 2 & 3 were *"entitled as Owners as a part of his share that he owned in the Commercial Complex"*

XX. That the Complainant had a clear understating and knowledge that the allotment of the Unit in question is being done from the share of the Respondent No.2 and 3 only.

XXI. That the complainants have not levied any particular/specific grievance against the respondent no.1 rather the dispute exists between the complainant and

respondent no. 2 and 3 only which has arisen from the agreement dated 05.05.2017 to which the respondent no.1 was not even a party. In fact, the complainant has specifically pointed out their grievances against the respondents no. 2 and 3. That no specific reliefs have been sought against the respondent no.1.

XXII. That all the allegations levied by the Complainant are against the respondents 2 and 3 only and the complainant of its own admission and admittance has only specifically named respondents 2 and 3 in every allegation and grievance. That the respondent no. 2 and 3 along with other landowners approach the respondent no. 1 to get the undeveloped land falling under the License No. 62 of 2008 and License no 92 of 2010, developed by the respondent no.1. Pursuant to which, after arriving at a mutual understanding, the development agreement dated 21.08.2015 was executed between the respondent no.1 and respondent no.2 and 3 and other landowners. That under the said Development Agreement the development rights of the Project to be developed on the undeveloped land falling under the license nos. 63 of 2008 and 92 of 2010 was granted to the Respondent No.1. The said Development Agreement records various terms, conditions, obligations, rights and liabilities of both the parties.

XXIII. That as per the agreed terms and conditions of the Development Agreement dated 21.08.2015, the Landowners including Respondent No. 2 and 3 have specifically agreed to indemnify the Respondent No. 1 from any losses or liabilities, costs(s), claims, actions, proceedings or third-party claims that may arise against the Respondent No.1 due to any transaction/ arrangement of the Respondent No. 2 and 3 and other Landowners with any other buyers of Respondent No. 2 and 3 or other landowner's allocated area.

XXIV. That in addition to Clause 15.2 of the Development Agreement, the Respondent No.2-3 and other Landowners through various communications have assured the Respondent No.1 to indemnify the Respondent No. 1 from any losses, damages, liabilities, claims etc., accruing to the Respondent No.1 for being Co-

Developer before any statutory authority including RERA Authorities, DTCP, or any Courts, or any reliefs sought from the Respondent No.1 by any of the allottees of the Respondent No.2-3 and other Landowners.

- XXV. That the complaint prior to filing of the present complaint, has made all the correspondences with respondent no.2 (including Legal Notices sent by the Complainant to the Respondent No.2) with respect to alleged grievances arising due to non-performance of Agreement dated 05.05.2017 on part of the Respondent No.2 and 3. The complainant is cognizant of the fact that Respondent No.1 bears no role or obligation in the Agreement executed between the Complainant and Respondent No. 2 and 3. Hence, the Complainant has sent the Legal Notices to Respondent No. 2 only as the Complainant was well aware of the fact that no relief can be sought against the Respondent No.1.
- XXVI. That as of date the Respondent No.1 has fulfilled its obligation under the Development Agreement dated 21.08.2015 and has developed the Project as per the terms and conditions of the Development Agreement. That post completing the construction of the Project, the Respondent No. 1 *vide* Application dated 20.09.2018 applied for the grant of the Occupation Certificate and the same was granted by the Competent Authority *vide* Memo No. ZP-757-Vol-II/AD(RA)/2019/1199 dated 15.01.2019.
- XXVII. That the Development Agreement dated 21.08.2015 was executed between the Respondent No. 1 and Landowners including Respondent No. 2 and 3 on a condition that the Respondent No. 1 shall not execute any agreement to sell, transfer any area allocated to it or create any third party rights on the Respondent No.1's Allocated Area till issuance of virtual completion certificate by the Project Architect.
- XXVIII. That it is evident that the respondent no.1 till completion of the construction of the licensed lands was not authorized/ permitted to sell, allot or create any third-party rights in the Developer's share of allocated area.
12. All other averments made in the complaint were denied in toto.

E. Reply by respondent no.2

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

- I. That the complaint filed by complainant is not maintainable. That neither an actual allotment was ever made in favor of complainant nor any agreement to sell was ever executed with an intention to allot any unit. That the agreement in question was only executed to secure a loan amount taken by the CAPL Hotels and Spa Pvt. Ltd (CAPL) and Mr. Anubhav Sharma, from the complainant, which was later cleared by way of adjustment. That none of the parties ever intended to act upon agreement in question as detailed hereinafter.
- II. The allegations made by the complainant in the complaint are absolutely false. True and material facts pertinent to the matter have been concealed by the complainant. In fact, the complainant has intentionally made fraudulent pleadings before this Court, thereby rendering itself liable to prosecution under the law. The complainant is trying to benefit from certain documents (the alleged agreement to sell/BBA) to allege that the complainant is entitled to the unit in question. However, no such allotment was ever made in favor of the complainant and no such allotment was intended to be made in favor of the complainant.
- III. On 30.08.2001, a Collaboration Agreement was entered into between the complainant (as the developer) and Sh.Anumod Sharma (as the owner). Sh. Anumod Sharma is the real brother of respondent No. 2. Respondent No. 2 is the power of attorney holder for Sh. Anumod Sharma.
- IV. The said Collaboration Agreement dated 30.08.2001 contemplated the development of a land parcel measuring 4.737 acres situated in the revenue estate of Village Silokhera, Tehsil and District Gurugram. The said land parcel was to be developed as a commercial complex. In terms of the Collaboration Agreement, it was agreed that the complainant/developer would develop such commercial and allied complexes on the land parcel subject to the Collaboration Agreement. Further, in terms of the Collaboration Agreement, the complainant was entitled to 66.5 percent of the built-up commercial and allied area and

basement with proportionate rights in the land underneath. Sh. Anumod Sharma was entitled to 33.5 percent of the built-up commercial and allied area and basement with proportionate rights in the land underneath.

- V. A separate company known as CAPL Hotels and Spa Private Limited had been formed, wherein the present complainant, Sh. Anumod Sharma, and Sh. Sunil Chopra were the original promoters. In 2016, the complainant held majority shares in the said company known as CAPL Hotels and Spa Private Limited. A loan was taken by CAPL Hotels and Spa Private Limited (said company) from Reliance Capital. Owing to exigent circumstances to make the payment of EMI on the loan taken, the said company and respondent No. 2 were in temporary need of credit assistance. Accordingly, the said company and respondent no. 2 availed a temporary loan of Rs. 3,90,00,000/- from the complainant. That when the said loan amount was given to CAPL, complainant was holding 39.665 % share in CAPL and for this reason complainant had agreed to give loan to CAPL. However, in order to secure the loan already given to CAPL i.e. Rs.1,35,00,000/- (on 29-03-2017 & 29-04-2017) and further loan amount of Rs.2,55,00,000/- in parts on 22-05-2017, 31-05-2017, 20-06-2017, 26-06-2017, 29-06-2017, 31-07-2017, 31-08-2017 & 28-09-2017, the agreement in question and other 7 agreements were executed.
- VI. As the amount involved was quite high, the complainant requested respondent No. 2 to secure the said loan amount by adequate security/documents. Out of the aforementioned amount of Rs.3,90,00,000/-, an amount Rs.1,60,00,000/- was transferred to respondent No. 2, whereas Rs.2,30,00,000/- was transferred to the said company (CAPL).
- VII. That in order to secure the aforementioned amount of Rs.3,90,00,000/- several agreements were executed between the complainant, respondent no. 2 and others, whereby only as a security, the unit in question (and other units which are subject matter of other complaints) was shown to have been allotted to the complainant.

- VIII. That the said agreement neither created nor was intended to create any rights of allotment whatsoever in favor of the complainant with regard to the said unit. The fact that the allotment was not real or intended, is clear from the agreement to sell dated 05.05.2017. The rate at which the unit in question is shown to have been allotted is Rs.6600/- per square foot for a total sale consideration of Rs.53,47,266/-. Clause No. 1 of the agreement to sell dated 05.05.2017 recites that the complainant made a payment of Rs.16,87,500/- through two RTGS transactions dated 29.03.2017 for an amount of Rs.85,00,000/- and dated 29.04.2017 for an amount of Rs.50,00,000/-. The aforementioned amount had in fact been paid to the said company, CAPL Hotels and Spa Private Limited, yet the unit in question is not concerned with CAPL Hotels and Spa Private Limited. As evident from the agreement to sell, the allotment had been made in favor of respondent no. 2. It is clear that the payment which had been made to the said company (as a loan) as mentioned Rs.1.35 Cr. In the agreement to sell was adjusted in the agreement to sell itself.
- IX. That the payment made to the said company and its adjustment towards the alleged consideration for the allotment of the unit in question clearly disproves the claim of allotment made by the complainant in the present reply. In the agreement to sell, the balance amount was shown to be payable in four installments of Rs.8,20,000/- each, payable by 20th May, 20th June, 20th July, and 20.08.2017, and the balance payment was shown to be payable at the time of possession amounting to Rs.3,79,766/-. Since the allotment was notional, the balance payments were never made by the complainant.
- X. That in terms of the Collaboration Agreement dated 30.08.2001, Sh. Anumod Sharma was entitled to 33.5 percent of the built-up commercial area in the project. The project was initially developed as a hotel named The Galaxy Out of Sh. Anumod Sharma's entitlement, the complainant made a sale of commercial area in the Galaxy, including unit numbers 301 to 310, 416, 416-A, 417, and 153-A, having a total area of 15,657.89 square feet. The brother of respondent No. 2,

Sh. Anumod Sharma, was entitled to the 33.5% sale consideration of the aforementioned area. However, the complainant did not make the payment of Sh. Anumod Sharma's share i.e. totals Rs.3,02,51,191/-, as the complainant had already made payments towards loans to respondent no. 2 and the said company. The aforesaid amount was adjusted towards the loan amount and was thus not paid to Sh. Anumod Sharma.

XI. The fact that the complainant itself admits the relation between Sh. Anumod Sharma and respondent no. 2 and further admits the adjustment of amounts. The complainant has alleged in the complaint that it has added/ an amount of Rs.67,61,238/- from account of Mr. Anumod Sharma (Real brother of respondent no. 2). However, there was no such adjustment made nor ever informed by complainant about such adjustment to respondent no. 2, that the only adjustment made by complainant was Rs.3,02,51,191/- against share of Anumod.

XII. That CAPL Hotels and Spa Private Limited (under the control of respondent No. 2 at that time sold an area measuring 7654 sq ft. to the complainant company in the Galaxy at the rate of Rs.6600/- per square foot, for a total sale consideration of Rs.5,05,16,400/-. This area comprised unit numbers 401E, 402C, 401D, and 415.

XIII. Despite the sale of the aforementioned areas, not a single rupee was paid by the complainant to respondent No. 2 or said company. The payment was not made, as the complainant partly adjusted the remaining amount forwarded to the same company and respondent No. 2 as a loan.

XIV. In this manner, it is clear that none of the respondents have received any sale consideration regarding the unit in question. It is further evident that no genuine allotment of the unit in question was made by the respondents to the complainant and the agreement to sell was executed only to secure the loan amount forwarded by the complainant.

- XV. A peculiar circumstance that shows the correctness of the respondents' stand is seen in the sale deed bearing Vasika No. 10921 dated 05.09.2022, executed by the said company in favor of the complainant. Unit number 415 was sold to the complainant for a total sale consideration of Rs.1,27,84,200/-. Clause No. 1 of the sale deed mentions that the above-mentioned sale consideration has already been paid. But no amount was paid at the time of the execution and registration of the sale deed. In fact, the amounts (as loan) already paid by the complainant to respondent no. 2 and the said company were adjusted.
- XVI. That the agreement to sell in question duly proves that the alleged allotment shown to be made in favor of the complainant was never intended to be acted upon. The complainant cannot derive benefit from this situation. On one hand, the complainant has benefitted from the sale of various units in the Galaxy by way of the attached sale deed/agreement to sell and has not made payment for the area sold from Sh. Anumod Sharma's share in the Galaxy. On the other hand, despite the adjustment of money as stated in this reply, the complainant is seeking the allotment of the unit for an amount that was actually never paid. The complainant is seeking dual benefits. The complainant cannot sail in two boats.
- XVII. The facts and circumstances speak for themselves. The complainant's silence from 2018 till date clearly shows that the allotment was only notional.
- XVIII. Furthermore, the amounts reflected in the agreement to sell have already been adjusted. The mode and manner in which amounts are shown to be paid in the agreement for sale, that is, the adjustment of a large amount paid earlier being partly adjusted in the agreement for sale, duly show that the nature of the agreement for sale was not for the allotment of the unit in question. Whatever amount was paid by the complainant has already been adjusted/repaid in the manner stated above by conveying various units to the complainant in the Galaxy and otherwise. Under these circumstances, there is gross misrepresentation and concealment on the part of the complainant.
14. All other averments made in the complaint were denied in toto.

F. Findings regarding relief sought by the complainant.

F.I Execute the Conveyance Deed/Sale Deed for the said unit in favor of the complainant.

F.II Interest for every month of delay at the prevailing rate.

F.III Pay minimum guaranteed lease in terms of letter dated 05.05.2017 with effect from 01.12.2017 calculated till date of execution of conveyance deed.

15. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

16. The complainant herein contends that respondent no.2 along with other landowners entered into a Development Agreement dated 21.08.2015 with respondent no.1 for developing the commercial complex "Milestone Experion Centre", Sector-15, Part-II, Gurgaon, which was subsequently amended on 24.11.2015 and 05.02.2016. That respondent no.2, for self and as authorised by his wife respondent no.3, entered into an Agreement to Sell dated 05.05.2017 with the complainant for Unit No.1, Floor-3, Tower-II, and represented that he had all valid approvals, clear title, and development rights. That based on these representations, complainant paid the entire sale consideration of Rs.53,47,266/-. That as per the agreement, possession was to be handed over by 04.05.2018, failing which respondent no.2 was liable to pay interest @18% p.a., and also undertook a guaranteed lease from 01.12.2017 @Rs.100/- per sq. ft. per month. Though Occupation Certificate was obtained on 15.01.2019 but the respondent no.2 failed to hand over possession, execute the sale deed, or pay the assured lease, despite repeated requests and notices dated 14.02.2022 and 14.03.2022

17. On the other hand respondent no. 1 submits that it was made aware of the Agreement to Sell dated 05.05.2017 and other similar agreements only after the service of the present and related complaints, and had no prior knowledge of any such transactions between the complainant and respondent nos. 2 and 3. The respondent no.1 is not a party to the said agreement, has no privity of contract with the complainant, has received no consideration, and bears no obligation or

liability under the said agreement. The Agreement to Sell dated 05.05.2017 was exclusively between the complainant and respondent nos. 2 and 3 who were the owners/developers of the unit in question and were solely responsible for the development, possession, execution of the conveyance deed and compensation for delay. Also, the complainant has not sought any relief against respondent no.1, and all grievances are directed solely against respondent nos. 2 and 3. The role of respondent no.1 was limited to development of the project under the Development Agreement dated 21.08.2015 with the landowners, including respondent nos. 2 and 3 and respondent no.1 has fulfilled its obligations by developing the project and obtaining the Occupation Certificate dated 15.01.2019. As per the Development Agreement, respondent no.1 was not permitted to sell or create third-party rights over its allocated share until virtual completion, and any transactions undertaken by respondent nos. 2 and 3 from their share therefore, respondent no.1 is a stranger to the Agreement to Sell and no cause of action has arisen against it.

18. Further, the respondent no. 2 submits that the complaint filed by the complainant is not maintainable as neither any actual allotment was ever made in favor of the complainant nor was any agreement to sell ever executed with the intention to allot any unit, and that the agreement in question was merely executed to secure a loan of Rs.3,90,00,000/- extended by the complainant to CAPL Hotels and Spa Pvt. Ltd. and Mr. Anubhav Sharma, which was later cleared through adjustment. The complainant has falsely claimed rights under the agreement despite knowing that it was never intended to be acted upon and was only an arrangement to secure the said loan. The payments referred in the agreement were in fact loan amounts disbursed to CAPL and respondent no.2, and the terms of the agreement clearly reflect this, including the fact that further instalments were never paid as no real sale was intended. The complainant, being in a business relationship with Anumod Sharma under a prior Collaboration Agreement dated 30.08.2001, had already sold commercial space from Anumod Sharma's share without remitting

his entitled amount of Rs.3,02,51,191/-, which was subsequently adjusted against the said loan. The complainant continued to receive units such as Unit No. 415 in Galaxy without paying any fresh consideration, adjusting the same against previously advanced loans, proving that the complainant cannot now claim fresh allotment rights without any corresponding payment and the complainant is now falsely trying to derive dual benefit from a transaction that was merely executed to secure repayment.

19. Upon careful perusal of the submissions and documents on record the Authority observes that there is a lack of clarity in the documents submitted by the parties and in the financial transactions alleged to have taken place between the complainant and the respondents. The complainant has claimed to have paid a total sum of Rs.4,57,61,238/- towards the purchase of 8 commercial units. However, on examination of the agreements to sell filed with the complaint, it is noted that each of the said agreements uniformly reflects only a payment of Rs.1,35,00,000/- of the same two RTGS transactions dated 29.03.2017 and 29.04.2017 in favor of CAPL Hotels & Spa Pvt. Ltd in all the agreements. The relevant para of from the agreement executed between complainant and respondent no. 2 is reiterated below:

"1.

The ALLOTTEE has paid an amount of Rs. 16,87,500 /- (Rupees Sixteen Lakhs Eighty Seven Thousand and Five Hundred only) (herein after referred to as "Part-Payment) being part of 2 (two RTGS, bearing UTR No.CBINR5201703301 dated 29.03.2017 for an amount of Rs. 85,00,000/- (Rupees Fifty Five Lakhs) and RTGS bearing UTRNo.KKBH17119856101 dated 29.04.2017 for an amount of Rs. 50,00,000/- (Rupees Fifty Lakhs) aggregating to Rs. 1,35,00,000/- (Rupees One Crore Thirty Five Lakhs Only) in favor of CAPL Hotels & Spa Pvt. Ltd. on behalf of the Owner. The Owner hereby acknowledges the receipt of the said Part Payment in respect of the said Unit."

20. This repetition of same payment details in all 8 agreements, without any independent proof of separate payments for each unit, raises doubts about the actual consideration paid, the nature of the transactions, and the intention of the

parties as the said amount was paid to the CAPL Hotels & Spa Pvt. Ltd. which is not a party in either of the agreements.

21. In light of these discrepancies and in the absence of any conclusive documentary evidence to establish the complainant's claim of having paid the entire consideration towards all 8 units, the Authority finds that the matter involves complex questions of fact and evidence, including the intention behind their execution and whether the same were executed as security for a loan as contended by respondent no.2.
22. Additionally, there is no document on record to show any direct privity of contract between the complainant and respondent no.1 nor any payment, allotment, or builder-buyer agreement executed between respondent no.1 and complainant.
23. It is also pertinent to note that the amended development agreement was executed between respondent no. 1 and 2 on 05.02.2016 prior to the execution of the agreement to sell dated 05.05.2017 between complainant and respondent no.2. The said development agreement dated 05.02.2016 clearly states that the owner cannot sell or create any third-party rights over any saleable area on the third floor until a Virtual Completion Certificate is issued by the project architect. The relevant para is reiterated below:

4. The Owners hereby further agree and acknowledge that they shall not enter into any agreement to sell, alienate or transfer any saleable area on third floor west side / block A to a third party or create any third party rights until such time a Virtual Completion Certificate. is issued by the Project Architect."

24. Herein, all the subject units are located on the third floor only, which raises questions towards the right of title with the respondent no.2/owner to create third party rights before issuance of completion certificate.
25. Given these disputed facts the matter clearly requires proper adjudication through examination of evidence, cross-examination of parties. This Authority, not being a court of evidence, lacks the jurisdiction to determine such issues and

to conduct such detailed inquiry. Therefore, the parties are at liberty to approach a civil court or other appropriate forum of competent jurisdiction for adjudication of their rights and claims.

26. The complaint stands disposed off.

27. Files be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 19.08.2025

HARERA
GURUGRAM