

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

**Complaint no.:** 4135 of 2023  
**Date of filing:** 08.09.2023  
**Date of order:** 12.08.2025

Windchants Condominium Association  
Through Himanshu Dewan Secretary  
**Regd. Address** – Office No. 221, 1<sup>st</sup> Floor  
Deep Plaza Complex, Opposite Civil Court,  
Gurugram

**Complainant**

Versus

1. Experion Developers Pvt. Ltd.  
**Regd. Address** – Plot no. 18 2<sup>nd</sup> floor  
Institutional Area Sector -32, Gurugram
2. Experion Developers Pvt. Ltd.  
**Regd. Address** – Experion The Westerlies  
Sector 108 Dwarka Expressway Gurugram

**Respondents****CORAM:**

Shri Arun Kumar  
Shri Ashok Sangwan

**Chairman**  
**Member**

**APPEARANCE:**

Ms. Pooja Anang Pal (Advocate)  
Shri Ishaan Dang (Advocate)

**Complainant**  
**Respondents**

**ORDER**

1. This order shall dispose of the aforesaid complaint titled above filed before this Authority under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

#### A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S. No. | Heads                                                   | Information                                                                                                                                                                                                                                                                                      |                                                    |
|--------|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| 1.     | Name of the project                                     | Wind chants at Parkland, Phase 3, Sector 112, Gurugram                                                                                                                                                                                                                                           |                                                    |
| 2.     | Total project area                                      | 24.6275 acres                                                                                                                                                                                                                                                                                    |                                                    |
| 3.     | DTCP License                                            | 21 of 2008 dated 08.02.2008 valid up to 07.02.2020                                                                                                                                                                                                                                               | 28 of 2012 dated 07.04.2012 valid up to 06.04.2025 |
| 4.     | Licensee name                                           | M/s Experion Developer Private Limited                                                                                                                                                                                                                                                           |                                                    |
| 5.     | Date of execution of buyer's agreement                  | 03.09.2013<br>(Page no. 31 of the complaint)                                                                                                                                                                                                                                                     |                                                    |
| 6.     | Building plan approved on                               | 07.06.2012<br>(page no. 32 of the complaint)                                                                                                                                                                                                                                                     |                                                    |
| 7.     | Occupation certificate /Completion certificate          | <b>06.12.2017</b> for tower T1, T5, T15, and Villa V7 to V12, V12A, and V14 to V21, EWS block and community building<br><b>23.07.2018</b> for tower T2, T12 to T14, and EWS block.<br><b>24.12.2018</b> for towers T7&T8, Villa V2, V3 and V5A, Town houses (Th2, TH3m, TH-12, TH12A, and TH-14) |                                                    |
| 8.     | Complaint filed through Secretary namely Himanshu Dewan | HR-018-2021-02414<br>(as per Annexure A of the written submissions filed by the complainant)<br><i>*Note: vide proceedings dated 22.07.2025 it was inadvertently recorded as RWA is not registered</i>                                                                                           |                                                    |

#### B. Facts of the complaint association.

3. The complainant association has made following submissions in the complaint:

- i. That the complainant is a registered 'Association' incorporated under the relevant laws of the land with regard to registration of societies and has been duly registered with the registrar of societies. The main object of the formation of the organization is to form true welfare association for the purpose to take necessary steps including initiation and prosecution of civil and criminal proceedings before appropriate for a for/on behalf of its members/apartment owners to secure, protect & safeguard their interests including completion of project & recovery of all deposits including IFMS situated at Sector 112, Gurugram, Haryana. The complainant has been striving and working forward to achieve its above stated objects since its inception.
- ii. The complaint has been filed through sh. Himanshu Dewan Secretary of the complainant association and who has been duly authorized by the complainant association to file, contest, defend etc. The present complaint in the residential project called "Wind Chant" Sector 112, Gurugram.
- iii. That the members of the complainant association are no one else but only the owners of the flats in the said project or for that matter the present occupants of any of the units in the above said project. That majority of the owner/occupants i.e. non-builders/non-promoters, of the flats in the above said project are members or in process of being the members of the complainant association and the above named complainant association is the only association which is recognized by the apartment owners in the above said project namely wind chant.
- iv. That the project was initially launched by the respondents in the year 2012 and that major bookings in the said project were made in the year 2012 and 2013 while inducing purchasers that the project shall be made with highest

standards and that the project shall be completed within time and where completion time at that point was assured to be by June 2016.

- v. That however in reality all the above said assurances given by the respondents came out to be false, as the project was delayed exorbitantly and that the possession of the project was offered with exorbitant delay in year 2017 to 2022 after taking tower wise occupancy certificates.
- vi. That further the possession of the units in project was offered on the basis of occupancy certificate only and such OC was received by the respondents only in December 2017 to August 2022 and that OC also is received by the respondents in connivance with the Government Officials by giving false information's, the project was far away for completion in actual terms i.e. With all amenities as promised by the respondents in the brochure of sale while booking the units in the project and thus the respondents have defrauded the allottees. The respondent has made gross violation of section 14(2) of the Act which needs to be adhered by the authority as the base of this complaint. The Authority vide its notice no. 6499 dated 09-09-2020 issued notice to the respondent for such gross violation and directed to adhere to the sanctioned plans and\
- vii. The project specifications which are clearly neglected. This needs to be scrutinized by the Authority. The non-completion of the project in all sense is evident from the fact that the respondents till date have not even applied for the completion certificate though having taken full consideration from the allottees.
- viii. That the current allottees/owners occupying the project from day one are facing huge challenges in peacefully occupying their units and living peacefully in the project as major challenges are still prevalent in the project majorly due to non-fulfilment of even basic amenities as promised by the

respondents at the time of sale of the units in the project. Few instances of lack of basic amenities are enshrined as follows: The biggest and most important problem or rather an act found against the allottees/complainant association/owners is regarding the payment which was made by the complainant association to the respondents on account of IFMS, i.e., interest free maintenance security. The said IFMS was collected by the respondent/developer and the said is being received by the respondent against the construction of the project at the time of handing over the possession.

- ix. That the respondent very cleverly directed the complainant association to deposit the said amount of IFMS into the account of the builder which was created and founded by the respondent only for its own personal benefit and thereby committing fraud upon the complainant association, which was nothing but merely to hoodwink the allottees. The prime agenda of creating, formulating, designing of the said fake collection was to dupe the complainant association by extorting from them the security amount and the respondent has succeeded in its motive of achieving wrongful gains from the complainant association as the same fact is self-explanatory. IFMS is charged and collected by the builder from allottees of the project but he is merely trustee of the amount collected which should be handed over to the RWA.
- x. That even the infrastructure work is not complete and it is very low quality like leakage and seepage in basement, beautification of common areas is still incomplete. There are other issues pending in the project which required local commissioner enquiry in it, like the respondent has failed to construct a portion of the boundary wall on one side of the complex, specifically between Tower WT-3 and the villas. As a temporary solution, makeshift



boards have been put up, which compromises the promised three-tier security system.

- xi. Furthermore, certain sections of the boundary walls are not adequately tall, thus failing to provide the necessary security for residents. Extensive damage caused by rainwater infiltration in over 100 flats which is indicative of a significant problem with the sealing of doors and windows, as a result, water has damaged wooden flooring, carpets, and furniture on two separate occasions in the past. The respondent builder must urgently address this persistent issue before the onset of the monsoon season to ensure the safety and well-being of the residents. The reduction in surface parking by approximately 40% raises concerns regarding compliance with the prescribed norms and standards. The reduction in surface parking slots is a serious deviation from the approved plan. Insufficient parking spaces leads to congestion, inconvenience for residents and visitors, and potential security issues.
- xii. That as per communication no. A- 1 100 18/01/2021-caqm/ 8 27(I)T dated: 02.06.2023 issued by the commission for air quality management in national capital region and adjoining areas regarding directions under Section 12 of the commission for air quality management in National Capital Region and adjoining areas act 2021- Regulations for use of DG Sets in NCR., retrofitment of dual fuel kits or ECDS in DG Sets, wherever warranted, must be targeted to be completed latest by 30.09.2023, failing which the use of the DG Set shall not be permitted under any circumstances, anywhere in the entire NCR. Consequently, DG Sets of the capacity of 800 kw or more are to be converted to dual fuel mode with retro-fitted ECDS through certified vendors/ agencies. The same communication and schedule was issued by the

commission last year too and it was the duty of builder to have complied with this statutory requirement where he has miserably failed.

- xiii. That the respondent has failed to construct circulation roads within the project which causes great hindrances for day to day movement of residents. The respondent has added a parcel of adjacent land, fraudulently taken license and started showing total area of project inclusive of the said adjacent land. The respondent has reduced the promised organized green area and also encroached upon organized green area by illegally building HSD and gas bank. Also, has reduced the ground coverage of towers but on the contrary increased • the sale area of units without disclosing details. The respondent has failed to follow up on show cause notice dated 28.08.2020 issued by Authority to promoter.
- xiv. That the respondent has illegally charged for community centre/ furnishing charges etc in violation of bilateral agreement LCIV and LCIVA. One of the main object of the Act is to give allottees complete control over the project once the project is complete and to outdo the promoters from the project so that promoters could not extort monies in the name of maintenance and repair and thus, for such purposes the act envisages provision that the promoter shall execute the conveyance deed of the common areas of the project and handover the project completely to the association.
- xv. That association is running the maintenance and upkeep of the society/ project in question. In spite of the non-co-operation by the respondent builder. There are approx. 200 nos' unsold or unoccupied apartments against which cam charges etc are to be shared with RWA by the respondent builder. The staff of respondent use all the common facilities to sell and upkeep such

apartments but do not share cam charges with other residents of the project. This is illegal and requires strict intervention by the Authority.

- xvi. Thus, in addition respondents be directed to execute the conveyance deed of the common areas of the project in question and handover the maintenance of the project in question in favour of the resident owners association elected vide the laid down processes as per the Haryana Societies Act herein and that while doing so handover the sum collected till date towards IFMS with interest as deemed fit and proper by the Authority to the complainant
- xvii. That the respondents have not provided any deed of declaration to the complainants in order to show that there has been illegal act committed by the respondents as the document gives an in-depth description of the approved license etc on which the building is constructed. The status of the land, whether the land is freehold or leasehold. It has the exact number of apartments and where they are located, as well as the approximate area that the apartment has access to. It also indicates the number of rooms in each apartment, and any other information required for an apartment to be properly identified. The common areas and shared facilities must also be included in the declaration. This could be the swimming pools), lifts), gymnasiums), and firefighting equipment, generator or any other shared facility as to which their use is reserved for specific apartments. The purpose for which the property, i.e. The land, buildings, or the apartments is intended to use also has to be indicated in the declaration as well as the value of the property.

### **C. Relief sought by the complainant**

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

- I. Direct the respondent to provide a complete list of allottees who have been allotted the units.



- II. Direct the respondent to provide a certificate on behalf of a registered chartered accountant bearing details of the amount deposited by the complainants/homebuyers under different categories such as IFMS, electricity charges, HVAT, EDC/IDC, advance maintenance etc.
  - III. Direct the respondent to provide the deed of declaration in order to safeguard the interest of the complaints.
  - IV. Direct the respondent to pay delayed possession charges.
  - V. To appoint a local commissioner to appraise the authority about factual position on ground and documents against which the project is constructed and developed to conduct the forensic audit of the project.
  - VI. Direct the respondent to not to show total area of project inclusive of the said adjacent land.
  - VII. Direct the respondent to pay compensation to buyers for reducing the ground coverage of towers but on the contrary increasing the sale area without disclosing details.
  - VIII. Direct the respondent to follow up on show cause notice dated 28.08.2020 issued by the authority promoter.
  - IX. Direct the respondent to refund the amount illegally charged for community centre/furnishing charges etc. in violation of bilateral agreement LCIV and LCIVA.
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 respondents.**

6. The respondents have contested the complaint on the following grounds.
- i. That the complaint filed by the complainant is not maintainable in law or on facts. The complainant does not have any locus standi or cause of action to institute the present complaint or to claim any relief from the Authority. The complainant claims to be an association of apartment owners in the residential group housing project developed by the respondent, known as 'Windchants', Sector 112, Gurugram. However, the complainant has failed to

provide the list of its so-called members and their particulars. The complainant does not represent the majority of flat owners in the project. In fact, out of about 563 flats in the project, it is believed that about 78 flat owners are members of the complainant association. The said governing body of the complainant association has not been elected in accordance with law.

- ii. That the complainant association was formed by the respondent in the year 2021. The duly nominated governing body was to hold office for a term of three years. At that point in time, the occupancy of the project was less than 25 % and as such it was felt that any elections held at that time would not result in the formation of a governing body that truly represented the interests of the majority of flat owners. It was intended that once the occupancy in the project increased along with membership of the complainant association, elections would be held involving the participation of maximum flat owners.
- iii. That however, one of the members of the complainant Association approached the office of the District Registrar, Firms and Societies, Gurugram for appointment of a returning officer for conducting fresh elections to form the new governing body. However, the elections for the governing body were held contrary to the provisions of the Haryana Registration and Regulation of Societies Act, 2012 and the bye laws made thereunder. Out of 367 residents only 66 were initially enrolled as voters with another 12 members added subsequently, without even conducting a membership drive and verification of eligibility. No elections were held and the present Governing Body was elected unopposed on 02.10.2022 and approval was obtained from the District Registrar, Firms and Societies through misrepresentation. Several buyers have made complaints about being left out of the voters list and not being allowed to vote in the elections.

- iv. That the respondent had filed an application before the State Registrar, Haryana under Sections 52, 53 and 54 of the Act of 2012 against the illegal election process. The State Registrar, Haryana had dismissed the application filed by the respondent on the ground that the District Registrar was competent to order an enquiry into the matter. Hence the respondent has filed a representation before the District Registrar, Gurugram on 27.04.2023, to enquire into the matter and take appropriate action as per law.
- v. That since no action was being taken by the District Registrar, Gurugram on the said representation filed by the respondent, the respondent had filed a writ petition before the Hon'ble Punjab and Haryana High Court being CWP 10762 of 2023. By its order dated 30.05.2023, the Hon'ble Punjab and Haryana High Court directed the District Registrar, Gurugram to decide the representation filed by the answering defendant in accordance with law within a period of 8 weeks.
- vi. That however, shockingly, instead of addressing the grievances of the respondent, the District Registrar, Gurugram vide order dated 25.07.2023 disposed of the representation without any enquiry. The respondent has challenged the aforesaid order passed by the District Registrar, Gurugram by filing an appeal before the State Registrar, Haryana. The appeal filed by the respondent bearing no 1336 of 2023 is still pending before the State Registrar.
- vii. That the complainant also approached the senior town planner (STP), Gurugram and obtained directions whereby the STP directed the respondent to hand over maintenance of the project to the newly elected body of the complainant without fixing any time frame or method. In its meeting with the office bearers of the complainant on 06.04.2023, the respondent communicated its intention of handing over maintenance of such part of the project to complainant association that had already received the occupation

certificate. It was mutually agreed that the existing arrangement would carry on till July 2023.

- viii. That the respondent has filed a writ petition before the Hon'ble Punjab and Haryana High Court being CWP 10654/2023 challenging the aforesaid orders passed by the STP Gurugram dated 16.02.2023 and 05.04.2023. By its order dated 17.05.2023, the Hon'ble High Court has been pleased to stay the operation of the aforesaid orders passed by the STP, Gurugram.
- ix. That in violation of the understanding between the parties, on 15.04.2023, the complainant forcibly took over the maintenance of the entire project and appointed its own maintenance agency, M/s Nimbus Harbor Facilities Management Pvt Ltd. The complainant disconnected electricity supply to the premises owned by the respondent as well as the nursery school site. The officials of the respondent were not permitted to enter the project and the entry of prospective buyers, agents, contractors, labour etc was also prevented by the complainant association.
- x. That under these circumstances, the respondent was constrained to institute a civil suit being CS 1195 of 2023 titled Experion Developers Private Limited Vs Windchants Condominium Association and others, in the civil courts at Gurugram whereby the Respondent, inter alia, challenged the forceful and illegal takeover of common areas and facilities, high side services, assets and maintenance of the entire project by the complainant and also challenged the illegal acts on the part of the complainant in prohibiting the ingress and egress of the Respondent's officials, contractors, customers in the project on account of which the respondent was/is facing huge problems and difficulties in selling its unsold units in the project.
- xi. That the Hon'ble Court of Ms Pragati Rana, Civil Judge, Gurugram has passed a detailed order dated 29.05.2023 whereby the application under Order 39



Rule 1 and 2 read with Section 151 CPC filed by the respondent in civil suit no 1195/2023 titled Experion Developers Private Limited Vs Windchants Condominium Association and another, has been allowed. The complainant association has been restrained from interfering in the peaceful functioning and amenities of the Respondent, its agents and assignees in the project except in due course of law.

- xii. That the complainant has filed another civil suit titled Windchants Condominium Association Vs Experion Developers Private Limited, in which, inter alia, the complainant has alleged violation of Section 17 of RERA by the respondent and has also sought a decree of declaration with consequential relief of permanent and mandatory injunction seeking creation of a charge in favour of the complainant with respect to certain units against alleged dues on account of non payment of common area maintenance charges.
- xiii. That the complainant has also got another civil suit instituted against the respondent by some of the residents of the project titled Rajendra Sachdeva and Others Vs Experion Developers Private Limited and others which is pending in the Hon'ble Court of Ms Sanchita Singh, Civil Judge, Gurugram. The complainant association has also been made a party to the said civil suit and the plaintiffs therein, inter alia, have sought an injunction restraining the respondent from transferring or handing over possession of its unsold/sold units until the respondent clears the common area maintenance charges in respect of such flats.
- xiv. That the basic grievance of the complainant pertains to alleged non payment of common area maintenance charges by the respondent pursuant to the forcible take over of the project by the complainant association and the various reliefs sought by the complainant before the civil courts as well as before the Authority arise out of the same cause of action. In other words, the

complainant is indulging in forum shopping by splitting the cause of action so as to try and seek relief from different courts which is not permissible under Order 2 Rule 2 of the CPC. In fact, the complainant ought to be directed by the Authority to withdraw other litigation instituted by/on behalf of the complainant association and to file a single comprehensive complaint before the Authority, once its legitimacy is determined under the provisions of the Haryana Registration and Regulation of Societies Act, 2012.

- xv. That until and unless it is determined that the governing body of the complainant association has been validly and duly elected in accordance with law and until the Hon'ble Punjab and Haryana High Court determines the validity of the orders issued by the STP, Gurugram on the basis of which the complainant association has taken forcible physical possession of the entire project, no useful purpose would be served by proceeding with the present complaint. Thus, reliefs claimed by the complainant not permissible/beyond the purview of RERA.
- xvi. That the complainant association has also prayed for grant of delay possession compensation/DPC from the respondent. The complainant does not have the locus standi or cause of action to seek any such relief and the same can only be claimed by individual flat owners. This Authority has held in a number of cases that clubbing of complaints for DPC arising of different buyer's agreements is not maintainable in law. Hence, the complainant is liable to be directed to delete /amend the relief no (d) claimed by it pertaining to grant of DPC.
- xvii. That moreover, the complainant has also prayed for compensation for alleged reduction of ground coverage of towers but increasing sale area of units without disclosing details vide prayer (g). The relief of compensation can only be granted by the Adjudicating Officer under RERA and not the Authority.

- xviii. That the complainant has prayed that the total area of the project land should exclude the 'adjacent land'. The additional land is licensed by DTCP (License no. 99 of 2019) and respondent shall start the construction on the same. The complainant has also alleged that the respondent has violated the conditions of LCIV and LCIVA executed under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975. That the relief claimed by the complaint is beyond the purview of RERA and can only be determined by the competent authority under the aforesaid 1975 Act.
- xix. That the respondent has duly fulfilled its obligations towards the allottees in the project in terms of the buyer's agreements executed with the allottees and also under RERA. The project is being developed in accordance with licenses/approvals from concerned government agencies in a phase-wise manner. Out of the total project land admeasuring 24.6275 acres, the respondent has developed 23.431 acres of land comprising of 17 Blocks/Towers and has received five-part occupation certificates in respect of the same from the competent authorities. Construction of the Nursery School in the project is complete but occupation certificate in respect of the same is still awaited. Remaining licensed area of 1.1965 acres is earmarked for future development and still remains to be developed.
- xx. That in accordance with the terms and conditions of the occupation certificates issued by the competent authority, the respondent applied for and got water connection and electricity connection to the project as per the availability and prevalent Rules/Regulations/Laws at that time. The respondent has also installed and commissioned Sewage Treatment Plant (STP) of required capacity and got Consent of Operate (CTO) from Haryana State Pollution Control Board (HSPCB). The project was being maintained as per international standards by CBRE South Asia Private Limited

(CBRE/erstwhile maintenance agency) for the last five years. The erstwhile maintenance agency was providing services to the satisfaction of the residents of the project.

- xxi. That several residents in the project defaulted in payment of maintenance charges to the erstwhile maintenance agency leading to huge arrears in outstanding common area maintenance (CAM) charges. In terms of the buyer's agreement and maintenance agreement executed between the Respondent /erstwhile maintenance agency and the flat buyers, outstanding maintenance charges are liable to be adjusted against the Interest Free Maintenance Security Deposit (IFMSD). The litigation instituted by the complainant is primarily to avoid payment of outstanding maintenance dues and cause needless harassment and put pressure on the Respondent to accede to the illegal and untenable demands of the complainant. The false and frivolous complaint is not maintainable in law and the same is liable to be dismissed with costs.
- xxii. That the elections for the governing body were held contrary to the provisions of the Haryana Registration and Regulation of Societies Act, 2012 and the bye laws made thereunder. Out of 367 residents only 66 were initially enrolled as voters with another 12 members added subsequently, without even conducting a membership drive and verification of eligibility. No elections were held and the present Governing Body was elected unopposed on 02.10.2022 and approval was obtained from the District Registrar, Firms and Societies through misrepresentation. Several buyers have made complaints about being left out of the voters list and not being allowed to vote in the elections. The respondent had filed an application before the State Registrar under Sections 52, 53 and 54 of the Act of 2012 against the illegal election process. The State Registrar had dismissed the application filed by the



respondent on the ground that the District Registrar was competent to order an enquiry into the matter. Hence the respondent filed a representation to the District Registrar on 27.04.2023, to enquire into the matter and take appropriate action as per law.

- xxiii. Since no action was being taken by the District Registrar on the said representation filed by the respondent, the respondent filed a writ petition before the Hon'ble Punjab and Haryana High Court being CWP 10762 of 2023. By its order dated 30.05.2023, the Hon'ble Punjab and Haryana High Court directed the District Registrar, Gurugram to decide the representation filed by the respondent in accordance with law within a period of 8 weeks.
- xxiv. However, shockingly, instead of addressing the grievances of the respondent, the District Registrar, Gurugram vide order dated 25.07.2023 disposed of the representation without any enquiry. The respondent has challenged the aforesaid order passed by the District Registrar, Gurugram by filing an appeal before the State Registrar, Haryana.
- xxv. The complainant had approached the senior town planner (STP), Gurugram and obtained directions whereby the STP directed the respondent, to hand over maintenance of the project to the complainant without fixing any time frame or method. In its meeting with the office bearers of the complainant on 06.04.2023, the respondent had communicated its intention of handing over maintenance of such part of the project to the complainant association that had already received the occupation certificate. It was mutually agreed that the existing arrangement would carry on till July 2023. However, in violation of the understanding between the parties, on 15.04.2023, the complainant forcibly took over the maintenance of the entire project and appointed its own maintenance agency, M/s Nimbus Harbor Facilities Management Pvt Ltd. The respondent filed a writ petition before the Hon'ble Punjab and Haryana High

Court being CWP 10654/2023 challenging the orders passed by the STP Gurugram dated 16.02.2023 and 05.04.2023. By its order dated 17.05.2023, the Hon'ble High Court has been pleased to stay the operation of the aforesaid orders passed by the STP, Gurugram.

- xxvi. The very legality and constitution of the complainant association is yet to be determined by the State Registrar, Haryana and the orders passed by the STP, Gurugram on the basis of which the project was forcibly taken over, is also sub judice before the Hon'ble Punjab and Haryana High Court.
- xxvii. That Sewage Treatment Plant installed by the respondent works on 'Zero-Discharge' basis. Hence, it appears that consent to operate was refused as per the case history available on the website of the Haryana State Pollution Control Board (HSPCB) website.
- xxviii. That the complainant has deliberately not annexed a list of its so-called members to the complaint. The legitimacy of the constitution of the governing body of the complainant as well as its forcible takeover of the project, is sub judice. That occupants other than apartment owners cannot be members of an association of apartment owners of a project under the Haryana Apartment ownership Act, 1983.
- xxix. That the project is enclosed by a boundary wall. There are no internal boundary walls separating different parts of the project except the nursery school site. The part of the project/licensed land admeasuring 1.1965 acres is yet to be developed. At the request of the complainant, a temporary wall has been constructed separating this area from the rest of the project.
- xxx. That Gas bank has been provided by the respondent only as a temporary arrangement for supply to gas until piped gas is made available in the area. In the absence of the same the complainant/residents would have had to rely on gas cylinders. Similarly, the High-Speed Diesel (HSD) Tank is an additional

storage for oil for generators for power back-up and is required to maintain the facility for power back up for about 24 hours. The HSD tank provides a power back up that lasts for a longer time and hence shall be beneficial for all the residents of the project especially in the event of any long-lasting power cut. That the HSD tank is an additional luxury feature provided for the benefits of all the residents of the project. It is not mandatory to provide the same, however, the same has been provided for the convenience of residents. It is submitted that the capacity of the said tank is 20,000 liters and can not be placed in the basement in consideration of security and safety of the residents and the project.

- xxxi. That the respondent has already submitted the parts of the project for which occupation certificate has been issued by the competent authority, to the 1983 Act, by execution and registration of the Deed of Declaration under Section 11 of the said Act. The percentage of undivided interest of each allottee in the common areas of the project have also been duly set out in the Deed of Declaration.
- xxxii. That, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.
- xxxiii. That in violation of the understanding between the parties, on 15.04.2023, the complainant forcibly took over the maintenance of the entire project and appointed its own maintenance agency, M/s Nimbus Harbor Facilities Management Pvt Ltd. The complainant disconnected electricity supply to the premises owned by the respondent as well as the nursery school site. The officials of the respondent were not permitted to enter the project and the

entry of prospective buyers, agents, contractors, labour etc. was also prevented by the complainant association.

7. All other averments made in the complaint were denied in toto.
8. 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 submission made by the parties.

#### **E. Jurisdiction of the Authority**

9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.I Territorial jurisdiction**

10. 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 purposes 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 a complete territorial jurisdiction to deal with the present complaint.

##### **E.II Subject matter jurisdiction**

11. 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.*



12. 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.

**F. Findings on the relief sought by the complainant/association.**

**F.I Direct the respondent to provide a complete list of allottees who have been allotted the units.**

13. The Authority observes that the complainant has itself placed on record the registration certificate of the Association bearing Registration No. HR-018-2021-02414, which establishes that it is a duly registered Resident Welfare Association (RWA). Accordingly, being an RWA, the complainant would have collected the information of allottees at the time of its formation and therefore already has access to the details of all allottees/residents. Hence, no directions are required to be issued against the respondent in this regard.

**F.II Direct the respondent to provide a certificate on behalf of a registered chartered accountant bearing details of the amount deposited by the complainants/homebuyers under different categories such as IFMS, electricity charges, HVAT, EDC/IDC, advance maintenance etc.**

14. As per Section 17(2) of the Act, 2016 the respondent/promoter is obligated to hand over all necessary documents to the association of the allottees or the competent authority after obtaining occupation certificate. Accordingly, respondent no.1 and 2 are liable to provide the complete bank details and statements of the said funds to the complainant/association within 30 days of this order.

**F.III Direct the respondent to provide the deed of declaration in order to safeguard the interest of the complaints.**

15. The complainant association has already placed on record the Deed of Declaration registered by the respondent before the Sub-Registrar, Gurugram,

on 25.11.2022, along with its written submissions. Therefore, no further directions are required in this regard.

**F.IV Direct the respondent to pay delayed possession charges.**

**F.V Direct the respondent to refund the amount illegally charged for community centre/furnishing charges etc. in violation of bilateral agreement LCIV and LCIVA.**

**F.VI Direct the respondent to pay compensation to buyers for reducing the ground coverage of towers but on the contrary increasing the sale area without disclosing details.**

16. In the present complaint, the complainant-association is seeking delay possession charges and refund of amount charged for community centre/furnishing charges etc. in violation of bilateral agreement LCIV and LCIVA under Section 18(1) of the Act, 2016 through various allottees. However, the complainant has not provided any details as to any individual agreement and other documents therefore the relief under Section 18(1) cannot be adjudicated.
17. The Act of 2016 makes it clear that only the individual buyer can approach RERA with a complaint related to delayed possession, refund of any payment and compensation claim by filing the complaint under Section 31 of the Act, 2016 before the Authority. Thus, in such a scenario, no case for delay possession charges would be made out by the association.

**F.VII To appoint a local commissioner to appraise the authority about factual position on ground and documents against which the project is constructed and developed to conduct the forensic audit of the project.**

18. The Authority finds no ground to appoint a Local Commissioner in the present matter. Compliance relating to construction, adherence to approved building plans, issuance of occupation certificate, and structural safety fall under the jurisdiction of the Directorate of Town and Country Planning (DTCP), to whom the complainant may approach in case of any grievance.
19. Further, as the promoter has already been directed to provide project-related details under Section 17(2) of the Act, 2016, there is no occasion to order a

forensic audit at this stage. If a need for forensic audit arises, the same may be referred to the Registrar of Firms and Societies.

**F.VIII Direct the respondent to not to show total area of project inclusive of the said adjacent land.**

20. The relief sought pertains to the jurisdiction of the Directorate of Town and Country Planning (DTCP), which is the competent authority to grant licenses and approve building and layout plans. However, the promoter is directed to strictly adhere to the layout plans submitted to the Authority at the time of project registration.

**F.IX Direct the respondent to follow up on show cause notice dated 28.08.2020 issued by the Authority.**

21. The Planning Branch of the Authority is directed to examine the matter and take appropriate action.

22. The complaint is accordingly decided in terms of the findings contained in para 13 to 21 above.

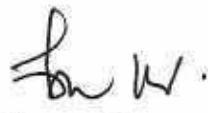
23. The complaints stand disposed of.

24. Files be consigned to the registry



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram



**(Arun Kumar)**  
Chairman

**Dated: 12.08.2025**