

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

Complaint no.: 5521 of 2022
Date of filing: 12.08.2022
Date of order: 19.08.2025

1. Sudhir Taneja,
 2. Asha Taneja
 3. Ankur Taneja
- All R/o:** - 10, New Colony, Gurugram,
Haryana-122001

Complainants

Versus

1. Experion Developers Private Limited
Registered Address: F-9, First
Floor, Manish Plaza-1, Plot No.7,
MLU Sector 10, Dwarka, New Delhi-
110075
2. M/s Apra Motels
Office Address: 32 Milestone
Complex, Chander Nagar, Delhi
Jaipur Bye Pass Road, Gurugram,
Haryana
3. M/s Apra Automobiles Private Limited
Office Address: 32 Milestone
Complex, Chander Nagar, Delhi
Jaipur Bye Pass Road, Gurugram,
Haryana
4. M/s A.S.M. Products Private Limited
Office Address: D-13, Basement,
Gulmohar Park, New Delhi-110049
5. Mr. Anubhav Sharma
Office Address: D 5. Sector 15,
Chander Nagar, Village Silokhera,
Tehsil and District Gurugram,
Haryana

6. Mrs. Vandana Swami

Office Address: - Flat No.403/18,
Heritage City Complex Mehrauli-
Gurugram Road, Gurugram, Haryana

7. Mr. Anumod Sharma

Office Address: - Sector 15, Chander
Nagar, Village Silokhera, Tehsil and
District Gurugram, Haryana

Respondents
CORAM:

Shri Arun Kumar

Chairman

Shri Ashok Sangwan

Member
APPEARANCE:

Shri Ishaan Dang (Advocate)

Complainants

Shri Venkat Rao and Shri Gunjan Kumar (Advocates)

Respondent no. 1

None

Respondent no. 2 to 7
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.	Particulars	Details
1.	Name of the project	32 nd Avenue and Milestone Experion Centre, Sector -15, Gurugram

2.	Nature of the project	Commercial complex
3.	Area of Project	3.8375 acres
4.	RERA Registered/ not registered	Registered, bearing memo no. HRERA-329 of 2017 date 23.10.2017, valid up to 22.10.2018
5.	License no. and validity	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
6.	Date of agreement to sell executed between the complainant and respondent no.5	01.05.2009 (Page 31 of complaint)
7.	Unit no. and area admeasuring	Ground Floor, admeasuring 1000 sq. ft. (Page 33 of complaint)
8.	Assured return clause as per the agreement dated 01.05.2009 executed between complainant and R5	2. <i>The Developer has agreed to pay the allottee an amount of Rs.80/- per sq. ft. per month as assured return for a period of 36 months from the date of allotment i.e., (01.05.2009 to 30.04.2012) during which the developer promises to complete the construction and handover the allottee, the promised area. The amount of Rs.80,000/- shall be paid before the 7th of each month by the developer to the allottee, failing which an interest of 2% per month shall be paid by the developer for the delayed period.</i> <i>The Developer further promised to the allottee that in the case the possession of the premises is delayed beyond 36 months, the developer shall pay the allottee an enhanced amount equal to Rs.105/- per sq. ft. i.e., Rs.1,05,000/- each month for the further period till the date of actual possession.</i> (Page no. 34 of the complaint)
9.	Possession clause as per the agreement dated 01.05.2009 executed between complainant and R5	5. <i>The expected/estimated time of completion as calculated by the DEVELOPER is expected to be 36 months at the most as calculated from the date of this agreement i.e., 01.05.2009. This date of handing over of the area (hereinafter referred to as Unit/units) of</i>

		<i>the ALLOTTEE in the completed premises thus comes to 30.04.2012.</i> (Page no. 34 of complaint)
10.	Due date of possession	30.04.2012 (As per clause 5 of the agreement dated 01.05.2009)
11.	Total sale consideration	Rs.27,50,000/- (As per agreement to sell at page no. 34 of complaint)
12.	Amount paid by the complainant	Rs.27,50,000/- (As per agreement to sell at page no. 34 of complaint)
13.	Development agreement b/w R1 and R2 – R5, R7	21.08.2015 (Page no. 34 of reply)
14.	Occupation certificate	15.01.2019 (page 56 of complaint)

B. Facts of the complaint.

3. The complainants have made the following submissions in the complaint: -

- I. That respondents no.5 to 7 had approached the complainants in the year 2009. The respondents no.5 to 7 had conveyed to the complainants that respondents no.5 to 7 along with respondents no.2 to 4 were developing a commercial complex over land admeasuring 3.8375 acres forming part of license bearing no.63 of 2008 dated 20.03.2008 and situated in revenue estate of Silokhera, Sector 15, Part-II, Gurugram. The respondents no.5 to 7 had also assured the complainants that they were in receipt of all necessary licenses, approvals, permissions etc. issued by the competent authorities for development of the commercial complex.
- II. That respondents no.5 to 7 proffered several assurances to the complainants with respect to the quality of the upcoming project and timeline of its construction. In fact, respondents no.5 to 7 had assured the complainants that the construction of the commercial complex would be complete within a period of three years at the relevant point in time. Furthermore, respondents no.5 to 7 claimed that they were fully entitled and competent to develop,

market and sell the same. The project in question was represented to be a state of the art project with world class amenities.

- III. That respondents no.5 to 7 made an elaborate presentation and also handed over a brochure to the complainants highlighting the features and amenities promised to be provided in the project in question. The respondents no.5 to 7 repeatedly emphasised that the project would be completed within a period of three years.
- IV. That relying upon the promises and assurances made by respondents no.5 to 7 orally as well as through brochures and other promotional material and enticed by the attractive picture portrayed by respondents no.5 to 7, the complainant was induced to book a commercial area admeasuring 1000 square feet located on the Ground Floor in the project in question. The rate of the allotted area was settled at Rs.2,750/- per square feet. Therefore, the total sale consideration amount had been quantified to be Rs.27,50,000/-.
- V. That accordingly, agreement of sale dated 01.05.2009 in respect of the allotted area had been executed by respondents no.2 to 7 in favour of the complainants. The total sale consideration of Rs.27,50,000/- had been paid by the complainants to respondents no.2 to 7 and the same had been duly mentioned in the agreement.
- VI. That it had been incorporated in the agreement that the possession of the allotted area would be handed over to the complainants within a period of 36 months from the date of agreement, i.e. On or before 30.04.2012. Furthermore, it had also been stipulated in the agreement that respondents no.2 to 7 would make payment of Rs.80,000/- per month as assured return (calculated at the rate of Rs.80/- per square feet) for a period of 36 months from 01.05.2009 till 30.04.2012 to the complainants.
- VII. That the aforesaid amount of Rs.80,000/- was agreed to be paid by respondents no.2 to 7 to the complainants before the 7th of each month failing

which an interest 2% per month would be liable to be paid by respondents no.2 to 7 to the complainants for the delayed period. The same had been duly incorporated in the agreement of sale.

- VIII. That furthermore, it had also been stipulated in the agreement that in case respondents no.2 to 7 were unable to handover possession of the allotted area to the complainants by 30.04.2012, in that event respondents no.2 to 7 would be liable to make payment of an enhanced amount equivalent to Rs.1,05,000/- per month (calculated at the rate of Rs.105/- per square feet) for each month beyond 30.04.2012. The aforesaid enhanced amount was liable to be paid by respondents no.2 to 7 till the date of handing over of actual possession of the allotted area.
- IX. That thereafter, license bearing no.92 of 2010 dated 30.10.2010 in respect of land admeasuring 0.1125 acres forming part of the aforesaid commercial complex had been granted to respondents no.5 to 7 by Town & Country Planning Department, Haryana. The total area of the commercial colony admeasured 3.95 acres.
- X. That respondents no.5 to 7 failed to develop the commercial complex and hand over possession of the allotted area to the complainants by the stipulated date i.e. 30.04.2012. The complainants repeatedly approached respondents no.5 to 7 after the expiry of stipulated period to enquire about the handing over of possession of the allotted area and the progress of the commercial complex. However, respondents no.5 to 7 kept ignoring the queries posed by the complainants and kept delaying the matter on one pretext or another.
- XI. That as per the contractual covenants contained in the agreement, respondents no.2 to 7 were liable to make payment of Rs.1,05,000/- per month to the complainants after 30.04.2012. However, respondents no.2 to 7 continued to make payment of only Rs.80,000/- per month to the

complainants in direct contravention of the stipulations contained in the agreement. That respondents no.2 to 7 had stopped making payments altogether to the complainants by March, 2016 and had only made payment of a meagre amount to the complainants thereafter.

- XII. That at this juncture, complainant no.1 kept visiting the office of respondents no.5 to 7 so as to enquire about the status of progress of the construction. Furthermore, the complainant no.1 also requested respondents no.5 to 7 to provide him with a copy of relevant sanctions, licenses, approvals etc. Obtained by respondents no.2 to 7 from the concerned statutory authorities. However, respondents no.5 to 7 promptly refused to cooperate. Complainant no.1 and neither did respondents no.5 to 7 disclose any information about the status of the project nor did they provide a copy of the relevant documents to complainant no.1.
- XIII. That in the meantime, license bearing no.63 of 2008 dated 20.03.2008 had been renewed vide letter bearing memo no. LC-451-DS (R)/2012/17196 dated 04.09.2012 issued by Directorate of Town & Country Planning, Haryana, Chandigarh.
- XIV. That in the meantime, the building plans for the commercial complex in question had been revised and had been sanctioned by the concerned statutory authority on 14.07.2015.
- XV. That thereafter, license bearing no.92 of 2010 dated 30.10.2010 had been renewed vide letter bearing memo no. LC-451 II/PA(SN)/2017/1449 dated 30.01.2017 issued by Directorate of Town & Country Planning, Haryana, Chandigarh. The aforesaid letter had been issued to respondent no.1 as well along with respondents no.2 to 7. Furthermore, it had been duly mentioned in the enclosure to the aforesaid renewal letter that the developer of the commercial colony. Had been changed from Unitech Limited to respondent no.1 i.e. Experion Developers Private Limited.

- XVI. That eventually, the respondents registered the commercial project in question with Haryana Real Estate Regulatory Authority, Panchkula. The registration period had expired on 22.10.2018.
- XVII. That during this period, the complainants not only approached respondents no.2 to 7 but also contacted the officials of respondent no.1 several times to enquire about handing over of possession of the allotted area to them. However, the officials of respondent no.1 continuously ignored the pleas of the complainants and in fact tried every conceivable method in order to discourage the complainants from contacting the said officials.
- XVIII. That thereafter, license bearing no.63 of 2008 dated 20.03.2008 had further been renewed vide letter bearing memo no.LC-451(IV)/JE(BR)/2018/18750 dated 22.06.2018 by the Directorate of Town & Country Planning, Haryana, Chandigarh.
- XIX. Further, the respondents had received approval of revised building plans for the commercial complex in question on 04.09.2018 from Chief Town Planner, Haryana, Town & Country Planning Department, Haryana.
- XX. That eventually, occupation certificate bearing memo no. ZP-757-Vol-II/AD(RA)/2019/1199 dated 15.01.2019 had been issued by the Director, Town & Country Planning Department, Haryana to the respondents in respect of the commercial complex in question.
- XXI. That as on date, the commercial complex is marketed by the name and style of "32nd Avenue" and "Milestone Experion Centre". Furthermore, the respondents have already sold a large area in the aforesaid constructed commercial complex to several allottees. However, till date, the complainants have not been handed over possession of the allotted area as duly mentioned in agreement of sale dated 01.05.2009 by the respondents.
- XXII. That as per the contractual covenants contained in the agreement of sale dated 01.05.2009, respondents no.2 to 7 were liable to make payment of

Rs.1,05,000/- per month to the complainants after 30.04.2012. However, respondents no.2 to 7 continued to make payment of only Rs.80,000/- per month to the complainants in direct contravention of the stipulations contained in the agreement. It would not be out of place to mention that respondents no.2 to 7 had stopped making payments altogether to the complainants by, March, 2016 and had only made payment of a meagre amount to the complainants thereafter.

XXIII. That till date, only an amount of Rs.52,48,000/- has been paid by respondents no.2 to 7 to the complainants after 30.04.2012. The aforesaid payment is merely a pittance of the total outstanding amount liable to be paid by respondents no.2 to 7 to the complainants and is grossly inadequate. Furthermore, the respondents no.2 to 7 are liable to make payment of outstanding amount of Rs.1,50,70,180/- to the complainants calculated till July, 2022 as per the contractual covenants contained in the agreement. The aforesaid amount is inclusive of interest calculated at the rate of 24% per annum as mentioned in Clause 2 of the agreement of sale dated 01.05.2009.

XXIV. That the respondents have acted in a high handed and arbitrary manner. There is gross deficiency in service on the part of the respondents by inordinately delaying possession and failing to handover possession of the allotted area to the complainants. The respondents no.2 to 7 have adopted unfair trade practices by taking the entire sale consideration amount in respect of the allotted area from the complainants and thereafter failing to abide by the contractual covenants contained in agreement of sale dated 01.05.2009. The respondents have abused their dominant position and taken undue advantage of the compulsions of the complainants who had made payment of the entire total sale consideration of the allotted area by May, 2009 itself.

- XXV. That the complainants are aggrieved by the failure of the respondents in handing over possession of the allotted area to the complainants in blatant violation of the agreement of sale dated 01.05.2009 and the provisions of RERA. Clause 5 of the Agreement provides that possession of the allotted area was liable to be handed over to the complainants on or before 30.04.2012. Furthermore, Clause 2 of the Agreement outlines in detail the assured return component liable to be paid by respondents no.2 to 7 from 01.05.2009 till 30.04.2012 and thereafter, the period post the stipulated date of handing over of possession (30.04.2012) till handing over of possession of the allotted area to the complainants.
- XXVI. That till date, possession of the allotted area has not been handed over to the complainants. The validity date of RERA Registration certificate dated 23.10.2017 bearing memo No.HRERA-493/2017/303 (Annexure C7) had long expired on 22.10.2018. It is not known as to whether the registration under RERA has been renewed. The occupation certificate had only been received on 15.01.2019 by the respondents. Thus, prima facie, the respondents are in violation of RERA and the Rules made thereunder and are liable to be penalised for their violations and transgressions.
- XXVII. That the complainants have duly complied with the terms and conditions of the agreement of sale dated 01.05.2009. The entire sale consideration amount had been paid by the complainants to respondents no.2 to 7 at the time of execution of the aforesaid agreement and the same has been duly reflected therein. However, respondents no.2 to 7 have miserably failed to fulfil their contractual obligations arising out of agreement of sale dated 01.05.2009. Furthermore, the respondents have intentionally not handed over possession of the allotted area to the complainants in order to cause wrongful loss to the complainants.

XXVIII. That the complainants have already performed their part of the contract. The complainants always had available with them and still have available with them the requisite funds to pay towards the stamp and registration charges for the conveyance deed. In fact, the complainants have not been offered possession of the allotted area despite making complete payment of the entire sale consideration amount by May, 2009 itself. Therefore, it is evident from the entire sequence of events that no illegality or lapse can be attributed to the complainants.

XXIX. That the respondents have cheated and defrauded the complainants. The respondents have misused the amount paid to them by the complainants. The officials of respondent no.1 along with respondents no.2 to 7 have diverted the funds of the allottees of the project in question including the complainants and have illegally utilised the said funds for their own personal use.

C. Relief sought by the complainants: -

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

- i. Direct the respondent to hand over possession of the allotted area i.e. area admeasuring 1000 sq. ft. and located on the ground floor in the commercial complex.
- ii. Direct the respondent to make payment of the outstanding amount of assured return of Rs.1,50,70,180/- to the complainants along with accumulated interest at the rate of 24% per annum in terms of the contractual covenants contained in the agreement of sale dated 1st of May, 2009.
- iii. Direct the respondent to pay pendente lite interest and future interest at the rate of 18 % per annum to the complainants from the date of filing of the complaint till realization of the entire outstanding amount.
- iv. Direct the respondent to pay Rs.1,00,000/- as litigation expenses to the complainants.

D. Reply filed by the respondent no.1.

5. The respondent no.1 had contested the complaint on the following grounds:

- I. That the present complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant has not approached this Authority with clean hands and is trying to suppress

material facts relevant to the matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent.

- II. That the complainants are real estate investors and with the intention of investing in the real estate sector of Gurugram, had allegedly entered into a commercial transaction to purchase 1000 sq. ft. of commercial space in a "Commercial Complex" on the land bearing License No. 63 of 2008 which the respondent no. 2-3 and 5-7 were in the process of constructing, developing and setting up. Further, the complainants allegedly paid an amount of Rs.27,50,000/- to the respondent no. 2-3 and 5-7.
- III. That in the year 2009, when the complainants and the respondent nos. 2-3 and 5-7 had entered into the commercial transaction, the respondent no.1 was not associated with the respondent no. 2 -7 in any whatsoever manner nor did the respondent no. 1 have any involvement or interest in the transaction entered into by the respondent nos. 2 to 7. In fact, the said agreement dated 01.05.2009 has come into the knowledge of the respondent no.1 only vide the present complaint.
- IV. That, the complainants have relied and filed the instant Complaint based on the agreement dated 01.05.2009 executed between the complainants and respondents no. 2-3 and 5-7. Herein 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. That the complainants have unnecessarily dragged the respondent no.1 into the false and frivolous litigation, basis the said agreement which was not even in the knowledge of the respondent no.1 prior to the present complaint.

- V. 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.
- VI. Furthermore, the respondent no. 1 has no role to play in what seems to be a dispute between the respondent no. 2-3 and 5-7 and the complainants. That in the instant case, respondent no. 1 is a stranger to the agreement dated 01.05.2009 having no involvement or obligations towards the complainants. Therefore, no action can be brought against the respondent no.1 by the complainant.
- 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 the alleged money has been admittedly paid to the respondent no.2 to 7 only and the respondent no.1 has not received a single penny. Further, the complainants have not attached any layout/ plan or any similar document to showcase as to where the alleged area of the complainants have been allotted in the land pertaining to License no. 63 of 2008.
- IX. That by applying the supra principle in the present case, it is most humbly submitted that:
- a. no agreement has been executed between the complainants and the respondents no.1;
 - b. there is no privity of contract or commercial relation between the Complainants and the respondent no.1;
 - c. no consideration of any kind whatsoever has been paid by the Complainants to the respondent no.1;
 - d. No allotment has been made by the Respondent No.1 in favor of the Complainants.
 - e. There is no builder-buyer relationship between the Complainant and the Respondent No.1.

- X. That from the perusal of the Complaint, the Complainants in the year 2009 had entered into a commercial transaction to purchase 1000 sq. ft. of commercial space in a Commercial Complex on the land bearing License No. 63 of 2008 which the Respondent No. 2-3 and 5-7 were in the process of constructing, developing and setting up and accordingly an Agreement dated 01.05.2009 was allegedly executed between the Complainants and Respondent No. 2-3 and 5-7. That when Agreement dated 01.05.2009 was executed, the Respondent No.1 was not even involved nor was having any sort of relation with the other Respondents i.e 2 to 7. In fact, the existence of the said Agreement came to the knowledge of the respondent no.1 only vide the present complaint.
- XI. That as per the said agreement the respondent no. 2-3 and 5-7 were the developers and were responsible for constructing, and developing a commercial complex.
- XII. That as per Clause 5 of the agreement dated 01.05.2009 the developers i.e., respondent nos. 2-3 and 5-7 undertook to hand over the area purchased under the said agreement within 36 months from the date of execution of the agreement dated 01.05.2009 i.e., by 30.04.2012.
- XIII. That in Clause 9 of the said agreement, it was categorically agreed between the complainants and respondent no. 2-3 and 5-7 that the possession of the units shall be handed over/ given by the developers i.e., respondent no. 2-3 and 5-7. Furthermore, under the said agreement the developer i.e., respondent no. 2-3 and 5-7 undertook to compensate the complainants in case of delay in the offer of possession.
- XIV. That claim of the complainants pertains to a project which was to be developed by the respondents no. 2-3 and 5-7. Further, the complainants have not attached any layout/ plan or any similar document to showcase as to where the alleged area of the complainants have been allotted in the land

pertaining to License No. 63 of 2008. In fact, the name of the project which was being developed by the respondents 2-3 and 5-7 was commercial complex. Hence, any responsibility towards the complainants is solely that of the respondents no.2 to 7 and the respondent no.1 had been wrongly implicated in the present matter.

XV. That from terms and conditions of the agreement dated 01.05.2009 it is evident that the respondent no. 1 has no role in the transactions entered into between the complainants and the respondent nos. 2-3 and 5-7 as:

- a. The agreement was executed between the complainants and the respondent nos. 2-3 and 5-7;
- b. Respondent Nos. 2-3 and 5-7 were the developers in the said agreement;
- c. The obligation to hand over the possession is that of the respondent nos. 2-3 and 5-7;
- d. The obligation to pay compensation in case of delay in the offer of possession is also of the respondent nos. 2-3 and 5-7.

XVI. Therefore, under the Agreement dated 01.05.2009 all the obligations and liabilities were bestowed upon the Respondent Nos. 2-3 and 5-7. Thus, the respondent no. 1 being a stranger to the agreement and since no cause of action has arisen against the respondent no.1, is entitled to be removed from the array of parties in the present Complaint. The respondent no. 1 was not either developer or co-developer at the time of execution of the agreement between the complainant and the respondent nos. 2-3 and 5-7.

XVII. That Mr. Anubhav Sharma i.e., respondent no. 5, Mrs. Vandana Swami i.e., respondent no. 6, Mrs. Mamta Sharma w/o Mr. Anubhav Sharma in the capacity of 'Landowners' entered into a Development Agreement dated 21.08.2015 with the respondent no.1 i.e., Experion Developers Pvt. Ltd. In the said Development Agreement dated 21.08.2015, M/s Apra Motels i.e., respondent no. 2, M/s Apra Automobiles Pvt. Ltd. i.e., Respondent No.3 and M/s A.S.M. Products Pvt. Ltd. i.e., respondent no. 4 were the 'Confirming Parties'.

- XVIII. That in the development agreement the respondent nos. 2-6 have stated that the land admeasuring 3.95 acres situated at 32nd Milestone Complex is owned by landowners i.e., Mr. Anubhav Sharma i.e., Respondent No. 5, Mrs. Vandana Swami i.e., Respondent No. 6, Mrs. Mamta Sharma w/o Mr. Anubhav Sharma.
- XIX. That the at time of execution of the Development Agreement dated 21.08.2015, the respondent no. 2-6 informed the respondent no.1 that:
- a. The respondent no.2-6 had entered into various collaboration agreement with "Unitech Ltd." for the development of a larger land parcel including the aforementioned land admeasuring 3.95 acres;
 - b. That the under the collaboration agreements executed with 'Unitech Ltd,' the development of a larger land parcel including the aforementioned land admeasuring 3.95 acres was divided into Two (2) phases i.e., "Phase I" and "Phase II";
 - c. Unitech Ltd. under the Phase - I has developed a commercial complex on land admeasuring 3.6625 acres;
 - d. The development of land falling under Phase -II was not completed by Unitech Ltd., however, all the requisite permissions, and approvals were obtained by the Unitech Ltd.;
 - e. The collaboration agreement with Unitech Ltd. was terminated and Unitech Ltd. has no objections to the development of the land falling under Phase - II by the Respondent No.1;
 - f. The respondents nos. 2-6 have categorically stated that neither did they nor Unitech Ltd. has created any Encumbrance on the Project Land;
- XX. That after disclosing the above-mentioned facts and stating the same in the Development Agreement dated 21.08.2015 the said Development Agreement was executed between the respondent no. 2-6 and the respondent no.1.
- XXI. That believing the aforementioned statements which are also recorded in the Development Agreement 21.08.2015, the respondent no.1 executed the Development Agreement and undertook the development of the land falling under Phase II. There is no agreement between the Complainant and the Respondent no.1 and there is no mention of Phase-II in the agreement dated 01.05.2009 executed between complainant and respondent no. 2-3 and 5-7.
- XXII. That prior to 2015 the respondent no. 2-7 were associated with Unitech Ltd. for the development of commercial real estate projects on their Lands and had executed various Collaboration Agreements with Unitech Ltd. That the

same is specifically admitted by the respondent no. 2-6 in the collaboration agreement dated 21.08.2015.

- XXIII. That it was only after the termination of the collaboration agreements between the respondent no. 2-6 and Unitech Ltd., the Respondent No. 2-6 approached the respondent no.1 for the development of the unutilized FAR on the land parcel owned by the Respondent No. 2-6. Therefore, it is abundantly clear that prior to 2015 the instant Project in question was not in existence and the same came into existence only after the execution of the Development Agreement dated 21.08.2015. Further, the Complainants have failed to show any such document wherein the Respondent No.1 has allotted any area/unit to the Complainants from the development of the unutilized FAR of the current project so as to initiate the present legal proceedings against the Respondent No.1.
- XXIV. Further, without prejudice and without specifically admitting anything, it is humbly submitted that even if the Complainants have any claim, the same can only be claimed from the Respondents No. 2 to 7. Also, any area that has been allocated to the Respondents No. 2 to 7 in the project developed by the Respondent No.1 is the area belonging to the Respondents no. 2 to 7 and the Respondent No.1 has no right, title, control over the said area. The Respondent No.1 has neither collected any money against these areas of the Respondent No.2 to 7 nor has it allotted any such area to any third party to create an Allottee- Promoter relationship as per the definition of the Real Estate (Regulation & Development) Act, 2016.
- XXV. That the Respondent No. 2-6 have specifically stated in Recital G of the Development Agreement dated 21.08.2015 that the Project Land i.e., Land Admeasuring 3.95 acres was free from all encumbrances
- XXVI. That apart from Recital G, the Respondent No. 2-6 have also stated in the Development Agreement about Non-Encumbrance and no possession rights,

nor any Agreement for sale has been executed for the Land admeasuring 3.95 acres. Further the Respondent No. 2-6 stated that the Encumbered Areas form part of Utilized FSI, which are not part of the present Project for which the Development Agreement was executed.

XXVII. That from a mere perusal of the aforementioned clauses of the Development Agreement dated 21.08.2015, it is abundantly clear that the Respondent No.1 believing the terms and conditions of the Development Agreement, was under the impression that:

- a. Project Land was free from encumbrance;
- b. all the encumbered areas were part of the Utilized FSI;
- c. No rights were created on the Project Land which was to be developed by the Respondent No.1;
- d. No Agreement for Sale was executed with the third parties.

XXVIII. That under the Agreement dated 01.05.2009, the Respondent 2-3 and 5-7 i.e., the Developer under the said Agreement has promised to sell/allot and convey a commercial area admeasuring 1000 sq. ft. to the Complainants.

XXIX. Therefore, it is evident that the Agreement was executed between the Complainants and the Respondent No. 2-3 and 5-7 and payments were also received by the Respondent No. 2-3 and 5-7 without it being in the knowledge of the Respondent No.1 and prior to execution of the Development Agreement dated 21.08.2015. Further, it is clarified that Respondent No.1 has no interest with respect to the money paid by the Complainant nor is exercising any right over it.

XXX. Furthermore, as per the terms and conditions of the Agreement dated 01.05.2009 the Complainants are entitled to seek compensation/penalty in the form of 'Rent' and possession from the Respondent No. 2-3 and 5-7 only and not from the Respondent No.1 which makes it evident that no Builder-Buyer/ Promoter-Allottee relationship existed between the Complainants and the Respondent No.1.

- XXXI. Thus, the present Complaint is not maintainable against the Respondent No. 1, as no real cause of action has either been pleaded or exists against the Respondent No. 1 and it is verily believed that the present Complaint is nothing but an instigated and motivated attempt at pressurizing the Respondent No. 1 without any basis or cause of action.
- XXXII. That it is settled law that Complaints based on the illusory cause of action must be nipped in the bud in order to prevent the streams of justice from being polluted by unscrupulous litigants and to prevent abuse of the process of law. It is also noteworthy to mention that "cause of action is a bundle of essential facts-necessary for the plaintiff to prove so that he can succeed in the case (A 1991 Ker137, 138)". That in the instant case the true material and essential facts adequately signifies that Respondent No.1 is being unfairly dragged in the instant matter.
- XXXIII. That all the allegations levied by the Complainants are against the Respondents 2 to 7 only and the Complainants of their own admission and admittance have only specifically named Respondents 2 to 7 in every allegation and grievance.
- XXXIV. That the complainants have not levied any particular/specific grievance against the respondent no.1 rather the dispute exists between the complainants and respondent No.2-7 which has arisen from the Agreement dated 01.05.2009 to which the Respondent No.1 was not even a party. In fact, the complainants have specifically pointed out their grievances against the respondents No. 2-7. It is also to be noted that no specific reliefs have been sought against the respondent No.1.
- XXXV. That as per the agreed terms and conditions of the Development Agreement dated 21.08.2015, the Respondent No. 2-7 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. 2-7 with any other buyers of Respondent No. 2-7's allocated area.

- XXXVI. That the respondent no. 2-7 has specifically agreed to indemnify respondent no.1 from all sorts of liability towards any promises/ obligation arising from the allottees of the Respondent No.2-7 at various stages.
- XXXVII. That as per Clause 2 of the Agreement to Sell dated 01.05.2009, the Complainant have allegedly paid an amount of Rs. 27,50,000/- in favour of Respondent nos. 2-7 herein and even opted for assured return scheme of Respondent nos.2-7, however no proof of payment/payment receipts has been annexed with the present complaint.
- XXXVIII. That the Development Agreement dated 21.08.2016, it is abundantly clear that Respondent No. 2-3 and 5-7 has independent rights and obligations with respect to allotment/ transactions, Agreement for Sale executed by them and no repercussions are to fall upon Respondent No.1 arising from any allotment made/ agreement executed by the Respondent No.2-7 thereof. It is further submitted that the obligations and liabilities, if any, towards the Complainants are solely of Respondent No.2-7 as Respondent No.2-7 have specifically indemnified Respondent No.1 against all kinds of liabilities, claims, and proceedings that may arise due to default of the respondent no. 2-7 or agreement executed by the respondent no. 2-7.
- XXXIX. That the Commercial Complexes named as "32nd Avenue" was developed/constructed by the Respondents 2-7 and "Milestone Experion Centre" being Phase-II was developed/constructed by the respondent no.1 under the Development Agreement dated 21.08.2015. It is pertinent to mention herein that under Clause 13.1 of the Development Agreement dated 21.08.2015, it was categorically agreed between the Respondent No.1 and the Respondent No. 2-6 that the Project which was to be constructed under

the Development Agreement dated 21.08.2015 shall be named as "Milestone Experion".

- XL. Accordingly, complainants while filing the complaint under adjudication have not annexed any documents/letters to substantiate the fact that they have been allotted any unit/space in the Project named as "Milestone Experion" developed by the Respondent No.1. Furthermore, the Complainants have also not disclosed on what basis they have made the Respondent No.1 a party to the Complaint as there are no privity of contract between the Complainants and the Respondent No.1.
- XLI. That in the year 2009 when the complainants had entered into a transaction with the respondent no. 2-3 and 5-7 with respect to the purchase of a commercial space admeasuring 1000 sq. ft., that at that point in time, the instant Project was not in existence nor any documents/ allotment letter has been executed with respect to the instant Project by the Respondent No.1. Furthermore, it is pertinent to mention herein that the Complainants have not filed or brought or record any documents which substantiate the fact that it was the obligation of the Respondent No. 1 to allot or deliver the commercial space booked in the year 2009, at the time when the Respondent No.1 was not even familiar with the rest of the Respondent i.e., Respondent No. 2-3 and 5-7.
- XLII. That in the Development Agreement dated 21.08.2015 it is specifically disclosed by Respondent No. 2-6 that all the encumbered space/land are part of the Unutilized FSI, that the Development Agreement dated 21.08.2015 was executed between the Respondent No.1 and Respondent No. 2-6 for Unutilized FSI.
- XLIII. That the Respondent No.1 has not allotted any Unit/Space to the Complainants. There are no allotment letters, no builder-buyer agreement or

any other such document to establish the relation of a Promoter and Allottee between the Respondent No.1 and Complainants.

- XLIV. That as of date the respondent no.1 has fulfilled its obligation under the Development Agreement dated 21.08.2015 and has developed the 'Unutilized FAR' 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.
- XLV. That the present Complaint is barred by law of limitation as the Complainant has allegedly entered into a commercial transaction with the Respondent No. 2-3 and 5-7 to purchase a commercial space in the year 2009 and executed an Agreement dated 01.05.2009 recording the terms and conditions of the commercial transaction/sales. That upon perusing Clause 5 of the alleged Agreement dated 01.05.2009 annexed as Annexure C/2 in the Complaint, it came to the knowledge of the Respondent No.1 that allegedly the possession of the commercial space was to be handed over to the Complainants by the Respondent No. 2-3 and 5-7 by 30.04.2012.
- XLVI. That the RERA Act, 2016 do not provide for the period of limitation, therefore, the provisions of the Limitation Act, 1963 shall become applicable by virtue of Section 29(2) and Section 3 of the Limitation Act, 1963.
- XLVII. That accordingly, since it has been established that the Limitation Act is applicable, the period of limitation shall be computed as per Articles no 55 and 113 of the Schedule.
- XLVIII. Therefore, it is abundantly clear that the period of Limitation shall be deemed to be 3 years. It is further clarified that in the present matter, the alleged due date of possession was 30.04.2012. That without prejudice to

anything, if the Complainants had any grievances with respect to handing over of possession or any other things then the Complainants had the option to get their grievances redressed from other Courts/Consumer forums etc. However, it is pertinent to mention herein that as per the averments made in the Complaint, it is evident that upon expiry of the alleged due date of possession, the Complainants till 2022 have not filed a single Complaint/Suit of any nature before any court of law including the Consumer Forums and the RERA Authorities seeking possession of the alleged commercial space purchased by them.

XLIX. That now the Complainants after an expiry of 10 years 3 months and 4 days (approximately) from the alleged due date of possession, have filed the present Complaint seeking Possession, payment of outstanding Assured Return, and impleaded the Respondent No.1 as a party to the present Complaint, with whom the Complainants have no privity of contract. Without prejudice to any averments made in the Complaint, it is noted herein that as of the due date of possession, the Respondent No.1 was not associated with the Respondent No. 2-7, that all the obligations with respect to handing over of possession and payments of any delay penalties were that of the Respondent No. 2-3 and 5-7.

L. That the Respondent No. 1 executed the Development Agreement dated 21.08.2015 with the Respondent No. 2-7 at a much belated stage for development of the Project "Experion Milestone", which was much after the lapse of the alleged due date of possession as per the Agreement dated 01.05.2009. Also, from 2015 till service of the Complaint upon the Respondent No.1, the Respondent No.1 did not have any knowledge of the alleged Agreement dated 01.05.2009 or commercial area allegedly sold to the Complainants.

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

7. The present complaint was filed on 12.08.2022 in the Authority. The respondent no. 2 to 7 were granted opportunities to put in appearance and file reply. However, despite specific opportunities respondent failed to file reply. In view of the same respondent no. 2 to 7 defence was struck off and the matter was proceeded ex-parte against the respondent no. 2 to 7 vide order dated 18.08.2023.

E. Findings on the relief sought by the complainant.

E.I. Direct the respondent to hand over possession of the allotted area i.e. area admeasuring 1000 sq. ft. and located on the ground floor in the commercial complex.

E.II. Direct the respondent to make payment of the outstanding amount of assured return of Rs.1,50,70,180/- to the complainants along with accumulated interest at the rate of 24% per annum in terms of the contractual covenants contained in the agreement of sale dated 1st of May, 2009.

E.III. Direct the respondent to pay pendente lite interest and future interest at the rate of 18 % per annum to the complainants from the date of filing of the complaint till realization of the entire outstanding amount.

E.IV Direct the respondent to pay Rs.1,00,000/- as litigation expenses to the complainants.

8. 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.

9. The complainants contend that respondents no.5 to 7 in 2009 conveyed them that they along with respondent no.2 to 4 conveyed them they are developing a commercial complex located in Sector 15, Part-II, Gurugram. Relying on the assurance complainant booked a commercial area admeasuring 1000 sq. ft. on Ground floor. Also, the respondent no. 5 to 7 assured that they possess all necessary licenses, permissions, and approvals for a commercial complex, and promised timely delivery within 36 months along with assured returns of Rs.80,000/month, later increasing to Rs.1,05,000/month in case of delay beyond 30.04.2012. Accordingly, a sale agreement dated 01.05.2009 was executed and full sale consideration of Rs.27,50,000/- was paid by the

complainants. However, the respondents failed to complete the project and hand over possession by the stipulated date, and despite the project's occupation certificate being issued on 15.01.2019. Additionally, respondents no.2 to 7 continued to pay only Rs.80,000/- per month till March 2016, and have paid only Rs.52,48,000/- till July 2022 against a total outstanding amount of Rs.1,50,70,180/-.

10. On contrary the respondent no. 1 pleads that the present complaint has been filed with the intent to mislead and extract unlawful gains by suppressing material facts and falsely implicating respondent no.1, with whom the complainants have no privity of contract. In 2009, the complainants entered into a commercial transaction with respondents no. 2-3 and 5-7 for the purchase of 1000 sq. ft. of commercial space through an agreement dated 01.05.2009, an agreement to which respondent no.1 was not a party and had no knowledge of until the filing of the present complaint. All obligations, liabilities, and consideration under the said agreement were solely between the complainants and respondents 2-3 and 5-7, who were the developers at that time. There is no document, payment receipt, or allotment letter to show any contractual obligation or transaction between the complainants and respondent no.1.
11. That the project developed by respondent No.1, named "Milestone Experion," is distinct from the commercial complex mentioned in the 2009 agreement. Respondent No.1 has not received any consideration, made any allotment, or had any transaction with the complainants and is merely being dragged into litigation involving respondents 2 to 7, who are solely liable.
12. Upon careful consideration of the documents on record and submissions made by both parties, it is clear that the issue involves disputes about subject unit, the agreed timeline for possession in agreements executed, and the responsibilities of each respondent. The complainants rely on the Agreement to

Sell dated 01.05.2009, which they entered into with respondents no. 5 for the subject unit admeasuring 1000 sq. ft. The complainants herein claim that they have paid the full consideration of Rs.27,50,000/- and were promised possession within 36 months, along with monthly assured returns. However, they have not received possession of the unit and has paid assured returns only till March, 2016.

13. On the other hand, it is pertinent to note that respondent no. 1 was not a party in the agreement dated 01.05.2009 which became associated with the subject land only through a Development Agreement dated 21.08.2015 executed with respondents no. 2 to 5 and 7. In that agreement, respondents no. 2 to 5 and 7 categorically declared that the land measuring 3.95 acres was free from all encumbrances and that no prior agreements, third-party rights, or sale transactions had been created in respect of the said land. The relevant clause of the said development agreement is reiterated below:

8. Representation & Warranties

8.1

- (i) *The Owners are the owner of the Said Land and have a clear and marketable right, interest and title to the Said Land. The Said Land is free from all and any Encumbrances and no Person (other than the Owners) has any right in or title to the Said Land, and that the Owners are absolutely entitled to deal with the Said Land, as they deem fit and expedient, without any legal impediment(s).*
- (ii) *The Said Land is in lawful physical possession of the Owners. The Said Land is legally and beneficially owned by the Owners and that there are neither any tenants, occupants, trespassers, squatters or encroachers of any kind on the Said Land nor any possession, occupancy or exploration rights have been granted to any Third Party, save and except as provided in terms hereof to EDPL;*
- (iii)
- (iv) *The Owners represent that there is no agreement for sale, estate contract, agreement to sell or power of attorney (save and except the power of attorney executed in favour of EDPL by the Owners) or development agreements, or collaboration agreements, or other similar or analogous arrangements or agreements or matters similar thereto, where under any third party has a contractual right or obligation or commitment to acquire an estate or interest in the Said Land, or which may hinder the consummation of the transaction or defeat the purpose of this Agreement, and there are no outstanding actions, claims, or demands between the Owners and any third party affecting or relating to the Said Land;*
- (v) *The Owners represent that the Owners are the absolute owner of the Said Land as per the records with the Said Land registry having jurisdiction over the Said Land and all municipal local records of the Authority.....*

14. However, the earlier agreement dated 01.05.2009 executed between the complainants and respondents no. 2 to 5 and 7 itself suggests that certain rights may already have been created upon the subject unit in favor of complainants prior to the execution of the Development Agreement dated 21.08.2015.
15. Additionally, there is no document on record to show any direct privity of contract between the complainants and respondent no.1, nor any payment, allotment, or builder-buyer agreement executed between respondent no.1 and complainants.
16. Given these disputed facts particularly regarding the status of the land, the existence of prior rights, and the nature of representations made in both agreements 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.
17. The complaint stands disposed of.
18. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.08.2025