

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: November 27, 2025

Appeal No.33 of 2024

1. Gopal Krishan Arora
2. Sunita Arora
Residents of H.No. C-1/17, First Floor, Rana Pratap Bagh, Malka
Ganj, Delhi.

...Appellants

Versus

M/s. Experion Developers Private Ltd. Regd. Office at F-9, First
Floor, Manish Plaza – I, Plot no. 7, MLU, Sector 10, Dwarka, New
Delhi-110075, Corporate Office at 8th Floor, Wing-B, Milestone
Experion Centre, Sector -15, Part-II, Gurugram, Haryana-
122001.

...Respondent

Appeal No 722 of 2023

M/s. Experion Developers Private Ltd. Regd. Office at F-9, First
Floor, Manish Plaza – I, Plot no. 7, MLU, Sector 10, Dwarka, New
Delhi-110075, Corporate Office at 8th Floor, Wing-B, Milestone
Experion Centre, Sector -15, Part-II, Gurugram, Haryana-122001

...Appellant

Versus

1. Gopal Krishan Arora
2. Sunita Arora
Residents of H.No. C-1/17, First Floor, Rana Pratap Bagh, Malka
Ganj, Delhi.

...Respondents

CORAM:

Justice Rajan Gupta
Dr. Virender Parshad
Dinesh Singh Chauhan

Chairman
Member (Judicial)
Member (Technical)

Present: Mr. Sandeep Khunger, Advocate, for the allottees.
Mr. Vansh Vohra, Advocate, for the promoter.

O R D E R:

JUSTICE RAJAN GUPTA, CHAIRMAN

This order shall dispose of above mentioned appeals, as common questions of law and facts are involved therein. However, the facts have been extracted from Appeal No. 33 of 2024.

2. Present appeal is directed against the order dated 26.09.2023, passed by the Authority¹. Operative part thereof reads as follows:

“63. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act of 2016:

a.. The respondent shall pay interest at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 24.12.2016 till the date of offer of possession (08.12.2017) plus two months i.e., 08.02.2018 as per proviso to section 18(1) of the Act read with rule 15 of the rules.

b.Out of amount so assessed, the respondent is entitled to deduct the amount already paid towards DPC i.e. Rs. 1,98,942/-.

c. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

d. The respondent is directed to pay arrears of interest accrued, if any after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.

e. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent is further directed to handover

¹Real Estate Regulatory Authority, Gurugram

the possession within next two weeks and the complainant is also directed to take the possession of the subject unit.

f. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e. 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

64. Complaint stands disposed of.

65. File be consigned to the registry.”

3. As per the averments made in the complaint, Unit No. WT-07/1002, measuring 2650 sq. ft., was allotted to the original allottees in the project titled “Windchants,” Sector 112, Gurugram. Thereafter, the said unit was endorsed in the favour of the present complainants. Total sale consideration was Rs.2,10,95,530/-. A Builder-Buyer Agreement (BBA) was executed between the parties on 26.12.2012 under a construction-linked payment plan. An amount of Rs.2,14,02,772/- was paid by the allottees. As per Clause 10.1 of the BBA, possession was to be delivered by 24.12.2016. However, the offer of possession was made on 08.12.2017.

4. Complainants approached the Authority with grievance that although the unit was booked for 2650 sq. ft., the promoter unilaterally increased the super area to 2802 sq. ft. in the offer of possession and raised demands accordingly.

5. Complainants also contended that the unit offered was incomplete and inhabitable. Accordingly, they sought delay possession charges (DPC) for the period, from the stipulated due date of possession till the date of actual handing over of possession.

6. The promoter resisted the complaint on the ground that a valid offer of possession was made on 08.12.2017 upon obtaining Occupation Certificate on 06.12.2017, thus allottees cannot be allowed DPC for further two months after valid offer of possession. It was averred that the complainants failed to take possession despite repeated requests and were liable to pay the outstanding dues.

7. All other contentions raised by the complainants were denied, and the promoter prayed for dismissal of the complaint.

8. Upon hearing both the parties and perusal of record, the learned Authority issued the directions vide its order dated 26.09.2023 already reproduced in para 1 of this order.

9. Aggrieved thereby, both parties have filed cross-appeals before this Tribunal, raising various contentions.

10. Matters are heard on merits.

11. Learned counsel for the allottees submitted that despite paying entire sale consideration, possession of the unit has not been handed over, and the promoter continues to raise illegal demands as a precondition for possession.

12. On the other hand, learned counsel for the promoter submitted that the demands are perfectly valid and were raised in accordance with the BBA. It was further argued that the area, at the time of booking, was tentatively adjudicated as 2650 sq ft, but after completion of the construction, the said area was increased to 2802sq. ft. as per the sanctioned plan. The said increase in area was also in consonance with the terms of the BBA, and the allottees are liable to pay outstanding dues as per demands raised by it.

13. It was also submitted that a sum of Rs.25,90,762/- has been deposited by the promoter with this Tribunal in compliance with proviso to Section 43(5) of the Act.

14. We have heard learned counsel for the parties and given careful thought to the facts of the case.

15. The issue before this Bench pertains to the charges raised by the promoter for the increased area and other ancillary heads. Stand of the promoter is, however, that same are inconsonance with the terms of the BBA.

16. From a perusal of the relevant clauses of the BBA, there is no room for doubt that size of the unit can always vary and so can be its price. Thus, allottees are required to pay the price proportionate to the size of the unit offered to them. As we find no violation of any of the clauses of the BBA, no interference in appellate jurisdiction is called for.

17. Further, a perusal of the record reveals that Occupation Certificate to the project was granted on 06.12.2017, and a formal offer of possession was made on 08.12.2017. The allottees, however, did not take possession, asserting that the unit was not ready for possession.

18. This Tribunal holds that the offer of possession made on 08.12.2017 after receipt of Occupation Certificate constitutes a “valid offer of possession” in terms of the law. Had the allottees accepted possession upon receipt of the said offer and settled the outstanding dues, further litigation and accrual of delayed possession charges could have been avoided.

19. Under these circumstances, this Bench feels that there would be no justification in granting DPC to the allottees beyond the period when the unit was ready for occupation after valid offer of possession. Thus, allottees are entitled to DPC from due date of possession i.e., 24.12.2016 till the date of offer of possession and not beyond the said date. The bonus period of two months need not be granted to the appellant-allottees as no cogent reasons are forthcoming for the same.

20. Thus, Appeal No. 722 of 2023 is hereby partly allowed and Appeal No. 33 of 2024 is hereby dismissed.

21. The amount deposited by the appellant-promoter in Appeal No. 722 of 2023 with this Tribunal in order to comply with the provisions of Section 43(5) of the Act along with interest accrued thereon, with be remitted to the Authority at Gurugram for disbursement to the parties as per their entitlement, subject to tax liability, if any, in accordance with law.

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

23. Files be consigned to the records.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Dr. Virender Parshad
Member (Judicial)

Dinesh Singh Chauhan
Member (Technical)

November 27, 2025