

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: November 27, 2025

Appeal No.469 of 2022

Parveen Gambhir, R/o 87-B, Masjid Moth, Phase-II, DDA Flats, Greater Kailash-3, Delhi-110048.

...Appellant

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.

...Respondent

Appeal No 293 of 2022

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 Plot No. 18, Second Floor, Institutional Area, Sector -32 Gurugram, Haryana-122001.

...Appellant

Versus

Parveen Gambhir R/o 87-B, Masjid Moth, Phase-II, DDA Flats, Greater Kailash-III, Delhi-110048.

...Respondent

CORAM:

Justice Rajan Gupta
Dr. Virender Parshad
Dinesh Singh Chauhan

Chairman
Member (Judicial)
Member (Technical)

Present:

Mr. Sandeep Khunger, Advocate for the allottee.
Mr. Yash Pal Sharma, Advocate for the promoter.

ORDER:

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. 469 of 2022.

2. Present appeal is directed against the order dated 22.12.2021, passed by the Authority¹. Operative part thereof reads as follows:

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

i. The respondent is directed to hand over the possession of the unit within one month and thereafter conveyance deed will be executed in next one month. The promoter will allow inspection of the unit after fixing the date and time in a week's time.

ii. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 27.06.2016 till offer of possession plus two months i.e., 27.02.2019 as per section 19(10) of the Act.

iii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.

iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The payment, if any, due towards the complainant shall be made after adjusting the delayed

¹Real Estate Regulatory Authority, Gurugram

possession charges and calculating the interest at equitable rate from due date of possession i.e., 27.06.2016 till offer of possession plus two months i.e., 27.02.2019.

v. The promoter shall not demand any extra charge which are not part of BBA or otherwise legally not payable by the allottees. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no.3864-3889/2020 dated 14.12.2020.

vi. The respondent is not entitled to charge GST from the complainant as the liability of GST had not become due up to the deemed date of possession as per the agreement.

vii. The complainant paid a sum of Rs.2,477/- as ad hoc charges on the basis of demands raised by the builder but the amount so received is liable to be refunded to the complainant.

71. Complaint stands disposed of.

72. File be consigned to registry.”

3. As per the averments made in the complaint, the complainant was allotted Unit No. 1802, located on 18th Floor of Tower WT-05, measuring 4650 sq. ft., in the project titled “Windchants,” Sector 112, Gurugram. Total sale consideration was Rs.3,17,55,003/-. A Builder-Buyer Agreement (BBA) was executed between the parties on 26.12.2012 under a construction-linked payment plan. An amount of Rs.2,91,79,570/- was paid by the allottee as per ledger dated 31.12.2019. As per Clause 10.1 of the BBA, possession was to be delivered by 27.06.2016. However, offer of possession was made on 27.12.2018.

4. Complainant approached the Authority with grievance that although the unit was booked for 4650 sq. ft., the promoter

unilaterally increased the super area to 4857 sq. ft. in the offer of possession dated 27.12.2018, and raised demands accordingly.

5. The complainant also contended that the unit offered was incomplete and inhabitable. Accordingly, he 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 27.12.2018 upon obtaining Occupation Certificate on 06.12.2017, thus allottee cannot be allowed DPC for further two months after valid offer of possession. It was averred that the complainant failed to take possession despite repeated requests and was liable to pay outstanding dues.

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

8. Upon hearing both the parties and perusal of the record, the learned Authority issued directions vide its order dated 22.12.2021 already reproduced in para 1 of this order.

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

10. During the pendency of the appeal, order dated 18.01.2023 was passed by the Predecessor Bench. Relevant para is reproduced below:

“Out of the total sale consideration of Rs.3,17,55,003/- , the appellant has already paid an amount of Rs.2,91,79,570/- to the respondent-promoter. As per impugned order dated 22.12.2021, the appellant-allottee has been granted delayed possession interest @ 9.30% per annum from the due date of delivery of possession i.e. 27.06.2016, till the date of offer of possession plus 02 months i.e. 27.02.2019, as per Section 19(10) of the Real Estate (Regulation and Development) Act, 2016. Prima facie, at this stage, the total amount paid by the appellant-allottee plus the

delayed possession interest, as awarded in the impugned order, is more than the total sale consideration.

Now in the present appeal filed by the allottee, as well as in cross-appeal No.293 of 2022, preferred by the promoter, only point for consideration is as to which of the parties is liable to pay the due amount to the opposite party.

Thus, in these circumstances, the respondent-promoter is hereby directed to handover the possession of the unit to the appellant-allottee within a period of 4 weeks subject to the final adjudication of the dues of the respective parties.”

11. The aforesaid order was challenged by the promoter in Hon’ble Punjab and Haryana High Court in RERA-APPL-5-2023(O&M). Learned counsel state that the said order has now been set aside vide order dated 17.02.2025 by the Hon’ble High Court with the direction to this Tribunal to decide the appeal as expeditiously as possible. The said order is taken on record.

12. Thus, the matters are heard on merits.

13. Learned counsel for the allottee submitted that despite directions issued by the Authority and this Tribunal, possession of the unit has not been handed over, and the promoter continues to raise illegal demands as a precondition for possession.

14. 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 4650 sq. ft., but after completion of the construction, the said area was increased to 4857 sq. ft. as per the sanctioned plan. The said increase in area was also

in consonance with the terms of the BBA, and the allottee is liable to pay outstanding dues as per demands raised by it.

15. Further, grievance raised by the counsel for the promoter before this Bench is that in terms of agreement, the promoter was entitled to 180 days' grace period. Relevant clause is reproduced hereunder for ready reference:

“10.1 Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project plans, the Company intends to handover possession of the Apartment within a period of 42 (forty-two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or execution of this Agreement, whichever is later ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time period of 180 (one hundred and eighty) days ("Grace Period") after the expiry of the Commitment Period for unforeseen and unplanned Project realities. However, in case of any default under this Agreement that is not rectified or remedied by the Buyer within the time period as may be stipulated, the Company shall not be bound by such Commitment Period.”

16. It was also submitted that a sum of Rs.40,36,168/- has been deposited by the promoter with this Tribunal in compliance with proviso to Section 43(5) of the Act.

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

18. A bare reading of the aforesaid clause 10.1 goes to show that BBA allows grace period of 180 days to the promoter. In light of facts and circumstances of the instant case, we feel that the promoter is entitled to benefit of above clause. Calculated in this manner, due date of possession would come to 24.12.2016 instead of 27.06.2016.

19. The remaining issue 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 BBA.

20. 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, the allottee is required to pay the price proportionate to the size of the unit offered to him. As we find no violation of any of the clauses of the BBA, no interference in appellate jurisdiction is called for.

21. Further, a perusal of record reveals that Occupation Certificate was granted on 06.12.2017, and a formal offer of possession was made on 27.12.2018. The allottee, however, did not take possession, asserting that the unit was not ready for possession.

22. This Tribunal holds that the offer of possession made on 27.12.2018 after receipt of occupation certificate constitutes a “valid offer of possession” in terms of the law. Had the allottee 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.

23. Under these circumstances, this Bench feels that there would be no justification in granting DPC to the allottee beyond the period when the unit was ready for occupation after valid offer of possession. Thus, allottee is entitled to DPC from due date of possession as calculated above i.e., 24.12.2016 after allowing grace period till the date of offer of possession i.e. 27.12.2018 and not beyond the said date. The bonus period of two months need not be granted to the appellant-allottee as no cogent reasons are forthcoming for the same.

24. Thus, Appeal No.293 of 2022 is hereby partly allowed and Appeal No. 469 of 2022 is hereby dismissed.

25. The amount deposited by the appellant-promoter in Appeal No. 293 of 2022 with this Tribunal in order to comply with the provisions of Section 43(5) of the Act along with interest accrued thereon, 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.

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

27. 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