

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

Complaint no. : 4047 of 2025
Complaint filed on : 07.08.2025
Date of order : 13.02.2026

Experion Developers Private Limited
Having Regd. Office at: - F-9, First Floor, Manish Plaza
1, Plot No.7, MLU, Sector 10, Dwarka, New Delhi.

Complainant

Versus

Rahul Yadav and Neha Yadav
Both R/o: - A-201, Harmony Apartments,
Plot No. 6B, Sector 23, Dwarka, New Delhi.

Respondents

Coram:

Arun Kumar

Chairman

Appearance:

Harshit Batra (Advocate)

Rahul Yadav (Advocate)

Complainant

Respondents

ORDER

1. The present complaint has been filed by the complainant/promoter under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for fulfilling of obligation by the allottees under Section 19(6), (7) and (11) of the Act.
 - A. **Project and unit related details**
2. The particulars of the project, the details of sale consideration, the amount paid by the allottees, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name and location of the project	"Windchants", Sector 112, Gurgaon
2.	Nature of the project	Group Housing Colony

3.	Project area	23.431 acres
4.	DTCP license no.	21 of 2008 dated 08.02.2008 valid upto 07.02.2030 28 of 2012 dated 07.04.2012 valid upto 06.04.2030
5.	RERA Registered/ not registered	Registered bearing no. 64 of 2017 dated 18.08.2017, Valid till 17.08.2018
6.	Allotment letter	04.08.2012 [page 38 of complaint]
7.	Unit allotted	WT-02/1202 [As per page 38 of complaint]
8.	Unit admeasuring area	420.39 sq. ft. (sale area) [As per page 38 of complaint]
9.	Date of builder buyer agreement	26.12.2012 [As per page 42 of complaint]
10.	Endorsement in favor of the respondent	08.04.2013 (page 80 of complaint)
11.	Possession Clause	Clause 10. <i>Subject to force majeure..... the company intends to handover possession of the apartment within a period of 42 months from the date of approval of the building plans or the date of receipt of the approval of ministry of environmental and forest, govt. of India for the project or execution of this agreement whichever is later.</i> [on page 59 of complaint]
12.	Date of approval of building plan/EC	Not on record
13.	Due date of possession	26.06.2016 (Calculated from the date of execution of buyer's agreement)
14.	Total sale consideration	Rs.2,92,89,639/- (as per BBA on page 78 of complaint)
13.	Total amount paid by the respondent	Rs.11,62,565/- (on page 106 of complaint)
14.	Occupation certificate	23.07.2018 (page 85 of complaint)
15.	Offer of possession	24.07.2018 (page 87 of complaint)

16.	Possession reminder	14.05.2019 (page 90 of complaint)
17.	Final Notice for execution of CD	05.01.2021, 18.07.2022, 31.07.2023, 05.05.2025 (page 92- 100 of complaint)

B. Facts of the complaint

3. The complainant/promoter has made the following submissions in the complaint: -
- I. That the complainant is engaged in the development of a real estate project in phases known under the name and style "Windchants", Phase 2, located at Sector 112, Gurugram and hence, comes within the meaning and ambit of promoter under Section 2(zk) of the Act.
 - II. That being interested in the project being developed by the Complainant, Mr. Manu Kapila ("Erstwhile Allottee") after conducting his own due diligence applied for allotment of a unit in the project vide application form dated 20.06.2012 after conducting his own due diligence and having completely verified and satisfied himself with respect to the development of the project.
 - III. That subsequent to the application of the erstwhile allottee seeking allotment of unit, unit bearing no. WT-02/1202, tentatively admeasuring 4525 sq. fts. was provisionally allotted to the respondent herein vide allotment letter dated 04.08.2012.
 - IV. That apartment buyer agreement was willingly executed between the complainant herein and the erstwhile allottees on 26.12.2012. The terms of the agreement are absolutely binding on both the parties and the parties are under obligation to abide by the same.
 - V. That the respondents herein after conducting their own due diligence approached the erstwhile allottee seeking purchase of the unit from him, in lieu of the same, agreement to sale dated 30.03.2013 was executed between

the erstwhile allottee and the respondents herein for transfer of the unit from the erstwhile allottee to the respondents herein.

- VI. That the erstwhile allottee along with the respondents herein requested the complainant herein to transfer the allotment of the unit in favour of respondent. That the complainant being a customer-oriented company, acceded to the request of the respondents herein and the erstwhile allottee and endorsed the unit in favour of the respondents herein on 08.04.2013, vide which it was confirmed that the respondent shall be responsible for all payments and other obligations relating to the unit. With the execution of agreement to sale between the erstwhile allottee and the respondents herein, and endorsement dated 08.04.2013, the respondents herein stepped into the shoes of allottees, within the meaning of the Act.
- VII. That it was categorically noted in the terms of the agreement that the respondent-allottees shall be liable to make timely payments of the due instalments against the unit and take possession of the unit. It is pertinent to note that the aspect of timely payment against the unit was of the essence to the agreement, as was willingly, and voluntarily agreed by the respondent-allottee. However, the respondent has violated the said provisions by not making the due payments; furthermore, the respondents herein sought loan from HDFC Ltd. and a tripartite agreement was executed between the parties in lieu of the same on 12.04.2014, despite which, complete payments have not been made till date.
- VIII. That the complainant completed the development of the project and after having procured the occupancy certificate dated 23.07.2018, legally offered the possession on 24.07.2018 and requested the respondent-allottees to clear the dues along with execution of the conveyance deed, however, the respondent failed to come forward and ensure the payment of the same.

- IX. That in breach of the terms of the agreement, the respondents herein have been in continuous default in making timely payment of instalments against the unit and hence, miserably failed to abide by their obligations. The complainant raised demands as per the payment plan opted by the respondent, however, the respondent failed to make payment of outstanding dues, constrained by the defaults of the respondents. The complainant issued reminder letters to the respondent, but to no avail. That the last payment was made by the respondent on 29.09.2018, and only part payments as against the sales consideration have been made till date.
- X. That the complainant has also granted certain benefits to the respondents in the form of refund/credit note/delayed possession charges and the same is evident from refund vouchers given to the respondents.
- XI. That the respondent has not taken the possession of the unit and failed to adhere to the statutory norms; however, the complainant has duly fulfilled its contractual and legal obligations and hence, should not face the adverse effects of defaults by the respondents.
- XII. That the complainant herein duly offered possession of the unit to the respondents post receipt of occupancy certificate, however, the respondents failed to come forward to take possession. Since the complainant has been maintaining the project and the unit since receipt of the occupancy certificate, the complainant is entitled to recover maintenance charges from the respondents. As per latest statement of account dated 28.07.2025, an amount of Rs.4,09,908.40/- is due at the respondent's end towards maintenance charges.
- XIII. That as per the terms of the agreement, the respondent is also liable to make payment of holding charges and maintenance charges from date of offer of possession till actual realization, along with interest from respective date of demand. That after the offer of possession, the allottees defaulted in making

the payment and in taking the handover of the unit. In such a circumstance, the allottees are bound to pay the holding charges as per clause 12 of the agreement.

- XIV. That in the event the respondents fail to come forward to make payment of the aforesaid outstanding dues along with interest, the complainant herein has the right to cancel the allotment of the unit with forfeiture of the amounts as detailed under the agreement and the Act.
- XV. That in the interest of equity, justice and fair play, it must be noted that the complainant has always complied to its obligations and has waited for an inordinate period for the respondent to make payment of outstanding dues on account of maintenance charges and holding charges, take possession of the unit on as is where is basis and execute the conveyance deed. Hence, the complainant cannot be made to wait for a longer period of time and the respondent should be bound to adhere to the law and the agreement, failing which the unit of the respondent allottees shall be terminated as per the terms of the agreement.
- XVI. That the unit is already complete and thus, the respondent should be bound to make payment of the aforesaid outstanding dues with interest, take possession on as is where is basis and execute the conveyance deed. Hence, it is humbly prayed that the Authority take note of the matter and direct the respondent to comply with their contractual and legal obligations and the provisions of the Act.

C. Relief sought by the complainant/promoter

4. The complainant/promoter has filed the present compliant for seeking following reliefs:
- i. Direct the respondent to execute CD and take possession, pay maintenance charges and holding charges.

- ii. IN ALTERNATIVE, grant leave to cancel the unit and to forfeit the non-refundable amount.
5. On the date of hearing, the Authority explained to the respondents/allottees about the contravention as alleged to have been committed in relation to Section 19(6), (7) & (11) of the Act to plead guilty or not to plead guilty.
6. The respondents-allottee put in appearance through their counsel and marked attendance on 10.10.2025. However, despite specific direction for filing reply in the matter, no reply has been received from respondents with regard to the present complaint till date. It shows that the respondents are intentionally delaying the procedure of the court by avoiding filing of reply in the matter. In view of the above, the defence of the respondents was struck off vide proceedings dated 13.02.2026.
7. 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 those undisputed documents and submission made by the complainant.

D. Maintainability of complaint

8. In the present case, it is observed that the complainant/promoter has allotted a unit bearing no. WT-02/1202, to the original allottee i.e. Manu Kapila, vide allotment letter dated 04.08.2012 and a buyer's agreement with respect to the said unit was also executed between them on 17.12.2021 for a total sale consideration of Rs.2,92,89,639/-. Thereafter, on request of the respondents and the original allottee, the unit in question was endorsed in favour of the respondents on 08.04.2013. As per clause 10 of the buyer's agreement, the due date of possession was 26.06.2016. The occupation certificate for the project was obtained by the complainant/promoter on 23.07.2018 and possession of the unit was offered to the respondent/allottees on 24.07.2018. The complainant/promoter has contended that several reminders for taking over possession of the unit and execution of conveyance deed after payment of

outstanding dues and applicable charges was issued to the respondents-allottees. However, the respondents are not coming forward to clear the outstanding dues and to execute conveyance deed.

9. Now, the complainant/promoter has filed the present complaint under Section 31 of the Act, seeking direction to the respondents/allottees to execute CD and take possession, pay maintenance charges and holding charges *or alternatively*, grant leave to the complainant/promoter to cancel the unit and to forfeit the non-refundable amount.
10. It is observed that Section 31 empowers an aggrieved person to file a complaint before the Authority or the Adjudicating Officer on account of any violation or contravention of the provisions of the Act or rules and regulations. The complainant/promoter has filed the present complaint under Section 31(1) for fulfilling of obligations under Sections 19(6), 19(7) and 19(11) of the Act, 2016, which are reproduced herein for ready reference: -

Section 19: - Rights and duties of allottees

19(6) *Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*

19(7) *The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."*

19(11) *Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.*

(Emphasis supplied)

11. These provisions undoubtedly cast binding duties upon the allottee. However, the issue for consideration is whether non-compliance thereof confers a statutory right upon the promoter to seek coercive directions from the Authority compelling performance by the allottee.

12. The Authority observes that Clause 4.8 of the Buyer's Agreement clearly stipulates that in the event of default beyond 60 days; the company shall have the right to terminate the agreement and cancel the allotment in accordance with the terms of the agreement. Clause 4.8 of the buyer's agreement is reproduced below:
- 4.8 "The timely payment of all the amounts due and payable by the buyer to the company is the integral part of this agreement. In the event the buyer defaults in payment of any amount(s) due and payable per this agreement or otherwise beyond a period of 60 days from the due date of each payment, the company shall have the right to terminate this agreement and cancel the allotment of the apartment as per the terms herein.*
- Thus, the contractual mechanism between the parties provides the promoter with a specific remedy in case of default namely, termination of agreement and cancellation of allotment.
13. Thus, from a conjoint reading of Clause 4.8 of the agreement read with Sections 31, 19(6),(7) and (11) of the Real Estate (Regulation and Development) Act, 2016, it is manifested that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments and to participate towards execution of conveyance deed as provided under Section 17(1) of the Act. In case of default, the only remedy available to the promoter is confined to cancel the allotment of the allottee under the provisions of the buyer's agreement and the applicable provisions of law. However, the statutory right to approach the Authority in matters relating to cancellation of allotment vests only with the allottee, and that too when such allottee is aggrieved by a cancellation carried out by the promoter in a manner not in accordance with the agreement for sale, or where such cancellation is unilateral and without sufficient cause. Section 11(5) specifically provides a remedial right to the allottee alone and does not contemplate or confer any corresponding right upon the promoter to invoke the jurisdiction of the Authority for seeking leave to cancellation or forfeiture of earnest money. Further, the expression "aggrieved person" under Section 31

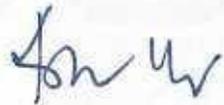
must be construed in the context of the legislative object of consumer protection embedded in the Act. The scheme of the Act is predominantly remedial in favour of allottees, with regulatory obligations imposed upon promoters. The promoter's rights, if any, are confined to acting strictly in terms of the agreement for sale and applicable provisions and it cannot take recourse under Section 19(6), (7) and (11) of the Act to seek direction to the allottee to take possession and execute conveyance deed after payment of outstanding dues and applicable charges as no one can be forced to purchase a property against his will and in the case of breach of contract, the promoter is well within its right to proceed towards cancellation of the unit and forfeiting the earnest money in accordance with law. This view has also been observed by the Appellate Tribunal in appeal no. 255 of 2019 titled as **Ravinder Pal Singh V/s Emaar MGF Land Ltd. & Anr.** wherein it is stated as follows:

"32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government" ..

14. In the present case, the grievance arises out of an alleged breach of contractual obligations relating to payment and execution of conveyance deed. Such breach, if established, entitles the promoter to exercise contractual remedies under the agreement for sale, including cancellation and forfeiture of earnest money in accordance with law. The Act does not confer jurisdiction upon the Authority to enforce specific performance of payment obligations at the instance of the promoter or to compel the allottee to take possession. Accordingly, the promoter cannot be treated as an "aggrieved person" within the meaning of Section 31 of the Act for the purpose of seeking directions against the allottee to execute conveyance deed and take possession, pay

maintenance charges and holding charges *or alternatively*, grant leave to the complainant/promoter to cancel the unit and to forfeit the non-refundable amount, and is beyond the scope of Section 31 of the Act, 2016. The appropriate remedy available to the promoter lies in exercising its contractual right of cancellation in accordance with the terms of the agreement and applicable provisions of law, including forfeiture of reasonable earnest money, subject to any challenge that may be raised by the allottee in accordance with Section 11(5) of the Act. Accordingly, the present complaint stands dismissed being not maintainable.

15. The present complaint stands disposed of.
16. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.02.2026

HARERA
GURUGRAM