

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

Complaint No. :2515-2025
Date of Decision: 06.05.2025

Mukesh Sharma, resident of H. No.CA/42A, Shalimar Bagh, New Delhi-110088.

..... Complainant

Versus

M/s Experion Developers Pvt. Ltd. through its Managing Director and other Directors, Office Address: F-9, First Floor, Manish Plaza 1, Plot No.7, M/u Sector-10, Dwarka, New Delhi-110075.

Corporate Office: M/s Experion Developer Private Limited, First India Place, Ist Floor, Block 8, Sushant Lok-I, MG Road, Gurugram.

..... Respondent

APPEARANCE

For Complainant:

Mr. Nikhil Hooda, Advocate.

For Respondent:

Mr. Pankaj Chandola, Advocate.

ORDER

This is a complaint filed by Mr. Mukesh Sharma (allottee) under section 31 of The Real Estate (Regulation and Development), Act

2016 (in brief Act of 2016) against M/s Experion Developers Pvt. Ltd. (promoter).

2. Briefly stated, according to complainant, he applied for a residential apartment vide application dated 20.11.2012 in the project "The Heartsong" Sector-108, Gurugram being developed by the respondent. The allotment of the unit No. A1/0401 Tower-A1 was done on 03.12.2012. Total sale consideration of the unit was agreed to be Rs.82,95,076/-. However, no Builder Buyer Agreement (BBA) was executed between the parties. He (complainant) has already paid an amount of Rs.20,73,670/- till 30.07.2016 as per demands raised by the respondent. As per provisional allotment letter dated 03.12.2012, the said apartment was to be handed over to him (complainant) within a period of three years from the date of booking i.e. up to 03.12.2015, but the respondent neither completed the project nor handed over possession of the allotted apartment within the stipulated period. Occupation Certificate was received by the respondent on 02.03.2017, which is much beyond the stipulated period of three years.

3. That on 11.01.2017 and again on 06.07.2021, the complainant sent a legal notice to the respondent that he is no more interested in the said flat due to delay in getting the possession and requested it to refund the amount paid by him, but the respondent company declined to refund the

amount paid by him. Instead of responding to the genuine demand of complainant for refund of his hard-earned money, the respondent cancelled allotment of said apartment and forfeited an amount of Rs.20,35,305/-. Moreover, the respondent demanded additional balance amount of Rs.25,20,712/- as interest recoverable from complainant by sending a letter dated 18.07.2017. The amount refundable has been shown as "nil" in this letter.

4. That being aggrieved by the respondent's inability to handover the possession, he (complainant) filed a complaint (no.2022 of 2022) before the Authority. The Authority vide its order dated 02.02.2023 directed the respondent to refund the amount received from the complainant i.e. Rs.20,73,670/- along with interest at the rate of 10.60% per annum from the date of each payment till the actual date of refund of amount, within a period of 90 days of the order. But the respondent neither handed over the possession of the allotted apartment nor refunded his amount.

5. Contending all this, complainants sought following reliefs: -
- i. to direct the respondent to give Rs.5 lakhs as compensation on account of loss/injury as well as mental agony suffered by the complainant.
 - ii. to direct the respondent to pay litigation charges to the tune of Rs.2 lakhs.

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6. The respondent contested the complaint by filing a written reply. It is averred that on 30.04.2013, it (respondent) sent two copies of Apartment Buyer's Agreement (ABA) along with a covering letter to the complainant, which was duly received by him, but he fraudulently with a malafide intention did not sign draft of ABA nor sent it back to it (respondent). It sent multiple reminders to the complainant, but he never came forward to execute ABA.

7. That the complainant defaulted in making timely payments towards the sale consideration of the unit despite sending multiple reminders. The complainant had paid 24.99% i.e. 20,73,677/- only against total sale consideration of Rs.82,95,076/-. Therefore, the respondent cancelled the provisional allotment of the complainant vide Cancellation Letter dated 29.07.2017 and informed the complainant that no balance amount is refundable to him, rather an amount of Rs.25,20,712/- stood recoverable from him.

8. That being aggrieved by the order dated 02.02.2023 passed by the Authority, it (respondent) has filed an appeal (no.336 of 2023) before the Haryana Real Estate Appellate Tribunal, Chandigarh.

9. That the present complaint is barred by law of limitation as the respondent had cancelled the provisional allotment of the unit of the

complainant on 29.07.2017 and the present complaint has been filed after expiry of approximately 6 years 10 months 12 days. That the complainant had booked the unit with the motive to earn quick profits, however due to slow down in the real estate market, he sought to exit from the allotment. With these submissions, the respondent prayed for dismissal of the complaint.

10. Both of the parties filed affidavits in support of their claims. I have heard learned counsels appearing for both of parties and perused the record.

11. Admittedly, the present complainant approached the Authority seeking refund of the amount from the respondent by filing a complaint (No.2022 of 2022) and while allowing said complaint, the Authority directed the respondent/promoter to refund the amount received by it from the complainant i.e. Rs.20,73,670/- along with interest at the rate of 10.60% per annum from the date of each payment till the actual date of refund of amount.

12. The Authority noted that the complainant requested the respondent for refund of the amount by serving legal notice dated 11.01.2017. Reply of said notice was received by the complainant from a builder on 18.07.2017. Though Occupation Certificate was received by the

respondent on 02.03.2017 and possession was offered to the complainant vide letter dated 04.03.2017, but he (complainant) had already withdrawn from the project till then.

13. It is contended by learned counsel for the complainant that the respondent demanded payments by issuing several demand letters without executing Buyer's Agreement, which was contrary to the law. Moreover, construction was not completed till the due date of possession and hence, his client had no other option but to withdraw from the project.

14. It is claimed on behalf of the respondent that it (respondent) sent draft of ABA on 30.04.2013, but the complainant did not sign it due to his malafide intention. The respondent sent multiple reminders to the complainant but he never came forward to execute ABA. All this is denied by learned counsel for the complainant. The respondent failed to adduce any evidence to prove that any such draft was ever served upon the complainant.

15. Section 13 of Act of 2016 restrains a promoter from accepting more than 10% of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale. Admittedly, the respondent made the complainant to pay Rs.20,73,670/- out of total sale consideration of

Rs.82,95,076/-. Several payment demands were raised against the complainant. In such a situation, it does not lie in the mouth of the respondent to claim that the complainant did not make payment of entire sale consideration. An allottee could not be compelled to pay more than 10% of sale consideration, before execution of agreement for sale.

16. It is not disputed and as observed above, it was noted by the Authority that the complainant sent a legal notice to the respondent dated 11.01.2017. It is also not disputed that despite lapse of due date of possession i.e. 19.10.2016, the project was not complete. In such a situation, an allottee-complainant was within his right to withdraw from the project.

17. According to Section 18(1) of the Act of 2016, if promoter fails to complete or is unable to give possession of an apartment/plot or building-

(a) In accordance with the terms of agreement for sale or, as the case may be, duly completed by the date specified therein: or

(b)

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him----- including compensation in the manner as provided under this Act.

Arb
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18. In this way, when the respondent failed to complete the project and to handover the possession of the unit in time, the complainant despite receiving refund of the amount along with interest, is thus entitled for compensation.

19. According to learned counsel for the complainant, his client suffered huge loss due to appreciation in property prices in Gurugram. If he had invested this amount in some other project, his amount would have appreciated at least three times. However, no reliable evidence has been adduced by the complainant to establish that the property rates in Gurugram have been increased three times since the amount of sale consideration (in part) was paid by the complainant to the respondent. Despite all this, when the complainant has been found entitled for compensation, his case cannot be thrown away for want of conclusive evidence in this regard. This Forum is legally obliged to adjudge amount of compensation keeping in view the facts of the case and prevailing circumstances.

20. According to AI overview, the residential property prices in Sector 108, Gurugram (along with the Dwarka Expressway) experienced significant appreciation between July 2016 (last payment by complainant) and early 2023 (order of refund), largely driven by the operationalization of

the expressway and improved connectivity Residential property in Sector-108 has been a massive appreciation over the long term, with some data suggesting flat prices grew by over 130% in the last 5 years (relative to early 2023). It is presumed that if the amount paid by the complainant i.e. Rs.20,73,670/- up to 30.07.2016 (date of payment) was invested in some other similar project, it would have appreciated to Rs.26,95,771/- (20,73,670 x 130/100).

21. As stated above, the Authority has already allowed refund of the ^{paid by complainant} amount. The complainant is thus granted a compensation of Rs.26,96,000/- (rounded up) to be paid by the respondent.

22. The complainant has prayed for Rs.5 lakhs as compensation on account of loss/injury as well as mental agony suffered by him. Admittedly, the complainant was forced to withdraw from the project as the respondent failed to complete the construction of the project within in agreed time. All this caused mental agony and harassment to the complainant. However, Rs.5 lakhs appear to be excessive, the complainant is allowed a sum of Rs.one lakh on this count.

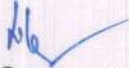
23. The complainant further sought Rs.2 lakhs as cost of litigation. No court fee is required to be paid to the Authority, while filing such complaint. Even then, it is evident that the complainant was represented by

a lawyer during the proceedings of this case, same is allowed a sum of Rs.50,000/- as litigation expenses.

24. The respondent is directed to pay said amounts of compensation along with interest at the rate of 11% per annum from the date of this order, till realization of amount.

25. This complaint stands disposed of accordingly. File be consigned to the record room.

Announced in open court today i.e. **on 06.05.2026**


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
Gurugram.


Mukesh Sharma vs. M/s Experion Developers Pvt. Ltd.

11

Present: Mr. Nikhil Hooda, Advocate for the complainant.
Mr. Pankaj Chandola, Advocate for the respondent.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
06.05.2026