

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

Complaint no.: 5009 of 2024
Date of filing: 09.10.2024
Date of order: 30.01.2026

Jyoti Arora
R/o: E - 198, East of Kailash, New Delhi -
110065.

Complainant

Versus

M/s Vistas Private Limited
Regd. Office at: 5B, Pratap Bhawan
Bahadur Shah Zafar Marg, Dada Ghosh
Bhawan, Central Delhi, New Delhi, Delhi -
110008.

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Shri Aditya Ramani (Advocate)
None

**Complainant
Respondent**

EX-PARTE ORDER

1. The present complaint has been filed by the complainant/allottee 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 violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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	"32 nd Avenue/ Milestone and Milestone Experion Centre at Sector-15, Part-II, Gurugram
2.	Project area	3.8375 Acres
3.	Nature of the project	Commercial Colony
4.	DTCP license	63 of 2008 dated 20.03.2008 Valid up to 19.03.2020 92 of 2010 dated 30.10.2010 Valid up to 29.10.2020
5.	Name of Licensee	M/s Experion Developers Pvt. Ltd. (Earlier known as Unitech Ltd. vide orders dt. 14/03/2016)
6.	RERA Registered & validity status	Registered 329 of 2017 dated 23.10.2017 Valid up to 22.10.2018
7.	Unit no.	S-97 at first floor (As per allotment letter at page 14 of complaint)
8.	Unit area	60 sq. ft. (super area) (As per allotment letter at page 14 of complaint)
9.	Allotment letter [issued by Mr. Anubhav Sharma]	10.07.2024 (As per page no.22 of complaint)
10.	Date of execution of buyer's agreement	Not executed
11.	Possession clause	Not provided
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs.39,60,000/- (As stated in the complaint)
14.	Amount paid	Rs.3,96,000/- Amount paid to M/s 32 nd Vistas

		Private Limited (as per receipt at page 12 & 13 of complaint)
15.	Occupation Certificate	31.12.2015 [Block-A for G+10 Floors] [As per TCP Haryana Website]
16.	Offer of possession	Not known
17.	Request for cancellation by complainant	Undated (page 15 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
 - I. That the complainant, a retired school teacher, was looking to purchase a unit in the project whereupon, she was allured by attractive advertisements posted by the respondent for the project. Thereafter, the complainant sought to book a unit through the channel partner of the respondent i.e. Mr. Vishesh Thakur.
 - II. The complainant was then coordinating with Mr. H. P. Vashist, who allowed her to inspect the project and further showed her several attractive features and convinced her to book the unit bearing no. S-97, admeasuring 60 Sq. Ft., situated on the first floor, in the project.
 - III. That the total consideration for the unit was informed to the complainant by Mr. H. P. Vashist, who represented himself to be in the sales office of the respondent as Rs.39,60,000/-. That thereafter, the complainant has remitted an amount of Rs.50,000/- towards the booking of the unit on 27.06.2024. That upon remittance of the said amount, the respondent has shockingly not issued any receipt to the complainant and only a kuccha receipt was signed and handed over to the complainant. It is further pertinent to mention that the complainant was asked to make the payment of the amount in the account of "32nd Vistas Private Limited" i.e. respondent no. 2 whereas, to the knowledge of the complainant, the promoter of the project is respondent no. 1. That the same amounts to

malpractice since it provides no clarity to the homebuyer and further the non-issuance of receipt in a clandestine manner further adds to the distress of the complainant.

- IV. Thereafter, the complainant further paid an amount of Rs.3,46,000/- towards the total consideration of the unit on 10.07.2024. That again to the shock and dismay of the petitioner, the respondent did not issue any payment receipt in her favor for the remittance of the said amount.
- V. That as on 10.07.2024, the complainant had already paid a total amount of Rs.3,96,000/- in the favor of the respondent towards consideration of the unit. That the respondent issued an allotment letter dated 10.07.2024 in the favor of the petitioner whereby the unit was allotted to the petitioner. That the allotment letter contained no terms and conditions or payment schedule, and further did not even reflect the amount already paid by the complainant. That it would not be out of place to mention that despite collecting a substantial amount of Rs.3,96,000/- from the complainant, the respondent did not execute any builder buyer agreement to the complainant till date.
- VI. Thereafter, the complainant started to consolidate her funds and tried to get the purchase of the unit closed, however, unfortunately, the same was disturbed due to a medical emergency in close relation of the complainant and some other unavoidable financial constraints. In view of the same, vide communication dated 08.08.2024, the complainant duly informed the respondent of the exigent situation whereby she could no longer go ahead with the purchase of the Unit.
- VII. It would be pertinent to note that despite the earnest request made by the complainant, that too within a short period of less than one month from the payment of the aforesaid amounts and allotment of the Unit, the respondent has declined the refund of the hard-earned money collected

from the complainant. That the complainant is a retired school teacher, and had sought refund from the respondent, on humanitarian grounds, who had not only failed to issue proper payment receipts to the complainant but had further failed to execute a builder buyer agreement with the complainant. However, the respondent has refused to refund a single penny of the hard-earned money collected from the complainant without any proper reason or explanation given for the same.

VIII. It is not out of place to submit that in the absence of any agreement between the parties, the respondent is not entitled to withhold any amount received from the complainant. Further, the Respondent has not given any reason to the complainant to deny refunding the amount, especially in the absence of any agreement between the parties. Furthermore, without prejudice to the aforementioned averments, even if arguendo the amount is deducted towards 'earnest money', the same cannot be done without the execution of any agreement between the parties. Without prejudice, no financial harm has been caused or has been shown by the respondent necessitating the withholding of the entire amount paid by the complainant.

IX. That it is further pertinent to submit that as is evident from the allotment letter dated 10.07.2024, the respondent has allotted the unit on the basis of super area of the project as opposed to the carpet area as categorically mandated vide "The Haryana Real Estate Regulatory Authority, Gurugram (Sale of Apartments/Floors in a real estate project on the basis of carpet area) Regulations, 2021". That it is submitted that the builder has violated Rule 4(i) whereby it is mandated that the promoters have to provide inter alia, carpet area of the real estate unit for sale in the project along with the area of exclusive balcony or veranda and open terrace area. However, no such information has been provided by the respondent till on the basis of

the purported 'super area' of the unit. That on being aggrieved by the same, the Complainant has been constrained to approach this Hon'ble Authority. That due to the same, the Respondent Promoter is inter alia, liable to pay penalty in terms of Rule 7 of the said Rules i.e., 5% of the estimated cost of the project and further refund the entire amount collected from the complainant along with interest.

X. That, above contraventions committed by the respondent against the complainant, are clear cut evident and are deliberately causing insurmountable pain & agony along with mental harassment & huge pecuniary loss perpetrated to the innocent & law-abiding complainant. That the complainant reserves her right to file an appropriate petition for seeking compensation for mental agony caused due to the unfair trade practices and deficiency of services of the respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - a. Direct the respondent to refund the entire amount of Rs.3,96,000/- paid by the complainant to the respondent along with the interest as per RERA Act.
5. The present complaint was filed on 09.10.2024 and registered as complaint no. 5009 of 2024. As per the registry, complainant sent copies of complaint along with annexures through speed post as well as through email. The tracking report of the same has been submitted by the complainant at page no.18 to 22 of the complaint. The proof regarding the delivery of the complaint along with annexures made to the respondent, has been submitted by the complainant as available in the file. The registry of the Authority sent a notice with a copy of the complaint along with annexures through speed post on 14.10.2024 bearing tracking no. EH092250792IN and Registry has also sent the notice along with a copy of the complaint through

email dated 10.10.2024 and the mail was duly served. Despite service of notice through email as well as speed post, the respondent failed to appear and to submit any reply. Accordingly, the Authority is left with no other option but to proceed ex-parte against the respondent.

6. 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 based on these undisputed documents and submission made by the complainant.

D. Jurisdiction of the Authority:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

D. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas

to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
11. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)*, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

E. Maintainability of complaint:

13. The present complaint pertains to the real estate project "32nd Avenue/ Milestone and Milestone Experion Centre", situated in at Sector-15, Part-II, Gurugram, Haryana. It is an admitted and undisputed position on record that the competent authority had granted the occupation certificate dated 31.12.2015 in respect of the said project and the complainant paid an amount of Rs.3,60,000/- to the respondent on 10.07.2024, for purchase of a commercial shop at S-97 at first floor admeasuring 60 sq. ft. super area in the said project. At the very threshold, this Authority is required to examine whether the statutory conditions necessary for assumption of jurisdiction are satisfied. Jurisdiction under the Act is not automatic, nor does it arise merely from the filing of a complaint. The Authority is a creation of statute and derives its powers strictly from the legislative mandate. It is, therefore, incumbent upon this Authority to first ascertain the existence of jurisdictional facts, without which the exercise of adjudicatory power would be impermissible in law.
14. The Real Estate (Regulation and Development) Act, 2016 is a regulatory statute designed to govern a specific class of real estate projects identified by the legislature. The applicability of the Act is circumscribed by Section 3, which mandates compulsory registration of real estate projects with the Regulatory Authority. However, the legislature has, in its wisdom, expressly excluded certain categories of projects from the operation of the Act, 2016.

Section 3(2)(b) categorically provides that no registration shall be required where the promoter has received a completion certificate for a real estate project prior to the commencement of the Act. The relevant portion of the Section is reproduced below: -

3. *Prior registration of real estate project with Real Estate Regulatory Authority: -*

(2) *Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required*

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

15. Further Rule 2(1)(o)(ii) of the Rules, 2017, also defines the on-going project.

The relevant portion of the section is reproduced below: -

(o) *"on going project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:*

(i) *any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and*

(ii) *that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.*

16. This exclusion is neither incidental nor ancillary; it is a substantive legislative determination forming an integral part of the statutory scheme. The statutory framework thus makes it abundantly clear that the Act is not intended to operate retrospectively so as to reopen completed transactions or subject concluded projects to a new regulatory regime. The jurisdiction of the Authority is, therefore, confined only to such projects as fall squarely within the definition and scope prescribed by Section 3 of the Act.

17. The constitutional validity of this legislative classification and the scope of the Act have been examined in depth by the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India***. The Hon'ble Supreme Court has authoritatively held as under:

"The Real Estate (Regulation and Development) Act, 2016 is a prospective legislation and applies only to those real estate projects which are brought within its fold by the legislature."

"Parliament has consciously made a distinction between ongoing projects and completed projects, and has deliberately excluded the latter from the purview of the Act."

"Such exclusion is founded on an intelligible differentia and forms an integral part of the statutory scheme."

"The Act cannot be interpreted in a manner so as to retrospectively apply its provisions to projects which had already been completed in accordance with law prior to its commencement."

"Courts and authorities are bound to give effect to the legislative classification and cannot, by interpretative process, expand the scope of the Act beyond what the legislature has expressly provided."

18. The above pronouncement lays down, in unequivocal terms, that the Act is prospective in nature and that completed projects constitute a distinct and excluded class. The exclusion is founded on intelligible differentia and bears a rational nexus with the object of the legislation. The Hon'ble Supreme Court has further cautioned that neither courts nor statutory authorities can, by interpretative ingenuity, enlarge the scope of the Act so as to bring within its fold projects which the legislature has consciously kept outside. This declaration of law binds this Authority and admits of no deviation.
19. The jurisdictional limits of the Authority have been further elucidated by the Hon'ble Supreme Court in ***Newtech Promoters and Developers Private Limited v. State of Uttar Pradesh and Others***. In the said judgment, the Hon'ble Supreme Court has delineated the contours of jurisdiction under the Act in the following terms:

"The Real Estate Regulatory Authority is a creature of statute and can exercise only such powers as are expressly conferred upon it by the Act."

"The existence of an 'ongoing project' is a jurisdictional fact which must be established before the Authority can assume jurisdiction under the Act."

"If the project is not an ongoing project within the meaning of Section 3 of the Act, the Regulatory Authority would have no jurisdiction to entertain a complaint in respect thereof." "Jurisdiction cannot be conferred upon the Authority by consent of parties, nor can it be assumed on considerations of equity or hardship."

"When the statute clearly defines the limits of jurisdiction, neither the Authority nor the Courts can travel beyond the same by interpretative exercise."

20. This judgment reinforces the principle that jurisdiction under the Act is conditional and not plenary. The existence of an "ongoing project" is not a mere procedural formality but a foundational jurisdictional fact. In the absence of such a fact, the Authority lacks competence to entertain, adjudicate, or grant relief. The Hon'ble Supreme Court has further clarified that jurisdiction cannot be assumed on sympathetic considerations, nor can it be conferred by consent, or waiver of parties. The limits of jurisdiction, once statutorily defined, are binding and inviolable.
21. When the aforesaid principles are applied to the facts of the present case, it becomes evident that the project in question had already attained completion to the extent certified prior to the commencement of the Act. The completion certificate dated 31.12.2015, which predates the coming into force of the Act on 01.05.2017, conclusively demonstrates that the project, to that extent, stood completed in accordance with law. Such completion brings the project squarely within the exclusion contemplated under Section 3(2)(b) of the Act.
22. Once the statutory exclusion is attracted, the project ceases to be an "ongoing project" for the purposes of the Act. In such circumstances, this Authority cannot, by interpretative expansion or equitable reasoning, assume jurisdiction where none exists. To do so would amount to rewriting the statute and transgressing the limits of authority conferred by Parliament.
23. In view of the statutory scheme, and in light of the binding law declared by the Hon'ble Supreme Court, this Authority holds that the present project does not satisfy the jurisdictional pre-condition of being an "on-going project" within the meaning of Section 3 of the Act, 2016 as well as Rule 2(1)(o) of the Rules, 2017. The absence of this foundational fact renders the present complaint outside the purview of the Act and beyond the jurisdiction of this Authority.

24. Accordingly, the complaint is held to be not maintainable under the Real Estate (Regulation and Development) Act, 2016, for want of jurisdiction, and is liable to be dismissed on this ground alone.
25. In view of the foregoing reasons, the Authority finds no merit in the present complaint and the same is accordingly dismissed, being not maintainable. Pending applications, if any, also stand disposed of.
26. File be consigned to registry.



Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 30.01.2026



HARERA
GURUGRAM