BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM:

Complaint No. :3094-2023
Date of Decision: 04.11.2026

1. Naresh Arora
2. Ms. Jyoti Arora, both residents of H.No.537, Sector-7, Gurugram.

..... Complainants.

Versus

M/s Experion Developers Pvt. Ltd., 8th Floor, Wing 'B' Milestone Experion Center, Sector-15, Gurugram, Haryana.

..... Respondent.

APPEARANCE

For Complainants: **Mr. Satyavir Singh, Advocate.**
For Respondent: **Mr. Venket Rao, Advocate**

ORDER

This is a complaint filed by Ms. Naresh Arora & Ms. Jyoti Arora (allottees), under section 31 of The Real Estate (Regulation and

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

2. Briefly stated, according to the complainants, they purchased an apartment through transfer of provisional allotment from Sh. Vivek Kumar, who was previously allotted apartment in the residential group housing colony bearing No. 0304" on 3rd floor in Tower-B3, having approximate area of 1758 sq. ft. in the project "Heartsong" situated in Sector-108, Gurugram, which was developed by the respondent, vide allotment letter dated 07.12.2012. The respondent charged Rs.1,48,147/- as administrative charges and transferred the provisional allotment in their names.

3. That they (complainants) paid instalments as per demands raised by the respondent. An Apartment Buyer's Agreement (ABA) was entered between the parties on 18.04.2013. Total sale consideration of the said apartment was agreed as Rs.1,07,72,770/- inclusive car parking charges, EDC, IDC, Community Building Furnishing Charges and security deposit for community building and maintenance. Due date for handing over of possession was 17.04.2016. Possession of the apartment in

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question was offered to them(complainants) by the respondent on 03.03.2017.

4. That they (complainants) made the final payment in good faith and believing that the apartment has been developed as per plans with reservation as to completion of deficiencies by the respondents, if left incomplete. The actual possession of the apartment was given on 11.06.2017 with the assurance that all the common facilities/amenities as per promise and remaining deficient will be provided shortly. However, the respondent failed to do so.

5. Feeling aggrieved by the acts of the respondent, they(complainants) filed a complaint before the Haryana Real Estate Regulatory Authority, Gurugram (in brief "the Authority"). The Authority vide order dated 21.04.2023 decided the issue related to delay compensation.

6. That neither terrace garden included in the 'sale area' has been provided by the respondent on the roof top of the apartment nor 'lift shaft' was extended to the roof top. Further, Air Handling Unit, refuse area, Pantry area, and Solar Water Heating system have also not been provided in their building block. That the respondent has charged several charges from them

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(complainants) i.e. towards car parking, under the head "Community Building furnishing charges", payments on ADHOC basis, solar power charges and Community Building Furnishing Charges. Thus, the respondent has unfairly gained by collecting charges from them illegally and inappropriately.

7. Citing facts as mentioned above, the complainants have prayed for following reliefs: -

a) to direct the respondent to pay compensation of Rs.17,12,369/- for failing to provide Terrace Garden;

b) to direct the respondent to pay compensation of Rs.8,68,688/- for failing to provide Air Handling unit;

c) to direct the respondent to pay compensation of Rs.4,54,686/- for failing to provide Refuse Area;

d) to direct the respondent to pay compensation of Rs.4,65,602/- for failing to provide Pantries;

e) to direct the respondent to pay compensation of Rs.3,15,500/- for failing to provide Solar Water Heating System as per condition of approved revised Building Plans;

f) to direct the respondent to pay compensation of Rs.6,43,795.79P for failing to provide car parking space.

g) to direct the respondent to pay compensation of Rs.1,70,395.15P for wrongly charging for construction of Community Building;

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h) to direct the respondent to pay compensation of Rs.4,15,748.74 for amount collected on ADHOC and lump sum basis;

i) to direct the respondent to pay compensation of Rs.13,996.96P for the amount collected under the head "Solar Power Charges";

j) to direct the respondent to pay compensation of Rs.88,712.42/- for the amount collected for community furnishing;

k) to direct the respondent to pay compensation of Rs.5 lakhs on account of harassment, mental agony and undue hardship caused to the complainants on account of deficiency in service and unfair trade practices; and

l) to direct the respondent to pay compensation of Rs.75,000/- towards cost of litigation.

8. The respondent contested the complaint by filing a written reply. It is averred that the Conveyance deed of the apartment in question was executed between the parties on 08.06.2017, without any protest from the side of the complainants. Possession of the subject unit was handed over to them on 11.06.2017. From a mere perusal of complaint, it is very much evident that the complainants are seeking relief pertaining to the refund of the various miscellaneous charges, therefore, the same not being the compensation is outside the jurisdiction of the learned Adjudicating Officer.

9. That the present complaint is barred by law of limitation as due date of possession was 28.05.2016. Possession of the unit was offered on

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03.03.2017 and conveyance deed of the subject unit was executed on 08.06.2017. The complainants have preferred present complaint after an expiry of 7 years 1 month and 23 days from due date of possession, therefore, the same is not maintainable before the learned Adjudicating Officer. That Occupation Certificate was received on 02.03.2017 i.e. prior to coming into force of the RERA Act, 2016. Completion Certificate was received on 23.02.2023.

10. That merely alleging anything without providing evidence to substantiate the allegations does not qualify the complainants for grant of compensation as they have already been compensated by the Authority vide order dated 21.04.2023. The Authority has granted delayed penalty interest. That the Terrace garden, Air Handling Unit, refuse Area, Pantries and Solar Water Heating System were neither promised to the complainants nor have any amounts been charged/demanded from them for these facilities. That during the pendency of the complaint, the Authority appointed a Local Commissioner, who inspected the project site in the presence of the complainants and filed his detailed report, wherein it is categorically mentioned that there has been no provision of the alleged facilities in the project nor the same is mentioned in the approved building plans. That due

to some force majeure situations, the construction of the project was hampered. Further, that the complainants are not allottees, but are actually owners of the subject unit.

11. Contending all this, the respondent prayed for dismissal of present complaint.

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

13. It is contended by learned counsel for the respondent that his client(respondent) received Occupation Certificate before the Act of 2016 came into force and hence the complaint under this Act is not maintainable.

14. Per contra, according to learned counsel for the complainants, the project in question was an on-going project, when Act of 2016 came into force. The respondent took same plea before the Authority in complaint No.6254/3831 of 2019, but the Authority did not agree with the respondent on this ground and decided the complaint on merits i.e. in favour of the present complainants.

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15. The fact that aforesaid plea was raised before the Authority by the respondent and the Authority dismissed its plea, is not disputed on behalf of the respondent during deliberations.

16. It is again plea of the respondent that the present complaint is barred by limitation. The possession of subject unit was handed over to the complainants on 11.06.2017 and present complaint is dated 20.07.2023 and hence barred by limitation.

17. Admittedly, present complainants approached the Authority by filing a complaint No.6254/3831 of 2019, which were decided by the Authority on 21.04.2023. The case of complainants seeking compensation depends upon the findings of the Authority and hence cause of action can be presumed to have arisen in favour of the complainants from 21.04.2023 i.e. date of order by the Authority. By no stretch of imagination, present complaint is barred by limitation. The plea of dismissal of complaint on this ground is thus declined.

18. It is further plea of learned counsel for the respondent that the complainants have sought refund of amount alleging that his client i.e. the respondent did not provide necessary facilities despite payment. They want refund of their amounts which were excessively paid. The Jurisdiction to

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allow refund of amount is vested with the Authority and not with the Adjudicating Officer.

19. True, as it was mandated by the Apex Court in case ***M/s New-tech Promoters and Developers Private Limited versus State of UP & Ors. etc.***, it is for the Authority to entertain the complaint seeking DPC. Relevant portion of the Apex Court order is reproduced here 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."*

20. A perusal of the complaint makes it clear that the complainants did not seek refund of their amounts rather sought compensation from the respondent for charging more than they were liable to pay, as per agreement. In this way, present complaint is not a complaint seeking refund

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of the amount rather, the complainants have sought compensation on several grounds, which is well within the jurisdiction of this forum.

21. Learned counsel for the respondent further claimed that when delay possession compensation (DPC) has already been allowed by the Authority in favour of the complainants, the same are not entitled for any other compensation. According to him, award of interest is nothing but compensation.

22. As per Section 18 (1) of Act of 2016, if promoter fails to complete or unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, (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 in respect of that apartment, plot or building, as the case may be, with interest at such rate as may be prescribed in this behalf **including compensation, in the manner as provided under this Act.**

23. It is worth mentioning here that the complainants did not wish to withdraw from the project but prayed for delayed possession

compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till handing over of possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

24. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra" Appeal No. 70 of 2023 decided on 20.04.2023----------;**

> ***"13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation***

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only to those Allottees who exit the project and not to those who tends to stay in the project."

25. Similar was finding of Haryana Real Estate Appellate Tribunal in case "TATA Housing Development Company Limited vs. Nitin Singhal & Surendra Kumar Singhal, Appeal No.737 of 2023 decided on February 17,2026.

26. In this way, I agree with the learned counsel for the respondent claiming that an allottee is not entitled for compensation when the same has already been allowed DPC, but subject that relief of compensation is based on the plea of delay in handing over of possession. It is to be noticed here that the complainants have sought compensation not only on ground of delay in handing over of possession, but also for not providing prominent facilities/amenities like terrace garden, Air handling unit, refuse area, pantries , solar water heating system etc.

27. While deciding the aforesaid complaint, the Authority gave finding that the respondent has not provided terrace garden, Air handling unit and refuse area. Moreover, pantries have not been provided as well as Solar water heating system is not installed. The relevant portion of para-No.51 of the order of the Authority is reproduced here as under:

"51. The complainant sought relief of refund of amount excess paid to the respondent which they charged for various amenities such as terrace garden, mail room air handling unit, refuse area, water heating system fire safety, community centre car parking, solar water heater, fire system, pantries. To clarify the Local Commissioner was appointed vide order dated 22.02.2022 and as per the details of a local commissioner report, on the issue raised by the complainant regarding the amenities, it was concluded that the respondent has not provided the terrace garden. Mail room has been provided in the stilt area of tower as per requirement and specification. Air handling unit, Refuge Area, Pantries have not been provided. Solar Photovoltaic power plant has been installed on the terrace of community building having capacity of 40 KW. Solar water heater is not installed. Fire system has been installed on the project site and NOC has been obtained from the department before obtaining occupation certificate. For clarification regarding installation process and layout plan, the issue may be referred to the fire department".

28. As per Rule 28(2) (m) of The Rules of 2017, complaint filed before the adjudicating officer for adjudging quantum of compensation, shall be admissible from the stage of concluding inquiry by the Authority that respondent being promoter has violated or contravened provisions of

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the Act or the rules or regulations made thereunder warranting liability of the promoter to pay compensation to the allottee.....

29. As the Authority has found fault with the respondent for not providing aforementioned facilities i.e. terrace garden, air handling unit, refuse area, pantries and solar water heating, the complainants are entitled for compensation in this regard.

30. The complainants in their complaint have quantified amount of compensation for terrace garden i.e. Rs.17,12,369/- for air handling unit Rs.8,68,688/-, refuse area Rs. 4,54,686/-, pantries Rs.4,65,602/- and solar water heating system amounting to Rs.3,15,500/-. I am not inconsonance with the complainants in calculating amount of compensation. There is no evidence to prove that the complainants suffered losses i.e. lump sum in deficient construction or deprivation in facility and even towards cost benefit as claimed by them. In my opinion, it will be appropriate to direct the respondent to compensate the complainants by refunding the amount received by the same on these counts along with interest which is 2% of maximum lending rate of State Bank of India, in view of Rule 15 of The Rules of 2017.

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31. Other claims of the complainants for compensation on count of community building, car parking usage charges, furnishing charges and solar power charges did not find favour of the authority and hence no compensation can be granted for these facilities. The respondent is thus directed to compensate the complainants by repaying the amounts received by it from the complainants for terrace garden, air handling unit, refuse area, pantries and solar water heating system along with interest at the rate of 11% per annum from the dates these amounts are collected, till day of repayment.

32. The complainants have prayed for compensation of Rs.5 lakhs on account of harassment, mental agony and undue hardship caused to them on account of deficiency in service and unfair trade practices. When the complainants, despite making payment of entire sale consideration did not get prominent facilities/amenities as agreed by the respondent, all this caused mental agony and harassment to them. Rs.5 lakhs appear to be excessive; the complainants are allowed a sum of Rs. two lakhs under this head.

33. The complainants have further prayed for compensation of Rs.75,000/- towards cost of litigation. Apparently, the complainants were

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represented by an Advocate during the proceedings of this case, same(complainants) are allowed a sum of Rs.75,000/- as litigation expenses.

34. The respondent is directed to pay said amounts of compensation for mental agony and harassment as well as of litigation expenses along with interest at the rate of 11% per annum from the date of this order, till realization of amount.

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

Announced in open Court.
today i.e. **on 04.11.2026.**

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