

**PROCEEDINGS OF THE DAY**

Day and Date	Thursday and 25.10.2018
Complaint No.	530/2018 Case titled as Mr. Sunil Kumar V/S Experion Developers Pvt. Ltd. & Ors.
Complainant	Mr. Sunil Kumar
Represented through	Shri Sushil Yadav Advocate for the complainant.
Respondent	Experion Developers Pvt. Ltd. & Ors.
Respondent Represented through	Shri Ajay Kumar authorized representative with Shri Dheeraj Kapoor, Advocate.
Last date of hearing	
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Arguments heard.

Counsel for the complainant has primarily raised three issues:

- (i) Location of the flat in Tower No.WTO-07 where he alleges that he had booked a flat in Tower-7. However, the respondents are giving him possession in Tower-1. The matter was examined in detail and as per sanctioned plan dated 7.6.2012 and after examining it has been found that 2 BHK flat has been sanctioned in Tower-1 only. There is no provision for 2 BHK flats in Tower-7, as such, his allegation has been found to be baseless.
- (ii) Complainant has raised the issue that there is delay in delivery of the possession as per BBA which was to be handed over to the complainant on 27.12.2016. However, the same was offered on 8.12.2017. As such, he is eligible for prescribed rate of interest @ 10.45% on account of delayed delivery of possession after

adjusting compensation amount of Rs.1,73,311/- which was given as per agreement. However, delayed possession charges at the rate of Rs.7.50 per square feet is not valid as per the provisions of RERA Act. The delayed possession charges shall be payable at the rate of 10.45% as per section 18 (1) of the Act *ibid*.

(iii) Complainant has further raised the issue w.r.t. increase in super area. In this context, the authority is of the considered view that a committee consisting of authorized representative of the builder/respondent, complainant and one representative of the authority, namely, Sumit shall be constituted to examine the issue of actual measurement area being offered to the complainant on the spot and sort out the matter.

(iv) Complainant shall make payment for extra super area on actual rate basis. Complainant shall be accountable for late payment on account of increased super area alongwith interest at the rate of 10.45% only.

The complaint is disposed of accordingly. Detailed order shall follow. File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)

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

**Complaint No. : 530 of 2018**  
**First date of hearing : 21.08.2018**  
**Date of Decision : 25.10.2018**

Mr. Sunil Kumar,  
R/o. GM-E Commerce and Innovations, Jet  
Airways- First Floor, Siroya Center, Sahar  
Airport Road, Andheri (E), Mumbai-400099

**Complainant**

Versus

M/s Experion Developers Private Limited  
Office: First India Place, 1<sup>st</sup> Floor, Block B,  
Sushant Lok -1, MG Road, Gurugram, Haryana-  
122002

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Complainant in person Advocate for the complainant

Shri Dheeraj Kapoor Advocate for the respondent



**ORDER**

1. A complaint dated 11.07.2018 was filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (regulation and development) Rules, 2017 by the complainant Mr Sunil

Kumar, against the promoter M/s Experion Developers Private Limited, on account of violation of clause 10.1 of the apartment buyer agreement executed on 26.12.2012 for unit no. WT-07/1004 in the project “Windchants” for not giving possession on the due date i.e 26.12.2016 which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	“Windchants” in Sector 112, Gurugram
2.	Unit no.	WT-07/1004
3.	Project area	23.431 Acres
4.	Registered/ not registered	Not registered
5.	Registration certificate no	Not applicable
6.	Date of booking	06.07.2012
7.	Date of builder buyer agreement	26.12.2012
8.	Total consideration	Rs.1,78,01,301/- (Inclusive of Tax)
9.	Total amount paid by the complainant	Rs. 1,65,48,402/ (Inclusive of Tax)
10.	Payment plan	Construction Linked Plan
11.	Date of delivery of possession.	Clause 10.1- 42 months from date of approval of building plans or the date of receipt of the approval of Ministry of Environment and Forests for the



		project or execution of this Agreement i.e 26.12.2012 whichever is later + 6 months grace period i.e <b>26.12.2016</b>
12.	Delay of number of months/ years upto 19.09.2018	1 years 9 months and 28 days
13.	Penalty clause as per Builder Buyer Agreement dated 26.12.2012	Clause 13.1- Rs. 7.50/- per sq. ft. per month of the Sale Area

3. As per the details provided above, which have been checked as per record of the case file. An apartment buyer agreement dated 26.12.2012 is available on record for Unit No WT-07/1004 according to which the possession of the aforesaid unit was to be delivered by 26.12.2016. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability till date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 21.08.2018 . The case came up for hearing on 21.08.2018, 25.10.2018. The reply has been filed on behalf of the respondent on 27.08.2018



## FACTS OF THE CASE

5. The complainant submitted that he booked Unit No WT-07/1004 in the project “Windchants” situated at Sec 112, Gurugram relying upon promise and undertakings in the advertisements given by the respondent in various leading newspapers about thier forthcoming project “Windchants” promising advantages like world class amenities and timely completion of the project etc.
6. The complainant submitted that he had made total payment of Rs 1,65,48,402/- to the respondent vide different cheques on different dates.
7. The complainant submitted that as per Clause 10.1 of the apartment buyer agreement dated 26.12.2012 the prospective date of delivery of possession was 42 months from the date of execution of agreement along with a grace period of 6 months.
8. The complainant submitted that the respondent has failed to deliver the possession of the allotted unit on due date. The complainant received the notice of possession on 08.12.2017.
9. The complainant also submitted that there was disparity between original project plan approved by DTCP and respondent actual plan. The respondent had changed the location of tower 7 where the allotted unit was situated from



the location marked in the original project plan approved by DTCP.

10. The complainant also submitted that the respondent unilaterally and arbitrarily increased the area of the allotted unit from 2,275 sq. ft to 2,441 sq. ft and accordingly the demand notices were issued on inflated basis. The complainant was neither informed nor his consent was obtained for enhancement of area.
11. The complainant submitted that the penalty clause of apartment buyer agreement for delay in delivery of possession is unjust and inequitable.

#### **ISSUES RAISED BY THE COMPLAINANT**

12. The issues raised by the complainant are as follows :-
  - I. Whether the respondent has arbitrarily changed the position of tower 7 from the position marked in original plan approved by DTCP ?
  - II. Whether the respondent has delivered the possession of the allotted unit to the complainant and whether the occupation certificate in respect of tower 7 has been obtained by the respondent ?



- III. Whether the respondent has arbitrarily increased the area of the flat without permission of the complainant ?
- IV. Whether interest cost demanded by the respondent @18% is unjustified and unreasonable ?

### RELIEF SOUGHT

13. The relief sought by the complaints are as follows ;-

- I. To direct the respondent to refund of the entire amount of Rs 1,65,48,402 paid by the complainant along with interest@18% per annum on compounded rate from the date of booking ?
- or
- II. To direct the respondent to deliver the possession of the booked unit to the complainant along with the interest calculated @ 18% for the delayed period.

### REPLY

14. The respondent stated that the present complaint is not maintainable in law or facts.
15. The respondent submitted that the present complaint is not maintainable before this authority and the present complaint has been filed seeking compensation and interest for alleged delay in delivering possession. Thus it was further submitted that complaints pertaining to refund, interest and





compensation are to be decided by the adjudicating officer under section 71 of the said Act read with rule 29 of HARERA Rules 2017 and not by this authority.

16. The respondent respectfully submitted that the project of the respondent pertaining to the apartment in question is not an “ongoing project” as per the definition of “ongoing project” given in Rule 2 (1) (o) of Haryana Real Estate (Regulation and Development) Rules, 2017. As per the definition, any project or part thereof for which an application for occupation certificate of completion certificate is made to the competent authority on or before the publication of the said rules is outside the purview of this authority and in the present case the application for occupation certificate was made on 21.04.2017 which is prior to the date of publication of Rules i.e 28.07.2017.

17. The respondent respectfully submitted that according to sub code 4.10 (5) of Haryana Building Code,2017 if after submission of an application for grant of occupation certificate, there is no communication from the competent authority for 60 days then the occupation certificate is deemed to be granted to the applicant and the communication referred in Sub Code 4.10 (5) pertains to the decision of the competent



authority for the grant or refusal of the occupation certificate and no other communication. In the present case, the application for occupation certificate was made on 21.04.2017 and therefore the occupation certificate was deemed to be granted after 60 days i.e 20.06.2017.

18. The respondent submitted that the complaint is not signed by the complainant and is also not supported by any proper affidavit with a proper verification.
19. The respondent submitted that the complainant is an investor and due to financial crush, the complainant failed to make the payment of instalments within prescribed time which subsequently resulted in delay payment charges.
20. The respondent submitted that the Respondent had already obtained the occupation certificate dated 06.12.2017 for the said apartment and vide notice of possession dated 08.12.2017 has already offered possession to the complainant. The complainant failed to make complete payments and take over the possession of the booked apartment.



### **Determination of issues**

21. After considering the facts submitted by the complainant, reply by the respondent & perusal of files on record, the issues wise findings of the authority is as under

i. **First issue** : Here the complainant alleged that the complainant had booked a flat in Tower-7. However, the respondents are giving him possession in Tower-1. After detailed examination of the matter and as per sanctioned plan dated 7.6.2012, the authority has found that 2 BHK flat has been sanctioned in Tower-1 only. There is no provision for 2 BHK flats in Tower-7. Therefore the allegation of complainant is found to be baseless and the booked unit is located in Tower 1 only and the location of Tower 7 need not to be determined.

ii. **Second issue** : As in the present case, the complainant had booked apartment no WT-07/1004 which is situated in the Tower 1 and not in Tower 7. Accordingly, the respondent has already offered the possession of the booked unit to the complainant vide Letter dated 28.02.2018. The respondent had obtained occupation certificate bearing memo no ZP-595/SD(BS)/2017/31249 dated 06.12.2017 in respect of Tower 1 in which apartment in question is situated.

According to clause 10.1 of the builder buyer agreement, the prospective date of delivery of possession was 42 months from the date of execution of agreement along



with a grace period of 6 months i.e 26.12.2016. As the respondent has offered possession of the booked unit to the complainant on 28.02.2018. The respondent has failed to deliver the possession on the assured date, therefore the respondent is also liable to pay delay interest calculated at the prescribed interest of 10.45% per annum for every month of delay to the complainant.

iii. **Third issue :** In the present case, the complainant was duly informed about the increase in sale area of the apartment vide letter dated 27.04.2017 by the 166 sq. ft from 2,275 sq. ft to 2,441 sq. ft and according to clause 8.6 of apartment buyer agreement executed between complainant and the respondent, the respondent can increase upto 10% in the sale area of the apartment and can raise additional demand at the original rate for the same.

iv. **Fourth issue :** Interest cost demanded by the respondent @18% is unjustified and unreasonable. However, the respondent can charge interest on delay payments at the prescribed rate of 10.45% per annum.



## Findings of the Authority

### Jurisdiction of the authority-

#### 22. Subject Matter Jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

#### 23. Territorial Jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town & 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.



### Decision and directions of the authority

24. After taking into consideration all the material facts as adduced and produced by both the parties, the authority

exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play :

- i. The respondent is duty bound to pay the interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 27.12.2016 till the date of offer of possession i.e. 08.12.2017 after adjusting compensation amount of Rs.1,73,311/- which was given as per agreement.
- ii. A committee consisting of authorized representative of the builder/respondent, complainant and one representative of the authority, namely, Mr Sumit shall be constituted to examine the issue of actual measurement area being offered to the complainant on the spot and sort out the matter.
- iii. Complainant shall make payment for extra super area on actual rate basis.
- iv. Complainant shall be accountable for late payment on account of increased super area along with interest at the rate of 10.45% only.



25. The order is pronounced.

26. Case file be consigned to the registry.

27. Copy of this order be endorsed to registration branch.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Dated : 25.10.2018



HARERA  
GURUGRAM

