

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 25.10.2018
Complaint No.	278/2018 Case titled as Mr. Raminder Singh & Ors. V/S Experion Developers Pvt. Ltd. & Ors.
Complainant	Mr. Raminder Singh & Ors.
Represented through	Complainant in person with Shri J.S.Dhull, Advocate.
Respondent	Experion Developers Pvt. Ltd. & Ors.
Respondent Represented through	Shri Ajay Kumar authorized representative with Shri Dheeraj Kapoor, Advocate.
Last date of hearing	19.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

It has been alleged by the counsel for the respondent that the complainants have produced a copy of order dated 4.12.2017 of National Consumer Disputes Redressal Commission with regard to withdrawal of the case from National Commission and filed fresh application before the authority without seeking permission from the 'National Commission' to approach this Authority. Arguments raised by the counsel for the respondent does not seem to be tenable as he has brought to the notice of the authority

the provisions of section 71 of the RERA Act and proviso (i) relates to compensation which is within the jurisdiction of Adjudicating Officer.

Complainant has filed a *de novo* complaint on 16.05.2018 under section 31 of the Real Estate (Regulation & Development) Act, 2016 before the authority, as such complainants are well within their right to file a fresh complaint before the authority. The authority is competent to look into the matter on the basis of merits of the case. The respondent has forfeited Rs.66,76,002/- deposited by the complainant which is wrongful and unilateral. The builder has committed this act having dominating position as per the provisions of BBA dated 08.08.2014. As a matter of fact, as per provisions of the RERA Act, the builder can only forfeit 10% deposited as earnest money by the buyer on account of non-depositing of further instalments by the complainant. The complainant is seeking refund after forfeiture of the earnest money and the authority is of the considered view that the builder/promoter may refund the remaining amount by deducting only 10% of the deposited amount. No interest shall accrue on this count. 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. : 278 of 2018
First date of hearing: 17.07.2018
Date of Decision : 25.10.2018

1. Mr. Raminder Singh
 2. Mr. Inderjeet Singh Kaur
 3. Mr. Tarunjyot Singh
 4. Mr. Parneet Anand
- R/o H.No. 3124, Sector 20D, Chandigarh

Complainants

Versus

1. M/s Experion Developers Pvt Ltd
Corporate office: 1st Floor, B block, Sushant
Lok-I, MG Road, Gurugram-122002
2. Housing development Finance Corporation
Ltd.
Capital, 9, Munirka, New Delhi

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri Raminder Singh & anr
Shri J.S. Dhull
Shri Dheeraj Kapoor
Shri Ajay kumar

Complainant in person
Advocate for the complainants
Advocate for the respondents
Authorised representative

ORDER

1. A complaint dated 16.05.2018 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. Raminder



Development) Rules, 2017 by the complainant Mr. Raminder Singh, against the promoter M/s Experion Developers Pvt. Ltd., on account of violation of Article 9 of the plot buyer agreement executed on 08.10.2014 for plot r.o. C3 34 in the project "The Westerlies", Sector 108, Gurugram with super area of 450 sq. yds for not handing over of possession on due date 05.05.2020 which is an obligation under section 11(4)(a) of the Act ibid.

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

1.	Name and location of the project	The Westerlies, Sector 108, Gurugram
2.	Apartment/unit no.	C3- 34
3.	Nature of real estate project	Residential
4.	Plot measuring	377 sq. mtr/ 450.89 sq. yards
5.	RERA registered/ not registered.	unregistered
6.	Booking date	23.04.2014
7.	Date of execution of plot buyer agreement	08.10.2014
8.	DTCP license no.	57 of 2013
9.	Payment plan	Time linked payment plan
10.	Basic sale price	Rs.2,98,07,359/-
11.	Total amount paid by the complainant till date	Rs.1,09,32,453/-
12.	Date of delivery of possession as per Article 9 i.e. 4 years from the date of receipt of the last project approvals for commencement of development of project from the competent authority as directed from DTCP+ 6 months grace period	Zoning plan got approval on 05.11.2015 thus date to be calculated from this date which comes out to 05.05.2020.



13.	Delay in handing over possession till date	premature
14.	Penalty clause as per apartment buyer's agreement dated 08.08.2014	Article 9 i.e. Rs 200 per Sq mtr of the plot

3. The details provided above have been checked on the basis of record available in the case file which have been provided by the complainants and the respondents. A plot buyer agreement dated 08.10.2014 is available on record for the aforesaid plot according to which the possession of the same was to be delivered by 11.01.2018.
4. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The respondents appeared on 17.07.2018. The case came up for hearing on 17.07.2018, 23.08.2018, 19.09.2018 and 25.10.2018. The reply has been filed by the respondent on 25.10.2018

Facts of the complaint

5. That the complainants submitted that respondent offered allotment of freehold residential plots in a scheme known as "The Westerlies" at contiguous land measuring 100.5 acres at Sector-108, Gurgaon (Haryana) and opened the bookings from



public through its prospectus containing terms and conditions of the allotment.

6. The complainants submitted that he went to the site office of the respondent no.1 and were shown the barren area where the township was to be established. It was orally assured to the complainants that the township will be ready for possession of the plots within one year.
7. The complainants decided to collect all the money and jointly purchased a plot with respondent no.1. The complainant no.1 applied for the allotment of residential plot from respondent as the complainant no.2 was planning to shift after retirement in February 2016 at Gurugram by constructing house at the said plot.
8. The complainants submitted that he paid an initial booking amount of Rs 6,00,000/- vide cheque no. 003064 dated 16.04.2014 and cheque of Rs. 5,00,000 /- bearing no.237354 dated 16.04.2014 amounting total 11,00,000/-. The complainants were allotted plot no. C-3/34 at "The Westerlies" Sector 108, Gurugram. The total cost of the plot is Rs 2,98,07,359/-. The provisional allotment letter dated 23.04.2014 was issued to the complainants wherein the detail of plot cost and payment plan is mentioned.



9. The complainants submitted that plot buyer agreement was executed between the complainants and respondents on 08.08.2014.
10. The complainants submitted that he has applied for loan of 2 crores from respondent and in furtherance of the same a tripartite agreement dated 14.08.2014 was entered between the complainants and respondent for the loan of 2 crores granted by the respondent. A copy of the tripartite agreement dated 14.08.2014 is attached herewith as Annexure C-3.
11. The complainants submitted that in spite of passage of more than 46 months the respondent no.1 did not carry out the development of the site as promised, however, kept on demanding payments from the complainants. It is relevant to mention here that the copy of the demand raised from the complainants were directly sent to the respondent as the payment was to be made by the HDFC i.e. respondent no. 3 as per the tripartite agreement.
12. The complainants submitted that upon receiving the above said demand letters dated 30.11.2015 and 29.12.2015, the complainants came to know that the respondent no.3 has not made the payment to the respondent no.1. The complainant no.1 on 05.01.2016 contacted respondent no.3 to enquire



about the reason of non-payment by respondent no.1. Smt. Madhur Chandna officer of respondent no.3 raised the query from other officer of HDFC namely Ms. Shweta Khanna through email dated 05.01.2016 as to “what is the demand against”. The officer of respondent no.3 namely Ms. Shweta Khanna sought clarification from another officer Mr. Madhur Chandna who clarified that as the development work has not started in the project, hence the current demand cannot be released. Further, it was advised that the customer should get in touch with the builder for clarification on demand raised as the demand could be raised within 18 months of booking or development milestone, whichever is later, therefore, as the milestone is not achieved therefore the payment cannot be released.

13. The complainants submitted that having received the email from respondent no.2, it was revealed that there was no construction or development work at the site, therefore, the demand raised by respondent no.1 is illegal and deficiency in service.

14. The complainants were stuck between the false demands of respondent no.1 and the inspection report of respondent no.3. It is beyond to understand as to how the payment can be released when the HDFC itself has verified that there is no



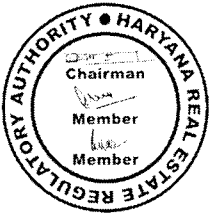
development work and the payment has to be released only after development.

15. The complainants submitted that he also conveyed to respondent no.1 that the complainants have already made the payment of about 1.11 crore (approx.) to it towards the price of the said plot, whereas, the respondent no.1 started imposing interest on the instalments without even offering the possession of the plots which is absolutely illegal and unheard.
16. The complainants submitted that complainant no.1 visited the site of the scheme area in the month of February 2016 for inspection and verification about the development works at the site of the plot. The complainant was shocked and surprised to know that the site of the scheme area was lying in an absolutely ignored condition and there was no touch of development at all at the site in question. Despite much propagation about the development of the scheme area, there was no sign of any development at the site. Even it was not possible to identify and locate the plot in question allotted to the complainant at the site nor there were any roads marked or constructed at the scheme site. As such, it has to be concluded that there are no chances of immediate development of the scheme area and of the plot in question, which was required by the complainant no.1 on immediate



basis for shifting to Gurgaon. Surprisingly respondent no.1 did not inform this fact to the complainants and is demanding the instalments without even initiation of the development of the plot sites.

17. That as the plot site has not been developed even after 4 years therefore the HDFC is not willing to release the loan for the payment of the remaining instalments of the plot. In such circumstances, the complainants tried to get some financial help from some relation, friend etc. who could make good the balance payment in view of the inability of the HDFC to pay the instalments due to lack of delivery of possession and lack of improvement/development on the site, but all went in vain.
18. That here respondent no.1 and 2 themselves have not developed the plots and have not even given the possession of the plots to the allottee so as to enable them to get the site plan approved and then to develop the plot. Thus, development of the plot mandates that first the possession be given to the allottee, whereas there is no sign of development at all. This gives a clear indication that the plots have been allotted without proper permissions from the local authorities and the general public has been befooled.



19. That the terms of the buyer agreement are unilateral and monopolistic. The complainants had no option but to sign the same. The agreement was never being a mutual agreement as every allottee has been forced to sign the same agreement. The respondent has cleverly inserted the Article 9 of the Allotment letter which mentions that the development of the plot will be completed within 4 years. The development would be done out of the instalments received and such development shall correspond to the payment of instalment but nothing as promised has been done, despite of payment of 1.11 crore (approx.). No development has been done over the plot and possession has not been given to the complainants and even to other aggrieved buyers of the plots in the same housing project.

20. The complainant no.3 visited the office of the respondent no.1 and requested for the refund of the money as the position of development at the that there can be no development even in next 2 years. Upon this the officer of the respondent no.1 has threatened to cancel the plot and forfeit the money deposited by the complainants. To the knowledge of the complainants there are several criminal and civil cases running against respondent no.1 relating to fraud and breach of trust. Several



allottees of various projects are running from post to pillar for possession of their plots.

21. The complainant submitted that he filed consumer complaint no. 445 of 2016 before the hon'ble National Consumer Disputes Redressal Commission, New Delhi for refund of the entire amount of 1,10,24,430/- deposited by them. All the respondents appeared before the hon'ble national commission and filed their reply. The respondent no.3 specifically filed reply and affidavit 26.09.2016 whereby maintained their stand that there is no development at the site and thus no instalment can be released.
22. That the respondent no.2 has clearly mentioned in the plot buyer agreement that they have already taken necessary permissions from the competent authority had it been true then there would have been no obstruction in the development of the site. Further the written statement submitted by respondent no.1 and 2 it has been admitted that they floated the scheme without approval from the competent authorities and there was a stay by the hon'ble high court on the possession of the land passed in CWP r.o.19050 of 2012 titled as **Chandra Shekhar Mishra Vs Union of India & Ors.** In the said writ petition, the hon'ble high court stayed the development works in the NCR Region in the year 2012 and



the stay continued till October 2015. It is only thereafter the respondent no.1 and 2 got the approval of zoning plan of the residential colony on 05.11.2015. A copy of the approval dated 05.11.2015 is attached herewith as Annexure C-9.

23. The respondents deliberately concealed the fact that the Ld. civil court Gurgaon has passed order dated 08.01.2013 and ordered that if any sale or any other deed creating third party interest effected during the pendency of the suit in favour of the third party then the factum of the pendency of the said civil suit shall be mentioned in the said deed. The respondents concealed this fact from the petitioners and nothing such was mentioned in the agreement to sell. Thus without having approved zoning plans the respondent no.1 and 2 floated the scheme and cheated the complainants as well as general public by collecting hard earned money from the complainants as well as general public.

24. Not only this, during the pendency of the consumer complaint, the complainant no.1 filed application under RTI Act before the Town and Country Planning Department Haryana and has come to know that though the respondent no.1 has taken charges of EDC from the allottees however the said amount has not be deposited by them to the department. There is an amount of Rs. 22,63,49,000/- outstanding against the



respondent no.1 till 16.09.2016. Thus, the respondent no. 1 has mis utilized the amount deposited by the allottees and siphoned the money.

25. That during the pendency of the complaint, surprisingly, the respondent no.1 and 2 sent an email to the complainants along with a letter dated 29.04.2017 whereby they have cancelled the allotment of plot no. C-3/34 allotted to the complainants and have even forfeited Rs.66,76,002/-. Not only this, respondent no. 1 and 2 have also retained amount of Rs. 43,48,428/- on the pretext that the same will be refunded only after resale of the plot. It is needless to mention here that the action of the respondent no.1 and 2 of cancellation of plot during the matter sub-judice is not only illegal but also amounts to threatening attitude of the respondent no.1 and 2. It is relevant to mention here that once it is proved that there is no development work and the HDFC has certified the same fact by sending an expert team there.



26. Due to the cancellation of the plot no. C-3/34 allotted to the complainants during the pendency of the complaint, fresh cause of action arises, and the complaint becomes infructuous. In such circumstances the complainants withdrawn the complaint and the same was disposed off vide order dated 04.12.2017.

27. That the cause of action has arose on 29.04.2017 when the respondent no.1 has cancelled the allotment of plot no. C-3/34 allotted to the complainants and have even forfeited Rs. 66,76,002/- and have also retained amount of Rs. 43,48,428/- . The complainants are entitled for refund of the entire amount of Rs. 1, 10, 24,430/-.

Issues raised by the complainants are as follows:

- i. Whether the respondent no. 1 and 2 have failed to fulfill their obligations by not complying with the requirement of obtaining necessary permissions from the competent authority?
- ii. Whether the complainants are liable for receiving interest on the amount paid to the respondents as per mandate of Rule 15 of Haryana rules, 2017 at the rate prescribed in the Act?
- iii. Whether the respondents are liable for not obtaining requisite approvals from the authorities?
- iv. Whether the respondents are liable for not completing the construction of the project in a timely manner and whether they can cancel the allotment of the plot in question?



Relief sought:

The complainants are seeking the following relief:

- a) Direct the respondent to refund amount of 1,10,24,430/- along with interest @ 18% p.a. from the date of deposit till date of payment.
- b) Direct the respondent to refund the interest paid to Housing Development Finance Corporation Ltd. (HDFC-Respondent no.3) since August 2014 till closure of Accounts along with interest @18% p.a.
- c) Direct the respondent to refund of all legal cost of 1.25 Lac incurred by complainant.

Respondent's reply

28. The respondents submitted that the respondent no. 1 has also separately filed an application for rejection of the complaint on the ground of lack of jurisdiction and this reply is without prejudice to the rights and contentions of the respondent no. 1 contained in the said application.

29. The respondents submitted that the project of the respondent no. 1 is not an ongoing project as per rule 2(1)(o). The respondent no. 1 had applied the part completion certificate for the said project on 27.07.2017 which is prior to the date of publication of the said rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per rule 2(1) (o) and the



present case is squarely covered under the first exception provided under 2(o) and therefore the hon'ble authority has no jurisdiction to try the present complaint and the same is liable to be dismissed.

30. The respondents submitted that the present complaint for compensation and interest can be only filed before the adjudicating officer under rule 28 of the Haryana Rules, 2017 and the authority has no jurisdiction to entertain the present complaint.

31. The respondents submitted that the complaint is not signed by any of the four complainants, neither the contents of the complaint are verified by any of the complainants and even the affidavit is filed by only one of the complainants i.e. Raminder Singh and not by the other three complainants and the affidavit is not supported by proper verification.

32. The respondents submitted that the RERA Act, 2016 has been enacted to protect the interest of the consumers and not the investors. The complainants in the present case are investors and not consumers as the complainants are already the owners of two properties, one in faridabad and one in chandigarh, who never had any intention to buy the plot for their own personal use.



33. The respondents submitted that the complainants are defaulters having deliberately failed to make the payment of instalments within the time prescribed, which resulted in delay payment charges and on the request of the complainants and as a special and one off case, believing assurances of the complainants in respect of timely payment of future instalments, the delay payment charges of Rs 68, 370/- were waived off by the respondent no. 1.

34. The respondents submitted that the complainants are investors and defaulters, having deliberately neglected and failed to make the payment of due installments in accordance with the agreed terms of the plot buyer agreement and CLP opted by the complainants within the time prescribed, which resulted in overdues, delay payment charges and then the cancellation of the allotment. This conduct of the complainants clearly indicates that the complainants are mere speculators having invested with a view to earn quick profit and due to market slowdown, the complainants failed to perform their contractual obligations of making timely payments.



35. The respondents submitted that they have continued with the development of the said project and has already obtained CC for the said project and is in the process of handing over of

possession of plots. However, as the complainants were merely speculative investors who defaulted in making timely payment of installments.

36. The respondents submitted that it is a matter of record that no such agreement under the provisions of the said Act or rules have been executed between both the parties rather the only agreement signed by both the parties is the buyer agreement dated 08.08.2014.

37. The respondents submitted that till the 3rd installment the complainants kept on making payment as per the payment plan, though not in time and never raised any issue whatsoever, clearly reveals that the complainants had no issue or concern about the said plot and terms and conditions of the said buyer's agreement.

Determination of issues

After considering the facts submitted by the complainants, reply by the respondents and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:



38. The complainants raised issues regarding not complying with the requirement of obtaining necessary permission from the competent authority by the respondent and conduct of

respondents regarding settled terms and condition between the parties to the complaint and development work and possession of the plot. As the complainant himself is a defaulter as complainant has not paid the instalment due towards them. The respondents cancelled the allotment of unit no. C 3- 34 vide cancellation letter dated 29.04.2017. As the complainants are left with no legal rights and interest in the said project, the issues raised the complaint become infructuous.

39. As per section 19 of the Haryana Real Estate (Regulation and Development) Act, 2016, the rights and the duties of the allottees, which is reproduced as under:

Section 19 - Rights and Duties of Allottees

Clause (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.

clause (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).



41. The complainants made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34. f) Function of Authority -

To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

45. The complainants requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Findings of the authority

46. The preliminary objections raised by the respondents regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in ***Simmi Sikka V/s M/s EMAAR MG Land Ltd.*** leaving



aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

47. In the case of *DLF Ltd. v. Bhagwati Narula*,¹ revision petition no. 3860 of 2014 it was held by The National Consumer Dispute Redressal Commission, New Delhi that agreement for forfeiting more than 10% of sale price would be invalid and 20% of the sale price cannot be said to be a reasonable amount which the petitioner company could have forfeited on account of default on the part of the complainants unless it can show that it had only suffered loss to the extent the amount was forfeited by it. Earnest money is said to be the only amount that is paid at the time of concluding the contract. Thus, amount beyond 10% cannot be forfeited and if done so that would be unreasonable.

48. Keeping in view the facts and circumstances, the authority is competent to look into the matter on the basis of merits of the case. The respondents have forfeited Rs.66,76,002/- deposited by the complainants which is wrongful and unilateral. The builder has committed this act having dominating position as per the provisions of BBA dated 08.08.2014. As a matter of fact, as per provisions of the RERA



¹ 1(2015) CPJ 319 (NC)

Act, the builder can only forfeit 10% deposited as earnest money by the buyer on account of non-depositing of further instalments by the complainants. The complainants are seeking refund after forfeiture of the earnest money and the authority is of the considered view that the builder/promoter may refund the remaining amount by deducting only 10% of the total consideration. No interest shall accrue on this count

Decision and directions of the authority

49. Thus, the authority, exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following directions to the respondent:


- (i) The respondents are directed to forfeit 10% of the total consideration amount deposited by the buyer on account of earnest money of non-payment of due instalments by the complainants. The complainants are seeking refund after forfeiture of the earnest money and the authority is of the considered view that the builder/promoter may refund the remaining amount by deducting only 10% of the total consideration amount. No interest shall accrue on this count.



50. The order is pronounced.

51. The file is consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Dated: 25.10.2018

