



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2572 of 2022, 2523 of 2022</b>
<b>Date of filing:</b>	<b>10.10.2022</b>
<b>Date of first hearing:</b>	<b>06.12.2022</b>
<b>Date of decision:</b>	<b>16.05.2023</b>

Name of Builder	M/s Eldeco Infrastructure and Properties Ltd.
Project Name	Eldeco Estate One, Sector 40, 19 A Panipat

Sr. No.	Complaint No.	Complainant
1.	2523 of 2022	Surender Singh, S/o Sh. Raghbir Singh, H no. D-11/6, sector 6, Eldeco Estate One, Panipat
2.	2572 of 2022	Surender Singh, S/o Sh. Mahabir Singh, House no. H-1/9, Sector-6, Eldeco Estate One, Panipat

VERSUS

Eldeco Infrastructure and Properties Ltd.

Through its directors

201-212, 2<sup>nd</sup> floor, Splendor Forum

Jasola, District Centre, New Delhi-110025

....RESPONDENT(S)

**CORAM:**                      **Dr. Geeta Rathee Singh**                      **Member**  
   **Nadim Akhtar**    **Member**

**Present:** - Mr. Sachin Miglani, learned counsel for the complainant through VC  
   Mr. Anuj Kohli, learned counsel for the respondent

**ORDER (NADIM AKHTAR-MEMBER)**

1. Both complaints dated 10.10.2022 have been filed on 10.10.2022 by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of both complaints are more or less identical and relate to the same project of the respondent. Complaint no. 2523 of 2022 titled "Surender Singh Vs Eldeco Infrastructure & Properties. Ltd.", has been taken as a lead case for disposal of both these matters.



**A. UNIT AND PROJECT RELATED DETAILS OF THE LEAD CASE:**

The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, if any, have been detailed in the following table:

S.N.	Particulars	Details
1.	Name of the project	Eldeco Estate One
2.	Nature of the Project	Residential Colony
3.	RERA Registered/not registered	Not- Registered
5.	Unit no.	D-II/6
6.	Location of the project	Sector 40, 19 -A Panipat
7.	Booking Date	07.04.2014
8.	Date of Allotment certificate and Agreement	23.04.2014
9.	Possession Clause	<p><b>Clause C (1) of Allotment cum agreement</b></p> <p><i>The construction of the villa is likely to be completed within a period of 34 months of the commencement of the construction with a grace period of 6 months subject to the receipt of requisite building/ revised building/ other approvals and permissions from the concerned authorities , force majeure conditions ( defined hereinafter) restraints or restrictions from any courts/ authority ; non availability of building materials, disputes with contractors/ work force etc. and circumstances beyond the control of the company and subject to timely payments by the allottee in terms hereof. No claim by way of</i></p>



		<i>damages/ compensation shall lie against the company in case of delay in handing over possession of the said villa on account of the aforesaid reasons. However, if the allottees opts to pay in advance of schedule, a suitable amt may be allowed but the completion schedule shall remain unaffected.</i>
10.	Total sale consideration	53,31,513/-
11.	Amount paid by the complainants	56,97,711/-
12.	Deemed date of possession	23.08.2017
13.	Offer of possession	10.03.2018
14.	Delay caused in handing over the possession	7 months

**B. FACTS STATED BY THE COMPLAINANT IN THE COMPLAINT:**

3. That the complainant booked a villa in the project of the respondent and paid ₹ 2,50,000/- as booking amount.
4. The respondent was allotted the villa in favour of the complainant and an agreement was executed between the complainant and the respondent on 23.04.2014. As per the agreement, complainant has to pay the balance amount as per the construction linked plan. Copy of the allotment certificate cum agreement is annexed as Annexure A.
5. That as per the allotment certificate cum agreement entered into between the complainant and the respondent, the respondent was supposed to be



delivered within 34 months with a grace period of 6 months from the date of the starting of the construction.

6. The complainant has made the payment of ₹56,97,711/-, against the total sale consideration of ₹53,31,513/-. Copy of the statement of money receipts are annexed as Annexure-B.
7. That respondent was not in a position to execute the conveyance deed as they have not received the Occupation Certificate from the concerned department so they allured the complainant to take the physical possession of the villa allotted to him. On the assurance given by the respondent that conveyance deed will be executed within one month, complainant took the possession of the villa. However, the conveyance deed has never been executed in favour of the complainant.
8. As per clause d 1(a) of the allotment certificate and agreement, the respondent was under obligation to execute the conveyance deed in favour of the allottee and only after execution of the conveyance deed, the respondent can give the possession of the villa to the allottee.
9. That respondent had handed over the possession of the Villa just to save themselves from the delayed possession charges as till date the respondent has not received occupation certificate from the concerned department.
10. That respondent officials' mis guided the complainant that they are unable to execute the conveyance deed as competent authority is not registering the conveyance deed. Complainant along with 20 other co-allotees filed



Civil Writ Petition no 12135 of 2021 before the Hon'ble Punjab and Haryana High Court seeking the direction to register the properties of the complainant and other co-allottees. Hon'ble High Court passed an order dated 26.07.2021, wherein it was observed that the department has already fixed the rates of NPNL category plots in licensed colony being developed by Eldeco Infrastructure Ltd. in sector 40, Panipat vide order dated 1406.2021 and there would be no bar on executing the sale deed/ transfer deed pertaining to such properties by the competent Authority. Copy of the order dated 26.07.2021 passed in 12135 of 2021 is annexed as Annexure D. The respondent has not complied with the orders of the Authority and has not executed the conveyance deed in favour of the complainant.

11. Hence, the present complaint.

**C. RELIEF SOUGHT**

12. The complainant in this complaint has sought the following reliefs:
- i) To direct the respondent to execute the conveyance deed in favour of the complainant
  - ii) To direct the respondent to pay the delay possession charges as per Rule 15 of HRERA Rules 2017 as possession offered was not a legal offer as it was obtained without obtaining the Occupation Certificate from the Authority.



iii) To direct the respondent to pay 5,00,000/- as compensation for mental and emotional harassment suffered due to illegal act of the respondent.

iv) To direct the respondent to pay 1,00,000 as litigation charges.

**D. REPLY ON BEHALF OF THE RESPONDENT:**

Learned counsel for the respondent has filed his reply on 06.12.2022 pleading therein:

13. That the respondent has developed the project comprising of plots/villas/ floors namely 'Eldeco Estate One- Panipat' on land admeasuring 150.28645 acres situated at sector 40 and 19-A, Panipat, Haryana after the approvals and sanctions granted by the competent Authority.
14. That the complainant approached the respondent for the purpose of purchasing a simplex villa no. D-II .6, sector 6 in the project of the respondent and agreement was executed on 23.04.2014.
15. The respondent has admitted the amount paid by the complainant against the total sale consideration.
16. That the master layout plan was revised as per the new bifurcation of phase II. Thereafter, the part completion certificate was granted on 13.05.2015 and part completion certificate of phase II was granted on 02.02.2018. Copies of the part completion certificate dated 13.05.2015 and 02.02.2018 are annexed as Annexure A and B. Master layout plan was revised by the DTCP in the year 2013 wherein the commercial areas for phase II was reduced to 0.565 acres and consequently, EDC, IDC and conversion charges were needed to



be determined according to the revised layout plan. Therefore, various representations were made before the DTCP in this regard.

17. That DTCP has acknowledged their representations and vide order dated 28.02.2020 has stated that the charges will be rectified. However, the concerned authority has failed to respond due to which the respondent was not able to get the permissions for the renewals.
18. That the villa of the complainant is complete with all the amenities and facilities and has already been given to the complainant on 18.01.2019. Copy of various communications submitted by the company are annexed as Annexure R-C and copy of the office order passed by the office of DTCP is annexed as Annexure- D.
19. That due to pending correction of EDC/SIDC charges, renewal of license has got delayed due which the respondent has not been able to obtain the occupation certificate and executing the conveyance deed in favour of the complainants. However, in compliance of the orders of the Hon'ble Punjab and Haryana Court, the registration of conveyance deed in respect of the project of the respondent has been started by the competent authority, i.e., sub registrar.
20. That complainant had been handed over the possession of the villa along with all the amenities and facilities in the project and the same was accepted by the complainant without any protest.





21. That the delay has been caused due to the arbitrary conduct of the various government departments as the company has been acting completely as per the binding terms and the governing statutes.
22. That the projects which are not registered with this Hon'ble Authority under RERA is not maintainable and as such Authority has no jurisdiction to entertain and adjudicate the complaint.
23. That the provisions of the Act have been made applicable prospectively i.e., 01.05.2016 and 01.05.2017 respectively and no provision of the Act have been made applicable retrospectively.
24. That the complaint is bad for mis joinder and non-joinder of necessary parties.
25. That the present complaint is hopelessly barred by the limitation as it is settled principle of law that stale claim should be thrown out at the threshold and the question of limitation should be considered by any Hon'ble High Court or Authority.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

26. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for the complainant submitted that possession has been given to the complainant on 10.03.2018 without executing the conveyance deed in favour of the complainant. However, after complainant has filed this complaint, respondent has executed the



conveyance deed in favour of the complainant. Now, he is seeking relief of delay interest from the respondent on account of delay caused in handing over the possession.

He further submitted that in complaint no. 2572 of 2022, respondent has given the possession to the complainant on 18.01.2019. However, conveyance deed has not been executed.

Learned counsel for the respondent argued that the complaint is time barred as the possession has been given to the complainant on 10.03.2018 and the complaint has been filed in the year 2022. In support of his arguments, he cited the judgment of 'Khatri Hotels Private Ltd v/s Union of India, and stated that on the basis of the said judgment, the present complaint is liable to dismissed.

Ld. counsel for the complainant on the other hand argued that cause of action is still persists as the conveyance deed has been executed by the respondent in the year 2022.

**F. ISSUES FOR ADJUDICATION**

27. Whether the respondent has delayed in delivering the possession of Villa in terms of allotment letter and is liable to be proceeded under the provisions of Real Estate (Regulation and Development) Act, 2016?



28. Whether the complainants are entitled for interest on the amount paid as per section 2(za) of the Real Estate Regulatory Authority?

**G. OBSERVATIONS AND DECISION OF THE AUTHORITY**

29. In light of the facts of the case and perusal of document placed on record, Authority observes as follows:

i) The plea of respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint. Jurisdiction in matters of unregistered projects has already been decided by the Authority vide its order dated 30.03.2022 in complaint case no. 191 of 2020 titled '*Mrs. Rajni & Mr. Ranbir Singh versus M/s Parsvnath Developers Ltd.*' and same is followed in present cases as well.

ii) Another objection raised by respondent is that complaint was filed on 10.10.2022 and the same is barred by limitation as in complaint no. 2523 of 2022 possession was offered on 10.03.2018 and in complaint no. 2572 of 2022 possession was offered on 18.01.2019. In complaint no. 2523 of 2022 the complainant had prayed for the execution of conveyance deed and delay interest, however, after filing of the complaint conveyance deed has been executed by the respondent meaning thereby the cause of action have been recurring due to non-discharging of the obligation cast upon the respondent. In complaint no. 2572 of 2022 still the respondent has



neither executed the convenience deed nor paid delayed interest. The complainant has already paid the amount of Rs. 56,97,711/- though the total sale consideration is Rs. 53,31,513/-. The facts of Khatri Hotels pvt. ltd. vs Union of India are not applicable to the present complaint because in the present complaint cause of action still persists due to non-discharging of the obligation by the respondent. Therefore, the ground taken by the respondent that the present complaints are barred by the limitation is rejected.

iii) One of the averments of respondent is that provisions of the RERA Act of 2016 have been made applicable prospectively i.e., 01.05.2016 and 01.05.2017 respectively. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd decided on 16.07.2018.



Relevant part of the order is being reproduced below:

*“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act save the provisions of the agreements made between the buyers and seller.”*

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaints.



Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

(iv) Respondent has also taken an objection that complaint is bad for non-joinder of parties as the financial institution is not party to the present complaint. In this regard it is observed that since no relief has been claimed by complainant against the financial institution and the payments made by the complainant have been admitted by the respondent, the financial institution cannot be said to be a necessary party in the complaint. Hence, respondent's objection that complaint is bad for non-joinder of parties is rejected.

v) Complainants have prayed before the Authority to direct the respondent to execute the conveyance deed in favour of the complainants in the captioned cases. However, during the course of hearing, learned counsel for the complainant admitted that in complaint no. 2523 of 2022, conveyance deed has been executed in favour of the complainant. Therefore, relief sought by the complainant with respect to conveyance deed in complaint no. 2523 of 2022 stands settled.



He further submitted that in captioned complaint no. 2572 of 2022, conveyance deed has not been executed in favour of the complainant. Therefore, respondent is directed to execute the conveyance deed in favour of the complainant.

vi) Further, with regard to the delay interest, Authority observes that complainant had booked a villa in the project of the respondent in the year 2014 and agreement was executed between the parties on 23.04.2014. As per the clause C (1) of the agreement, possession of the Villa was supposed to be given to the complainant within 34 months with a grace period of 6 months which means possession should be handed over to the complainant by 23.08.2017. However, respondent had offered the possession to the complainant on 10.03.2018 which means delay has been caused of seven months in handing over the possession.

As per provisions of the section 18 of the RERA Act 2016, if the respondent promoter fails to deliver the possession in accordance with the terms of the agreement for sale, then he is liable to pay the delay interest for every month of delay till the handing over of the possession along with interest. Hence complainants are entitled for the delay interest on account of delay caused in handing over the possession in terms of section 18 of the RERA Act, 2016 read with Rule 15 of the Rera Rules, 2017.



As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The term 'interest' is defined under Section 2(za) of the Act which is as under:

*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. -For the purpose of this clause-*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub. sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (NCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public".*

30. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 27.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.





31. Since, complainant has voluntarily accepted the possession in both the cases, the respondent is liable to pay the delay interest from the deemed date of possession to the actual date of offer of possession. The deemed date of possession and date of offer of possession in captioned complaints are as follows:

Sr No.	Complaint No.	DEEMED DATE OF POSSESSION	OFFER OF POSSESSION
1.	2523 of 2022	23.08.2017	10.03.2018
2.	2572 of 2022	22.03.2018	18.01.2019

Accordingly, the details of the amount paid by the complainant and interest calculated on the amount is shown in table as below:

Sr. No.	COMPLAINT NO.	AMOUNT PAID BY THE COMPLAINANT	DEEMED DATE OF POSSESSION	DELAY INTEREST CALCULATED BY AUTHORITY TILL THE OFFER OF POSSESSION
1.	2523/2022	₹51,97,705/- (amount taken till the offer of possession was made)	23.08.2017	₹2,82,832/-
2.	2572/2022	₹ 56,49,555/-	22.03.2018	₹4,73,374/-

*Handwritten signature*

32. Further, the complainant is seeking compensation on account of mental harassment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

#### **H. DIRECTIONS OF THE AUTHORITY**

33. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) Authority directs the respondent to execute the conveyance deed in favour of the complainant in complaint no.2572 of 2022.



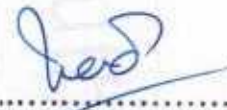
ii) Authority further directs the respondent to pay the delay interest to the complainant of ₹ 2,82,832 /- in complaint no. 2523 of 2022 and pay interest of ₹4,73,374 /- in complaint no. 2572 of 2022.

ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

34. Complaints are, accordingly, **disposed of**. Files be consigned to the record room after uploading the order on the website of the Authority.



.....  
DR GEETA RATHEE SINGH  
[MEMBER]



.....  
NADIM AKHTAR  
[MEMBER]