



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2861 of 2022
Date of filing:	10.11.2022
First date of hearing:	18.01.2023
Date of decision:	10.10.2023

COMPLAINT NO. 2861 OF 2022

1.Harish Juneja

Villa no.H-II/4, Sector-6,
Eldeco Estate One, Panipat-132103

2.Divya Sawhney

W/o Sh. Harish Juneja
Villa no.H-II/4, Sector-6,
Eldeco Estate One, Panipat-132103

.....COMPLAINANTS

Versus

Eldeco Infrastructure and Properties Ltd.
201-212, 2nd floor, Splendor Forum
Jasola, District Centre, New Delhi-110025

.....RESPONDENT

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

**Member
Member**

Date of Hearing: 10.10.2023

Present: - None present for the complainants.

Mr. Anuj Kohli, ld counsel for the respondent through VC.

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint has been filed by complainant on 10.11.2022 under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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.

A. UNIT AND PROJECT RELATED DETAILS

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



S.No.	Particulars	Details in Complaint no. 2861 of 2022
1.	Name of the project	Eldeco Estate One, Panipat
2.	Name of the promoter	Eldeco Infrastructure and Properties Limited
3.	Villa No.	H-II/4, Sector-VI
4.	Location of Project	Sector-40 and 19A, Panipat
5.	RERA registered/not registered	Unregistered
6.	Plot area Built up area	230sq. yard 980 sq.ft
7.	Date of builder buyer agreement	19.09.2014
8.	Due date of offer of possession	19.01.2018
9.	Possession clause in BBA	<i>Clause C(1): The construction of the said villa is likely to be completed within 34 months of commencement of construction with grace period of 6 months subject to receipt of requisite building/revised building plans/other approvals & permissions from the concerned authorities; force majeure conditions; restraints or restrictions for the any courts/authorities; non availability of building materials; dispute with contractors/work force etc. and circumstances beyond the control of the Company & subject to timely payments by the allottee/s, in terms hereof. No claim by way of damages/compensation shall lie</i>



		<i>against the Company in case of delay in handing over possession of the said villa on account of the aforesaid reasons. However, if the allottee opts to pay in advance of schedule, suitable discount may be allowed but the completion schedule shall remain unaffected.</i>
10.	Basic consideration	sale ₹52,10,035/-
11.	Amount paid by complainant	by ₹68,07,52.84 /-
12.	Offer of possession	04.04.2019

B. FACTS OF THE COMPLAINANT

3. That complainants booked a simplex villa in the project of the respondent and paid ₹ 2,50,000/- as booking amount.
4. That respondent allotted the villa in favour of the complainants and an agreement was executed between the complainants and the respondent on 19.09.2014 for simplex villa no. H-II/4, Sec-VI, Eldeco Estate One, Panipat, admeasuring 230 sq.yard. As per the agreement, complainants have 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 complainants and respondent, the respondent was under



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

6. That complainants have made the payment of ₹68,07,532.84/- against the total sale consideration of ₹52,10,035/-. Copy of ledger statement showing payment made by the complainants to the respondents is annexed as Annexure-B.
7. That respondent was not in a position to execute the conveyance deed as respondent has not received the Occupation Certificate from the concerned department so respondent allured the complainants to take the physical possession of the villa allotted to them. On the assurance given by the respondent that conveyance deed will be executed within one month, complainants took the possession of the villa. However, the conveyance deed has never been executed in favour of the complainants.
8. As per clause D 1(a) of the allotment certificate cum agreement, the respondent was under obligation to execute the conveyance deed in favour of the allottees 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 vide letter dated 04.04.2019, annexed as Annexure C, 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 misguided the complainant that they are unable to execute the conveyance deed as competent authority is not registering the conveyance deed. Thereafter some of the co-allottees 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 *"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 CWP No.12135 of 2021 is annexed as Annexure D.

11. The respondent has not complied with the orders of the Hon'ble High Court and has not executed the conveyance deed in favour of the complainant. Hence, the present complaint is filed.

C. RELIEF SOUGHT

12. Complainants in this complaint have sought the following reliefs:

(i) Direct the respondent to execute the conveyance deed in favour of the complainants.

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

(iv) Direct the respondent to pay 1,00,000 as litigation charges.

(v) Any other or further order which this Hon'ble Authority deems fit in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

13. Learned counsel for the respondent has filed his reply on 18.01.2023 pleading therein that the respondent has developed the project comprising of plots/villas 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 complainants approached the respondent for the purpose of purchasing a simplex villa no. H-II/4, sector VI in the project of the respondent and agreement was executed on 19.09.2014.

15. The respondent has admitted the amount paid by the complainant against the total sale consideration.

16. It is pertinent to mention that vide license nos.407-412 all dated 18.01.2006, to develop a residential plotted colony on a land

admeasuring 65.31 acres, (Phase I) falling in sector 40, Panipat were granted. Thereafter, vide license no.36 dated 28.02.2008, permission to develop a residential plotted colony for additional land admeasuring 55.8013 acre falling in sector-40 and 19A (Phase II) was granted to the answering respondent.

17. That the master layout plan was revised as per the new bifurcation of phase II. Thereafter, the part completion of phase-I 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 B and C.

18. Master layout plan was revised by the DTCP in the year 2013 wherein the commercial area 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.

19. 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.

20. That the villa of the complainant is complete with all the amenities and facilities and has already been given to the complainant on 04.04.2019. Copy of various communications submitted by the



company are annexed as Annexure D and copy of the office order dated 28.02.2020 passed by the office of DTCP is annexed as Annexure- E.

21. 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 execute 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.

22. That complainants 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 complainants without any protest.

23. That it is also pertinent to mention that in addition to abovementioned reasons for non-issuance of completion certificate as on date and non-registration of conveyance deed another factor is that Town and Country Planning Department has also asked about status of electrical infrastructure from HVPN in support of project and in pursuance to the same HSVP had further asked UHBVN, about the same. From the letter dated 08.03.2016 written by UHBVN it is clear that the Chief Administrator, HUDA vide letter dated 28.02.2016 has agreed to construct 33 K.V substation at the



project site. Furthermore, it is to mention that all the electrical infrastructure works within scope of the respondent had been completed by it as per approved scheme. However, UHBVN has been arbitrarily asking the respondent to deposit bank guarantee for the development of 33 KV substation whereas same is clearly and actually in scope of HUDA and same is evident from the letter mentioned above. Concluding, 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. Copies of letters are annexed as Annexure F.

24. That the complaint in a project which is not registered with this Hon'ble Authority under RERA Act is not maintainable and as such Authority has no jurisdiction to entertain and adjudicate the complaint.

25. That the provisions of the Act have been made applicable prospectively, i.e., 01.05.2016 and 01.05.2017 respectively and no provisions of the Act have been made applicable retrospectively.

26. That there is clause M in the agreement dated 19.09.2014 under the head " JURISDICTION & LAWS OF INDIA" forming a binding contract between parties and as per which parties have conferred jurisdiction upon Delhi courts and as per settled law such clause in the agreement is legally sound and binding on parties and hence this

had

Authority does not have jurisdiction to entertain the present complaint.

27. That the complaint is bad for mis joinder and non-joinder of necessary parties.

28. 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 thresh hold 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

29. During course of hearing, Ld counsel for respondent stated that complaint is in similar terms of complaint no.2572 of 2022 titled as "Surender Singh V/S Eldeco Infrastructure and Properties Limited."

F. ISSUE FOR ADJUDICATION

30. 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?

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



G. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

(i) Objection regarding jurisdiction of the Authority to adjudicate and grant relief of refund.

32. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

A. Territorial Jurisdiction:

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

B. Subject Matter Jurisdiction

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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

In view of the provisions of the Act of 2016 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 learned Adjudicating Officer if pursued by the complainants at a later stage.

Therefore, plea of respondent that Authority has no jurisdiction to decide the complaint is rejected. As, Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

33.The objection of the respondent that the project in which the complainant is seeking possession is not registered with this Hon'ble Authority and therefore this Hon'ble Authority does not have



jurisdiction to entertain the present complaint. This issue that whether this Authority has jurisdiction entertain the present complaint as the project is not registered has been dealt and decided by the Authority in **complaint no. 191 of 2020 titled as Mrs. Rajni and Mr. Ranbir Singh vs Parsvnath Developers Ltd.** Relevant part of said order is being reproduced below:

“Looked at from another angle, promoter of a project which should be registered but the promoter is refusing to get it registered despite the project being incomplete should be treated as a double defaulter, i.e. defaulter towards allottees as well as violator of Sector 3 of the Act. The argument being put forwarded by learned counsel for respondent amounts to saying that promoters who violate the law by not getting their ongoing/incomplete projects registered shall enjoy special undeserved protection of law because their allottees cannot avail benefit of summary procedure provided under the RERA Act for redressal of their grievances. It is a classic argument in which violator of law seeks protection of law by misinterpreting the provisions to his own liking.

14. *The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee*



vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.

15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected."

34. With regard to plea raised by the respondent that provisions of RERA Act, 2016 are applicable with prospective effect only and therefore same are not applicable in present case. It is observed that issue regarding operation of RERA Act, 2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in ***Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others.*** Relevant part is reproduced below for reference:-

"54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate



has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected.

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

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

1. Averment raised by respondent is that complaint was filed on 10.11.2022 and the same is barred by limitation as possession was offered on 04.04.2019. In this regard, it is observed that since, the promoter has failed to fulfil his obligations as per terms of agreement to hand over the possession of the booked plot in its project, the cause of action is occurring and the ground that complaint is barred by limitation stands rejected. Further, in this regard the Hon'ble Apex Court in Civil Appeal no. 4367 of 2004 titled as **M.P Steel Corporation v/s Commissioner of Central Excise** has held that the Limitation Act applies only to courts and not to the tribunals. Relevant para is reproduced herein:

"19. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963."

RERA Act of 2016 is a special enactment with particular aim and object covering certain issues and violations relating to



housing sector. Provisions of the Limitation Act 1963, thus, would not be applicable to the proceedings under the Real Estate Regulation and Development Act, 2016 as the Authority established under the Act is a quasi-judicial body and not Court. Therefore, the ground taken by the respondent that the present complaints is barred by the limitation is rejected.

2. Admittedly, complainants had booked simplex villa by paying an amount of ₹2,50,000/- and thereafter allotment certificate cum agreement was executed between the complainants and respondent regarding simplex villa no. H-II/4, Sector-VI, Eldeco Estae One, Panipat, admeasuring 230 sq.yard. on 19.09.2014. It is admitted that payment of ₹68,07,532.84/- has been made against the total sale consideration of ₹52,10,035/-. As per clause C(1) of the agreement respondent was under an obligation to hand over possession of villa within 34 months with a grace period of 6 months from date of starting of construction. Meaning therby, respondent was under obligation to hand over possession on 19.01.2018. However, as per possession certificate respondent handed over possession on 04.04.2019, that means there is delay of 14 months and 15days by the respondent. Respondent failed to fulfill its liabilities as per the agreed terms of agreement. Therefore, 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 HRERA Rules, 2017.

3. 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;*



Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 04.04.2019 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

4. Fact remains that offer of possession was made to complainant on 04.04.2019 without receipt of occupation certificate. As such, said offer of possession was not a valid offer and accordingly complainant prayed for delay interest till a valid offer is made as per rule 15 HRERA Rules, 2017. In this regard, Authority ^{observed} that though offer of possession was made to complainant without support of occupation certificate, however, complainant had duly accepted said offer and taken actual possession of villa. Moreover, no document have been placed on record by the complainant to prove that he was forced or coerced to accept said possession without issuance of occupation certificate by competent authority. Therefore, respondent is liable to pay the delay interest to the complainant from the deemed date of possession to the actual date of taking over offer of possession. The deemed date of possession, date of offer of possession, amount paid by complainants and interest calculated are as follows:



Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 04.04.2019
1.	₹41,52,715/-	19.01.2018	₹5,39,369/-
2.	₹1,30,404/-	19.06.2018	₹11,138/-
3.	₹2,19,000/-	19.06.2018	₹18,705/-
4.	₹3,80,000/-	19.06.2018	₹32,456/-
5.	₹5,80,000/-	12.10.2018	₹29,894/-
6.	₹17,000/-	12.10.2018	₹876/-
7.	₹1,38,000/-	12.10.2018	₹7113/-
8.	₹4,15,000/-	20.11.2018	₹16,623/-
9.	₹1,35,000/-	20.11.2018	₹5407/-
10.	₹2,80,000/-	25.12.2018	₹8329/-
11.	₹1,36,180/-	13.01.2019	₹3289/-
12.	₹1,05,575.84/-	11.02.2019	₹1648/-
13.	₹1,18,658/-	12.03.2019	₹839/-
	Total=₹68,07,532.84/-		Total=₹6,75,686/-

5. Also, complainants had approached the Authority for execution of conveyance deed. In this regard it is observed that though respondent had offered possession to the complainant on 04.04.2019 without receiving the occupation certificate, however complainant voluntarily accepted the possession of the villa. As per clause D sub clausel(a) of allotment certificate cum agreement respondent was under obligation to execute the sale/conveyance deed in favour of the allottee and it is after execution of the



conveyance deed the respondent can give possession of villa to the allottee and further as per section 17 clause 1 of RERA Act, 2016 promoter is under obligation to execute the registered conveyance deed in favour of the allottee however till date respondent had not executed conveyance deed in favour of complainant. Relevant section is reproduced for reference:

“Section-17 Transfer of Title:

(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.



As conveyance deed is only perfection of title and Hon'ble Punjab and Haryana High Court in Civil Writ Petition no 12135 of 2021 settled the issue regarding execution of conveyance deed in this project. In concurrence of order of Hon'ble Punjab and Haryana High Court respondent is directed to execute the conveyance deed as per liability under section 17 clause 1 of RERA Act,2016.

6. Further, the complainants are seeking compensation on account of mental and emotional harassment caused for delay in possession, litigation cost. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "**Ms Newtech Promoters und Developers Pvt Ltd. Vs 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 7, 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.



I. DIRECTIONS OF THE AUTHORITY

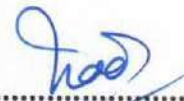
36. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(1) of the Act of 2016;

- 1) Authority directs the respondent to execute the conveyance deed in favour of the complainants.
- 2) Authority further directs the respondent to pay the delay interest to the complainants of ₹6,75,686/-.
- 3) 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.

37. Complaint is, accordingly, **disposed of**. File be consigned to the record room after uploading of the order on the website of the Authority.



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



.....
NADIM AKHTAR
[MEMBER]