



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>283 of 2023</b>
<b>Date of filing:</b>	<b>14.02.2023</b>
<b>First date of hearing:</b>	<b>26.04.2023</b>
<b>Date of decision:</b>	<b>15.01.2024</b>

Jai Prakash Sharma

S/o Lal Chand Sharma

R/o Flat no. 616, DDA Janta Flats,

Pul Pehladpur, Surajkund Road,

Jaitpur, South Delhi

Delhi-110044

.....COMPLAINANT No. 1

Mrs. Rekha Sharma (co-owner)

W/o Jai Prakash Sharma

R/o Flat no. 616, DDA Janta Flats,

Pul Pehladpur, Surajkund Road,

Jaitpur, South Delhi

Delhi-110044

.....COMPLAINANT No. 2

Versus

Adel Landmarks Ltd.  
(Formerly known as Era Landmarks Ltd.)  
Head office- C-56/41, Sector-62,  
Noida, India.  
Registered office- B-292,  
Chandra Kanta Complex, Shop no. -8  
Near Ashok Nagar,  
Delhi-110096

.....RESPONDENT

**CORAM: Parneet Singh Sachdev  
Nadim Akhtar**

**Chairman  
Member**

**Present:** - None for complainants  
None for respondent

**ORDER (PARNEET SINGH SACHDEV - CHAIRMAN)**

1. Present complaint has been filed on 14.02.2023 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 there under, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name and location of the project	Era Divine Court, sector-76, Faridabad
2.	RERA registered/not registered	Un-registered
3.	Buyers Agreement	15.12.2010 (Annexure C-4 in complaint book)
4.	Unit no.	B-99
5.	Unit area	890 sq. ft.
6.	Total sale consideration	₹18,64,550/-
7.	Amount paid by complainants	₹19,14,550/-
8.	Possession clause	(As per clause 5 of the Agreement which says " <i>the developer shall make endeavor to give/ offer possession of flat to Allottee(s) within 24 months of signing this Agreement</i> ")
9.	Deemed date of possession (24 months from execution of agreement i.e., 15.12.2010)	15.12.2012



10.	Offer of possession	No
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**B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANTS**

3. That on 24.12.2009 complainants approached respondent for booking of unit in respondent's project namely "Era Divine Court" at Sector-76, Faridabad and paid 10% as earnest money of booking amount, i.e., ₹1,57,000/- to respondent against their booking of flat in respondent's project. Booking receipt is attached as "Annexure C-1" to complaint.
4. That respondent as per the payment plan opted by complainants raised the demand of ₹4,41,300/- on 23.02.2010 annexed as "Annexure C-2". However, later on respondent postponed its demanded instalment till approval of the building plans by the government. Thereafter, another demand of ₹7,90,806/- was raised by respondent vide demand letter dated 22.11.2010. Copy of demand letter dated 22.11.2010 is annexed as "Annexure C-3".
5. Buyer agreement was executed between the parties on 15.12.2010, wherein complainants were allotted Flat no. B-99, GF, Era Divine Court, Sector 76, Faridabad against a total sale consideration of ₹18,64,550/-. Copy of buyer agreement dated 15.12.2010 is annexed as "Annexure C-4". Complainants namely; Jai Prakash Sharma applied for a departmental loan against the



demand letter dated 22.11.2010 from his employer, i.e., "Power Grid Corporation" which was duly sanctioned by the employer department. A cheque bearing no. 157406 dated 14.03.2011 was issued by Power Grid Corporation in favour of the respondent "Era Landmarks Ltd." which was encashed on 16.03.2011. In lieu of the same, a receipt of payment dated 16.03.2011 was issued by the respondent to complainants. A photocopy of cheque dated 14.03.2011 and a copy of payment receipt dated 16.03.2011 are annexed as "Annexure C-5 & 6" respectively.

6. Respondent again demanded money from the complainants through demand letters dated 22.07.2011, 29.09.2011 and 05.02.2013, which were duly paid by the complainants within stipulated time. Demand letters and payment receipts of amounts paid by complainants are annexed as "Annexure C-7 to C-12".
7. That on 24.02.2017, respondent sent a letter whereby it was intimated to the complainants that respondent had changed its name from "Era Landmarks Ltd." to "Adel Landmarks Ltd.". Copy of letter dated 24.02.2017 is annexed as "Annexure C-13". Thereafter, respondent vide demand letters dated 20.04.2017, 13.09.2017, 06.11.2017 and 09.01.2018 further demanded payments from complainants.



8. That as per terms and conditions of the agreement respondent was under an obligation to deliver possession of the booked flat within 24 months from date of execution of agreement. However, respondent has miserably failed to deliver possession of the aforesaid flat to complainants. Complainants have contacted respondent to know the actual status of the project but respondent did not give any heed to the request of the complainants. Even after receiving total amount of ₹19,14,550/-, respondent has neither handed over the possession of the booked flat nor paid any delayed interest to complainants till date.

**C. RELIEF SOUGHT**

9. In view of the facts mentioned in complaint book, the complainants prays for following:
- i. To direct the respondent to deliver the possession of unit/flat, i.e., "B-99, GF, Era Divine Court, Sector-76, Faridabad, Haryana to the complainants soon after getting the completion certificate from the concerned Authority.
  - ii. Respondent should be directed to pay compensation amount for delayed possession according to the Rules 15 of the "Haryana Real Estate (Regulation and Development) Rules, 2017.



- iii. Respondent should be directed to pay a sum of ₹2,00,000/- for mental harassment, torture, agony, pain suffering, humiliation, and a sum of ₹55,000/- as litigation expenses to the complainants in addition to aforesaid prayer clauses.
- iv. Any other order/ direction or relief (s) in favour of complainants may be passed, which Hon'ble Authority may deem fit and proper as per the facts and circumstances of the present complaint, in the interest of justice.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

10. As per the office record notice to the respondent was successfully delivered on 17.02.2023. Thereafter, captioned case was listed for hearing on 26.04.2023, 09.08.2023 and 22.11.2023 respectively where the respondent neither appeared nor filed any reply. Today also, none appeared on behalf of respondent nor any justified reasons have been given by the respondent for delay in handing over of possession. Authority is of the view that proceedings before this Authority are summary proceedings and sufficient opportunities have already been granted to the respondent to file reply, any further delay shall defeat the ends of justice for an allottee who has been waiting for his flat since 2010. Thus matter is proceeded and decided ex-parte, based on the documents available on file.



**E. ISSUES FOR ADJUDICATION**

11. Whether the complainants are entitled to possession of booked flat along with delay interest in terms of Section 18 of Act of 2016?

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

In light of the background of the matter as captured in this order and also the arguments submitted by learned counsel for complainants, the Authority observes as follows:

12. Complainants in this case had booked a flat measuring 890 sq. ft. in the project of the respondent on 24.12.2009 by paying an amount of ₹1,57,000/-. Thereafter, flat no. B-99 in respondent's project- Era Divine Court was allotted to complainants via execution of buyer agreement on 15.12.2010. Against the total sale consideration of ₹18,64,550/-, an amount of ₹19,14,550/- stands paid by the complainants to respondent. Complainants have attached Annexure C-1, C-6, C-8, C-10, C-12, C-15, and C-18 as proofs of payments made by complainants to respondent.
13. As per clause 5 of the buyer agreement, the possession was to be delivered within 24 months from execution of the buyer agreement and thus the deemed date of possession was 15.12.2012. However, the respondent has not offered possession of the booked unit till date to complainants. Respondent has failed





to fulfil its obligation of delivering possession of unit within the stipulated time without assigning any justification for it.

14. Despite availing opportunities respondent has neither appeared nor denied any claim/allegation made by the complainants meaning thereby that the respondent has nothing to file in rebuttal to the claims made by the complainants. Further, in spite of successful delivery of notice on 17.02.2023 respondent chose not to appear before the Authority. Further respondent has neither submitted any written statement nor provided any construction status of unit of complainants.
15. In order to ascertain the status of unit, the Authority verified the status of registration of the project from its 'Project Branch' and found that the promoter namely; "Adel Landmark Ltd." is not registered with the Authority. Further, to clarify the details of license granted to the said developer, Authority deemed it appropriate to fetch the information from the website of the Town and Country Planning Department, Haryana wherein it has come to notice that promoter namely; Countrywide Promoters Pvt. Ltd. and its associate companies were granted license no. 1042-1061 dated 25.07.2006 for development of Group Housing Colony over an area measuring 55.724 acres in Sector 76, Faridabad. The license was valid up to 24.07.2013. The licensee had submitted an application dated 24.06.2013 for renewal of the license for



further period, i.e, up to 24.07.2015. The said application was examined by the Town and Country Planning Department, Haryana and it was noticed that the company had transferred development and marketing rights of 26.619 acres of licensed land in favour of Adel Landmarks Ltd. (formerly known as Era Landmarks Ltd.), who had collected booking amount and other charges from the allottees in respect of the allotment of flats situated in this portion of the licensed land. Meanwhile, CWP no. 23486 of 2014 titled as Ankur Chawla & Ors. versus State of Haryana & Ors. and 23487 of 2014 titled as Vishal Rastogi versus State of Haryana were filed before Hon'ble Punjab and Haryana High Court with a prayer to initiate prosecution against the licensee company, i.e., Countrywide Promoters Pvt. Ltd. and Adel Landmarks Ltd. for committing offence under the provisions of Haryana Development & Regulations of Urban Areas Act, 1975 and rules framed there under. The Hon'ble Punjab and Haryana High Court disposed of the said writs with directions to DGTCP, Haryana to decide as whether there is any contravention of the license by either or all the respondents or the reason for not handing over possession of the units to petitioners.

16. DGTCP, Haryana passed a detailed speaking order wherein following directions were given to the respondents:



- i. Countrywide Promoters Pvt. Ltd. and Adel Landmarks Ltd. to submit an application for transfer of beneficial interest pertaining to the land.
  - ii. After transfer of development/ marketing rights to Adel Landmarks Ltd., the said company shall apply and obtain an occupation certificate for flats of the petitioners without delay.
17. However, no further information with regard to the compliance of the above mentioned directions given by the DGTCP, Haryana could be gathered from the website of the Town and Country Planning Department, Haryana. Therefore, the Authority is of the view that neither beneficial interest has been transferred to promoter "Adel Landmarks Ltd" by DTCP, Haryana nor has the promoter applied for or obtained an occupation certificate for flats of the petitioners. Furthermore, respondent has miserably failed to offer possession of booked unit to the complainants till date. The fact remains the same that complainants are insisting on possession of booked unit only and do not want to exist from the project. It is the respondent who has failed to hand over the possession of booked unit till date. Further, complainants have sought delay interest w.e.f. 15.12.2012, i.e., after expiry of 24 months from execution of the buyer agreement (as per clause 5 of the buyer agreement).



18. In the present complaint, the complainants intend to continue with the project and are seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act. Section 18 (1) proviso reads as under :-

*“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed”.*

19. Per contra respondent has failed to put forth any valid reason/ground for not offering the possession of the booked unit. Complainants however are interested in getting the possession of the booked unit. They do not wish to withdraw from the project. In such circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainants till date nor there is any available information with regard to the occupation certificate of the project in question. Hence, the Authority hereby concludes that the complainants is entitled for the delay interest from the deemed date i.e. 15.12.2012 till the



date on which a legally valid offer is made to them after obtaining occupation certificate. The definition of 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;*

20. 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. 15.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

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]*

*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 (MCLR) 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”.*

21. Authority has calculated the interest on total paid amount from the deemed date of possession i.e., 15.12.2012 till the date of this order, i.e, 15.01.2024 at the rate of 10.85% till, and said amount works out to ₹20,86,305/- as per detail given in the table below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 15.01.2024
1.	₹14,08,099.46/-	15.12.2012	₹16,94,798/-
	₹96,565/-	13.02.2013	₹1,14,504/-
	₹50,000/-	17.05.2017	₹36,191/-
	₹3,59,886/-	17.11.2017	₹2,40,812/-
	Total= ₹19,14,550.46/-		Total= ₹20,86,305/-
2.	Monthly interest		₹17,643/-

22. Accordingly, the respondent is liable to pay the upfront delay interest of ₹20,86,305/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of ₹19,14,550.46/- monthly interest of Rs. ₹17,643/- shall be payable up to the date of actual handing over

of the possession after obtaining occupation certificate. The Authority orders that the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

23. The complainants are seeking compensation of ₹2,00,000/- for mental harassment, torture, agony, pain suffering and humiliation and a sum of ₹55,000/- as litigation expenses. 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.

**G. DIRECTIONS OF THE AUTHORITY**

24. 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) Respondent is directed to pay upfront delay interest of ₹20,86,305/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of ₹19,14,550.46/- monthly interest of ₹17,643/- shall be payable by the respondent to the complainants up to the date of actual handing over of the possession after obtaining occupation certificate.
- (ii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.
- (iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.85% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

**Disposed of.** File be consigned to record room after uploading on the website of the Authority.



.....  
NADIM AKHTAR  
[MEMBER]



.....  
PARNEET SINGH SACHDEV  
[CHAIRMAN]