



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2654 of 2022
Date of filing:	10.10.2022
First date of hearing:	06.12.2022
Date of decision:	20.12.2023

COMPLAINT NO. 2654 OF 2022

Shikha

W/o Sh. Ravinder Kumar,
R/o House No.C-1/3, Sector-6
Eldeco Estate One, Panipat

.....COMPLAINANT

Versus

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

.....RESPONDENT

CORAM: Parneet Singh Sachdev
Nadim Akhtar
Dr. Geeta Rathee Singh
Chander Shekhar

Chairman
Member
Member
Member

Date of Hearing: 20.12.2023

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

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by complainant on 10.10.2022 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. 2654 of 2022
1.	Name of the project	Eldeco Estate One, Panipat
2.	Name of the promoter	Eldeco Infrastructure and Properties Limited
3.	Villa No.	C-I/3, Sector-VI
4.	Location of Project	Sector-40 and 19A, Panipat
5.	RERA registered/not registered	Unregistered
6.	Plot area Built up area	264 sq. yards 1200 Sq.ft
7.	Date of builder buyer agreement	16.02.2016 (with original allottee)
8.	Possession clause in BBA	<p><i>"Clause D:(1)(a)</i></p> <p><i>The possession of the said villa will be given after execution of sale/conveyance deed, subject to force majeure conditions, (ii) completion of basic infrastructure work , and (iii) payment of all the amounts due and payable by the allottee upto the date of such possession including maintenance charges, IFMS & stamp duty and other charges to the company."</i></p>
10.	Basic sale consideration	₹60,80,256/-
11.	Amount paid by complainant	₹72,62,117/-
12.	Offer of possession given	Yes, on 11.10.2018



B. FACTS OF THE COMPLAINANT

3. That the original allottee made an application for allotment of simplex villa in the township developed by respondent and paid Rs.3,15,032.75/- as booking amount.
4. That respondent allotted simplex villa in favour of the original allottee and an agreement was executed between the original allottee and the respondent regarding villa No. C-1/3, Sector-6, Eldeco Estate One, Panipat, Haryana. That as per the agreement original allottee has to pay the balance amount as per construction link plan. Copy of the Allotment Certificate & Agreement is annexed as Annexure- A.
5. That as per the Allotment Certificate & Agreement entered into between the original allottee and respondent, respondent was under an obligation to handover the possession of villa within 34 months with a grace period of 6 months from the date of starting of construction.
6. That the original allottee had made timely payments with regard to the allotted villa to the respondent. Copy of the ledger statement showing payment made by original allottee to the respondent 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 original allottee to take



- the physical possession of the villa allotted to him. As the original allottee has made full payment of the simplex villa to the respondent and further on the assurance given by officials of the respondent that conveyance deed of the allotted villa will be executed within 1 month so the original allottee took the possession of the allotted villa. Copy of the possession letter is annexed as Annexure C.
8. That the respondent allured the original allottee to take possession of the simplex villa allotted to him without obtaining the occupation certificate was in clear violation of Chapter 4.10 of the Haryana Building Code, 2017.
 9. That as per the Clause D sub clause 1(a) of the Allotment Certificate & Agreement, respondent is under an 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 the villa to the allottee. But the respondent herein in sheer misuse of statutory obligation handed over the possession of the villa to the allottee to save themselves from delayed possession charges as till date respondent has not received occupation certificate from the concerned department.
 10. That as per Clause D Sub clause 2 of the Allotment Certificate & Agreement, respondent is under an obligation to provide exclusive possession and title of the land and of the built up area of the Villa to the original allottee. But respondent has provided the possession of the villa



without obtaining the occupation certificate from the concerned department hence the possession given by respondent cannot be termed as exclusive possession. Further the respondent has not executed the conveyance deed of the villa in favour of the original allottee till date so the respondent has not conveyed the title of the said villa in favour of the original allottee despite receiving full consideration amount.

11. That thereafter complainant purchased the said villa from the original allottee and son of the complainant sent an email dated 26/04/2022 and enquired from the executive of the respondent with respect to transfer charges for the said villa no C-1/3 Sector 6, ELDECO Estate One, Panipat.

12. That vide reply dated 27/04/2022 the executive of the respondent informed the son of the complainant that the transfer charges for the said villa shall be Rs.500/- per sq. yards plus 18% GST.

13. That thereafter, son of the complainant sent an email dated 29/04/2022 whereby informing that the respondent is charging transfer fees @ Rs. 59,000/- in villa/ plot in which conveyance deed was already executed whereas in present case conveyance deed was not executed due to the fault of the respondent as respondent is not having occupancy certificate and further the respondent is taking advantage of their own wrong by charging illegal transfer amount of Rs.1,55,760/- in place of Rs.59,000/-.



14. Thereafter, vide reply dated 30/04/2022, the executive of the respondent admitted that in the case where registration has been executed, transfer charges of Rs.59,000/- will be payable and, on the other hand, if conveyance deed has not been executed transfer charges of Rs.500/- per sq. yards plus 18% GST will be payable. This admission clearly shows that the respondent has acted ultra-vires and taken undue advantage of their own wrongs by charging excess transfer charges from the complainant. That the respondent has taken Rs.96,760/- in excess from the complainant herein in the name of transfer charges.

15. That the complainant has invested her hard earned money in purchasing the Villa. That even after paying full consideration amount respondent is claiming to be the sole owner of the property which is causing threat and sense of insecurity to the complainant and her family members as the respondent has been escaping to execute the conveyance deed in favour of the complainant which also places scar on the integrity of the respondent.

C. RELIEFS SOUGHT

16. Complainant sought following reliefs from the respondent:

- i. Direct the respondent to execute the conveyance deed in favour of the complainant.



- ii. Direct the respondent to pay Rs.96,760/- to the complainant which was illegally extorted by the respondent in the name of transfer charges/admin charges.
- iii. Direct the respondent to pay Rs.5,00,000/- as compensation for mental and emotional harassment suffered due to illegal act of the respondent.
- iv. Direct the respondent to pay Rs.1,00,000/- as litigation charges.
- v. Any other or further order which this Hon'ble Authority deems fits in the interest of justice.

D. REPLY ON BEHALF OF RESPONDENT

17. That respondent has developed a residential project consisting of plots/villas/floors under the name and style of "ELDECO ESTATE ONE" (hereinafter "Project") on a parcel of land measuring 150.28645 acres situated at Sector-40 & 19-A, Panipat, Haryana after due approvals/permissions & sanctions from the competent authority i.e., Director, Town & Country Planning, Haryana in the present case.

18. That vide license Nos. 407-412 all dated 18.01.2006, license to develop a residential plotted colony on a land admeasuring 65.31 acres, ("Phase I") falling in sector 40, Panipat was granted. Thereafter, vide license No. 36 dated 28.02.2008, license to develop a residential plotted colony for additional land admeasuring 55.8013 acre falling in Sector 40 & 19A ("Phase II") was granted to the answering respondent. Thereafter, the complainant approached the respondent for the purpose of purchasing a



Simplex Villa No. C-1/3, Sector VI in the project of respondent and agreement was executed dated 16.02.2016.

19. That 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 of Phase II was granted on 02.02.2018. Copies of Part completion certificates dated 13.05.2015 and 02.02.2018 are annexed as Annexure A and Annexure B.
20. That the Master Layout Plan was revised by DTCP in the year 2013 wherein the commercial area for Phase II was reduced to 0.565 acres and therefore the EDC, SIDC, license fee & conversion charges had to be determined according to the revised plan, consequently, various representations were made since 2013 stating that the EDC, SIDC, license fee & conversion charges may be determined on the basis of revised area/approved area.
21. That vide office order dated 28.02.2020, DTCP's office acknowledged that the charges are levied on "User Basis" and the same should be rectified by them. Benefit of this order has also been granted to one of the developers at Karnal. However, till date the concerned department has failed to provide a resolution of this issue to the answering respondent resulting in holding back of grant of renewals and completion certificate etc., thereby clearly establishing that there is no fault at the end of the answering Respondent as the possession of villa involved in the present



case is complete in all respects with all amenities and facilities and has already been given to the allottees on different dates and to complainant via possession letter dated 11.10.2018. Copies of various communications submitted by the company are attached as Annexure C (colly) and copy of office order dated 28.02.2020 passed by office of DTCP is annexed as Annexure D (colly).

22. That due to pending correction of EDC/SIDC charges, outstanding against EDC/SIDC is reflected as a result the renewal of the license for Phase II is held up, which has further resulted in non- grant of occupation certificate of villa/floor falling in the Phase II, despite the construction being complete. Further, owing to the non-grant of OC the registration of the conveyance deed in favour of the home buyers like the complainant had been held up by the authorities without there being any fault at the end of the answering respondent as the development at the end of the answering respondent had been completed long back and allottees had been residing in the project. It is pertinent to mention here that, now owing to intervention of Hon'ble Court the registration of conveyance deed in respect of the project of the answering respondents has been started by the competent authority, i.e., Sub-Registrar office concerned and this again establishes the stand of the answering respondent that there was no fault at the end of the answering respondent in the matter.



23. That inter-alia it is also pertinent to mention here that in addition to the reasons mentioned above for non-issuance of completion certificate as on date and consequent non registration of conveyance deed another factor responsible for the same is that the Town and Country Planning Department has also asked about the status of electrical infrastructure from HVPN in support of the project and in pursuance to the same HVPN had further asked the 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. sub-station at the project site. Furthermore, it is also pertinent to submit here that all the electrical infrastructure works within scope of the company had been completed by it as per approved scheme. However, UHBVN has been arbitrarily asking the company to deposit bank guarantee for the development of 33 KV sub-station whereas the same is clearly and actually in the scope of HUDA as it evident from the letter mentioned above. In fact this is nothing but the departmental game of passing the buck and arbitrary act and conduct at their end in delaying the formal issuance of completion certificate to the company. Aggrieved by the situation, the company has already written to the Hon'ble Chief Minister of Haryana as well as M.D. of HUDA. Thus, from a bare perusal of the above factual position coupled with the circumstances and legal aspects of the present case, it is evident that despite everything being in order at



the end of answering respondent company, the company is suffering because of arbitrary and illegal act and conduct at the end of the various government departments as enumerated above. Consequently, a possible grievance, if any, the applicant/complainant can have would at best be against the said departments and not against the answering respondent company as the company has been acting completely as per binding terms and the governing statute. Hence, instant complaint deserves to be dismissed with exemplary costs. Copies of letters are annexed as Annexure E(colly).

24. That the complainant was handed over the possession of the simplex villa along with all amenities and facilities in the project and the same was accepted by the complainant without any protest or demur of any sort, hence the present complaint is not maintainable even otherwise and is liable to be dismissed.

25. That it is most humbly submitted that as per sub section-3 of Section-1 of the Real Estate (Regulation and Development) Act, 2016, it shall come into force on such date as the Central Government, may by notification in the Official Gazette appoint and different dates may be appointed for different provisions of the Act.

26. That vide Notification dated 26.04.2016, the Central Government appointed the date 01.05.2016 for coming into force of the provisions of RERA Act, 2016, section-2, sections-20 to 39, sections-41 to 58, Section-



71 to 78 and sections-81 to 92. The remaining sections of the Act are made applicable from 01.05.2017 vide notification dated 19.04.2017 issued by the central Government. That a perusal of the above said provisions of the Act would reveal that 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.

27. That the complaint against projects which are not registered with this Hon'ble Authority under RERA is not maintainable and as such this Hon'ble Authority has no jurisdiction to entertain and adjudicate the present complaint which is liable to be dismissed on this score alone.

28. That order passed in the case of **Bikramjit Singh and Others v. State of Punjab 2017** passed by RERA, Punjab and the order dated 06.12.2017 passed by the Hon'ble Bombay High Court in the case of **Neelkamal Realtors Suburban Pvt Ltd. and others Vs. Union of India and Others**. The Hon'ble Tribunal (Punjab) was pleased to observe vide order dated 24.07.2019 passed in Appeal No. 49 of 2018 titled as **M/s Silver City Construction Ltd. Vs. State of Punjab and Others** that the decision of the Authority in Bikramjit Singh's case is not a good law. However, an Appeal, bearing Appeal No. RERA-APPL-22- 2019-Silver City (Main) Residents Welfare Association Regd. Zirakpur Vs. State of Punjab and Others, filed against the order dated 24.07.2019 was pending



adjudication before the Hon'ble Punjab and Haryana High Court which means that the same has not attained finality and the order dated 06.12.2017 passed by the Hon'ble Bombay High Court is still in force and operative. In view of the above-stated position the Ld. Authority has no jurisdiction to entertain and try the present complaint.

29. That the above said issue of un-registered project and possession involved in the present complaint is pending adjudication before the Hon'ble Punjab and Haryana High Court in Appeals No. 32 of 2020 to 40 of 2020 and the same stand disposed of on 27.10.2022.

30. That as per clause M in the Allotment Certificate and Agreement dated 16.02.2016, under the head "JURISDICTION & LAWS OF INDIA" forming a binding contract between the parties vide which the parties by agreement have conferred jurisdiction upon Delhi Courts and as per settled law such a clause in the agreement between the parties is legally sound and binding on the parties. Hence, this Hon'ble Authority does not have the requisite jurisdiction to entertain the present complaint and the same deserves to be dismissed for this reason itself.

31. That present case is barred by limitation. It is relevant to mention here that it is settled principle of law that a stale claim should be thrown out at the threshold and the question of limitation should be considered by any Hon'ble Court or authority, irrespective of the fact whether the same has been raised by the other side or not.



32. That the complainant is a subsequent purchaser and as per record of the answering respondent, the complainant purchased the said property from open market from the original allottee with vide open eyes and with complete knowledge about everything, consequently, the instant complaint deserves to be dismissed for this reason alone.
33. That the complainant accepted all the terms and took possession of the simplex villa and is happily residing therein and is also reaping the benefits of appreciation in the price of the property and now after passing of more than three years from the date of possession and more than six years from the date of signing of the original agreement, as an arm twisting tactics in order to gain undue advantage, has filed the present malafide, time-barred and frivolous complaint. The possession of the villa was handed over without any delay to the complainant vide possession letter dated 11.10.2018 and a copy of the same has already been annexed.
34. It is further submitted that it is nobody's case that development is incomplete or that the facilities/amenities/services are not there rather everything is complete and the occupation certificate is held up because of the reasons attributable to the department and not to the answering respondent in any manner, consequently, the complaint deserves to be dismissed for this reason itself.
35. That alleged reproduction of Haryana Building Code 2017, the same need no reply being matter of record. That the applicability of the same to



the present set of facts is denied and it is most humbly submitted that the interpretation sought to be given to the same by the complainant is incorrect as there is no dispute about the fact that the building is complete and even partial completion certificate has been issued for both the phases of the project of the answering respondent and it is clear that everything is in order because complainant and other allottees have been residing in the properties allotted to them since the date they were offered possession without any problem of any sort.

36. It is denied that the possession given by the respondent without obtaining the occupation certificate cannot be termed as an exclusive possession or that till date title has not been conveyed. With respect to the alleged clauses of the Allotment Certificate and Agreement, that the clauses of the agreement have to be read together and the agreement has to be read as a whole and not any single clause can be read in isolation.

37. That the answering respondent had very promptly replied to the mail addressed on behalf of the complainant on the next day itself thereby clarifying the position regarding the transfer charges of subject villa and in the said reply it has been clearly mentioned by the executive of the answering respondent that the transfer charges of Rs.500/- per sq.yd. +18% GST shall be payable.

38. That the answering respondent has acted ultra-vires and taken undue advantage of their own wrongs by charging excess transfer charges from



the complainant, rather the exact position has been duly clarified to the complainant in the reply given by the answering respondent dated 30.04.2022 through e-mail in which it was mentioned that the respondent has forwarded the application for granting the completion certificate to Town And Country Planning Department, Haryana (TCP) but despite considerable time, TCP has not responded to the application. On further follow up by the respondent, it came to the notice that the TCP has asked the electrical infrastructure of the project by the HVPN and further HVPN has asked UHBVN for the same. It was also clarified in the mail that the chief administrator, HUDA vide memo No. CE-/EEC/ADMC/2016/2427 dated 26.02.2015 has agreed to construct 33KV Sub-Station at our project site. It is also mentioned that the electrical work with the scope of the company has been completed as per approved scheme. Therefore, UHBVN has arbitrarily asked the respondent to deposit bank guarantee for the development of 33KV sub-station which is actually in scope of HUDA because of the reason mentioned above the completion certificate of the project is pending and for the same reason registration of the conveyance deed is not done.

39. Further, it is also mentioned therein that the transfer charges for the case where the registration has been executed admin charges of Rs.59,000/- is payable to get the post possession issued. Whereas in the cases registry has not been executed transfer charges of Rs.500/- per sq. yd. would be



payable. Furthermore, it is relevant to mention here that despite having been apprised of the complete position the complainant has chosen not to implead the said departments thereby clearly establishing the malafide attempt of the complainant at undue enrichment at the cost of answering respondent by misleading this Hon'ble Authority.

E. FINDINGS ON THE OBJECTIONS RAISED BY THE RESPONDENT.

(i) Objection regarding jurisdiction of the Authority to adjudicate:

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.

- (ii) The objection of the respondent that the project 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 to 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."*

- (iii) 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:-

“41. The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding effect over the retrospective applicability of the Act, even on facts of this case.”

“45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament



indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest."

"53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

"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."

F. OBSERVATIONS AND DECISION OF THE AUTHORITY

40. 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 10.10.2022 and the same is barred by limitation as possession was offered on 11.10.2018. 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. It is admitted fact that complainant had derived her rights from the original allottee who had booked villa no.C-1/3, Sector-6, Eldeco Estate One, Panipat, Haryana and paid ₹3,15,032.75/- as booking amount. That original allottee had paid an amount of ₹72,62,117/-



towards the basic sale consideration of ₹60,80,256/- and possession was also handed to original allottee on 11.10.2018, annexed as Annexure C at page no.46. That as per allotment cum agreement dated 16.02.2016, respondent has to offer possession only after obtaining the occupation certificate and execution of conveyance deed in favour of original allottee. However, possession was offered without obtaining the occupation certificate from the competent Authority and without executing the conveyance deed. Further, said villa was endorsed in favour of complainant via deed of assignment cum novation. The grievance of the complainant is execution of the conveyance deed in favour of complainant and regarding refund of an amount of ₹96,760/- which was illegally extorted by the respondent in name of transfer charges. Regarding the execution of conveyance deed in favour of complainant, Authority vide its order dated 31.08.2023, directed the respondent to execute the conveyance deed in favour of complainant. Relevant para of order is reproduced for reference:

“After hearing both the parties, Authority observes that it is the obligation of respondent to execute the conveyance deed after giving possession to the complainant as complainant has fulfilled all her obligations including depositing the required amount. Therefore, Authority directs the respondent to first execute conveyance deed in favour of



complainant. The matter regarding to refund of excess amount of ₹96,760/- from the complainant will be decided by the Authority subsequently”

In compliance of said order, complainant during the course of hearing informed that conveyance deed has been executed on 27.10.2023.

3. Now, the only issue which needs to be decided is regarding refund of excessive amount of ₹96,760/- to the complainant. In this regard, Authority observes that as per clause D(1)(a) possession of the said villa will be given after execution of sale/conveyance deed, subject to force majeure conditions, (ii) completion of basic infrastructure work , and (iii) payment of all the amounts due and payable by the allottee upto the date of such possession including maintenance charges, IFMS & stamp duty and other charges to the company; meaning thereby, respondent was under an obligation to handover possession after execution of conveyance deed, however, respondent has handed over possession to the original allottee on 11.10.2018 without execution of conveyance deed and without receiving the occupation certificate from the concerned authority/department. The reasoning given by respondent for non - execution of conveyance deed is due to the issues relating to the correction of EDC, SIDC charges pending before the competent



authorities. In this regard, on perusal of email dated 30.04.2022, respondent itself admitted that application for grant of completion certificate is pending before the Town & Country Planning Department, Haryana (TCP) and for the same reason registration of the conveyance deed is delayed and in the meantime respondent handed over possession to the allottee. Further, respondent had also admitted in mail itself that for the cases where the registration has been executed, transfer charges of Rs.59,000/- are payable to get the post possession issued. In case registry has not been executed transfer charges of Rs.500/- per sq. yd. would be payable. On perusal of customer ledger, respondent has taken an excess amount of ₹1,55,760/- in place of ₹59,000/- which is not valid as it is not the case that conveyance deed is not executed due to default of the complainant, it is the case of default of respondent itself. Therefore, respondent cannot be allowed to take advantage of its own wrong. Also, as per legal maxim "*commodum ex injuria sua nemo habere debet*" (no party can take undue advantage of his own wrong). Meaning thereby, a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. This maxim, which is based on elementary principles, is fully recognized in courts of law and of equity.



Therefore, Authority deems it fit to allow refund of the excess amount of ₹96,760/- to the complainant.

4. Further, complainant is 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.

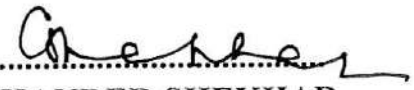
G. DIRECTIONS OF THE AUTHORITY

41. 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 refund the amount of ₹96,760/- to the complainant.
- 2) 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.

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


.....
CHANDER SHEKHAR
[MEMBER]


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


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET SINGH SACHDEV
[CHAIRMAN]