



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1098 of 2021
Date of filing:	30.09.2021
First date of hearing:	16.11.2021
Date of decision:	22.10.2024

### COMPLAINT NO. 1098 of 2021

**Alka Bharti and Anr.**

H.no. 312, Block B, Omaxe City

Sector-19, Sonipat, Haryana

.....COMPLAINANT

Versus

**Eldeco Infrastructure and Properties Ltd.**

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

Jasola District Centre, New Delhi-110025

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh**  
**Chander shekhar**

**Member**  
**Member**

**Present:** - None for complainant.

None for respondent.

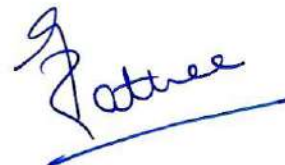
**ORDER (DR. GEETA RATHEE SINGH- MEMBER)**

1. Present complaint has been filed by complainant on 30.09.2021 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.

**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
1.	Name of the project	Eldeco county, Sector-19, Sonipat.
2.	Name of the promoter	Eldeco Infrastructure and Properties Limited
3.	Unit No.	4005, First Floor
4.	Location of Project	Sector-19, Sonipat.
5.	RERA registered/not registered	Unregistered
6.	Unit area	1716 sq. yard



7.	Date of builder buyer agreement	26.06.2017
8.	Due date of offer of possession	29.12.2019
9.	Possession clause in BBA	<i>The Allottee/s understands and agrees that the construction of the Said Unit is likely to be completed within a period of 24 months of commencement of construction of the particular block in which the Said Unit is located with a grace period of 6 (six) months subject to the receipt of requisite building/revised building plans/other approvals &amp; permissions from the concerned authorities: Force Majeure Conditions Detinned hereinafter: restraints or restrictions form any courts/authorities: non-availability of building materials: disputes with contractors/work force etc. and circumstances beyond the control of the Company &amp; subject to timely payments by the Allottee/s, in terms hereof.</i>
10.	Basic sale consideration	₹45,15,805/-
11.	Amount paid by complainant	₹52,74,605.62/-
12.	Offer of possession	

**B. FACTS OF THE COMPLAINANT**

3. Case of the complainant is that initially original allottee booked a unit in the project of the respondent after paying an amount of Rs.

*Rathee*

2,00,000/-. Original allottee was allotted unit no. 4005, 1<sup>st</sup> floor, phase 1 having super area of 1716 sq. yd. in the respondent's project "Eldeco County", Sector-19, Sonipat vide allotment certificate and agreement dated 26.06.2017.

4. As per clause C(1) of the agreement dated 26.06.2017, construction of the unit of the complainant was likely to be completed within a period of 24 months of commencement of construction of a particular block in which the said unit is located along with grace period of 6 months. As per the averment of the complainant, first payment was made by the complainant on 29.06.2017 at the time of excavation; therefore it can be construed that deemed date of possession of the complainant's unit is 24+6 months from 29.6.2017 which works out to be 29.12.2019.
5. Respondent sent a letter to the original allottees dated 09.10.2017 wherein it was written that respondent is offering club membership charges, 1 year maintenance, electricity connection/prepaid meter system, power backup and first transfer fee as complimentary against the unit. Respondent also sent a letter dated 12.10.2017 to the original allottee stating that as a goodwill gesture respondent wish to offer a discount of Rs. 25,000/- towards the unit and same would be taken into consideration at the time of offer of possession.





6. Original allottee made endorsement of transfer of the unit in question in favour of the complainants vide irrevocable letter of undertaking along with affidavit dated 01.02.2021. The same has been placed on record by the complainants. Respondent refused the substitution of names of the complainants in place of original allottees and demanded payment of entire dues outstanding against the unit from the original allottees vide letter dated 16.06.2021. In said letter respondent demanded an amount of Rs. 11,55,859 and further Rs. 2,81,000/- for stamp duty, advance monthly maintenance 24 post-dated cheque's of Rs. 2835/- each, registration and Incidental Charges Rs. 50,370/- and for subscription amount towards membership of RWA undated cheque of Rs. 100/-. Said amount was paid by the complainants to the original allottee who in turn paid the same to the respondent. Further an amount of Rs. 29,500/- was demanded by the respondent on account of administration charges (transfer charges) and the same were duly paid on 25.08.2021. It is pertinent to mention that vide letter dated 09.10.2017 respondent had assured that first transfer of the unit will be free (annexure C-5) but respondent had charged an amount of Rs. 29,500/- for transferring the unit in favour of the complainants.
7. Complainants have paid an amount of Rs.52,74,605.62/- to the respondent against the basic sales price of Rs. 45,15,805/- till date.



8. Complainants have alleged that the final demand notice dated 19.05.2021 annexed at page 81 of the complaint paper book is arbitrary as complainants were charged under following heads:

- (i) Miscellaneous charges- An amount of Rs. 25,460/- was charged for interest on delayed payment of basic price. Complainants have never defaulted in making payment of due instalments and same is charged without any reasonable cause or justification.
- (ii) Club Membership Charges- Rs. 59000/- were charges including GST overlooking letter dated 09.10.2017 written to the original allottee.
- (iii) Maintenance charges- 12 months advance maintenance charges @1.40 per sq. ft. overlooking letter dated 09.10.2021 written to the original allottee.
- (iv) Reimbursement- Cost of service cable Rs. 15000/- Power backup intallation 18000/-. These costs were also offered complimentary vide letter dated 09.10.2017.
- (v) Respondent refused to give discount of Rs. 25000/- a committed vide letter dated 12.10.2017.
- (vi) Respondent has also failed to offer the amount of delay interest despite the fact that respondent has failed to deliver the possession of the unit in due time and delay of one and half year has occurred.

Complainants have approached the respondent with respect to issues of delay in offer of possession and copy of occupation certificate vide e-mail dated 04.06.2021 but respondent is not serious in taking into consideration concerns raised by the complainants.

**C. RELIEF SOUGHT**

9. The complainant in this complaint has sought the following reliefs against the respondent:

- (i) To give necessary directions to the respondent to hand over the possession of the allotted unit along with delay interest till date along with prescribed rate of interest as per the provisions of Sec. 18 and Sec. 19(4) of the RE(R&D)Act.
- (ii) To set aside or waive off the arbitrary charges imposed by the respondent in final demand notice sent by mail date 19.05.2021 and further mentioned in letter dated 16.06.2021.
- (iii) To impose penalty upon the respondent as per the provisions of Section 60 of RE(R&D)Act for willful default committed by them.
- (iv) To impose penalty upon the respondent as per the provisions of Section 61 of RE (R & D) Act for contravention of Sec. 12,13 Sec. 14 and Sec. 16 of RE(R&D) Act.
- (v) To direct the respondent to provide detailed account statement against the amount collected from the complainant in lieu of



interest, penalty for delayed payment under Rule 21 (3) of HRERA Rules, 2017.

- (vi) To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RE(R&D)Act, 2016 to be read with HRERA Rules, 2017.
- (vii) To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.
- (viii) To issue direction to pay the cost of litigation.
- (ix) Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

**REPLY SUBMITTED ON BEHALF OF RESPONDENT**

10. 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 along.





11. That the complainants have got this unit transferred from the original allottee Ms. Susheela in the month of July, 2021, yet they have malafidely tried to plead and raise issues which have already been settled by the original allottee and in view of the said clear, categorical and rather admitted factual position, the present Complainants have no locus standi to file the present complaint as they cannot claim anything more or better than the original allottee i.e., Ms. Susheela. It is worthwhile to mention here that the original allottee had been issued the final demand notice dated 18.05.2021 and since she had certain apprehensions qua the same and she discussed the same with the answering respondent, consequently, the issues were settled between her and the answering respondent and an amended final demand notice dated 16.06.2021 was consequently issued to her wherein relaxations in payment were given to her in view of the things settled between the parties and the said amounts were paid by her to the answering respondent and subsequently on the application of original allottee coupled with completion of formalities by the parties, the unit was transferred in favour of the present complainants. As per own averments of the complainants the demands raised in final demand notice dated 16.06.2021 were paid by the allottee namely Ms. Susheela by taking the said amount from them meaning thereby that the complainants were well aware that



everything qua the unit stands settled and the present complaint is nothing but an attempt at undue enrichment at the cost of answering respondent.

12. That the complainants have purchased the unit with wide open eyes with complete knowledge of everything in respect of the colony including but not limited to the amounts to be paid and stage of construction/possession etc., in 2021 and they have become the new allottees of the property in question as per records of the answering Respondent only in the month of August 2021 i.e., 28.08.2021. possession complete in all respects with all amenities and facilities has already been given to the allottees.

**E. WRITTEN SUBMISSIONS FILED BY THE RESPONDENT**

13. As per office record, respondent has filed written submissions on 28.04.2023 wherein respondent has reiterated the stand taken in his reply. Further, respondent drew the attention of the Authority towards order dated 30.06.2022. Said order is being reproduced below:

*After hearing both parties and perusal of records of the case, Authority is of the view that FDN letter dated 19.05.2021 was issued to original allottee and not to present complainants. Original allottee has already made the payment to the respondent pursuant to terms of settlement and amended FDN dated 16.06.2021. Thus, original allottee had already made all payments to the respondent, thereby complainant is no more liable to*



*make any payment to the respondents as per FDN dated 19.05.2021 or 16.06.2021. Complainants have stepped into the shoes of original allottee post this letter/FDN dated 16.06.2021.*

*Further factual position reveals that possession of booked unit has already been taken by the complainants during the pendency of complaint before the Authority. Said fact has been brought to the notice today by Id. counsel for the complainant at the time of hearing. It is the duty of the complainants to inform the Court about such happening. It is a gross negligence on the part of complainants and once possession has been taken up by the complainant voluntarily, then liability of respondent ends. Now, the right of the complainants is just confined to be recognized as proper allottee and to get the conveyance deeds executed in their favour. Argument of complainant that possession was taken under pressure rather voluntarily has no merit since no documentary evidence has been placed on record to prove that possession was taken under pressure. Now, it is upon the complainants to prove their case as how possession was forceful and not taken up by them voluntarily".*

14. Respondent has submitted that an opportunity was granted to the complainants to prove their case on the effect that the possession taken by them was forceful and had not been taken by them voluntarily. Authority has also held in a series of cases that such a possession even in the absence of OC is absolutely a valid possession once the same is taken with the complete knowledge about non-existence of OC. Complainants have failed to prove that possession taken by them was forceful since last 1 year.

15. Respondent has referred to the e-mail dated 19.05.2021 wherein demands were raised from the original allottee, thereafter the





original allottee conveyed her grievances qua the final demand notice dated 19.05.2021 and an amended final demand notice was issue after negotiation between the parties. Original allottee had also made payments on 11.08.2021 and 25.08.2021. It is after the settlement of accounts the complainants became owners of the property in the records of the respondent on 28.08.2021.

16. Vide order dated 12.03.2024, respondent was directed to submit statement of accounts pertaining to the unit of the complainant, reflecting all amounts/payments and date of such payments. Respondent has submitted said statement of accounts on 04.06.2024 which shows that complainants have paid an amount of Rs. 52,74,605.62/-. Said statement of accounts is duly taken on record.

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

17. Today , ld counsel for complainant reiterated the facts of the case as discussed in para 2 to 8 . Ld. counsel for the respondent has also reiterated his reply and written arguments. He also submitted that complainants are not entitled to delayed possession charges as they have already taken possession.





**J. ISSUE FOR ADJUDICATION**

Whether complainant is entitled for delay possession charges as per Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017?

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

The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments made by both parties, Authority observes as under:

18. With regard to plea raised by 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 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."*

19. Factual position reveals that original allottee Mrs. Susheela booked a unit in the project of the respondent and paid an amount of Rs. 2,00,000/-. Respondent allotted her unit no. 4005, 1<sup>st</sup> floor, phase 1, Eldeco County, Sector-19, Sonipat having super area of 1716 sq. yd. and both parties executed an allotment certificate and agreement dated 26.06.2017. It is alleged by complainants that original allottee had transferred rights of the unit in favour of the complainants and for proving the same the complainants have placed on record a letter



of undertaking dated 01.02.2021 sent by them to the respondent whereby they had informed the respondent that they have got a letter of Authority from the original allottee Mrs. Sushila and therefore the unit be transferred to them. Complainant has also placed reliance upon the affidavit dated 01.02.2021 wherein they have stated that they have been nominated for transfer of unit by the original allottee. Per contra, respondent in his reply has submitted that complainants have become allottees of the property in question as per its records in the month of August 2021 i.e, 28.08.2021 but respondent has also not annexed any document proving the same. Both the parties have failed to provide any document proving the exact date of endorsement of the unit in favour of the complainant. In order to ascertain the fact that when did complainant stepped into shoes of the original allottee, Authority has referred to receipts at page 73 and 74 of complaint dated 11.08.2021 and 25.08.2021 which shows that the said receipts are issued in favour of the original allottee Mrs. Sushila meaning thereby that up till 25.08.2021 original allottee was the allottee in the records of the respondent. Therefore, Authority observes that complainant become the allottee in the records of the respondent only after 25.08.2021. Statement of account submitted by the respondent shows that post 25.08.2021 one payment was made by the complainants on 21.12.2021 however receipt of such

A handwritten signature in blue ink, appearing to read 'Ratna', is written over a horizontal line.



payment are not on record meaning thereby that this payment may have been made by the complainant. Admittedly respondent has also accepted complainant as its allottee on 28.08.2021 therefore complainant became allottee on 28.08.2021.

20. The main grouse of the complainant is that the final demand notice dated 16.06.2021 was illegal and the demands raised vide such notice be quashed and illegal demands be waived off. Respondent stand is that complainants have become the owners in their records only on 28.08.2021 and it is the original allottee who has paid demands raised by the respondent vide letter dated 16.06.2021 and not the complainants. Complainants themselves have stated that it is the original allottee who has paid demand raised by the respondent vide letter dated 16.06.2021. Complainants have also not disputed the fact that they have become the owners in respondent's records only on 28.08.2021 by way of submissions or documentary record. Authority observes that complainants have stepped into the shoes of the original allottee after the settlement of dispute with respect to demand letter dated 16.06.2021 and the said transaction was already complete between the original allottee and the respondent. Complainants are estopped from opening a completed transaction between the respondent and the original allottee. Further Authority in its order dated 30.06.2022 has already observed that original





allottee has already made the payment demanded against the unit. Therefore, if there is any dispute regarding the same it could have been raised by original allottee only. Since complainant had not stepped into the shoes of allottee on the date of payment as per final demand notice dated 16.06.2021, they cannot raise this objection at this point.

21.The next issue which needs to be adjudicated in the present case is with respect to delay interest. In *complaint no. 3775 of 2017 titled as Rajneesh Bhardwaj vs CHD Developers Ltd.* it is held by Hon'ble NCDRC that it is irrespective of the status of the allottee whether it is original or subsequent, an amount has been paid towards the consideration for a unit and the endorsement by the developer on the transfer documents clearly implies his acceptance of the complainant as an allottee. Authority is of the view that the term subsequent allottee has been used synonymously with the term allottee in the Act. The subsequent allottee at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the builder buyer's agreement entered into by the original allottee. Moreover, the amount if any paid by the subsequent or original allottee is adjusted against the unit in question and not against any individual. Furthermore, the name of the subsequent allottee has been endorsed

A handwritten signature in blue ink, appearing to read 'G. Rattue', is written over a horizontal line.

on the same builder buyer's agreement which was executed between the original allottee and the promoter. Therefore, the rights and obligation of the subsequent allottee and the promoter will also be governed by the said builder buyer's agreement. The subsequent allottee at the time of buying a unit/plot takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the builder buyer's agreement entered into by the original allottee. In the present case, although at the time of endorsement of his name in the builder buyer's agreement, the due date of possession had already lapsed but the subsequent allottee as well as the promoter had the knowledge of the statutory right of delay possession charges being accrued in his favour after coming into force of the Act. Thus, the concept of quasi-retroactivity will make the provisions of the Act and the rules applicable to the subsequent allottee.

22.As per clause C(1) of the agreement, possession of said villa was to be given within a period of 24 months of commencement of construction of a particular block in which the said unit is located along with grace period of 6 months. As per the statement of accounts first payment was made by the complainant on 23.06.2017 at the time of excavation, therefore it can be construed that deemed date of possession of the complainant's unit is 24+6 months from

A handwritten signature in blue ink, appearing to read 'Allottee', with a horizontal line underneath it.

23.06.2017 which works out to be 23.12.2019. In the present case complainant has taken the possession of the unit however the date on which such possession has been taken over has not been specified by any of the parties and no document with respect to the same has been annexed. Ld. counsel for complainant in the hearing dated 30.06.2022 himself has submitted before the Authority that possession has already been taken by the complainants but the same was forceful and under pressure. Considering the statement given by ld. counsel the Authority afforded an opportunity to the complainants to prove their case and to prove their averment of accepting forceful possession however no document has been placed on record by the complainant to prove the factum of accepting possession of unit under force or duress. Therefore, cut-off date of possession in the present case would be taken as date on which respondent recognizes the complainants as its allottees i.e. 28.08.2021 and delay interest will be calculated from the deemed date of possession till 28.08.2021.

23. The definition of term 'interest' is defined under Section 2(z) 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;*

24. 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 (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".*

25. 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., 24.10.2023 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.





26. Authority has got calculated the interest on total paid amount from the deemed date of possession i.e., 23.12.2019 till 28.08.2021 at the rate of 11.10% as per detail given in the tables below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 28.08.2021
1.	34,71,176/-	28.08.2021	6,49,205/-
2.	11,55,859/-	11.08.2021	6,327/-
3.	5,92,700/-	11.12.2020	47,044/-
4.	29,500/-	25.08.2021	36
5.	25370/-		No interest is awarded as payment is made after cut-off date.
	Total- 52,74,605/-		₹7,02,612/-

27. It is to mention that both the parties admit paid amount of ₹52,74,605.62/- which is reflected in statement of accounts submitted by the respondent.

28. Accordingly, the respondent is liable to pay the upfront delay interest of ₹7,02,612/- to the complainant towards delay already caused in handing over the possession.

29. On perusal of complaint file it is observed that complainant has neither argued nor pressed upon relief no. 3 to 8. So no directions are being issued for said reliefs.




**L. DIRECTIONS OF THE AUTHORITY**

30.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 ₹7,02,612/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order.

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

  
.....  
CHANDER SHEKHAR  
[MEMBER]

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