



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2297 of 2019</b>
<b>Date of filing:</b>	<b>12.09.2019</b>
<b>First date of hearing:</b>	<b>16.10.2019</b>
<b>Date of decision:</b>	<b>11.10.2023</b>

### COMPLAINT NO. 2297 of 2019

**Suman Gupta**

H.no. A-137, Yamuna Enclave, Panipat

.....COMPLAINANT

Versus

**1. Eldeco Infrastructure and Properties Ltd.**

201-212, 2<sup>nd</sup> floor, Splendor Forum,  
Jasola District Centre, New Delhi-110025

**2. Directorate, Town & Country Planning Department, Haryana**

SCO-71-75, Sector 17C, Chandigarh

**3. District Town Planner, Panipat**

HUDA Complex, near Toll Plaza, Sector-18, Panipat

.....RESPONDENTS

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

**Member**  
**Member**

**Present:** - Mr.Sachin Miglani, Id counsel for complainant through VC.  
 Mr. Anuj Kohli, Id counsel for respondent no.1 through VC.  
 None appeared on behalf of respondent no. 2 and 3.

**ORDER (NADIM AKHTAR- MEMBER)**

1. Present complaint has been filed by complainant on 12.09.2019 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 Estate One- Phase III
2.	Name of the promoter	Eldeco Infrastructure and Properties Limited



3.	Villa No.	G-I/4, Sector-VI
4.	Location of Project	Sector-40 and 19A, Panipat
5.	RERA registered/not registered	Registered
6.	Villa area	Plot area- 221 sq.yards Built-up area-980 sq.ft
7.	Date of builder buyer agreement	20.01.2015
8.	Due date of offer of possession	20.05.2018
9.	Possession clause in BBA	<i>Clause C(1) The construction of the Said Villa is likely to be completed within a period of 34 months of commencement of construction with a grace period of 6 (six) months subject to requisite building /revised building plans/other approvals &amp; permissions from the concerned authorities; Force Majeure Conditions (defined hereinafter); restraints or restrictions from the 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 Allote/s, in terms hereof." Further, Clause D(1)(a) stipulates that "The possession of Said Villa will be given after execution Sale/Conveyance Deed, subject to Force Majeure</i>



		<i>Conditions, (ii) completion of Basic Infrastructure Work , and (iii) payment of all the amount due and payable by the Allottee/s upto the date of such possession including maintenance charges, IFMS(defined hereinafter) &amp; stamp duty and other charges etc, to the Company."</i>
10.	Basic sale consideration	₹48,94,400/-
11.	Amount paid by complainant	₹49,32,910/-
12.	Offer of possession	Not valid

### **B. FACTS OF THE COMPLAINANT**

3. Case of the complainant is that initially sister of the complainant's husband namely; Santosh Rani wife of Sh. Rakesh Kumar had purchased a villa bearing no. G1/4-6, Zoning No.F122 in Eldeco Estate One, Panipat vide agreement dated 15.05.2014 wherein, the total sale consideration was fixed as Rs.48,89,984/-.
4. That Santosh Rani paid an amount of Rs.2,50,000/- in cash as booking amount at the time of execution of aforesaid agreement. It was agreed that respondent will hand over the physical possession to the allottee within 34 months, i.e., by 15.03.2017 after executing and registering sale deed. A copy of the receipt dated 15.05.2014 is appended as Annexure P-1.



5. Thereafter, family settlement took place between the husband of complainant namely; Sh. Kailash Chand and his sister Smt. Santosh Rani (original allottee) regarding the above said villa wherein the said villa was transferred to the present complainant Mrs Suman Gupta on 20.01.2015. Subsequent thereupon an agreement was entered between complainant and respondent no.1 on 20.01.2015. Copy of the agreement dated 20.01.2015 is attached as Annexure P-2.
6. At the time of transfer of the above said villa, complainant paid an amount of Rs.65,165/- to the respondent no.1, Eldeco as interest on delayed payment @ 24% p.a. vide cheque dated 14.09.2015. A copy of calculation sheet issued by Eldeco for recovery of interest amount on delayed payment is appended as Annexure P-3.
7. An agreement was executed on 20.06.2016 between the complainant; her son Sobit Singla; and her husband Kailash Chand and respondent no.1, Eldeco, and HDFC Ltd. for securing loan of an amount of ₹20 lacs from HDFC Bank Ltd. A cheque of ₹8,79,880/- was issued in favour of Eldeco by HDFC Bank Ltd. on 17.06.2016. Copy of cheque is attached as page no.48 and copy of the agreement dated 20.06.2016 is appended as Annexure P-4.
8. That complainant had deposited almost the entire amount of Rs.49,32,910/- including EDC charges of the villa on various dates



which is admitted fact by respondent company in its Final Demand Notice (FDN) dated 22.01.2018. A copy of said FDN is attached as Annexure P-6.

9. That son of complainant moved an RTI application dated nil to DTP, Panipat, i.e., respondent no.3, which was received by DTP on 17.01.2019, wherein he asked that above said villa falls under which category? In its reply dated 12.02.2019, DTP, Panipat informed that the above said villa of complainant falls under 'No Profit No Loss' (NPNL) category. A copy of the reply dated 12.02.2019 is appended as Annexure P-5.
10. That son of complainant again moved an application under RTI Act, 2005 to DTP, Panipat wherein he demanded a copy of the revised layout plans of Eldeco Estate One Panipat pertaining to License No.36 of 2008 & 407-412 of 2008 of M/s Eldeco Infrastructure & Properties Ltd. at Sector 19A & 40, Panipat which were not provided and same were obtained by the complainant from First Appellate Authority, i.e., O/o Directorate, Town & Country Planning, Chandigarh. The said layout plans clearly prove that total 278 plots/flats/ villas fall under NPNL category, which are sold by respondent company and its officials in general category.
11. That respondent no.1, Eldeco sent a wrong and illegal Final Demand Notice (FDN) to the complainant wherein they demanded



an amount of Rs. 8,28,641/-. Copy of the Final Demand Notice is attached as Annexure P-6. That respondent company cannot impose alleged illegal component charges upon the allottee in repeated manner as the complainant has already paid Rs.3,00,000/- to Eldeco as EDC & IDC.

12. A copy of Memo No. 1550 dated 30.07.2019, sent by DTP, Chairman, Building Approval Committee Licensed Colonies Controlled Areas, Panipat, which was addressed to respondent no.1 Eldeco Infrastructure Properties Ltd is annexed as Annexure P-10. In the said letter the respondent no.3 gave approval of building plans of plot nos.2, 4, 6, 8, 10, 12 (6Nos.) Block- F, Eldeco Infrastructure Properties Ltd. Sector-40 & 19A, Panipat without considering the original categories of said plots which actually falls under NPNL category. The said approval has been given by Govt. Department by ignoring the bye-laws of the TCP, Haryana, from which it becomes very much clear that the Govt. Department is also fully involved in the said illegal act of selling the plots of reserved category on exorbitant prices equivalent to general category. So, it is very much necessary to implead the Govt. Officials as necessary parties in the present complaint.

13. A copy of memo No.1638 dated 12.08.2019 sent by DTP, Panipat to son of complainant in reply of RTI application is annexed as P-11.



In the said letter, the respondent no.3 himself has admitted this fact that a total 63 plots of Block F, Eldeco Panipat falls under NPNL category. Moreover, in the said reply, the respondent no.3 himself admitted that approval of building plan of said plots have been sanctioned by department, same are given in wrong and illegal manner as the plots are related to NPNL category but Eldeco sold the same under general category on exorbitant prices.

14.A request letter was moved by complainant and other allottees (out of said 63 NPNL plots) on 04.03.2019, annexed as Annexure-12, to Managing Director, Eldeco Infrastructure & Properties Ltd., Delhi through proper channel, Branch office at Panipat. In the said letter, all the persons requested to the Eldeco regarding execution and registration of sale deeds pertaining to their plots/ villas/ flats etc. respectively but the respondent company failed to adhere the genuine request of complainant and other allottees.

**C. RELIEF SOUGHT**

15. The complainant in this complaint (amended the relief clauses vide application dated 20.07.2022) has sought the following reliefs against the respondent no.1:

- (i) To handover the physical possession of the villa along with delayed possession charges@24%.





- (ii) Direct the respondent no.1 to refund the excess money received from the complainant as said villa built upon NPNL category.
- (iii) Direct the respondent no.1 to withdraw the final demand notice.
- (iv) Any other order which Hon'ble Authority deems fit in interest of justice.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.1**

16. That respondent no.1 is developing residential colony namely, "Eldeco Estate One", admeasuring 150.282 acres, situated at Sector-40 & 19A, Panipat, Haryana. Said project is being developed as per the license no 407-412 of 2006 dated 18.01.2006, license no 36 of 2008 dated 28.02.2008 and license no 47 of 2017 dated 18.07.2017.

17. That on terms and condition mentioned in the Allotment Certificate & Agreement dated 26.05.2014, respondent no.1 allotted a Villa bearing No. G-1/4, Sector-6, consisting of plot area 221 Sq. yds and built-up area of 980 sq fts., to Mrs. Santosh Rani wife of Mr. Nand Kishore ("Original Allottee"). It is imperative to mention that on page15/16 of agreement No.1 as to nature of plot being NPNL is specifically mentioned. A copy of the agreement No.1 is attached as Annexure 'A'. Relevant part related to NPNL plot is narrated below:

*"The Allottee understands and agrees that the plot on which the Said Villa is to be developed by the Company is of "No Profit No Loss" category and the basic price of the Said Villa*



*is calculated taking into consideration the price of the land @ Rs. 7075/- per sq yards and the balance price towards the construction"*

18. That original allottee thereafter approached the respondent no.1 and requested to assign/transfer her all right/interest in the villa in favour of the complainant. Respondent no.1 accepted the request of the original allottee and accordingly after submission of necessary documents by the complainant and respondent no.1, a fresh allotment certificate & agreement dated 20.01.2015 (herein "agreement no.2 ") was entered between the complainant and respondent no. 1 in respect of the villa. It is imperative to mention that on page15/16 of agreement no.2 as to nature of plot being NPNL was specifically mentioned. Copy of the agreement no.2 is attached as Annexure 'B'. Relevant part related to NPNL plot is narrated below:

*"The Allottee understands and agrees that the plot on which the Said Villa is to be developed by the Company is of "No Profit No Loss" category and the basic price of the Said Villa is calculated taking into consideration the price of the land @ Rs. 7075/- per sq yards and the balance price towards the construction"*

19. That the respondent no.1 thereafter applied for sanction of the building plan of the said villa, having zoning No.F-122. However, same was returned by District Town Planner, Planning, Panipat vide



letter dated 13.01.2015 bearing Memo no 86 on the pretext that the building plan of said villa falls in Natural Conservative Zone (NCZ) area as per the Revised Regional Plan 2021 AD of National Capital Region Planning Board, New Delhi. A copy of the above said letter dated 13.01.2015 is attached as Annexure 'C'.

20. That the respondent no.1 thereafter approached respondent no.2, respondent no.3 and National Capital Region Planning Board, New Delhi asking them to resolve the issue as it is a matter between two government bodies and it has duly completed the necessary formalities for obtaining the license for residential colony and accordingly the license for developing a residential colony was granted by respondent no.2. Copies of few communications made to respondent no.2 and National Capital Region Planning Board, New Delhi are attached as Annexure D (Colly).

21. That the issue as to NCZ was finally resolved in the last quarter of 2015 and accordingly, the respondent no.3 approved the building plan of the said villa vide Memo no. 647, dated 26.11.2015. A copy of above said approval dated 26.11.2015 is attached as Annexure 'E'.

22. That respondent no 1 after completing the construction work of the said villa on 31.07.2017 applied for its occupation certificate before respondent no.3. Copy of the above said letter dated 31.07.2017 is attached as Annexure-'F'.



23. That respondent no. 1 vide its offer of possession/final demand notice dated 22.01.18, offered possession of the said villa in anticipation that occupation certificate will be soon granted by the respondent no.3 as the construction of the said villa is completed as per the approved building plan and norms. Copy of FDN is enclosed as Annexure-G.

24. That despite the construction of the said villa being completed in the year 2017 as per the approved building plan and norms, the respondent no.3 didn't grant occupation certificate on the pretext that said villa is developed on NPNL plot. It is submitted that the respondent no.1 acted bonfidelly and in general public interest. The respondent no.1 thereafter approached the respondent no.2 as well as the Principal Secretary, Town and Country Planning, Haryana ("PSTCP") on various occasion and requested them to grant occupation certificate and accordingly submitted letters in this regard. Presently, an application dated 13.08.19 before PSTCP is pending, whereby the respondent no.1 has requested to grant occupation certificate in respect of unit/s constructed on the NPNL plots on the grounds mentioned therein. A copy of the above said application dated 13.08.19 is enclosed as Annexure -H.

25. That the respondent no.1 time to time apprised the complainant the true and correct facts and situation. It is submitted that the



complainant was well aware of this very facts that the said villa is being constructed on NPNL plot and has now approached this Hon'ble Authority by filing the present complaint on vague and baseless facts. It is further submitted that the respondent no.1 since beginning kept transparency with the complainant.

26. That respondent no.1, time to time approached respondent no.2 for fixation of rates for NPNL plots but they were not finalized by respondent no.2 and in such circumstances to meet the financial obligations as well as to timely complete the development works the respondent no.1 was left with no option but to finalize the rate as per their cost. Copy of correspondence as to fixation of NPNL rate is attached herewith as Annexure -I Colly.

27. In the light of the foregoing facts, it is crystal clear that no cause of action has been arisen in favour of the complainant to file the present complaint, which is false, baseless and without any merits and deserves to be dismissed.

28. It is vehemently denied that the complainant paid any amount as cash to the respondent no.1 as alleged.

29. The respondent no.1 didn't sell the said villa stating being under general category. However, the said villa was not allotted/ sold to the complainant, instead the complainant bought it from the original allottee and in both agreement no.1 and agreement no.2, it is



specifically mentioned that plot on which said villa is developed is a NPNL plot. The complainant by repeatedly calling it an illegal act is trying to degrade the reputation of the respondent no.1.

30. The said villa is complete and owing to non-issuance of occupation certificate, the respondent no.1 is unable to hand over the same to the complainant. It is submitted that the offer of possession of the said villa was subject to the terms and conditions of the allotment and the respondent no.1 cannot be held responsible for the delays if any for the reasons beyond its control.

31. The respondent no.1 being the developer has fulfilled its role as such and accordingly constructed the said villa and completed the development works. It is submitted that more than 800 families inhabit in the said project. That respondent no.1 is already granted part completion certificate of 121.112 acres of land falling in the license no 407-412 of 2006 vide letter No 7773 dated 13.05.15 and license no 36 of 2008 vide letter no 4470 dated 02.02.18 which proves beyond doubt that the respondent no 1 has not diverted any funds or resources to another project. A copy of above said part completion certificate is attached herewith as Annexure -J Colly.

**E. REPLY ON BEHALF OF RESPONDNET NO.2**

32. As per office record, no reply has been filed by respondent no.2 nor anyone appeared during the course of hearings. Therefore, despite



giving adequate opportunities to file reply, matter is proceeded ex-parte against respondent no.2.

**F. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.3**

33. That the contents of the section relates to the financial transaction between the complainant and respondent no. 1, i.e., Eldeco Infrastructure & Properties Ltd., regarding family settlement of the complainant, imposition of interest on delayed payment by the respondent No. 1; calculation sheet issued by the Eldeco Infrastructure & Properties Ltd. to the complainant; execution of the agreement between complainant and Eldeco Infrastructure & Properties Ltd; demand of amount by the Eldeco Infrastructure & Properties Ltd. as Final Demand Notice (FDN) from the complainant, which are all bilateral issues between the complainant and respondent No. 1, i.e, Eldeco Infrastructure & Properties Ltd. and do not relates to the answering respondent. Approval of the building plans of plot No. 2, 4, 6, 8, 10, 12 are sanctioned in accordance of building bye laws.

**G. WRITTEN SUBMISSIONS ON BEHALF OF COMPLAINANT**

34. Complainant filed the present complaint due to non-handing over the physical possession and non-execution of conveyance deed with regard to the villa. As per builder buyer agreement dated 26.05.2014, executed between respondent no.1 and original allottee,



respondent no.1 was under an obligation to hand over the physical possession and execute the conveyance deed within 34 months of starting of construction with grace period of 6 months. Complainant purchased the said villa from the original allottee, however, a fresh builder buyer agreement dated 20.01.2015 was executed between her and respondent no.1. Said period including grace period of six months expired on 25.09.2017, but till date respondent no.1 has not handed over the possession, as respondent no.1 has neither obtain the occupancy certificate nor they are in a position to execute the conveyance deed in favour of complainant.

**H. WRITTEN SUBMISSIONS ON BEHALF RESPONDENT NO.1**  
**SUBMITTED ON 11.10.2023.**

35. That issue with regard to alleged overcharging and selling of villa by respondent on exorbitant rates qua NPNL plots has been decided by the Authority vide its order dated 30.09.2021 and said plea has been already dismissed.

36. Vide said order dated 30.09.2021, only question which was kept open by this Authority was with regard to demands raised by the respondent which were alleged to be illegal by the complainant. In this regard submissions of respondent are as follows:





- (i) Demands raised by the respondent in the FDN are completely valid and legal. Said demands are completely as per the binding terms of the agreement entered between the parties.
- (ii) Alleged basis to call the said demands raised by the respondent no.1 as illegal, is the same plea of NPNL plots and bare perusal of the pleadings would clearly reveal that everything has been stated only qua the NPNL plots and pricing thereof. Meaning thereby that complainant does not have any other claim for alleged claim and complaint hence deserves to be dismissed.
- (iii) No pleading by the complainant to the effect that there is delay in handing over possession of the villa. A bare perusal of the FDN dated 22.01.2018 clearly falsifies the stand of the complainant and rather establishes beyond any doubt that it is the complainant who is trying to avoid taking possession of the Villa in an attempt to gain undue advantage only with the malafide intention of avoiding her liabilities of making due payments under the agreement.
- (iv) No pleading or explanation in the entire complaint as to which element of the demand in the FDN is illegal or beyond agreement thereby establishing on record that the claim has been stated for the sake of it without any basis and it is settled principle of law that the Hon'ble Courts and Judicial Authorities should not grant



unsubstantiated reliefs as this would amount to undue enrichment and that is not the intent of law ever.

- (v) The complainant herself despite executing the undertaking etc. has failed to take possession of the Villa for her own reasons as the respondent no. 1 has already handed over the possession to several similarly situated allottees and it is nobody's case that the project is not complete or not habitable thereby clearly establishing the malafides at the end of the complainant.

37. That vide allotment agreement dated 26.05.2014, Mrs. Santosh Rani was allotted a Villa under "NPNL" category bearing No. G-1/4, Sector-6, consisting of plot area 221 Sq. yds and built-up area of 980 sq. fts. for the basic price of Rs.48,94,400/- by the respondent No 1 in the said project and accordingly in terms thereof, vide her affidavit dated 29.10.14 (herein "said request") she vide application requested the respondent to transfer/assign her rights in the said villa in favour of her nominee Mrs. Suman Gupta, i.e., complainant. Pursuant to the said request, the respondent No. 1 allotted the said villa to the complainant on terms and condition contained in Allotment Certificate & Agreement dated 20.01.15 and for the consideration and other charges payable thereunder. A copy of the said Agreement is already on record as Annexure 'A'.



38. Pursuant to allotment the complainant's son vide email dated 25.06.2016, requested the respondent no.1 instead of laying vitrified tiles as agreed on the flooring of the said villa and undertaking final coat of oil bound distemper inside the said villa (OBD Work), the complainant may be allowed to lay the flooring and OBD Work as per her choice and cost credit as to the flooring work and OBD Work to be undertaken by the respondent No.1 be granted to the complainant. Accordingly an undertaking on affidavit dated 08.12.16 was executed between the complainant and the respondent, whereby the respondent no.1, in terms thereof acceded to the request of the complainant and agreed to allow the complainant to carry out flooring work & OBD work in the said villa within 30 days from the date of handing over possession of the said Villa for carrying out flooring work & OBD Work on her own as per her choice and also agreed to give cost credit of Rs.92,000/- being the cost of laying the vitrified tiles in the said villa and undertaking final coat of OBD inside the said villa by the respondent no 1. Copy of the undertaking is already on record as annexed as page 29 of application dated 03.07.2023.

39. It is pertinent to mention that the respondent no.1 after completing the construction work of the said villa vide its mail dated 28.10.2017 offered the possession of the said villa to the complainant for



undertaking flooring work as agreed by the complainant but the complainant failed to complete the flooring & OBD work within 30 days, i.e., by 28.11.2017 from the date of handing over possession of the said villa and only completed the aforesaid work by 19.01.2018 as informed/confirmed vide her e-mail dated 19.01.2018. Copies of e-mails dated 28.10.2017 & 19.01.2018 are attached with application dated 03.07.2023.

40. Respondent No.1 immediately upon receipt of confirmation by the complainant with regard to completion of aforesaid work vide its Offer of Possession/Final Demand Notice dated 22.01.2018, (herein "FDN") called upon complainant to pay, as per terms of the said Agreement, the amounts as detailed thereunder within 30 days of the same alongwith the stamp duty and registration fee/legal charges as mentioned therein. Copy of FDN is enclosed as Annexure - D.

41. FDN shows that an amount of Rs.8,28,641/- is due and payable by the complainant (excluding stamp duty, registration fee, legal/incidental expenses and service tax) on account of cost of the said villa, miscellaneous charges, maintenance charges and reimbursement amount as were specifically detailed therein and is still outstanding on the part of the complainant thus accruing, in terms of the said agreement, fixed charges pertaining to electricity,



power back up, maintenance, holding charges and late interest thereon.

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

42. Today, ld counsel for complainant reiterated the facts of the case and stated that final demand notice dated 22.01.2018, at page 56, sent by the respondent is not valid one, also complainant did not take the possession as it was without occupation certificate. Against the total sale consideration of ₹48,94,400/-, complainant had paid an amount of ₹49,32,910/-. Further ld counsel for complainant stated that complainant now press upon only two issues, firstly, whether offer of possession sent by the respondent was valid one or not as same was without occupation certificate. Secondly, whether complainant is entitled to delay interest or not? Complainant forgive rest of the reliefs. On the other side, ld counsel for respondent stated that earlier all the pleadings of the complainant were limited to NPNL issue but the same was dismissed by the Authority vide its order dated 30.06.2022. Now the second issue whether the complainant is entitled to delay interest or not, there is no pleading in the complainant for same. Moreover in its reply respondent had attached all the documents and applications which states that where the default lies w.r.t issuance of occupation certificate, respondent



had not defaulted in its duties. Further, complainant had made undertaking in year 2016 and discount of ₹92000/- were adjusted in account in year 2017, various emails were sent to the complainant to take the possession and get the tile or other works done by herself. Complainant is raising issues only to gain delay interest whereas complainant herself is aware that there is no fault on part of respondent. Occupation certificate is mere document which was not issued by the DTCP because of his own office mistake. Moreover, in pleading no where it is mentioned that project was not complete or not habitable. Project is complete in all respect. Further, by referring to application dated 03.07.2023, respondent reiterated the pleadings mentioned in written submissions submitted on 11.10.2023.

**J. ISSUE FOR ADJUDICATION**

43. Whether offer of possession dated 22.01.2018 was a valid offer of possession.
44. Whether the complainant is entitled to possession of booked villa alongwith delay interest in terms of Section 18 of Act of 2016?

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

45. In light of the facts of the case and perusal of document placed on record, Authority observes that complainant got the villa transferred from the original allottee Smt. Santosh Rani under a family



agreement. However, subsequently an allotment certificate cum agreement was executed between the complainant and respondent no.1 regarding simplex villa no. G-I/4, Sector-VI, in Savoy-II, Eldeco Estae One, Panipat, admeasuring 221 sq.yard. on 20.01.2015 and an amount of ₹49,32,910/- has already been paid against the total sale consideration of ₹48,94,400/-; payments have been admitted by way of final demand notice dated 22.01.2018 annexed at Annexure-P-6. Complainant in her initial pleadings as well as in written submissions dated 20.07.2022, sought the relief to direct respondent no.1 to refund the excess money received from the complainant as said/booked villa falls under "No Profit No Loss" (NPNL) category whereas respondent sold it to the complainant under general category. The issue regarding the refund of the excess money received from the complainant by overcharging and selling of villa on exorbitant rates qua "No Profit No Loss" (NPNL) plots has already been decided by the Authority vide its order dated 30.09.2021. Relevant part of order is reproduced for reference:

*" 4. After hearing both the parties, Authority is of the considered view that as per last para mentioned on page 15/15 of the BBA, said villa falls under NPNL category. As far as issue of charging exorbitant amount for NPNL plot by the respondent promoter is concerned, DTCP letter dated 14.06.2021 categorically explained that respondent promoter is charging rates of NPNL plots lower*



*than the rates of the adjoining HSVP sectors. Considering this very fact, Authority is of the view that there is no merit in the arguments of the complainant. Therefore, this plea of the complainant is dismissed.”*

46. Now, the issue which remains to be adjudicated in this case is that whether the offer of possession dated 22.01.2018 was a valid offer of possession or not? Ld. counsel for complainant alleges that said offer of possession/final demand notice dated 22.01.2018 was not valid offer of possession as same was without occupation certificate and accompanied with unjustified and illegal demand of ₹8,28,641/-, therefore, complainant did not accept the said offer of possession. On the other side, counsel for respondent no.1 argued that complainant nowhere mentioned in her complaint that how the demand of ₹8,28,641/- is illegal and unjustified. Moreover, complainant did not raise any objection after receiving of final demand notice, thus, as per records of respondent no.1, complainant is liable to pay the same. In this regard Authority observes that as per final demand notice/offer of possession dated 22.01.2018, complainant had paid an amount of ₹49,32,910/- against the basic sale consideration and amount of ₹8,28,641/- is shown as payable by the complainant. Complainant nowhere in her pleadings mentioned that how the said demand of ₹8,28,641/- is unjustified nor the





respondent no.1 has provided detailed justification/grounds as how the said demand is payable by the complainant. Besides this, complainant has not placed on record any communications with regard to alleged demand after receiving the final demand notice by the respondent no.1. Both the parties have not placed any documentary evidence in support of their respective claim. These proceedings are summary in nature, complainant has to prove its case by way of document as to how the demand of ₹8,28,641/- is illegal. Therefore, in absence of specific allegations, averments and documents to prove the same, it cannot be ascertained that the amount of ₹8,28,641/- was charged illegally.

47. Moreover, as per clause C(1) read with clause D(1)(a) of the agreement dated 20.01.2015, possession of said villa was to be given within a period of 34 months of commencement of construction with period of 6 months grace period. As per documents on record, there is no specific date mentioned for commencement of construction nor specific date of first payment by the complainant. Therefore, deemed date of possession is to be calculated from the date of execution of agreement. Taking 34 months + 6 months from the date of allotment certificate cum agreement (20.01.2015) comes to 20.05.2018. Meaning thereby, respondent was under an obligation to hand over possession on



20.05.2018. The averment of the respondent no.1 that final demand notice/offer of possession on 22.01.2018 was valid and legal cannot be relied on as said offer of possession is bad in law for the reason that it was made without receiving the occupation certificate from the concerned authorities. Regarding the status of occupation certificate, it is clear from the pleadings though respondent no.1 had applied for the issuance of occupation certificate before the concerned authorities after completion of construction in the year 2017, however admittedly occupation certificate has not been received till date. In this regard the plea of the respondent no.1 that due to the default of the concerned authorities, i.e., respondent no.2 and 3, respondent no.1 did not receive the occupation certificate is not sustainable as this is a matter inter-se between the respondent no.1 and the concerned authorities, i.e., respondent no.2 and 3, complainant/ allottee is not concerned with the same, as she has invested her hard earned money in the project of the respondent no.1. Therefore, said offer of possession was not the valid offer of possession and complainant was not bound to accept it after making remaining/additional payment. Thus, respondent is directed to issue fresh offer of possession duly supported with occupation certificate in terms of RERA Act of 2016



48. Fact remains that possession has not been offered to complainant till date for the reason that but occupation certificate has not been received from the concerned Authority. In present situation, it is apparent that respondent failed to honour its contractual obligations. As per section 18 of the RERA Act,2016, if the promoter fails to complete or give possession of an apartment, plot or building in accordance with terms of agreement for sale or as the case may be, duly completed by the date specified therein, the allottee may demand the refund of amount paid and in case the allottee do not wish to withdraw from the project, then he shall be entitled to interest for every month of delay till handing over of possession. As of today, complainant-allottee wants to stay with the project and respondent is duty bound to deliver possession of villa supported with occupation certificate.

49. Thus, the Authority finds it a fit case to allow delayed possession charges from the deemed date, i.e., 20.05.2018 to the date on which a valid offer is sent to her after obtaining completion/occupation certificate 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”.*

50.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;*

51.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”.*

52. 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., 11.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

53. Authority has got calculated the interest on total paid amount from the deemed date of possession i.e., 20.05.2018 till the date of this order, i.e, 11.10.2023 at the rate of 10.75% 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 11.10.2023
1.	₹49,32,910/-	20.05.2018	₹28,63,554/-
2.	Monthly interest		₹43585/-

54. It is to mention that both the parties admit paid amount of ₹49,32,910/- which is reflected in offer of possession dated 22.01.2018. Meaning thereby, complainant had paid above said amount before the deemed date of possession, i.e., 20.05.2018.



55. Accordingly, the respondent is liable to pay the upfront delay interest of ₹28,63,554/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of ₹49,32,910/-, monthly interest of ₹43585/- shall be payable up to the date of actual handing over of the possession after obtaining completion certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to them.

56. On perusal of complaint file it is observed that no relief has been claimed by complainant against respondent no.2 &3. So no directions are being issued against respondent no. 2 and 3.

**L. DIRECTIONS OF THE AUTHORITY**

57. 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 no.1 shall make legally valid offer of possession to the complainant within 30 days after obtaining occupation certificate for the villa from the competent Authority.
- (ii) Respondent is directed to pay upfront delay interest of ₹28,63,554/- to the complainant towards delay already caused in handing over



the possession within 90 days from the date of this order. Further, on the entire amount of ₹49,32,910/- monthly interest of ₹43585/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

(iii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to her. Respondent shall not charge for anything that was not part of the buyer's agreement.

(iv) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate, i.e, 10.75% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottee.

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

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

  
.....  
**NADIM AKHTAR**  
**[MEMBER]**