



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2571 of 2022
Date of filing:	10.10.2022
First date of hearing:	06.12.2022
Date of decision:	20.12.2023

COMPLAINT NO. 2571 OF 2022

Ruby Garg

W/o Sh. Kapil Garg,

R/o House no.2613, Block F, Ansal Sushant City,

Panipat, Haryana-132103

.....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 complainant through VC.
Mr. Anuj Kohli, Id counsel for the respondent.

ORDER (NADIM AKHTAR- MEMBER)

- i. 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 DETAIL

- ii. 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, Panipat
2.	Name of the promoter	Eldeco Infrastructure and



		Properties Limited
3.	RERA registered/not registered	Registered
4.	Plot no. and area	C-III/23,Sec-IV, 250 Sq.yard
5.	Date of builder buyer agreement	05.10.2020
6.	Due date of offer of possession	01.07.2021 as per Schedule IV
7.	Possession clause in BBA	<p><i>Clause 7.2 Procedure for taking possession of plot-</i></p> <p><i>i. The promoter shall endeavour to offer possession of the Plot for Residential Usage in writing on or before the date specified in Schedule IV ("Date of offer of Possession") by issue a written offer of possession/Final Demand notice ("Offer letter"). The date of offer of possession shall be subject to the provisions of the sub - clauses herein and also subject to Force Majeure Events and the reasons beyond the control of the Promoter, provided it has obtained the approved demarcation-cum-zoning plan and other clearance required in respect of</i></p>



		<i>Project.</i>
8.	Basic sale consideration	₹31,43,894/-
9.	Amount paid by complainant	₹34,81,664/-
10.	Offer of possession	24.07.2020

B. FACTS OF THE COMPLAINANT

- i. That the original allottee namely; Mr. Ram Lal Mittal made an application for allotment of a plot in the township developed by respondent and paid Rs.3,14,389/- as booking amount.
- ii. That respondent vide letter dated 28.06.2019 allotted plot in favour of original allottee namely; Mr. Ram Lal Mittal having plot No. C-III/23, Sector-IV, Eldeco Estate One, Panipat, Haryana. Copy of the allotment certificate and agreement is annexed as Annexure-A. That the original allottee made timely payments with regard to the allotted plot to the respondent.
- iii. That thereafter the complainant purchased the said plot from the original allottee namely; Mr. Ram Lal Mittal on 05.10.2020 and the respondent herein executed the agreement in favour of complainant. A copy of the agreement in favour of complainant dated 05.10.2020 annexed as Annexure-B.



- iv. That thereafter complainant on various occasions requested the respondent to handover the physical possession and execute the conveyance deed of the allotted plot in her favour and the respondent fails to do so despite receiving the whole consideration amount.
- v. That the respondent is engaged in Unfair Trade Practices as the respondent is under obligation to handover the possession of the said plot to the complainant on or before July, 2021.

C. RELIEF SOUGHT

Complainant in this complaint has sought the following reliefs:

- (i) Direct the respondent to hand over the valid/legal physical possession along with completion certificate/occupancy certificate and execute the conveyance deed of the allotted plot in favour of the complainant.
- (ii) Direct the respondent to pay the delay possession charges as per Rule 15 of HRERA Rules 2017 and order passed by this Authority in complaint no.113 of 2018 titled as Madhu Sareen v. BPTP Ltd as the possession offered by the respondent to the complainant is not legal offer as it was offered without obtaining occupancy certificate from the concerned Authority.
- (iii) Direct the respondent to pay 1,00,000 as litigation charges.
- (iv) Any other or further order which this Hon'ble Authority deems fit in the interest of justice.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

- i. That all the allegations made and contentions raised by the complainant in the complaint under reply are denied as being false and without basis unless specifically admitted hereto. The contents and averments made in the complaint that are not specifically denied, admitted or replied should be deemed to have been denied.
- ii. That the complainant is a subsequent purchaser and she purchased the property with open eyes with complete knowledge about everything. Consequently, the present complaint by a subsequent purchaser at this stage is not maintainable and is liable to be dismissed in view of the settled factual and legal position.
- iii. That respondent inter-alia 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 159.282 acres situated at Sector-40 & 19-A, Panipat, Haryana after due approvals/permissions & sanctions from the competent authority, i.e., Director, Town & Country Panning, Haryana in the present case.
- iv. That it is pertinent to mention here 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 (*Res 63.51 acres & Comm1.80 acres*). Thereafter, Vide license



No. 36 dated 28.02.2008, license to develop a residential plotted colony for additional land admeasuring 55.802 acre falling in Sector 40 &19A ("Phase II") (*Res53.572 acres & Comm 2.23 acres*) was granted to the answering respondent. Thereafter, an additional license bearing no. 47 dated 18.07.2017 was granted in favour of the answering respondent to set up residential plotted colony over land measuring 29.175 acres situated at Sector 40 and 19 A, Panipat comprising Phase-III. Pursuant to the same the original allottee approached the respondent for the purpose of purchasing a Plot No. C-III/23, Sec-IV in the project of respondent. The buyers agreement was entered into between the answering respondent and the original allottee namely; Mr. Ram Lal Mittal on 26.06.2019. The aforesaid plot was subsequently purchased by the complainant from open market from the original allottee and finally Buyer's Agreement dated 05.10.2020 was executed with the complainant containing the binding terms between the parties. That the complainant has failed to put on record the complete agreement for sale dated 05.10.2020 and the complete agreement is annexed as Annexure A.

- v. That the original allottee namely; Mr. Ram Lal Mittal had already been issued final demand notice (FDN)/offer of possession letter dated 24.07.2020 and complainant purchased the plot from open market from the original allottee and consequently is bound by the same final demand



notice/offer of possession. Agreement dated 05.10.2010 also stands executed in favour of the complainant and the complainant can get the conveyance deed executed in her favour by completing the formalities and the same are pending at complainant's end.

- vi. That in view of the fact that the final demand notice dated 24.07.2020 had already been issued to the original allottee and consequent thereupon the payments pursuant to the said final demand notice as per own averments of the complainant had been made even by her without any protest or demur of any sort meaning thereby that the final demand notice was duly accepted by them and now they are estopped from raising any question in this regard as delay, if any, in getting possession or getting the conveyance deed executed in respect of the plot in question is at the end of the complainant herself.
- vii. That the possession is complete in all respects. All amenities and facilities have already been offered to the allottees like complainant. That the answering respondent had already applied for grant of partial completion certificate in respect of the phase-III of the project in October, 2020 but the same was not dealt with because of on going pandemic Covid-19 which has had its bad effect globally.
- viii. That despite follow up, the matter is pending at the end of authorities. That the plot in question falls under the NPNL (no profit no loss)



category and the answering respondent had applied to the competent authority for getting the rates fixed for the said category but even the said authority has failed to decide and communicate the same to the answering respondent. Thus, looked from any angle there is no fault at the end of answering respondent and also there is no impediment in the possession of the plot by the complainant and execution of conveyance deed by the answering respondent in her favour. The instant complaint hence being misconceived deserves to be dismissed. The copies of communication mentioned above are collectively annexed herewith as Annexure B (colly).

- ix. 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. That vide notification dated 26.04.2016, the Central Government appointed the date 01.05.2016 for coming into force of the provisions of 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.



- x. 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.
- xi. That without prejudice to the other submissions made in this reply it is most humbly submitted that the present case is hopelessly barred by limitation.
- xii. It is denied that the complainant on various occasions requested the respondent to hand over the physical possession and to execute the conveyance deed in favour of the complainant or that the answering respondent failed in any manner as the aforesaid averments are result of figment of imagination of the complainant. It is pertinent to mention here that the aforesaid averments of the complainant lack any legal or factual sanctity in as much as the offer of possession is concerned as the answering respondent had issued the final demand notice/offer of possession dated 24.07.2020 to the original allottee itself, consequently, the contention regarding non offering of possession is misconceived misplaced and absolutely false and hence liable to be ignored.
- xiii. It is denied that respondent is not handing over the physical possession of said plot. Respondent has issued the final demand notice/offer of possession dated 24.07.2020 and even conveyance deed in respect of



plots in phase III of the project in question are being registered and delay if any, in this regard is at the end of the complainant. Copy of final demand notice is annexed as Annexure C.

- xiv. It is denied that respondent is engaged in unfair trade practice of any sort rather it has been acting diligently at all times in the best interest of the allottees and the project.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

Ld counsel for complainant stated that in compliance of order dated 31.08.2023, conveyance deed has been executed on 01.12.2023 and only relief which remains is to be decided is that of delay possession charges as possession which was offered was without occupation certificate. All the payments has been made by the complainant well in time and same has been affirmed by the respondent. On the other hand, ld counsel for respondent stated that possession has already been offered in July, 2020 and possession has been voluntarily taken by the complainant and conveyance deed has already been executed. With respect to delay in offering possession, ld counsel stated that there is no fault on part of respondent as matter was pending before the concerned authorities/departments and to substantiate the same communications with concerned department has been attached in the reply. Moreover, as



per clause 7.2 subclause (ii) of the agreement dated 05.10.2020, in the event of offer of possession of the plot is delayed beyond the date as agreed, promoter shall be entitled to extension of 12 months for handover of possession and completion of development of plot. Therefore, as possession was offered in July, 2020, however, as per agreement due date of possession comes to July, 2021. Therefore, no default on part of respondent.

F. ISSUE FOR ADJUDICATION

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

G. 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:

- i. With regard to plea raised by the respondent that complaint was filed on 10.10.2022 and the same is barred by limitation as possession was offered on 24.07.2020. In this regard, it is observed that since, the promoter has failed to fulfil his obligations as per terms of buyer's agreement dated 05.10.2020, so the cause of action is continuing one. Further, in this regard 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 complaint is barred by the limitation is rejected.

- ii. There is no dispute regarding the fact that a builder buyer agreement (BBA) was executed between the original allottee namely; Mr. Ram Lal Mittal and respondent with respect to plot No. C-III/23, Sec-IV, Eldeco Estate One, Panipat, Haryana on 26.06.2019. Subsequently, respondent issued final demand notice/offer of possession to the original allottee on 24.07.2020, annexed as Annexure- C at page 39 of reply. Later on, complainant



purchased the plot from the original allottee and fresh builder buyer agreement in respect of same plot no. C-III/23, Sec-IV, Eldeco Estate One, Panipat was executed between complainant and respondent on 05.10.2020, annexed as Annexure A of reply. Complainant had paid an amount of ₹34,81,664/- against the total sale consideration of ₹31,43,894/-. The main averment of the respondent is with regards to the rights of the subsequent allottee, i.e, the complainant, who purchased the plot with open eyes and with complete knowledge about everything, and therefore, present complaint is not maintainable at this stage. Now, the issue arises that whether subsequent allottee is an allottee or not per provisions of the Act? The RERA Act 2016, provides the definition of the term "allottee" in Section 2 (d). The definition of the allottee as provided in the Act is reproduced as under:

"2 In this Act, unless the context otherwise requires-

(d)"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a



person to whom such plot, apartment or building, as the case may be, is given on rent".

From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the logical conclusion that the Act does not differentiate between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and she shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in her name, she will become the allottee and nomenclature "subsequent allottee" shall only remain for identification/ use by the promoter. Therefore, subsequent allottee/complainant is entitled to all rights as per the builder buyer agreement.



iii. Now, the issue which needs to be decided is whether complainant is entitled for delay possession charges or not? Respondent has averred that since the final demand notice/offer of possession was already made to the original allottee on 24.07.2020, therefore, obligation of respondent to offer stands discharged. It is observed that admittedly the said offer of possession was without a valid completion certificate/occupation certificate, thus, the same was not a valid offer of possession. In this regard, Authority observes that respondent promoter entered into a fresh builder buyer's agreement with the complainant on 05.10.2020, i.e., subsequent to the purchase of plot from the original allottee. Thus, complainant and respondent relationship as allottee and promoter will be governed by the agreement entered into inter-se them. As per clause 7.2 of builder buyer agreement dated 05.10.2020, respondent/promoter was under obligation to hand over possession of the plot for residential usage as per Schedule IV. The relevant clause is reproduced for reference:

Clause 7.2 Procedure for taking possession of plot-

- i. The promoter shall endeavour to offer possession of the plot for residential usage in writing on or before the date specified in Schedule IV (" Date of offer of possession") by issue a written offer of possession/Final Demand Notice ("*



Offer letter"). The date of offer of possession shall be subject to the provisions of the sub –clauses herein and also subject to Force Majeure and reasons beyond the control of the promoter, provided it has obtained the approved demarcation-cum-zoning plan and other clearance required in respect of project.

On conjoint reading of clause 7.2 and schedule IV of builder buyer agreement dated 05.10.2020, respondent was under obligation to hand over possession to the complainant on 01.07.2021. Admittedly, no document has been placed on record to show whether or not, respondent has obtained a completion certificate or part completion certificate from the competent Authority. Also, complainant had approached the Authority for execution of conveyance deed. In this regard it is observed vide order dated 31.08.2023, respondent was directed to execute the conveyance deed and in compliance of the same order, respondent executed the conveyance deed on 01.12.2023 and same has been affirmed by the complainant during the course of hearing.

Nevertheless, complainant insisted on taking the possession of plot and getting conveyance deed executed. Accordingly, in compliance with the orders of the Authority dated 31.08.2023, respondent



promoter handed over the possession of the plot to the complainant and got the conveyance deed executed. However, as per provisions of the Section 18 of the RERA Act, 2016, if the respondent promoter fails to deliver the possession in accordance with the terms of the agreement for sale, then he is liable to pay the delay interest for every month of delay till handing over of the possession along with interest. Hence complainant is entitled for the delay interest on account of delay caused in handing over the possession in terms of section 18 of the RERA Act, 2016 read with Rule 15 HRERA Rules, 2017.

- iv. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The term interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest*



thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 20.12.2023 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%. Interest shall be awarded from deemed date of possession to the date of handing over of possession of plot. As stated by the Id. counsel for the complainant possession was handed over and conveyance deed was executed by the respondent on 01.12.2023. therefore, complainant shall be entitled to delayed possession interest till 01.12.2023. The deemed date of possession, date of offer of possession, amount paid by complainant and interest calculated are as follows:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 01.12.2023
1.	₹34,81,664/-	01.07.2021	₹9,14,905/-

- v. Further, the complainant is seeking 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

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

- i. Authority directs the respondent to pay the delay interest to the complainant of ₹9,14,905/-.
- ii. 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

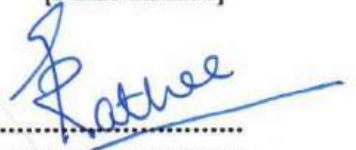


Haryana Real Estate (Regulation & Development) Rules,
2017 failing which legal consequences would follow.

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]