



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 387 OF 2021

Col. (Retired) Mahesh Chandra Kapilashrami

...COMPLAINANT

VERSUS

M/s Krrish Shalimar Projects Pvt. Ltd.

...RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh**

Member

Nadim Akhtar

Member

Date of Hearing: 17.01.2023

Hearing: 5th

Present : None for the complainant.

Ms. Praneeti Agarwal, Counsel for the respondents through VC.

ORDER (NADIM AKHTAR - MEMBER)

Ld. Counsel for respondent had filed application in the Authority under section 39 of RERA Act, 2016, for rectification of order dated 05.04.2022 passed in the present complaint whereby the captioned complaint was disposed of with direction to respondent to pay delay interest @ 9.30% for the entire period of 31.10.2016 i.e. deemed date of possession to 08.03.2021 i.e. date of receiving of formal occupancy certificate amounting to Rs. 67,28,222/- and

issue fresh offer of possession to complainant. Relevant part of the order is reproduced as below;

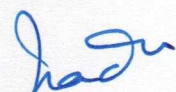
7. The matter was heard at length. The Authority observes and orders as follows:-

i) Admittedly, due date of offering possession was 31.10.2016, actual offer of possession was been made at 16.05.2020 whereas, final occupation certificate was received by respondent-company on 08.03.2021. Accordingly the offer of possession made in 2020 cannot be termed lawful. The offer shall be considered valid only with effect from 08.03.2021.

ii) Since the project is complete and has now finally received occupation certificate, Authority as per its policy will not allow the prayer of refund of money paid. Instead, Authority would ask complainant to take possession of the apartment, however, complainant would be entitled to receive interest for the entire period of delay caused in offering possession i.e. from 31.10.2016 upto 08.03.2021. For this period, interest will be admissible @ MCLR + 2% which was 9.30% on the date of passing this order. Authority has got the admissible interest calculated for the above period, it works out to Rs.67,28,222/-.

iii) The arguments of respondents that delay happened because of the project land falling in Natural Conservation Zone (NCZ), cannot be accepted. Liability on all such counts have to be borne by the respondents. Complainants never stipulated that the delay caused in getting clearance in respect of Natural Conservation Zone (NCZ) will be borne by them. Respondents' should have first sought clearance in this regard before going ahead with the project. The arguments of respondents in regard to force majeure condition, therefore, cannot be accepted.

v) Along with offer of possession, respondents have raised additional demand of Rs. 7,88,689/-. It appears that both parties on 31.8.2020 had entered into an amicable settlement. Obviously, such terms of settlement have not been adhered to. Authority would consider it just and fair



to order that respondents will give a fresh offer of possession to the complainant duly incorporating therein the delay interest admissible which have been worked out to be Rs.67,28,222/-. Further, if any amount is still lawfully payable by complainant, the same shall be paid in respect of which respondents will send a demand along with detailed justification. If the complainant feels dissatisfied with such demands they will have liberty to approach this Authority again.


2. Ld. counsel for the respondent has submitted in her application that respondent is not liable to pay the interest amount of Rs.67,28,222/- calculated from deemed date of possession i.e. 01.11.2016 to the date of formal occupancy certificate i.e 08.03.2021. It is submitted by respondent that after hearing all the arguments, Authority was of the view and issued directions that the in principle occupancy certificate received on 14.01.2020 is considered valid. Therefore, interest shall be calculated for the entire period of delay caused in offering possession i.e. from 31.10.2016 to 16.05.2020 ie. date of offer of possession. Relevant part of the application is reproduced below;

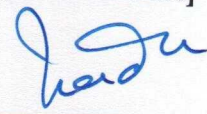
5. That however the learned Authority inadvertently passed the said order directing the Respondent to pay interest amount of Rs.67,28,222/-for the entire period of delay caused in offering possession i.e. from 31.10.2016 upto 08.03.2021, which is an -error apparent on the face on the record as the learned Authority considered valid the formal occupancy certificate instead of in principle occupancy certificate even after pronouncing otherwise.

2. Perusal of the order dated 10.08.2022, it can be observed that respondent was directed to issue a fresh offer of possession to the complainant and adjust

the payables with interest allowed. Now, it is observed that changing this part of order and allowing application of respondent will amount to changing the substantive part of the order.

3. Authority under section 39 of the RERA Act, 2016 only have the power to rectify clerical mistakes apparent on the face of record. The RERA Act, 2016 does not entrust the power of review on the Authority.
4. Relief sought by the applicant complainant is in the nature of review application and not rectification of error apparent on the face of record and if the relief is allowed the same shall result in amendment of the operative/substantive part/review of the judgement of the Authority.
5. In fact the proviso 2 to section 39 categorically provides that the Authority "shall not" while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the Act.
6. For the above stated reasons, the present rectification application is hereby **dismissed**.

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 DR. GEETA RATHEE SINGH
 [MEMBER]

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 NADIM AKHTAR
 [MEMBER]