



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 996 OF 2021 (Re-opened for Rectification Application)

Sukhbir Singh

....COMPLAINANT

VERSUS

TDI Infrastructure Limited.

....RESPONDENT

CORAM: Dr. Geeta Rathee Singh Member
Nadim Akhtar Member

Date of Hearing: 24.01.2023

Hearing: 3rd

Present: - Mr. Vikrant Dabas, Son of the the complainant
Mr. Shubhnit Hans, Counsel for respondent through VC.

ORDER (NADIM AKHTAR- MEMBER)

1. Captioned complaint no. 996 of 2021 had been filed by complainant for review of order dated 03.02.2022 passed in Review application no. 996 of 2021 titled as Sukhbir Singh vs M/S TDI Infrastructure Limited. Relevant part of order dated 03.02.2022 is reproduced below for reference:

“3. In present case, as admitted by ld. counsel for the respondent the relief of upfront payment of interest on account of delay in delivery of possession along with monthly interest till receipt of possession along with Occupation Certificate was declared by the

Authority on 25.02.2021 but inadvertently the same was not recorded in the said order. Although, Authority has granted relief of upfront payment of interest on account of delay in delivery of possession along with monthly interest till receipt of possession along with Occupation Certificate to several allottees in other complaints, but since the complaint under review was disposed of on 25.03.2021, Authority cannot review its order dated 25.03.2021 as per proviso to Section 39 of the RERA Act, 2016. Modification of aforesaid order as sought by the complainant/applicant and grant of relief of upfront payment of interest on account of delay in delivery of possession along with monthly interest till receipt of possession along with Occupation Certificate, will tantamount to amendment of substantive part of aforesaid order under the provisions of this Act. Thus, Authority cannot amend substantive part of its order by reviewing its order under said review application, appropriate remedy available to complainant/applicant would be to prefer an appeal before the Appellate Tribunal under section 43 of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016. Therefore, complainant/ applicant may approach appropriate forum under section 43 of the RERA Ac, 2016. Relevant sections 43 and 39 of THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 are reproduced below:

“Section 43(5). Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter”

“ Section 39. The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order

passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

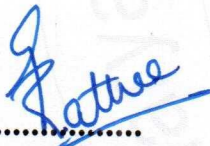
Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.”

4. *Grievance of complainant/applicant that the interest calculated by office of Authority on account of delay calculated i.e. Rs. 16,17,465 /- is wrong and that it should be Rs. 16,21,527/- as calculated by complainant, pertains to arithmetical calculation which Authority has power to review under section 39 of the RERA Act, 2016. Said calculations of Rs. 16,17,465/- were got reviewed / rechecked from the office and are found to be correct. The calculations have been done by office of the Authority as per principles and formulae adopted by the Authority in other cases too. Therefore, interest payable to the complainant/ applicant on account of delay in delivery of possession of unit to him is Rs. 16,17,465/- . No modification of same is required.*

5. *For the foregoing reasons, present review application is dismissed”*

2. Thereafter, respondent filed an application for review of order dated 03.02.2022 on the ground that in the impugned order it has not been stated that respondent is entitled to collect the outstanding dues from complainant at the time of final settlement of receivable and payable amount.

3. Upon perusal of the application filed by the respondent it is observed that the respondent is seeking amendment of the substantive part of order dated 03.02.2022 which amounts to review of the impugned order. It is pertinent to mention that under section 39 of the RERA Act of 2016, the Authority may, with a view to rectify any mistake apparent from the record, amend any order passed by it. However, proviso to section 39 further 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 RERA Act, 2016. Thus, Authority cannot review its order. Therefore, the application filed by the respondent for review of the order dated 03.02.2022 is rejected/dismissed.



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



.....
NADIM AKHTAR
[MEMBER]