HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 3208 OF 2022

(Rectification Before Authority)

Dr. Ajay Gupta deceased through Lrs ....COMPLAINANT(S)

VERSUS

TDI Infrastructure ....RESPONDENT

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

Date of Hearing: 15.02.2023
Hearing: 1st
Present: - Mr.Roopak Bansal, Counsel for the complainant through VC.
Mr. Shubhnit Hans, Counsel for respondent through VC.

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Complaint no. 273 of 2021 was disposed of by the Authority vide order dated 22.03.2022, granting relief of payment of refund of deposited money alongwith interest to the complainant. Relevant part of order dated 22.03.2022 is reproduced below for reference:

Rathee

"*7. After hearing arguments of both the parties and perusal of record, Authority observes that admittedly respondent has failed to deliver possession of booked units to the complainants till date and respondent has not even started the construction of tower in which units of complainants were booked and it appears that construction of said tower has been abandoned by the respondent. Thus, respondent is not in a position to deliver booked units to the complainants. Learned counsel for complainants has informed that complainants do not wish to relocate to alternate units. An alternate unit can be offered only with written consent of the allottee. Authority cannot force an allottee to accept alternate unit when booked unit cannot be delivered. In such circumstances, if allottee seeks refund, the same must be granted.*

In these circumstances, when construction of tower in which booked units of complainants' were located has been abandoned by the respondent and he has been using the amount deposited by complainants for the last sixteen years without any reasonable justification. Furthermore, complainants have paid only an amount of about Rs. 9,00,000/- in Complaint No. 273 & 294 of 2021 and Rs. 3,05,000/- in Complaint No. 307 of 2021 against sale consideration of Rs. 26,40,625/- and Rs. 42,27,084/- respectively. Now, after so much delay it is not correct to ask the complainants to arrange huge amount of remaining sale consideration. Even, purpose of buying the units has got totally frustrated due to inordinate delay. Therefore, the Authority finds them to be fit cases for allowing refund of the amount paid by the complainants and directs the respondent to refund

Rs. 9,00,000/- paid by the complainants in Complaint No. 273-2021 and 294-2021 and Rs. 3,05,000/- in Complaint no. 307-2021 along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017 from the date of making payments up to the date of passing of this order.

8. Learned counsel for the complainants has stated that in Complaint No. 273-2021 and 294-2021 since the respondent has admitted receipt of Rs. 11,00,000/- in his reply, therefore, complainants be allowed refund of Rs.11,00,000/- in both these cases. After perusal of record, Authority observes that in Complaint No.s 273-2021 and 294-2021 since complainants have sought relief of refund of Rs. 9,00,000/- and have attached receipts amounting to Rs. 9,00,000/-, therefore, complainants are entitled to refund of Rs. 9,00,000/- paid by them. Similarly, in Complaint No.s 307-2021 complainants have sought relief of refund of Rs. 3,05,000/- and have attached receipts amounting to Rs.3,05,000/, therefore, complainants are entitled to refund of Rs. 3,05,000/- paid by them.

9. As per calculations made by Accounts Branch, amount payable by the respondent to the complainants in Complaint No. 273-2021 and 294-2021 along with interest has been worked out to Rs. 18,09,031/- (Rs. 9,00,000/- + Rs. 9,09,031/-). Therefore, Authority directs the respondent to refund Rs. 18,09,031/.

10 As per calculations made by Accounts Branch, amount payable by the respondent to the complainant in Complaint No. 307-2021 along with interest has been worked out to Rs. 7,58,740/- (Rs. 3,05,000/- + Rs. 4,53,740/-).

Therefore, Authority directs the respondent to refund Rs. 7,58,740/-.

11. The respondent shall pay the entire amount to the complainants within 90 days of uploading this order on the web portal of the Authority. All complaints are ***disposed off*** *in these terms.*

Files be consigned to record room and order be uploaded on the website of the Authority."

2. Thereafter, complainant filed an application for review/rectification of order dated 22.03.2022 on grounds that firstly vide order dated 22.03.2022 Authority had directed the respondent to refund amount paid by complainant along with interest in Complaint No. 273-2021 and 294-2021 but inadvertently, the word 'each' was omitted on account of a clerical mistake and secondly that in Complaint No. 273-2021 and 294-2021, although respondent has admitted receipt of Rs. 11,00,000/- in statement of accounts in each case, the Authority vide order dated 22.03.2022 ordered refund of Rs. 9,00,000/- along with interest in each case, since the complainants had attached receipts amounting to Rs. 9,00,000/- in each case. It was requested that since payment of Rs. 11,00,000/- has been admitted by respondent in both cases, therefore, complainants should be allowed refund of Rs. 11,00,000/- along with interest in each case. After hearing both parties and perusal of record, application for rectification was allowed and disposed of and accordingly

order dated 22.03.2022 was modified to that extent vide order dated 07.07.2022.

3. Now the complainant has filed present complaint no. 3208 of 2022 for review/ rectification of order dated 22.03.2022 and further order dated 07.07.2022 passed in Complaint no. 273 of 2021 seeking directions to respondent for payment of interest from date of order till actual payment of refund amount.

4. Upon perusal of the complaint filed by the complainant, it is observed that the complainant is seeking amendment of substantive part of orders dated 22.03.2022/ and 07.07.2022 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/ alter any substantive part of its order passed under the provisions of the RERA Act, 2016. Thus, Authority cannot review its order. Therefore, the complaint filed by the complainant for review of the orders dated 22.03.2022 and further orders 07.07.2022 is rejected.

5. Captioned complaint is disposed of. Order be uploaded on the website and files be consigned to record room

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NADIM AKHTAR
[MEMBER]

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DR. GEETA RATHEE SINGH
[MEMBER]