



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1837 OF 2019

Anil Tuteja

....COMPLAINANT(S)

VERSUS

Splendor Landbase Ltd.

.....RESPONDENT(S)

COMPLAINT NO. 1838 OF 2019

Suraj Kumar

....COMPLAINANTS

VERSUS

Splendor Landbase Ltd.

.....RESPONDENT(S)

CORAM:

**Dr. Geeta Rathee Singh
Nadim Akhtar**

**Member
Member**

Date of Hearing: 25.01.2023

Hearing: 7th

Present:

None for the complainant
Mr. Mr. Ravi Aggarwal, counsel for the respondent
through video conferencing

ORDER (DR GEETA RATHEE SINGH-MEMBER)

Learned counsel for the respondent filed the review/rectification application dated 12.08.2022 praying for the rectification of orders dated 08.03.2022 passed in the present complaint whereby the captioned

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complaints were disposed of and refund was allowed to the complainants. Respondent in the present rectification application has raised the ground that Authority while deciding the said matter had not considered the material fact that the subject 'Splendor Adharshilla', the project of the respondent was not an ongoing project and did not fall within the jurisdiction of this Authority. He further stated that respondent had argued this material fact in Para 5 of his written submissions, but Authority had not considered this material fact and passed the order of refund along with interest in respect of the said project. Therefore, respondent has filed this review/rectification application under section 39 of the RERA Act for the rectification of the order dated 08.03.2022 to adjudicate on the point of jurisdiction, that the project 'Splendor Adharshilla' was not an ongoing project and the Authority erred in exercising of jurisdiction in the matter and ordering refund.

Further he has prayed that said order may be modified/amended on the point that the complainant has already given the consent for the offer of alternative unit in the application for allotment of apartment itself.

2. Today, learned counsel for the respondent has reiterated the same facts as have stated above in rectification application.
3. Perusal of the order dated 08.03.2022 reveals that Authority while passing the final order has considered all the material facts and circumstances as submitted above by the learned counsel for the respondent.

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Relevant part of the order is reproduced below:

“Considering submissions of both parties, Authority observes complainant had paid an amount of Rs 4,59,981/- by 2013 for a unit booked in the project of respondent. As per submission of respondent construction of said project could not be started due to various administrative reasons. Later on respondent shifted the booking of the complainant to another project without providing any justification for said change or obtaining approval of the complainant for the same. Said offer was not acceptable to the complainants and therefore they stopped making further payments and requested the respondent to refund the paid amount. Although when asked, complainant could not corroborate their claim regarding requesting the respondent to refund the paid amount with any documentary evidence. On the other hand, respondent submitted that since the project in which complainant had initially made his booking could not be developed, respondent had given him an offer for allotment of an apartment in another project being developed in the same locality at the same price showing bonafide intentions of respondent. However, it is the complainant who did not come forward to accept the same or convey his dissent.

6. In the absence of any documentary evidence, Authority cannot accept the contention of complainant in regard to making request to respondent to refund the paid amount. However, this does not change the fact that when the impugned offer for relocation/ reminder letter dated 26.10.2015 lapsed on 31.11.2015 respondent should have promptly cancelled the allotment of complainant and refunded the deposited amount. Even after multiple attempts at communication, when the complainant failed to come forward, respondent was duty bound to issue a cancellation letter and return the deposited amount. Rather, the respondent has retained the amount of Rs 4,59,981/- paid by the complainant till date. Allottees can be offered alternate unit only with their consent. Nobody can be forced to accept a unit other than the allotted one.

Further, Authority finds no merit in the argument of learned counsel of respondent in regard to present complaint being barred by limitation as respondent has neither cancelled the allotment of complainant nor issued him an offer of possession, but has illegally retained the amount

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deposited by complainant for more than seven years which is a wrongful act on the part of respondent and wrongful loss to the complainant. Therefore, Authority deems it fit to order the respondent to refund the amount paid by complainant alongwith delay interest calculated in terms of Rule 15 of HRERA Rules 2017 i.e at the rate of SBI MCLR + 2 % .”

In the light of all these facts and circumstances, Authority deemed it fit to order the respondent to refund the amount paid by the complainant along with delay interest in accordance with the provisions of the RERA Act. Now, rectifications and modifications stated in this review/rectification application cannot be permissible as it will amount to change the substantive part of the order.

4. 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.
5. Moreover, relief sought by the learned counsel 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 judgment 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.

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6. For the above stated reasons, the present rectification application is hereby dismissed.

Geeta

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Dr GEETA RATHEE SINGH
[MEMBER]

Nadim

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NADIM AKHTAR
[MEMBER]

