

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 519 of 2022
Date of Decision: 01.03.2023

Ram Avtar Nijhawan S/o Sh. Ram Swaroop Nijhawa, R/o House
No. E-50, Bali Nagar, New Delhi, 110015.

Appellant

Versus

M/s Neo Developers, Registered office at 1205, 12th Floor, Tower B,
Signature Tower, South City, NH 8, Gurgaon.

Respondent

CORAM:

**Justice Rajan Gupta
Shri Inderjeet Mehta
Shri Anil Kumar Gupta**

**Chairman
Member (Judicial)
Member (Technical)**

Present: Shri Gaurav Jaglan, Advocate,
for the appellant.

Shri Venket Rao, Advocate,
for the respondent.

ORDER:

Rajan Gupta, Chairman:

Appellant (Ram Avtar Nijhawan) has challenged the order dated 17.05.2022 passed by the Haryana Real Estate Regulatory Authority, Gurugram. The operative part of the said order is reproduced as under:

“The complaint was disposed of vide authority order dated 05.09.2019 and execution in the matter No. 4257 of 2020 was also disposed of on 05.03.2021. Rectification of the order dated 05.09.2019 cannot be allowed at this stage as application has been filed after more than 2 years i.e. on 24.01.2022. If the execution has not been complied with the promoter then complainant-DH shall be free to make an application separately and punitive action against the promoter will be given effect in case of non-compliance.”

The complainant has shown a screenshot a copy of email dated 22.04.2013 regarding start of construction and laying of foundation stone which was not part of the record or pleadings when the matter was decided. Accordingly, cannot be taken now in the rectification as this is a new fact that has been brought before the Authority and it will affect substantive part of the order. Accordingly, the application for rectification of order is rejected.

Application stands disposed of. File be consigned to the registry.”

2. It is apparent from the above that the proceedings in the matter have already culminated. Even in the execution proceedings order dated 05.03.2021 has been passed. It is an explicable, how any substantive order can be passed in the instant appeal at this stage. Admittedly, the appellant has not challenged the original order dated 05.09.2019 passed by the Id. Authority. It appears that on 24.01.2022 i.e. after the expiry of the limitation period of two years as envisaged under Section 39 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called ‘the Act’) an application for rectification of order dated 05.09.2019 was filed, wherein, it was stated that the starting date of construction was to be taken as 12.02.2013 and not 15.12.2015. A query has been put to learned counsel for the appellant about the scope of rectification as envisaged under Section 39 of the Act, no clear answer is forthcoming.

3. We are of the considered view that the application filed before the authority, after expiry of the limitation period of two years and specifically when no appeal was pending, was misconceived, at the outset. Besides, a simple interpretation of Section 39 of the Act shows that same has been incorporated in the Act for a limited purpose of rectification of any mistake apparent on record and amendment of the order accordingly. As per the second proviso thereof, it has been made clear that while rectifying any mistake apparent on record, the authority

would not amend substantive part of the order. In the instant case, if the start date of construction is allowed to be changed from 12.02.2013 to 15.12.2015, the same would substantively change the order dated 05.09.2019 and it shall increase the liability of the respondent. This would reopen ancillary issues which is not desirable.

4. No further assistance has been rendered on the scope of Section 39 of the Act.

5. In view of the foregoing reasons, the appeal is hereby dismissed.

6. No order to costs.

7. Copy of this order be sent to the parties/Ld. counsel for the parties and Ld. Haryana Real Estate Regulatory Authority, Gurugram.

8. File be consigned to the record.

Justice Rajan Gupta
Chairman,
Haryana Real Estate Appellate Tribunal,
Chandigarh

Inderjeet Mehta
Member (Judicial)

Anil Kumar Gupta
Member (Technical)

01.03.2023
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