HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 3123 of 2019

(Reopened for review application dated 17.08.2022)

Balram Bisnoi and Anr. ....COMPLAINANT(S)

VERSUS

M/S Aerens Gold Souk Infrastructure Pvt. Ltd. ....RESPONDENT(S)

2. COMPLAINT NO. 3129 of 2019

(Reopened for review application dated 17.08.2022)

Vinod Kumar Bhalotia ....COMPLAINANT(S)

VERSUS

M/S Aerens Gold Souk Infrastructure Pvt. Ltd. ....RESPONDENT(S)

3. COMPLAINT NO. 3082 of 2019

(Reopened for review application dated 17.08.2022)

Shiv Dutt ....COMPLAINANT(S)

VERSUS

M/S Aerens Gold Souk Infrastructure Pvt. Ltd. ....RESPONDENT(S)

4. COMPLAINT NO. 02 of 2020

(Reopened for review application dated 17.08.2022)

Hanuman Prasad Bishnoi ....COMPLAINANT(S)

VERSUS

M/S Aerens Gold Souk Infrastructure Pvt. Ltd. ....RESPONDENT(S)

5. COMPLAINT NO. 1242 of 2020

(Reopened for review application dated 17.08.2022)

Shakutla ....COMPLAINANT(S)

VERSUS

M/S Aerens Gold Souk Infrastructure Pvt. Ltd. ....RESPONDENT(S)

6. COMPLAINT NO. 1244 of 2020

(Reopened for review application dated 17.08.2022)

Naveen Nagpal ....COMPLAINANT(S)

VERSUS

M/S Aerens Gold Souk Infrastructure Pvt. Ltd. ....RESPONDENT(S)

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

Date of Hearing: 13.12.2022

Hearing: 6th in complaint nos. 3082/2019, 3123/2019, 3129/2019 and 02/2020.

4th in complaint nos. 1242/2020 and 1244/2020

Present: - Mr. Pradeep Singh Sheoran, Ld. Counsel for the Complainant.

Mr. Saksham Mahajan and Bahul Bunger, Ld. counsel for the respondent.

ORDER (NADIM AKHTAR-MEMBER)

1. Ld. counsels for the respondent has filed the present review application dated 17.08.2022 seeking review of the order dated 01.04.2022 passed in the present complaints. The review application has been filed on following grounds:

i. That the authority by passing the impugned order made an error apparent on the face of the record as it has relied on the order dated 22.01.2019 in complaint No. 44 of 2018 titled as Rameshwar Vs. M/s Aerens Gold Souk Projects Pvt. Ltd. and another wherein the authority had failed to pay heed to the fact that after the cancelation of licence No. 54 of 2009 of the applicant vide order dated 31.08.2016 passed by Director, Department of Town and Country Planning, the appeal of the applicant qua his restoration of construction licence No. 54 of 2009 was pending before the Additional Chief Secretary, Town and Country Planning, Haryana and therefore the project in question vested with the Director Town and Country Planning. Since the applicant was ousted from the project in question of the Haryana Development and Regulation of Urban Areas Act 1975 all the necessary action in terms of the Section 8 upon cancellation of the licence was required to be taken by the Director (DTCP) himself or through a third party agency identified by him in order to secure the assets of the colony as well as to ascertain the claim and liabilities

against the licensee. Since it was the Director of Town and Country Planning who was incharge of assets and liabilities and was to ascertain the claims against the licensee including the present complaint the impugned order directing refund in question could have only been made against the Director of Town and Country Planning.

ii. That the applicant had taken a stand in the complaint No. 44 of 2018 titled as Rameshwar Vs. M/s Aerens Gold Souk Projects Pvt. Ltd. and another that since the project in question has been taken over by the Department of Town and Country Planning in terms of the Regulation 19 of the Haryana Development and Regulation of Urban Areas Rules 1976 and therefore the project in question vested with the department of Town and Country Planning. Moreover, in terms of rule 18(4) cancellation of licence vide order dated 31.08.2016 passed by the Director, Town and Country Planning, no further work could have been undertaken or carried out by the coloniser/applicant. In view of the above not only was the impugned order liable to be passed against the Department of Town and Country Planning for refund of the amount in question but also the Department of Town and Country Planning were required to be made liable for the interest component of the said refund for the period wherein the project in question vested with the Department.

iii. That the apparent error on the fact of the record in the impugned order dated 01.04.2022 is that the authority has relied upon the order dated 22.01.2019 in complaint No. 44 of 2018 titled as Rameshwar Vs. M/s Aerens Gold Souk Projects Pvt. Ltd. and another wherein the authority had itself specifically held in para (vi) that "the department must own and accept joint responsibility along with developers if a project fails as in this case. Acceptance of joint responsibility will mean that the vision of the department shall extend to find a solution in the overall interest of the stakeholders rather than having a narrow vision of fast recovery of fees and EDC dues only." Despite holding the same the authority has failed to attribute the liability of interest towards the department of Town and Country Planning and therefore the said error/mistake is liable to be corrected by way of review.

iv. That the applicant despite taking a specific stand in complaint No. 44 of 2018 titled as Rameshwar Vs. M/s Aerens Gold Souk Projects Pvt. Ltd. and another that appeal against the cancellation of license is pending before the Additional Chief Secretary and till the time of decision of the said appeal the said complaint be deferred. Despite the aforesaid stand taken by the applicant in the aforesaid complaint the authority in haste passed the

order dated 22.01.2019 leaving in doubt as to what will be the interest component in terms of the period of calculation and who would be responsible to pay interest for period 28.08.2009 to 13.08.2013 and 01.01.2016 till 04.07.2022. It is now come to light that the Additional Chief Secretary of Town and Country Planning Haryana allowed the appeal of the applicant vide order dated and while allowing the appeal held that it was due to sovereign acts of the State of Haryana which was beyond the control of the appellant and on account of which the applicant was unable to construct the project in question and therefore the aforesaid events are Force-Majeure and the period 28.08.2009 to 13.08.2013 and 01.01.2016 till 04.07.2022 is liable to be considered as zero period wherein the interest, penalties of the aforesaid period is to be treated as zero. Had the authority waited for the aforesaid order dated 21.02.2022 (Annexure RA/6) passed by the Additional Chief Secretary, Town and Country Planning. Haryana the error apparent from the face of the record towards determining the component of interest would have not crept in.

v. That it has been held by the Hon'ble Supreme Court of India in the case titled as *Yaswant Sinha and others Vs. CBI through its Director and another, (2020) 2 SCC 338*, that if the expression 'record' is read to mean in its semantic sweep, any material, even later

brought on record, with the leave of the court, it will embrace subsequent event, new light and other grounds which we find in Order 47 Rule 1 CPC. In pursuance of Order 47 Rule 1 of the CPC and Rule 23 of the Haryana Real Estate Regulatory Authority, Panchkula, (General Regulations), 2018 are a kind, the aforesaid proposition of law directly applicable to the present case and the authority is liable to correct the mistake in light of the subsequent events such as in the order dated 21.02.2022 passed by the Additional Chief Secretary, Town and Country Planning wherein period 28.08.2009 to 13.08.2013 and 01.01.2016 till 04.07.2022 has been held to be equivalent of Force-Majeure as the said period were beyond the control of the applicant and the applicant could not control the affairs/activities of the Govt./Authorities of the Govt. being sovereign acts. Therefore, these periods are order to be treated as zero periods and the interest, penalties of these periods are to be treated as zero and further the subsequent event of renewal of licence by the Department of Town and Country Planning vide order dated 04.07.2022 (Annexure RA/7) wherein the licence No. 54 of 2009 of the applicant to construct the commercial colony in question has been renewed and the applicant was put back into the possession of the property. The applicant is only claiming review of the calculation of interest on the principal amount levied on towards refund to the complainant. The applicant asserts that

the period from 28.08.2009 13.08.2013 and 01.01.2016 till 04.07.2022 are liable to be excluded in the calculation of interest on the principal amount and the same are liable to be removed by the complainant from the Department of Town and Country Planning, the aforesaid period have been declared as zero period by the State of Haryana.

vi. It is prayed that this review application be allowed and the order dated 01.04.2022 be set aside and the component of interest towards refund of the amount due to the complainant be recalculated in terms of the order dated 21.02.2022 passed by the Additional Chief Secretary, Town and Country Planning, Haryana by excluding the period form 28.08.2009 to 13.08.2013 and 01.01.2016 till 04.07.2022.

2. Perusing the order dated 22.01.2019 and the complaint file, it can be observed that the order of refund has been passed in the captioned complaint after thoroughly considering the written and verbal pleadings/arguments of the complainants and respondent. All the material facts had already been taken into consideration while passing the given order. Now, the respondent/applicant cannot challenge the order of the Authority on the same grounds before the Authority when matter has already been heard and decided on merits. Further, allowing the prayer of respondent/applicant will amount to changing the substantive part of the order. The Authority cannot rectify its decision in this captioned matter since there is no factual error apparent on the face of record.

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 respondent/applicant is in the nature of review application 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.

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]