



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 209 OF 2021

(Re-opened vide rectification application no. 21020)

Rakesh Kumar

....COMPLAINANT(S)

VERSUS

M G Housing Pvt. Ltd.

....RESPONDENT(S)

**CORAM: Dr. Geeta Rathee Singh**

**Member**

**Nadim Akhtar**

**Member**

**Date of Hearing: 28.03.2023**

**Hearing: 4<sup>th</sup>**

**Present: Mr. Rakesh Kumar, complainant.  
None for the respondent.**

### **ORDER (NADIM AKHTAR-MEMBER)**

1. Captioned complaint was disposed of by the Authority vide order dated 15.09.2021 with direction to respondent to hand over possession of the booked unit to complainant after receiving occupation certificate alongwith delay interest. Relevant part of the order is being reproduced as follows:

*Nadim Akhtar*



“3. After hearing the parties and going through the documents placed on record, Authority observes that relief for possession is not possible because the respondent has not completed the development work and more time is required for obtaining the completion certificate. The only relief which at present can therefore be awarded to the complainant is to direct the promoter to pay upfront delay interest from the deemed date of possession to the date of this order and to pay future monthly delay interest thereafter till the handing over of possession as provided in Section 18 of RERA Act, 2016.

4. So, Authority decides that complainant is entitled for payment of upfront interest on the already paid amount from the deemed date of possession i.e. 30.03.2019 till today i.e. 15.09.2021 (date of order) in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% which as on date is 9.30%.

5. The complainant per receipts has paid total amount of Rs 32,40,000/- which includes even the amount of Rs 6,00,000/- for EDC/IDC. The amount of Rs 6,00,000/- collected under aforementioned head was payable to the government departments and if the respondent had not passed on the same to the concerned departments, he will be liable to pay delay interest only to the departments entitled to receive the amounts. How can the complainant in such situation legitimately claim delay interest on the amount of Rs. 6,00,000/- collected by the respondent for payment to the government





departments. So, no delay interest on amount of Rs. 6,00,000/- is payable to the complainant. Delay interest payable to the complainant, in other words, deserves to be calculated only on the balance amount of Rs 26,40,000/-(32,40,000-6,00,000).

6. The Authority got the delay interest calculated from its Account branch on Rs 26,40,000/- in terms of rule 15 of HRERA Rules 2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from deemed date of possession (30.03.2019) till date of order (15.09.2021) in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR-2% (9.30%). Such interest works out to Rs 6,05,392 and it is held payable by the respondent to the complainant. For further delay occurring after the date of this order, the respondent is liable to pay monthly interest of Rs 20,460- to complainant commencing from 15.10.2021.

7. Accordingly, the respondent is directed to pay Rs 6,05,392/- on account of delay interest in two equal instalments. Fifty percent of the said amount shall be paid within 45 days from the date of uploading of this order and the remaining fifty percent in next 45 days. The respondent shall thereafter discharge his liability of paying interest of Rs 20,460/- for each month's delay in terms of this order till the date on which valid offer of possession is made to complainants after obtaining completion/part completion certificate.

8. **Disposed of** in above terms. File be consigned to record room."





2. Complainant filed an application under Section 39 of RERA Act, 2016 on 13.12.2022 in registry seeking rectification in possession date mentioned in the order dated 15.09.2021. He argued that as per clause 36 of the plot buyer agreement, it is mentioned that "The developer undertakes to complete the development work of the said township latest by 30th September 2018, with a grace period of six months to obtain occupancy certificate and on receipt of the same will offer the possession of the plot to the buyer. Hence, deemed date of possession comes to 30.09.2018. He prayed that the date of possession be changed from 30.03.2019 to 30.09.2018 in the order dated 15.09.2021.

3. Authority observes that the issue raised by the complainant had been dealt with by Authority in detail. There is no issue which is left undisputed. Authority has decided the matter on the basis of facts of the case and evidence adduced. There is no clerical mistake apparent on record to allow this application under section 39 of RERA Act, 2016. Now after final decision/ judgment, the complainant cannot be allowed to make such pleadings which are already decided on merits.

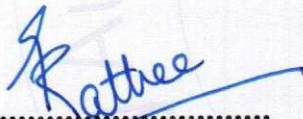
Moreover, relief sought by the applicant/complainant is in the nature of review application and if the relief is allowed the same will result in change of the operative/substantive part of the judgment of the Authority. Furthermore, Authority under section 39 of the RERA Act, 2016 only have the power to rectify clerical





mistake apparent on the face of record. The RERA Act, 2016 does not entrust the power of review on the Authority. If the legislature ever intended to entrust such powers upon the Authority the same would have been specifically provided in the Act itself, which is a comprehensive and exhaustive power of legislature. 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. Therefore, Authority disallows the prayer of complainant and dismiss the complaint.

4. Case is **disposed of as dismissed.** File be consigned to record room after uploading of order on the website of the Authority.



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**Dr. GEETA RATHEE SINGH**  
**[MEMBER]**



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**NADIM AKHTAR**  
**[MEMBER]**