

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no. : 4431 of 2020
Date of application : 23.02.2022
Date of decision : 16.05.2023

Mr. Jagdish Prasad Gupta
R/o:

Complainant

Versus

M/s Emaar MGF Land Ltd.
Address:

Respondent

CORAM:

Sh. Vijay Kumar Goyal
Sh. Ashok Sangwan
Sh. Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Shri K.K. Kohli (Advocate)
Shri Aditya Rathi (Advocate)
Shri Pankaj Chandola (Advocate)

Complainant
Respondent no. 1
Respondent no. 2

HARERA
ORDER
GURUGRAM

1. An application dated 23.02.2022, has been filed by the complainant for rectification of proceedings of the day dated 02.02.2021 under section 39 of the Act, 2016 passed by the authority wherein it is stated that the said complaint was dismissed being not maintainable.

A. Finding by the authority

2. The complainant filed an application for rectification of order dated 02.02.2021. The order is reproduced below:

"The unit was booked was booked by the complainant on 12.10.2007. As per the builder buyer agreement dated 12.02.2008, the possession of the unit was to be handed over to the complainant on 01.04.2011. In this case, the occupation certificate has already been received by the respondent on 01.04.2015 before coming into force the RERA Act, 2016. As such, the complaint is not maintainable in the eyes of law and the same stands dismissed. File be consigned to the registry."

3. Though the complainant in its application dated 23.02.2022 stated that the authority vide order dated 02.02.2021 has dismissed the complaint being not maintainable since the occupation certificate of the project was received in 2015 i.e., prior to RERA coming into force whereas the completion certificate was required by the Act for not covered by the definition of "ongoing project" and also authority has granted DPC in many cases of the same project.
4. The authority observes that section 39 deals with the *rectification of orders* which empowers the authority to make rectification within a period of 2 years from the date of order made under this Act. The authority may rectify any mistake apparent from the record and make such amendment, if the mistake is brought to its notice by the parties. However, **rectification cannot be** allowed in two cases, *firstly*, orders against which appeal has been preferred, *secondly*, to amend substantive part of the order. The relevant portion of said section is reproduced below.

Section 39: Rectification of orders

"The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

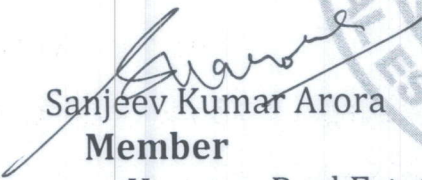
Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

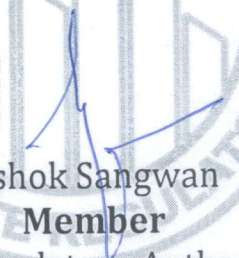
Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act."

5. The present complaint was filed on 24.12.2020 and the same was disposed of by the authority on 02.02.2021. Since the present application involves

amendment of substantive part of the order by seeking relief of DPC against respondent, this would amount to review of the order. Accordingly, the said application is not maintainable being covered under the exception mentioned in 2nd proviso to section 39 of the Act, 2016.

6. A reference in this regard may be made to the ratio of law laid down by the Haryana Real Estate Appellate Tribunal in case of ***Municipal Corporation of Faridabad vs. Rise Projects vide appeal no. 47 of 2022***; decided on 22.04.2022 and wherein it was held that the authority is not empowered to review its orders.
7. Thus, in view of the legal position discussed above, there is no merit in the application dated 23.02.2022 filed by the complainant for rectification of order dated 02.02.2021 passed by the authority and the same is hereby declined.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.05.2023

HARERA
GURUGRAM