



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

(Reopened for deciding Application)

COMPLAINT NO. 2423 OF 2019

Anil Kumar Dubey

....COMPLAINANT

VERSUS

Hightech Construction Co. Pvt. Ltd.

....RESPONDENT

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

**Member  
Member**

**Date of Hearing: 31.05.2023**

**Hearing: 1<sup>st</sup>**

**Present through video conference: -**

None for the complainant

None for respondent

### **ORDER (Dr. GEETA RATHEE SINGH- MEMBER)**

1. Ld. counsel for the respondent filed an application dated 05.12.2022 praying for the setting aside of disposal order dated 16.08.2022 passed in captioned complaint, whereby respondent was directed to refund the paid amount by the complainant along with prescribed rate of interest. Respondent in the present application has raised the following grounds:

*Geeta Rathee*



(A) Respondent has alleged that the final order dated 16.08.2022, was passed in the absence of respondent. He stated that respondent did not stopped appearing wilfully as respondent had already engaged an Advocate to represent their part but due to reasons best know to said counsel, he stopped appearing before Authority.

(B) Moreover, the director of the company was suffering from cancer and during the pendency of aforesaid complaints, director was undergoing his treatment due to which he was unable to communicate with counsel.

(C) Further, he submitted that impugned order dated 16.08.2022, is also against the principals of natural justice as no opportunity of hearing was afforded to the respondent.

2. On perusal of records and order dated 16.08.2022, it is observed that respondent was directed to refund the paid amount of the complainant along with interest as per Rule 15 of HRERA Rules, 2017. However, respondent in the present application has prayed for setting aside the said order as same was an ex-parte order and respondent was not heard on the said date.
3. Authority on consideration of written submissions/documents submitted by the parties, is of the view that firstly, order dated 16.08.2022, wherein



relief of refund was granted to the complainant was passed after duly taking into consideration the reply filed by respondent/promoter. Further, in para 6 of the said order it was clarified that even after been given ample opportunities to appear, respondent consecutively failed to appear for three time. Consequent thereupon written submission and documents filed by respondent were taken into consideration and final order was passed. Now, after almost nine month of passing of orders, Authority at this stage cannot set-aside the order passed on merits. The proceeding before Authority are summary proceedings and the Authority following the principle of natural justice, served notice to the respondent promoter and also took on record the reply submitted by the respondent. Repeated opportunities were given to the respondent in the captioned case to argue the matter. However, neither respondent nor his counsel appeared on the date of hearing. In fact the Authority, is of the view that this application appears to be an advised attempt to cause delay w.r.t. making payment as ordered by the Authority in its order dated 16.08.2023.

4. Further more, Authority under section 39 of the RERA Act, 2016 is only mandated to rectify only clerical mistakes apparent on the face of record. The RERA Act, 2016 does not entrust the power of review on 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. A bare perusal of the application, leaves no doubt that the respondent is not praying for correction of the clerical mistake but is seeking the relief of rehearing the matter and deciding the case afresh.

6. For the above stated reasons, the present application for setting aside the final order dated 16.08.2022 is hereby dismissed. File be **Disposed of as dismissed.**

File be consigned to record room after uploading of this order on the website of the Authority.



.....  
NADIM AKHTAR  
[MEMBER]



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DR. GEETA RATHEE SINGH  
[MEMBER]