



**HARERA**  
**GURUGRAM**

Complaint No. 1444 of 2019

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

**Complaint no.** : 1444 of 2019  
**Date of application** : 21.10.2021  
**Date of decision** : 28.03.2023

Mrs. Sangeeta Gupta  
House No 299, Sector 10A, Gurugram 122001

**Complainant**

Versus

M/s Vatika Ltd  
Address: Vatika Triangle ,4<sup>th</sup> Floor Sushant Lok -1,  
Block A, Mehrauli Gurgaon Road Gurgaon-122002

**Respondent**

**CORAM:**

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

**Member**  
**Member**  
**Member**

**APPEARANCE:**

Shri Umesh Kaushik and Shri Rakesh Gupta  
Sh. Pankaj Chandola & Mayank Grover

**Complainant**  
**Respondent**

**ORDER**

1. An application dated 21.10.2021, has been filed by the complainant for recall of order dated 18.02.2021 passed by the Authority. Thereafter, vide email dated 22.11.2021, it was informed to the applicant that the Authority has no



power to recall its order except rectification of the order under section 39 of the Act, 2016.

2. Thereafter, the complainant moved an application before the Hon'ble Tribunal and vide its order dated 15.02.2022, following direction has been passed:

*"Thus, in our view, the present appeal can be disposed of by setting aside the communication dated 22<sup>nd</sup> November 2021 and giving direction to the Id. authority to decide the application dated 21<sup>st</sup> October 2021 moved by the appellant for recalling the order dated 18<sup>th</sup> February 2021 by passing speaking order after affording opportunity of being heard to both the parties. If the grievance of the appellant still stands, then the appellant shall be at liberty to prefer the fresh appeal on the same cause of action raising all the pleas available to the appellant....."*

3. In view of the same, the matter was fixed before the Authority for hearing on 29.04.2022. Thereafter, the respondent filed a reply to the application and the same was taken on the record. Upon perusal of the document the Authority gives the following finding.

**A. Finding by the Authority**

4. The order passed in this regard was not challenged by way of appeal by the complainant. However, an application dated 21.10.2021 was filed under regulation 25 of the Haryana Real Estate Regulatory Authority, Gurugram (General) Regulation 2018 by the complainant/allottee for recalling of the impugned order and passing a fresh one in view of submissions made in the



complaint. The applicant was informed vide email dated that the power of "recall of order" does not lie with the Authority. Feeling aggrieved with that order, the applicant preferred an appeal before the Haryana Real Estate Appellate Tribunal and vide order dated 15.02.2022, the Haryana Real Estate Appellate Tribunal directed the Authority to decide the application by passing a speaking order and after affording an opportunity of being heard to the parties.

5. In view of the above, the complainant-applicant filed application dated 17.03.2022 intimating order of Appellate Tribunal and in consonance of direction the Hon'ble Appellate Tribunal, the matter was listed for 29.04.2022, followed by next date of hearing dated 05.07.2022. Reply was filed by the respondent and the same was taken on record.
6. In response to the application, the respondent submitted that the same is not maintainable as the review of the impugned order not permissible under the Act of 2016. It was pleaded that by way of instant application, the complainant wants recall of the impugned order instead of challenging the same by way of appeal and the same was passed in the presence of the parties/their counsel.
7. The plea raised by the complainant-application is that the said application is filed under clause 25 of regulation 1, wherein it is provided as under:



**25. Saving of inherent power of the Authority:**

*Nothing in the Regulations shall be deemed to limit or otherwise affect the inherent power of the Authority to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of the process of the Authority.*

8. However, the fact cannot be ignored that there is no provisions under the RERA Act, 2016 or Rules thereunder permitting the authority to recall its orders except under section 39 providing as under”

**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.”*

9. It is evident from a perusal of the above-mentioned provisions that the authority may rectify its orders within the stipulated period for any mistake apparent from the record and amend any order passed by it but shall not change substantive part of its order. So, in view of the specific provisions under the Act, the application filed in not maintainable.



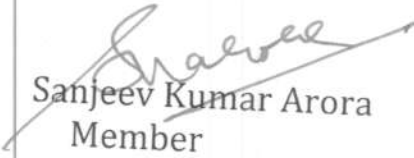
10. The Authority lays its reliance on Judgment of Hon'ble Apex Court of law in the case of **Patel Narshi Thakershi vs. Pradyumansinghji Arjunsinghji, (1971) 3 SCC 844**, wherein it was held that *the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.* Thus, keeping in view the precedent laid down by the Apex Court of the land, no power of review can be exercised as inherent power.
11. Even otherwise, a statutory body cannot recall its orders unless empowered to do so under the statute and the Act of 2016, does not enjoin such powers with the authority to recall its orders. A reference in this regard may be made to the ratio of law laid down by the hon'ble Apex court of the land in cases of **Kalabharti Advertising vs Hemant Vimalnath Narichania (2010) 9 SCC, 347** reiterated in **Naresh Kumar and Others. vs Govt. of NCT of Delhi, Civil Appeal no. 6637-6638 of 2010** decided on 17.10.2019 and followed 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.
12. Thus, in view of factual as well as legal position discussed above, there is no merit in the application dated 21.10.2021 filed by the complainant for recall




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of order dated 18.02.2021 passed by the authority and the same is hereby  
ordered to be rejected.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2023



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