BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**6188 of 2019**
Date of application	:	**11.07.2022**
Date of decision	:	**21.02.2023**

Mr. Ram Prakash
R/o: R-7, Nehru Enclave, Kalka ji, New Delhi-110019 **Complainant**

Versus

1. M/s Krrish Realtech Pvt. Ltd.
   Address: 406, 4th floor, elegance tower 8, Jasola, District Centre, New Delhi-110025
2. M/s Brahma City Pvt. Ltd.
   Address: DLF Cyber Terraces, Building No. 5A, 10th Floor, Cyber City, DLF Phase-III, Gurgaon-122022
3. Mr. Amit Katyal, Director Brahma City Pvt. Ltd.
   Address: DLF Cyber Terraces, Building No. 5A, 10th Floor, Cyber City, DLF Phase-III, Gurgaon-122022
4. Mr. Satish Kumar Seth, Director Krrish Realtech Pvt. Ltd.
   Address: 1216, Sector C-1, Vasant Kunj, Vasant Vihar, New Delhi-110070

Respondents

CORAM:

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

APPEARANCE:

Shri K.K. Kohli (Advocate)	Complainant
Shri Aditya Rathi (Advocate)	Respondent no. 1
Shri Pankaj Chandola (Advocate)	Respondent no. 2

ORDER

1. An application dated 11.07.2022, has been filed by the complainant for rectification of order dated 07.09.2021 under section 39 of the Act, 2016 passed by the authority wherein it is stated that the said order remains silent upon fixing the liability upon respondent no. 2, 3 & 4 therefore, respondent no. 2, 3 & 4 shall also be made as an affecting party. In view of the same, the authority fixed the matter for a hearing on 21.02.2023.

A. Finding by the authority

2. The complainant filed an application for rectification of order dated 07.09.2021 in direction of the authority mentioned in para 94-point no. (i). The relevant para of the order is reproduced below:

> *"The answering respondent no. 1 is directed to pay the interest at the prescribed rate i.e., 9.30% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 20.07.2020 till handing over of possession as per section 18(1) read with rule 15 of the rules."*

3. Though the complainant in its application dated 11.07.2022 stated that the authority vide order dated 07.09.2021 has directed only respondent no.1 to comply with the said orders and respondent no. 2, 3 & 4 were excluded through an oversight despite being a party to the case.

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. Since the present application involves amendment of substantive part of the order by seeking relief against respondent no. 2,3 & 4, 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 11.07.2022 filed by the complainant for rectification of order dated 07.09.2021 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: 21.02.2023