



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 705 OF 2021

Arun Bhaduria and Neelam Singh and Kajal SinghCOMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

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

**Member
Member**

Date of Hearing: 28.03.2023

Hearing: 13th

Present: Ms. Antara Mishra, Counsel for complainants through VC.
Mr. Hemant Saini and Mr. Himanshu Monga, Counsel for the
Respondent.

ORDER: (NADIM AKHTAR-MEMBER)

1. Captioned complaint was disposed of by the Authority vide order dated 13.07.2022 allowing refund of the paid amount alongwith interest payable to the complainants. Relevant part of the order is being reproduced as follows:

“Complainant has not annexed any receipt of payment and is relying on statement of accounts dated 12.03.2014. An email dated 01.08.2022 was sent to the complainant for submission of payment receipts by the complainant. Complainant chose not to file any such receipts. Therefore, the case is now being decided on the basis of best evidence placed on record by the respondent. After perusing the written statement filed by the respondent it is revealed that respondent has annexed receipts of payment for an amount of Rs. 1,26,85,740/-. Interest will be given on this amount from the date of payment till the date of order. On an amount of Rs. 14,28,814/- (1,41,14,554 - 1,26,85,740) interest will be given from the date of statement of accounts dated 12.03.2014. Complainant alleges that he has paid an amount of Rs. 1,50,34,853/- but no proof has been given for the amount over and above Rs. 1,41,14,554 and therefore no refund or interest will be allowed for any amount above Rs. 1,41,14,554/-

In view of above facts, it has been observed by the Authority that by virtue of section 18 of RERA Act, 2016, allottee is within his right to ask for refund when unit is not ready and no timeline is committed by respondent for handing over of possession. Allottee cannot be forced to wait for an indefinite period for possession of booked unit. So, Authority deems it a fit case for allowing relief of refund. Accordingly, Authority grants relief of refund of paid amount to the complainants along with interest as per Rule 15 of HRERA Rules, 2017 i.e., SBI MCLR+2% (9.70%) from the respective dates of making payment till the actual realization of the amount.

In furtherance of aforementioned observations, Authority directs the respondent to refund the entire principal amount of Rs. 1,41,14,554/- to the complainant.

Now, respondent has to pay total amount of Rs. 1,41,14,554/- + ₹ 1,26,75,846/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal instalments.”

2. Complainants have filed an application under Section 39 of RERA Act, 2016 on 20.02.2023 in registry seeking rectification of amount of refund



with interest calculated for the reason that receipts of total amount of Rs 1,50,34,854/- have now been placed on record. Ld. counsel for the complainants apprised the Authority that receipts for total paid amount of Rs 1,50,34,854/- has been provided and has requested that amount of refund with interest should be re- calculated.

3. Learned counsel for respondent argued that under section 39 of the Act this Authority has power of rectification of orders only when the mistake is apparent on face of record and not otherwise. He submitted that allowing amendment in calculation of refund with interest will result in change in substantive part of the order which is prohibited under the law by way of rectification. He further submitted that the receipts which have now been produced before this Authority were in the possession of the complainants earlier as well, but they did not place the same on record while filing their original complaint.

4. Authority observes that complainants were in possession of receipts now being submitted by them by way of rectification application. Complainants were duty bound to submit proper record at the time of filing their original complaint. Authority has decided the matter on the basis of evidence adduced after giving an opportunity to the complainants. Now after final decision, complainants cannot be allowed to produce additional evidence.



Further re-calculation of interest at this stage will amount to alteration of substantive part of the order which is not allowed as per section 39 of RERA Act,2016. Therefore, recalculation of interest at this stage cannot be allowed and prayer of the complainants for rectification of order dated 13.07.2022 is dismissed.

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

Geeta Rathee

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Dr. GEETA RATHEE SINGH
[MEMBER]

Nadim Akhtar

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NADIM AKHTAR
[MEMBER]