



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1413 OF 2021

Kamal SardanaCOMPLAINANT

VERSUS

Shree Vardhman Developers Pvt. LtdRESPONDENT

2. COMPLAINT NO. 1414 OF 2021

Jitendra ShuklaCOMPLAINANT

VERSUS

Shree Vardhman Developers Pvt. LtdRESPONDENT

3. COMPLAINT NO. 1467 OF 2021

Vinay KumarCOMPLAINANT

VERSUS

Shree Vardhman Developers Pvt. LtdRESPONDENT

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

**Member
Member**

Hearing: 4th

Date of Hearing: 22.08.2023

Present: Sh.Vineet K. Srivastava, learned counsel for complainants through VC.

Sh.Dharmveer Singh, learned counsel for respondents through VC.

ORDER (NADIM AKHTAR- MEMBER)

1. Respondent is seeking rectification of the order passed by Authority in complaint no. 1413, 1414 and 1467 of 2021 under section 39 of RERA Act, 2016. In the said order dated 12.07.2022, respondent was directed to pay EMI till possession including penalty, if any. Relevant part of the order is reproduced as follows:

“6. Perusal of files reveals that complainants have approached the Authority for relief to direct the respondent to pay due interest under subvention agreement and tripartite agreement executed between them vide order dated 06.05.2022 Authority had already given its tentative view that complainant is entitled to resumption of payments of EMI's and interest, relevant part of the order is reproduced below:

3. In the light of facts put forth by the complainant, Authority observes that since both the parties have opted for subvention scheme and a tripartite agreement is also signed therefore respondent is duty bound to pay the EMIS. However respondent has failed to perform his duty therefore Authority is of tentative view that complainant is entitled to resumption of payment of EMI's and interest Further, if respondent fails to pay



EMI, Authority will be constrained to take coercive actions against the respondent which may including attachment of bank accounts.

7. It is observed that these complaints are pending before the Authority since 2021. Respondent has defaulted in making payment of EMIS as agreed between the parties because of which complainants have suffered not only monetary loss, but as per oral averments of ld, counsel for the complainant, proceedings before Debt Recovery Tribunal are also pending against them. Authority is of the view that in situation where complainants are not at fault and respondents were duty bound to pay the EMI's and have failed to fulfill their agreed duties, complainants should not suffer and respondents deserves to be directed to fulfill their obligations.

Accordingly, the Authority confirms its tentative view and directs that respondent is liable to pay due EMI's along with interest or penalty if imposed by the bank for non-payment of due/EMI and clear outstanding dues within 90 days of uploading of this order."

2. During the course of hearing, Ld counsel for respondent stated that as per the agreed terms of the agreement dated 25.07.2019, the respondent is liable to pay the Pre-EMI interest for up to 2 years from the date of disbursement, if the amount is paid more than 75% by the bank. Further he referred to agreement dated 25.07.2019 executed between the complainant and respondent and relevant clause of agreement dated 25.07.2019 is as under:

"Clause-3...the Developer shall pay to the Allottee Pre-EMI interest charged by the Lender on the amount disbursed/released to the Developer but only for a



period of two years from the date of such disbursement or till the date of termination/cancellation/surrender of the allotment made in favour of the allottee and recall of the loan by the Lender whichever is earlier. The Developer shall not be responsible and/or liable to pay any interest/EMI, except the Pre-EMI interest on the amount disbursed to it for a maximum period of two years. The liability to pay interest/EMI payable for the period post the said period of two years shall exclusively be of the Allottee(s).”

3. Ld counsel stated that as per agreement the respondent was liable to pay Pre- EMI interest only for a period of 02 years from date of disbursement. However, vide Impugned Order, the Authority has directed the respondent to pay the EMI till the possession including the penalty if any, which is grossly wrong and against the agreed terms of the agreement. Therefore, the Impugned order needs to be rectified in terms of the agreed terms of the agreement. Further, he stated that the complainant has concealed the material facts from this Authority with regard to the execution of the agreement, dated 25.07.2019, though it was in his knowledge that the agreement dated 25.07.2019 was executed.
4. Authority observes 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. The agreement between complainant and



respondent was never referred nor argued during the course of hearing therefore rectifying the order on basis of agreement now brought to the notice of the Authority will result in change in substantive part of the order which is prohibited under the law by way of review.

5. Authority observes that as agreement dated 25.07.2019 was never placed on record during the hearing, therefore, Authority had decided the matter on the basis of evidence adduced. Now after final decision, respondent cannot be allowed to produce additional evidence. Further relying on agreement at this stage will amount to alteration of substantive part of the order which is not allowed as per section 39 of RERA Act. Therefore, rectification cannot be allowed and prayer of the respondent is declined in this regard.
6. Case is **disposed of**. File be consigned to record room after uploading order on the website of the Authority.



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DR. GEETA RATHEE SINGH
[MEMBER]



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NADIMAKHTAR
[MEMBER]