

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

Complaint no. : 1545 of 2019
Date of application : 15.12.2022
Date of decision : 04.07.2023

Rajendera Kumar
R/o: F-439, Mahilpalpur, New Delhi-110037.

Complainant

Versus

M/s Vatika Ltd
Address: Vatika Triangle ,5th 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:

Complainant in Person with Sh. Rajiv Kumar Khare
Sh. Pankaj Chandola

Complainant
Respondent

HARERA
ORDER
GURUGRAM

1. An application under Section 39 of Act, has been filed by the complainant on 15.12.2022 for rectification of order dated 25.08.2021 passed by the Authority. Following directions were passed vide order 25.08.2021 of Authority:

- i. *The allottees have already paid a sum of Rs. 16,84,169/- to the respondent/builder. So, they are entitled to that amount beside interest @ 9.30% per annum from the date of each payment.*

- ii. *The respondent is directed to allot a new unit. A suitable unit in the project shall be offered to complainant by respondent within a period of 2 months after adjusting the amount paid by the allottees besides interest accrued thereon by way of delay possession charges and that would be counted settlement towards the allotment of the new unit.*
 - iii. *It is considered significant that the developer shall take a lenient view in this context.*
2. Upon perusal of the document the Authority gives the following finding.
- A. Finding by the Authority**
3. The Authority observes that the complainant initially filed an application u/s 152 of CPC for rectification of order dated 25.08.2021 and submitted that the direction given by the Authority in earlier proceedings dated 28.07.2021 relating to same price and same size have not been incorporated in the final order passed by the Authority on 25.08.2021.
4. The respondent filed a reply to said application on 01.05.2023 wherein challenging the maintainability of said application on ground that the same is filed under Section 152 of CPC and thus, is not maintainable.
5. Thereafter, an application under Section 39 of Act was filed on 15.12.2022 was filed by the complainant for rectification of order dated 25.08.2021 passed by the Authority. The section 39 of Act of 2016 provides 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

6. The aforesaid plea of the respondent is not-tenable as no doubt initially the application u/s 152 of CPC was filed but after that application under Section 39 for rectification was also filed on 15.12.2022. It was in pursuance of application dated 15.12.2022 only, the matter was fixed for hearing on 13.04.2023 and email in this regard was sent by Authority on 13.03.2023 to both the parties. Further, during the course of proceedings dated 13.04.2023, the said objection was raised by the respondent wherein challenging the maintainability of application on the ground that an application under CPC is not maintainable before this Authority and also that the above amendment would amount to review of order which is not permissible under the Act of 2016. It was further pleaded by it that application under section 39 was not received to it. In view of aforesaid circumstances, directions were issued to the complainant to supply the copy of same to the other party. Now the respondent has filed the reply to aforesaid application on 01.05.2023 wherein again taking the same plea that the said application u/s 152 of CPC is not maintainable. The Authority is of considered view that when it has already bought to the knowledge of the respondent vide proceedings dated 13.04.2023, that another application dated 15.12.2022 under Section 39 of Act has already been filed after such application under Section 152 of CPC which was earlier filed by the applicant. Now at this stage any such

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plea by the respondent is mere delay tactics and nothing else. Thus, keeping in view the fact that the application later filed under Section 39 of Act was well within the knowledge of the respondent, and is within limitation period prescribed under section 39 of the Act, 2016. The said plea of the respondent is hence, rejected.

7. The respondent submitted that the relief sought amounts to review of the order and is not admissible and placed copy of order passed by the Hon'ble Supreme Court wherein it has been held that once the final order has been passed, all the interim orders ceases to exit.
8. On the other hand, the counsel for the complainant states that application has been filed under section 39 of the Act, 2016 and no fresh directions are being sought as the same is only for the incorporation of interim orders of the Authority passed from time to time.
9. The Authority observes that the complainant initially booked the subject unit in 2011 and till date no possession of same has been handed over to him. Thus, exercising the liberty under Section 18(1) of Act, the complainant filed a complaint before the Authority wherein seeking possession and delay possession charges against the same. Vide proceedings dated 28.07.2021, the direction were issued to the respondent to allot an alternate unit to the complainant if the booked unit is not available with the respondent at the same price and same size. The complaint was thereafter disposed of vide order dated 25.08.2021 of Authority wherein allowing delay possession charges to the complainant-allottee, which continued with direction that the

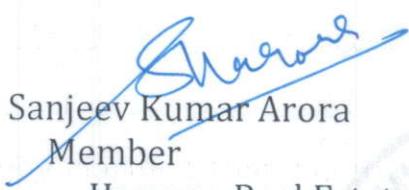
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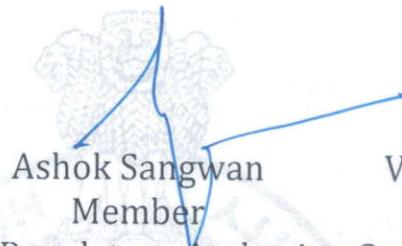
respondent was further directed to allot a new suitable unit to the complainant and further such amount to be adjusted towards DPC be counted as settlement towards the allotted unit.

10. It was after disposal of aforesaid complaint that the respondent offered alternative unit to the complainant at the prevailing market rate prices.
11. The Authority observes that it is an undisputed fact that the prices of property has changed with the rate of inflation from many folds from 2011 to 2021 and it is respondent-builder who is at fault and has failed to handover the possession of the allotted unit to the complainant resulting in making him run from post to pillar to secure the amount paid by him. In cases where the complainant approaches the Authority seeking refund of the amount paid against allotted unit, an interest component is awarded to equalize the amount paid by the allottee at time of booking/allotment or any other milestone till date of refund of such amount. But it is a case where the complainant has approached the Authority seeking delay possession charges and wishes to continue with the project. Thus, at this stage of time the complainant cannot be asked to make payment of property at new prevailing prices with no fault at his part. Even otherwise, if the same is not taken into consideration then it would result in a scenario where respondent-builders would pool refund from innocent buyers at the initial stages of the project and later, as soon as the market rates improves would make one or other excuse to alienate/transfer the property. Thus, it is fair and justified interpretation of the present

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complaint that the proceedings dated 28.07.2021 be read as part and parcel of order dated 25.08.2021. Therefore, the order dated 25.08.2021 is hereby clarified that the new unit of the same size shall be allotted to the complainant-allottee at the same price as per the terms and conditions of the original buyer's agreement.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.07.2023

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