

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

Complaint no. : 1012 of 2018
M.A. no. : 16 of 2023
Date of application : 11.07.2022
Date of decision : 29.08.2023

Daljit Singh Dalal
R/o: H.No.29, Sector 30, near Shivam Hospital,
HUDA, Gurugram, Haryana-122001

Complainant

Versus

M/s VSR Infratech Pvt. Ltd.
(Through its director Mr. Rakesh Jain)
Address: Plot no. 14, Ground floor, Sector 44,
Institutional Area, Gurugram-122003.

Respondent

CORAM:

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

Member
Member
Member

APPEARANCE:

Complainant in person
Ms. Unnati Anand

On behalf of the complainant
Advocate on behalf of the respondent

ORDER

1. An application dated 01.03.2023, has been filed by the complainant for rectification/clarification of of decree wherein it is stated that the decree is for simple interest in spite of the decree being speaking loud and clear for the claim of payment of interest at the prescribed rate of interest for every month of delay which impels the compound interest only, therefore the complainant has approached the Ld. Authority vide

present application seeking clarification of the same. In view of the same, the authority fixed the matter for a hearing on 09.05.2023, 18.07.2023 and 29.08.2023.

A. Finding by the authority

2. The present complaint bearing no. 1012 of 2018 was disposed of vide order dated 07.02.2019 with a direction to refund the entire amount of Rs. 33,72,970/- along with prescribed rate of interest @ 10.75% per annum within 90 days from the date of decision. The relevant para is reproduced as under:

"38. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest @ 10.75% per annum within 90 days from the date of decision."

3. The complainant filed an application for rectification of decree dated 07.02.2019 in direction of the authority and the relevant para of the order is reproduced below:

"It is ordered that the respondent shall refund the entire amount paid by the complainant i.e., Rs.33,72,970/- along with the prescribed rate of interest @ 10.75% per annum within 90 days from the date of decision."

4. The complainant in its application dated 01.03.2023 stated that it is settled position that the executing court cannot go beyond the decree and the Hon'ble Executing Court have erred in ruling that the decree is for simple interest in spite of the decree being speaking loud and clear for the claim of payment of interest at the prescribed rate of interest for every month of delay which implies the compound interest only. That the decree is for claim for refund and payment of interest at the prescribed rate of interest for every month of delay and it means only compound interest on the monthly basis and the same was decreed

order as per rule 16 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

5. Thereafter, the complainant filed an application for execution of decree and vide proceedings dated 22.01.2021 following was observed by the authority:

"3. As per the calculation given by the Decree Holder and also as per the office report the total amount to be paid by the judgement Debtor to the Decree Holder as per the directions contained in the decree comes out to Rs. 81,04,913/-."

6. In view of the above, the complainant has prayed that *the Hon'ble Adjudicating Officer may be directed to execute the decree as per the direction contained in the decree which is by all means 'ONLY INTEREST COMPOUNDED ON MONTHLY BASIS'.*
7. The authority observes that **firstly**, there is no provision in the Act which empowers the authority to clarify its order. **Secondly**, there is provisions under section 39 of the Act which deals with rectification of the order, however, the ambit and scope of section 39 of the Act is very limited. 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 and 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 three cases, *firstly*, when the application for rectification is filed after 2 years from the date of the order made under this Act, *secondly*, orders against which appeal has been preferred, *thirdly*, 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."

8. 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.
9. The present complaint was disposed of by the authority on 07.02.2019 and the respondent has filed the present application on 01.03.2023 which is after the limitation period of 2 years as provided under section 39 of the Act. Thus, in view of the legal position discussed above, there is no merit in the application dated 01.03.2023 filed by the complainant for rectification/clarification of order and decree dated 07.02.2019 passed by the authority and the same is hereby declined.
10. File be consigned to the registry.


(Sanjeev Kumar Arora)

Member


(Ashok Sangwan)

Member


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.08.2023