

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

Complaint no. : 678 of 2021
Date of application : 11.10.2022
Date of decision : 05.09.2023

Rajiv Sethi

R/o: 17/104, 2nd floor, Vikram Vihar,
Lajpat Nagar- IV, New Delhi-110024.

Complainant

Versus

M/s Orris Infrastructure Pvt. Ltd.

Address: C-3, Janakpure, New Delhi- 110058.

Respondent

CORAM:

Sh. Ashok Sangwan

Member

APPEARANCE:

Shri Satya Prakash Yadav,
None

Advocate on behalf of the complainant
Advocate on behalf of the respondent

ORDER

1. The present complaint was heard and disposed of vide order dated 13.07.2022 wherein the Authority has awarded delayed possession charges to the complainant at the prescribed rate of interest i.e., 9.70% p.a. from due date of possession i.e. October 2015 till date of the possession plus 2 months i.e. 11.06.2017 as per section 18(1) of the Act read with rule 15 of the Rules.
2. Application dated 11.10.2022 has been filed by the counsel of the complainant wherein it is stated that the Authority had observed at para no.32 at page 21 of order dated 13.07.2022 that the '*due date of possession as per agreement for sale as mentioned in the table in para 2*



is October 2015 and there is delay of 2 years approximately on the date of filing of the complaint as respondent has already offered the unit on 11.04.2017 after obtaining occupation certificate from the competent authority on 06.04.2017'. It is further submitted by the applicant-complainant that the said order suffers from an error apparent on the face of record, in as much as, the due date of possession, as per the builder buyer agreement executed on 26.03.2011 is October 2014 and not October 2015. In view of the above, it is prayed by the applicant-complainant that necessary orders be passed thereby rectifying the orders dated 13.07.2022.

3. On 09.03.2023, the counsel for the complainant was directed to file written submissions and the same were filed by the complainant on 04.07.2023 whereby the complainant is proposing following rectification as under:

S.No.	Matter sought to be rectified	Relevant page of detailed order dated 13.07.2022 showing error	Proposed rectification by the applicant-complainant with relevant page of paper book showing error
1.	Date of approval of building sanction plan	April 2012 [Point no.10 at page 3 of detailed order dated 13.07.2022]	29.07.2011 [Letter dated 29.07.2011 [at page 52 of complaint] issued by the respondent stating that the sanction plan/approvals of the project were already received prior to 29.07.2011]
2.	Due date of offer of possession	October 2015 [calculated from- 42 months April 2012 i.e, date of sanctioned plans, Point	29.01.2015 [calculated from- 42 months from letter dated 29.07.2011 sent by the



		no.13 at page no.3 of detailed order dated 13.07.2022]	respondent to bank whereby the respondent has stated of receiving sanctioned plans]
3.	Date of offer of possession	11.04.2017 [Point no.18 at page 4 of detailed order dated 13.07.2022, after relying upon annexure B at page 23 of reply]	The offer vide said letter is conditional as it was subject to payment of certain dues which have been held illegal by this Authority. Also, the said letter dated 11.04.2017 also refers to earlier letter dated 22.07.2016 and this letter dated 22.07.2016 shows that the possession was being offered without OC in 2016, as such offer made vide such letter is no offer in eyes of law.

4. The respondent has placed on record copy of building plans on record in compliance of order dated 25.04.2023 passed by the authority. The respondent has placed on record approval of building plan dated 14.10.2010 and has also placed on record approval of revised building plan dated 10.04.2012.

A. Finding by the authority

5. The authority observes there is a provision under section 39 of the Act which deals with rectification of orders. 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."

6. Upon perusal of documents placed on record, the authority has gone through the possession clause 10.1 of the buyer's agreement and the same is reproduced below for the ready reference:

"Clause 10.1 The company based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said unit within a period of 36 months plus grace period of 6 months from the date of execution of the apartment buyer's agreement by the company or sanctions of the plans or commencement of construction whichever is later unless there shall be delay or failure due to reasons mentioned in clauses 11.2, 11.3 and clause 38 or due to failure of allottee to pay in time the price of the said unit ..."

7. In the present complaint, the authority has calculated due date of possession in the following manner: The construction commenced on 02.03.2011 [Page 55 of the complaint], the buyer's agreement was executed on 26.03.2011 [Page 25 of complaint] and the sanction plans were approved in April 2012 [Email by Orris at page 71 of complaint]. The due date of handing over possession is computed from the date of



sanction of the plans, i.e., April 2012, being later. The period of 36 + 6 months ends in October 2015.

8. However, the counsel for the complainant submitted that as per letter dated 29.07.2011, the respondent has admitted having obtained all necessary permissions/ approvals/ sanctions for construction of the said building from all the concerned competent authorities. Therefore, this date be treated as date of sanction of the plans for computing due date of handing over possession. [letter dated 29.07.2011 at page 52 of complaint]
9. The authority observes that unit of the complainant is situated in tower 3D and the building plan in respect of it was granted by the competent authority on 10.04.2012. In view of the above, the due date is calculated from the date of sanction plans i.e., April 2012 being later. Thus, no rectification is required in respect of 'Date of sanction plan' and 'Due date of possession'.
10. The authority has treated letter dated 11.04.2017 as date of offer of possession as the same was sent to the complainant to take possession after obtaining occupation certificate from the competent authority. Thus, no rectification is required to be done at this stage in the date of offer of possession.
11. For the reasons stated above, no rectification is required in order dated 13.07.2022 passed by this authority, and the application dated 11.10.2022 is hereby declined. File be consigned to the registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.09.2023