

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

Complaint no.: 4411 of 2020
Date of application: 01.12.2022
Date of decision: 28.09.2023

Mrs. Santosh Chahal,
R/o: A71, Palam Vihar, Gurugram, Haryana.

Complainant

Versus

Eminence Township India Pvt. Ltd.
Address: 44, Ground Floor, Sector-32, Gurugram.

Respondent

CORAM:

Shri. Vijay Kumar Goyal

Member

APPEARANCE:

None

Shri. Naveen Lohia (Advocate)

Complainant
Respondent

ORDER

1. The present complaint was heard and disposed of vide order dated 13.01.2022 wherein the Authority has awarded delayed possession charges to the complainant at the prescribed rate of interest i.e., 9.30% p.a. from due date of possession i.e., 01.12.2017 till date of the offer of possession plus 2 months i.e., 25.09.2019 as per section 18(1) of the Act read with rule 15 of the Rules.
2. Application dated 01.12.2022 has been filed by the counsel of the respondent wherein it is stated that the Authority while calculating the due date of possession at page 3, Clause 13 of order dated 13.01.2022 had observed the date of start of construction of the ground floor slab of the particular tower in which the unit of the complainant was situated

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as 01.06.2014, whereas the date of start of construction of the ground floor slab was 31.07.2017. Therefore, the due date of possession was 31.07.2020 and not 01.12.2017'. In view of the above, it is prayed by the applicant-respondent that necessary orders be passed thereby rectifying the orders dated 13.01.2022.

3. The respondent is proposing following rectification as under:

S. No	As per order dated 13.01.2022	Rectification proposed
1.	Date of start of the ground floor slab: - 01.06.2014 (As stated by the respondent in its reply at page no. 8 of the reply)	Date of start of the ground floor slab: - 31.01.2017
2.	Due date calculated from 36 months plus 6 months from the date of start of the stilt/ground floor roof slab of the particular tower in which the booking was made 01.12.2017	Due date calculated from 36 months plus 6 months from the date of start of the stilt/ground floor roof slab of the particular tower in which the booking was made 31.07.2020

A. Finding by the authority

4. The authority observes there is provisions under section 39 of the Act which deals with ratification 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

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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."

5. Since the present application involves amendment of substantive part of the order by seeking rectification of the due date of possession, this would amount to review of the order. Further, as per schedule of payments annexed with the buyer's agreement, 95% amount against the sale consideration was to be paid on 31.03.2016 i.e., 10 months prior to the alleged date of start of construction i.e., 31.01.2017 which itself make it null and void. Also, no document was placed on record to support the claim of the respondent. Accordingly, the said application is not maintainable being covered under the exception mentioned in 2nd proviso to section 39 of the Act, 2016.
6. 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.

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7. Thus, in view of the legal position discussed above, there is no merit in the application dated 01.12.2022 filed by the respondent for rectification of order dated 13.01.2022 passed by the authority and the same is hereby declined.
8. File be consigned to registry.

Dated: 28.09.2023

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(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



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