

PROCEEDINGS OF THE DAY		19
Day and Date	Tuesday and 02.01.2024	
Complaint No.	MA No. 41/2023 in CR/915/2018 Case titled as Amit Tyagi Vs Athena Infrastructure Limited	
Complainant	Amit Tyagi	
Represented through	Shri Nitin Yadav Advocate	
Respondent	Athena Infrastructure Limited	
Respondent Represented through	Shri Arun Yadav Proxy Counsel	
Last date of hearing	21.11.2023	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceeding/Order

Succinct facts of the case as per complaint and reply are as under:

1.	Name and location of the project	Indiabulls Enigma, Sector -110, Gurugram
2.	Registered/unregistered	Registered (351 of 2017)
3.	Nature of the project	Residential
4.	Revised date of completion as per registration certificate	31.08.2018
5.	Plan	Subvention scheme till possession (page 94)
6.	Flat/unit no.	C-192 on 19 th floor in tower C

7.	Date of flat buyer agreement	27.11.2013
8.	Total consideration amount as per agreement	Rs. 2,05,54,000/- (annexure -4, page- 99)
9.	Total amount paid by the complainant upto date	Rs. 1,72,27,910 /- (annexure -4, page- 100)
10.	Percentage of consideration amount	83% approx.
11.	Date of delivery of possession.	Clause 21 within 3 years with a 6 months grace period from the date of execution of the agreement i.e. 27.05.2017

Relief sought by the complainant :

- To amend/rectify the order dated 17.01.2019 by setting aside/removing the rectification carried out on 19.12.2019 and order dated 17.01.2019 may be restored in its original form upon setting aside order dated 19.12.2019**

Date of decision by Courts/Tribunal	Decision by the Courts/ Tribunal
17.01.2019 Haryana Real estate Regulatory Authority, Gurugram	The respondent is directed to pay delay possession charges at prescribed rate of interest i.e. 10.75% per annum w.e.f. 27.05.2017 till date of order
19.12.2019 Haryana Real Estate Regulatory Authority	The respondent vide its application placed on record has sought rectification of order dated 17.01.2019 passed by the Authority wherein the Authority has ordered to pay interest to the complainant at the prescribed rate i.e' 10.75% p.a. till handing over the possession as per

	<p>provisions of section 18[1] of the Real Estate(Regulation and Development) Act,20L6.</p> <p>The respondent has stated at bar that they have already paid interest to the bank till offer of possession of the allotted unit to the complainant under the subvention scheme and, as such, no further interest is required to be paid to the complainant. In view of the submissions made by the respondent against which the complainant has not raised any objections, the application for rectification of order dated 17.01.2019 passed by the authority is allowed and order dated 17.01.2019 is rectified to the extent that the interest paid by the respondent/promoter by way of subvention scheme shall be considered to have been adjusted in the delay possession charges and no further interest is required to be paid by the respondent to the complainant till offer of possession of allotted unit.</p>
<p>30.10.2019(Dismissed) Haryana Real Estate Appellate Authority</p>	<p>On, 07.10.2019, the Haryana Real Estate Appellate Authority dismissed the application moved by the respondent for waiver of the condition of pre-deposit and granted an opportunity to the respondent to comply with the provisions of proviso to section 43(5) of the Act</p>
<p>16.10.2020(Dismissed) Hon'ble High Court of Punjab and Haryana , Chandigarh</p>	<p>Since these writ petitions have been pending for some time and interim orders have also been passed in many of them, as a one-time measure permission is granted to the Petitioners to make</p>



the pre-deposit in terms of the proviso to Section 43 (5) of the Act before the Appellate Tribunal, wherever appeals have already been filed and are pending, not later than 16th November, 2020. This will also be available to those Petitioners in whose cases the registry of the Appellate Tribunal did not process the appeals for failure to make the pre-deposit. Upon the making of such pre-deposit within the time granted by this Court, the Appellate Tribunal, where the appeal is still pending, will then proceed to hear the appeal on merits, which would include a challenge to the validity of the order of the Authority. On failure of the Petitioners to make the pre-deposit even within the extended time as granted by this Court, the Appellate Tribunal will proceed to pass appropriate consequential orders in the appeal.

95. Where the Petitioner's appeal already stands dismissed by the Appellate Tribunal for a failure to make the pre-deposit as directed, and that order is challenged in the writ petition, this Court as a one-time measure, permits the Petitioner to make the pre-deposit in terms of the proviso to Section 43 (5) of the Act before the Appellate Tribunal not later than 16 November, 2020. Upon making of the pre-deposit within the time granted by this Court, the Appellate Tribunal will recall its order dismissing the appeal, restore the appeal to file and proceed to dispose of the appeal on merits, which will include examining the validity of the order of the Authority. On

	failure of the Petitioners to make the pre-deposit with the time as granted by this Court, the order of the Appellate Tribunal dismissing the appeal will stand affirmed without any further recourse to this Court.
13.05.2022(Dismissed) Hon'ble Supreme Court of India	We do not see any reason to interfere in these matters. However, the relief that was granted in terms of paragraph 142 of the decision in M/s. Newtech Promoters & Developers Pvt. Ltd. v. State of UP & others, reported in 2021 (13) SCALE 466, in rest of the matters [i.e. SLP © No.13005 of 2020 Etc.] disposed of on 12.05.2022 shall be available to the petitioners in the instant matters. With these observations, the Special Leave Petitions are dismissed. Pending applications, if any, also stand disposed of.

The factual matrix of the case is that the aforesaid complaint was disposed of vide order dated 17.01.2019. The complainant-applicant filed an application dated 14.03.2023 under Section 39 of Act seeking relief that the rectification vide proceedings dated 19.12.2019 in order dated 17.01.2019 be withdrawn and the order dated 17.01.2019 be restored in its original form. To proceed further, it is appropriate to look into the statutory provisions of the Act under section 39, as under:-

39. 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.

The aforesaid provision mandate that the rectifying proceedings mistake apparent from record is to be rectified and substantive part of order is not to be modified. In the present application filed by the complainant states that the complaint was disposed vide order dated 17.01.20219 wherein allowing DPC to the complainant. An appeal against the same preferred by the respondent which was dismissed by the Hon'ble Appellate Tribunal on 30.10.2019 for waiver of condition under section 43(5). Thereafter, the respondent approached the Hon'ble Punjab and Haryana High Court in CWP no. 35679 o 2019 against the dismissal order dated 30.10.2019 and same was dismissed on 16.10.2020. The respondent approached the Hon'ble Supreme Court of India in SLP © No. 000256-000286 of 2021 against the dismissal order dated 16.10.2020 passed by the Hon'ble Punjab and Haryana High Court and same was also dismissed on 13.05.2022. The complainant further states that he had not received any application for rectification and filed the execution petition dated 19.05.2022 only on the basis of final order 17.01.2019.

On the contrary, the respondent-builder states that pursuant to filing of the application by the respondent, notice of hearing were communicated by the Authority to both the parties. As per the order dated 19.12.2019, the complainants were represented through Ms. Ahluwalia who was well aware of the nature of the proceedings.

After consideration of the facts and circumstances, the authority observes that the appeal has been filed upto the Apex Court of India. 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. Accordingly, the said application is not maintainable being covered under the exception mentioned in 2nd proviso to section 39 of the Act, 2016. 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. Thus, in view of the legal position discussed above, there is



HARERA
GURUGRAM

**HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विभाग गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

no merit in the application dated 14.03.2023 filed by the complainant for rectification of order dated 1912.2019 passed by the authority and the same is hereby declined.


Ashok Sangwan
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman
02.01.2024