



**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. विश्राम गृह सिविल लाईंस गुरुग्राम हरियाणा

<b>PROCEEDINGS OF THE DAY</b>		<b>11</b>
Day and Date	Wednesday and 07.02.2024	
Complaint No.	MA No. 478/2023 in CR/6609/2022 Case titled as Shyam Lal Mukharjee VS IREO GRACE REALTECH PVT LTD	
Complainant	Shyam Lal Mukharjee	
Represented through	Shri Khush Kakra Advocate	
Respondent	IREO GRACE REALTECH PVT LTD	
Respondent Represented	Shri M.K. Dang Advocate	
Last date of hearing	Application u/s 39 of the Act	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

### **Proceedings-cum-order**

The above-mentioned matter was heard and disposed of vide order dated 15.11.2023 wherein, the Authority had directed the respondent to entire amount received by it from the complainant along with interest at the rate of 10.75% p.a. from the date of each payment till actual refund of the deposited amount.

The respondent has filed an application under section 39 of the Act for rectification of order dated 15.11.2023 stating that the amount deposited by the complainant be refunded to the complainant with interest @ 10.75% p.a. from 27.11.2018 till date of refund as observed by the Hon'ble Apex Court in similar case of same project titled as **Ireo Grace Realtech Pvt. Ltd. Versus Abhishek Khanna and others.**

The authority observes that this is a simple case of full refund as the respondent is in contravention of Section 11 (4) (a) read with Section 18 (1) of the Act, 2016. Therefore, the complainant is entitled to get full refund of the entire amount paid along with prescribed rate of interest as per the provisions of the Act. Thus, no question w.r.t. granting of refund from the alleged date till its realization. Further, this Authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue has already been heard and decided by this Authority.

It is further observed that section 39 deals with the *rectification of orders* which empowers the authority to make rectification within a period of 2 years



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from the date of order made under this Act. Under the above provision, 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 two cases, *firstly*, orders against which appeal has been preferred, *secondly*, 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."*

Since the present application involves amendment of substantive part of the order by granting refund from the alleged date till realization, this would amount to review of the order. Accordingly, the said application is not maintainable being covered under the exception mentioned in 2<sup>nd</sup> 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 no merit in the application dated 21.12.2023 filed by the respondent for rectification of order dated 15.11.2023 passed by the authority and the same is hereby declined.

Rectification application stands disposed off. File be consigned to registry.

  
Ashok Sangwan  
Member  
07.02.2024