



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

(Reopened for deciding rectification application u/s 39 of RERA Act, 2016)

COMPLAINT NO. 1479 OF 2020

Rajesh Goel

....COMPLAINANT

VERSUS

MG Housing Pvt. Ltd.

.....RESPONDENT

**CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar**

**Member
Member**

Date of Hearing: 24.08.2023

Hearing: 1st (Reopen)

Present: - Mr. Shubham, Advocate, counsel for complainant through VC.

None for the respondent.

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Learned counsel for the complainant filed an application on 11.05.2023 praying for the rectification of the disposal order dated 17.02.2022 passed in captioned complaint, under section 39 of Real Estate (Regulation and Development) Act, 2016. Vide order dated 17.02.2022, respondent was directed to pay delayed interest of ₹3,19,179/- to the complainant on account of delay caused in delivery of possession of the booked unit. Complainant in the present application has raised the following grounds:

- (A) Complainant has alleged that as per para 3 of the order dated 17.02.2022, complainant has paid total sum of ₹53,61,624/- to the respondent. Authority vide its order dated 15.09.2021 directed the complainant to submit the proof of amount paid and discount received. Complainant vide letter dated 21.02.2022 submitted his ledger account of the payment of ₹53,61,623/- made to the respondent. However, respondent did not submit any proof in compliance of the order passed by the Authority. So record submitted by the complainant was taken as a final proof with regard to the payment.


Rathee

- (B) Complainant also stated that as per para 4 of order dated 17.02.2022, total amount paid by the complainant to the respondent is ₹53,61,623/- out of which ₹47,52,254/- has been paid till 31.12.2016 and ₹6,52,254/- was paid on 16.01.2020 towards outstanding dues asked at the time of offer.
- (C) Complainant has alleged that there is a contradiction in para 3 and para 5 of the said order. Without considering the relevant facts of the case, Authority inadvertently states in para 5 of the said disposal order, that learned counsel for the complainant in his averments also claimed that he was given discount of ₹6,52,254/-. However, despite several opportunities, neither of the parties submitted proof of the aforesaid discount given to the complainant. As a matter of fact, same has been paid by complainant to respondent without any protest. Therefore, in such circumstances Authority is not in a position to decide the issue pertaining to alleged discount of ₹6,52,254/- given by the respondent to the complainant.

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- (D) Complainant also annexed the copy of interest ledger dated 17.09.2020 wherein it is clear that complainant had paid total some of ₹53,61,624/- as Annexure-03.
- (E) Further, complainant requests to add that the total amount paid by the complainant to the respondent in respect of the apartment is ₹53,61,624/- (Rupees Fifty Three Lakhs Sixty One Thousand Six Hundred and Twenty Four).
- (F) The complainant also prays to delete the whole para 5 from the order.
2. Today, Advocate Shubham appeared on behalf of the complainant and submitted his arguments with reference to the rectification application filed by him on 11.05.2023, where he requests the Authority to delete para 5 of the order dated 17.02.2022, regarding discount of ₹6,52,254/- as it has been added in the order by mistake. He further submitted that respondent in the ledger has mentioned that ₹52,36,100 has been received to him from the complainant. Same has been annexed as "Annexure-2" on Page no. 11 of the rectification application.
3. Neither anyone appeared on behalf of respondent nor filed reply.
4. Authority is of the view that order dated 17.02.2022, was passed after duly taking into consideration the facts and documents placed on record

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by both the parties. Vide said order the Authority at para 4 has observed that since occupation certificate was obtained from the Department of Town and Country Planning, Haryana on 22.09.2017 following which an offer of possession was made to the complainant on 09.10.2017, therefore complainant is entitled to get interest on account of delay in delivery of possession on the already paid amount of ₹47,09,369/- from due date of possession i.e. from 31.12.2016 till offer of possession after obtaining occupation certificate i.e. 22.09.2017. Thus, complainant was awarded interest of ₹3,19,179/- on account of delay in delivery of possession on the already paid amount of ₹47,09,369/- from the deemed date of possession i.e., 31.12.2016 till the date of offer of possession after obtaining occupation certificate i.e., 22.09.2017. Further, as reflected in para 3 of the said order, complainant vide letter dated 21.02.2022 had submitted by ledger account of payment of ₹53,61,623/- made to the respondent. As per para 4 of the said order, it has also been recorded that, total amount paid by the complainant to respondent is ₹53,61,623/-. Out of which ₹47,52,254/- was paid till 31.12.2016 and ₹6,52,254/- was paid on 16.01.2020, meaning thereby that complainant has only paid an amount of ₹47,52,254/- between the period of awarding delay interest i.e., 31.12.2016 to 22.09.2017 and interest was correctly calculated only at ₹47,52,254/-.



5. Further, learned counsel for complainant averred during hearing today, that para 5 of order dated 17.02.2022 statement that “learned counsel for complainant in his averment also claimed that he was given discount of ₹6,52,252/-” has been wrongly recorded. However, it is observed that the Authority vide its interim order dated 15.09.2021 at para 1 had also observed that “possession was offered to the complainant on 09.10.2017. On 18.12.2017 respondent issued a demand letter for payment of ₹07,19,911/-. As per averment of complainant he was given a discount of Rs. 6,52,254/- . When complainant visited office of respondent on 11.08.2020, he was apprised that Rs. 67,556/- were due against him, towards which he issued a cheque in favour of respondent company.” It is pertinent to mention here that the proceedings before Authority are summary proceedings and the Authority following the principle of natural justice passed the order while considering arguments of both the parties. If complainant had grievance with regard to statement with respect to discount of ₹ 6,52,254/- which was first recorded in the interim order dated 15.09.2021 then he would have raised his objections on subsequent date of hearing of the case itself. However, no such objection was ever raised by complainant.
6. Furthermore, Authority under section 39 of the RERA Act, 2016 is only mandated to rectify only clerical mistakes apparent on the face of record.



The RERA Act, 2016 does not entrust the power of review of the order on the Authority.

7. In fact the proviso 2 to section 39, categorically provides that the Authority "shall not" while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the Act. A bare perusal of the application leaves no doubt that the complainant is not praying for correction of the clerical mistake but is seeking the relief of "deleting whole para 5 of the order dated 17.02.2022 passed by the Authority".
8. Further, as per order dated 17.02.2022, complainant is also given liberty to file a fresh complaint before the Authority for seeking redressal of this issue along with evidence supporting his averments. Relevant part of the order is reproduced below:

"5. Learned counsel for complainant in his averments also claimed that he was given discount of Rs. 6,52,254/-. However, despite several opportunities, neither of the parties submitted proof of the aforesaid discount given to the complainant. As a matter of fact, same has been paid by complainant to respondent without any protest. Therefore, in such circumstances Authority is not in a position to decide the issue pertaining to alleged discount of Rs. 6,52,254/- given by the respondent to the complainant.

6. In case, complainant wishes to seek redressal for this issue, he may approach the authority by filing a fresh complaint for the



same along with evidence supporting his averments.

7. In view of aforementioned discussion, Authority is of view that the dispute/issues alleged by the complainant stands settled and delay interest of Rs. 3,19,179/- is awarded to the complainant on account of delay caused in delivery of possession of booked unit. Respondent is directed to issue statement of accounts of receivables and payables in terms of above said directions within 30 days of uploading of this order and complainant is directed to take possession of unit within 15 days of receipt of statement of accounts.

8. Disposed of in above terms. File be consigned to record "room and order be uploaded on the website of the Authority."

6. For the above stated reasons, the present application for rectification of the final order dated 17.02.2022 deserves to be rejected and the same is **hereby dismissed.**

File be consigned to record room after uploading of this order on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



.....
DR. GEETA RATHEE SINGH
[MEMBER]