



## 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. 2160 OF 2023**

Eldeco Infrastructure and Properties Ltd ....APPLICANT/RESPONDENT

VERSUS

Mr. Sanjay Kumar

....COMPLAINANT

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

**Member  
Member**

**Date of Hearing: 17.10.2023**

**Hearing: 1st**

**Present: - Mr. Anuj Kohli, Id counsel for respondent.  
Mr. Sachin Miglani, counsel for complainant through VC.**

**ORDER (NADIM AKHTAR- MEMBER)**

1. Learned counsel for the applicant/respondent filed an application on 27.09.2023 praying for the rectification of the disposal order dated

26.07.2022 passed by this Authority in complaint No.969 of 2021, under section 39 of Real Estate (Regulation and Development) Act, 2016.

2. Vide the instant application, Ld counsel for applicant/respondent submitted that in the order dated 26.07.2022, due date of possession has been wrongly taken as 14.09.2015 whereas, said fact lacks factual and legal sanctity and rather contrary to pleaded facts. It is relevant to reproduce here in a tabular form, important dates and events with respect to complaint:-

Sr. No	Events	Date of Events
1	Allotment in favour of original allottee ( Rashmi Bhayana)	14.03.2013
2	Date of purchase of said villa by complainant	05.07.2014
3	Endorsement in favour of complainant by the company	08.08.2014
4	Full payment paid by the complainant	22.06.2017
5	Offer of possession	23.07.2018

3. That due date has been wrongly taken as 14.09.2015 whereas, as per the terms of the agreement and the reasoning given by this Authority in the aforesaid order, it is amply clear that the date of possession would at best come to 08.12.2017 and another factor which is relevant is that the last payment had been made by said Mr. Sanjay Kumar on 22.06.2017 thus,



he could not have raised any claim prior to that date and rather the delay in payment would automatically result in extension of time and date of possession.

4. That Mr. Sanjay Kumar made the last payment to the tune of Rs.1,40,004.07/- on 22.06.2017, consequently, calculated from the said date, the possession was offered and taken well within agreed time frame. Thus, no claim for compensation survived in his case based on the reasoning mentioned in the disposal order dated 26.07.2022 and hence the same deserves to be corrected/rectified by ordering correction/modification of the order dated 26.07.2022
5. It is also prayed that present application of review/rectification may be allowed by incorporating the amount calculated in table of the application.
6. Today, during course of hearing, Id counsel for applicant/respondent reiterated the facts of above said application dated 27.09.2023 and stated that as per clause C(1) of builder buyer agreement deemed date of possession to be calculated from 30 months from the date of start of construction/excavation and as per ledger at page No.47, date of excavation is 08.09.2014. Per contra, Id counsel for complainant had stated that respondent had taken lump sum amount before excavation and also half of the amount before execution of agreement, i.e., 14.03.2013 and thereafter executed the agreement.



7. It is observed by the Authority that as per clause D (1) of builder buyer agreement dated 14.03.2013, upon completion of construction of the building /said unit excluding the final finishing, company shall issue a written offer of possession/final demand notice to the allottee. Further, as per clause C(1) of builder buyer agreement, construction of the said unit is likely to be completed within a period of 24 months of commencement of construction of the particular building in which the said unit is located with a grace period of 6 months subject to receipt of requisite building/ revised building plans/other approvals and permissions of concerned authorities. From the conjoint reading of both the clauses, it is clear that deemed date of possession to be calculated from date of agreement, i.e., 14.03.2013 ( 24 months with 6 months) which comes to 14.09.2015.
8. Vide said order dated 26.07.2022, complainant was awarded delay interest from 14.09.2015(deemed date of possession) to 23.02.2018 (date on which offer of possession was offered to complainant). Authority observed that said order, was passed after duly taking into consideration the facts and documents placed on record by both the parties.
9. Therefore, the plea of applicant/respondent that deemed date of possession to be calculated from the date of start of construction is rejected for the above-mentioned reasons.
10. Authority under section 39 of the RERD Act, 2016 is mandated to rectify only clerical mistakes apparent on the face of record. The RERD



Act, 2016 does not entrust the power to review of the order of the Authority.

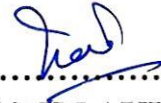
11. In fact the proviso 2 of section 39 of RERD, Act 2016, categorically provides that the Authority "shall not" while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the Act.

12. For the above stated reasons, present application filed by applicant/respondent for rectification of the final order dated 26.07.2022, deserves to be rejected and the same is **hereby dismissed.**

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



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



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**NADIM AKHTAR**  
[MEMBER]