



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

PROCEEDINGS OF THE DAY		6
Day and Date	Wednesday and 27.03.2024	
Complaint No.	MA NO. 460/2023 in CR/1501/2019 Case titled as Azad Dabas VS VSR Infratech Private Limited	
Complainant	Azad Dabas	
Represented through	Shri Pradeep K. Khatana Advocate	
Respondent	VSR Infratech Private Limited	
Respondent Represented through	Ms. Shriya Takkar & Smriti Advocates	
Last date of hearing	31.01.2024	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings-cum-order

The above-mentioned matter was heard and disposed of vide order dated 22.03.2023 wherein, the Authority has directed the respondent to pay delayed possession charges from the due date of possession, i.e., 25.02.2017 till the occupation certificate(02.08.2019) plus 2 months, i.e., 02.10.2019.

The complainants have filed an application dated 12.12.2023 for rectification of the said order stating that the complainant is entitled to delayed possession charges from the due date of possession, i.e., 25.02.2017 till the valid offer of possession. Reply has been filed by the respondent on 05.03.2024.

The Authority in para 48 of the order dated 22.03.2023 had already dealt with the issue raised by the complainant in the said rectification application and allowed delayed possession charges from the due date of possession, i.e., 25.02.2017 till the occupation certificate(02.08.2019) plus 2 months, i.e., 02.10.2019. The same was allowed keeping in view that the offer of possession made by the respondent was invalid perse, same being made prior to receipt of occupation certificate. The occupation certificate was obtained during the pendency of complaint, i.e., on 02.08.2019 and it was also the obligation of the



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

MA NO - 460/2023 In CR/501/2019

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

complainant-allottee under Section 19(10) to take physical possession of the unit within a period of 2 months of the receipt of occupation certificate. Thus, no question w.r.t. granting delayed possession charges till the date of valid offer of possession arises. 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 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 delayed possession charges from the due date of possession till the valid offer 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.



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

MANO 480/2023 MCN/1501/2019

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

Thus, in view of the legal position discussed above, there is no merit in the application dated 12.12.2023 filed by the complainant for rectification of order dated 22.03.2023 passed by the authority and the same is hereby declined. This order shall be read as a part of the final order dated 22.03.2023.

Rectification application stands disposed of. File be consigned to registry

Ashok Sangwan
Member
27.03.2024