



PROCEEDINGS OF THE DAY		13
Day and Date	Thursday and 08.02.2024	
Complaint No.	MA NO. 428/2023 in CR/4021/2022 Case titled as Umesh Gupta and Sudha Gupta VS Fantasy Buildwell Private Limited	
Complainant	Umesh Gupta and Sudha Gupta	
Represented through	Complainant No. 1 in person	
Respondent	Fantasy Buildwell Private Limited	
Respondent Represented through	Shri Dhruv Dutt Sharma Advocate	
Last date of hearing	14.12.2023	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings-cum-orders		
<p>The applicants/complainant vide application dated 15.11.2023 has requested for rectification of order dated 21.09.2023 in the above captioned complaint which was disposed of by the authority.</p> <p>Application dated 15.11.2023 has been filed by the counsel of the complainant seeking delay compensation @ 3% per month on Rs.1,83,60,000/- for a period of 10 months 17 days i.e., from 01.01.2021 to 17.11.2021 to be paid by the respondent in the final order, as the respondent extended the date of possession through the early payment rebate letter from 29.02.2020 to 31.12.2020 and agreed to give interest of 3% per month on the amount of upfront/early payment received (in case of delay in possession later than 31.12.2020) and the same has been duly recorded and acknowledged by this authority in proceeding dated 04.05.2023.</p>		



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HARYANA REAL ESTATE REGULATORY AUTHORITY
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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

MA No. 428/2023/CR/402/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

The counsel for the respondent states that the said application is not within purview of rectification under section 39 of the Act being exempted under 2nd proviso to Section 39 of the Act of 2016, as the said rectification would amount to change the substantive part.

Argument heard.

The authority observes 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 amending to allow the interest of 3% per month on the amount of upfront/early payment received, (for a period of 10 months 17 days i.e., from 01.01.2021 to 17.11.2021) this would amount to review of the order. Therefore, all the pleas advanced in this regard are devoid of



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MA No - 428/2023 In CR/1021/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

merits. 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 no merit in the application dated 15.11.2023, filed by the complainant for rectification of order dated 21.09.2023 passed by the authority and the same is hereby declined.

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

V.1-3
Vijay Kumar Goyal
Member
08.02.2024