



**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. 2159 OF 2023**

Eldeco Infrastructure and Properties Ltd

....COMPLAINANT(S)

VERSUS

Mr. Ankit Mittal

.....RESPONDENT

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

**Member  
Member**

**Date of Hearing: 17.10.2023**

**Hearing: 1st**

**Present: - Mr. Anuj Kohli, Id counsel for complainant.**

None present for respondent.

*Lead*

**ORDER (NADIM AKHTAR- MEMBER)**

1. Learned counsel for the complainant filed an application on 27.09.2023 praying for the rectification of the disposal order dated 26.07.2022 passed in complaint no.966 of 2021, under section 39 of Real Estate (Regulation and Development) Act, 2016.
2. Vide said application, Ld counsel for complainant stated that Authority inadvertently considered the period of delay w.e.f. 30.09.2018 to 06.09.2020 in complaint no.966 of 2021, whereas on pleaded facts and documents on record it is apparent that Mr. Ankit Mittal had purchased the property in question from Mr. Vikas Kumar and hence a subsequent purchaser. The property was transferred in his name on 17.06.2020 and he was given possession on dated 06.07.2020 which had been received by him without any demur of any sort. That the original allottee, Mr. Vikas Kumar had made the payments to the petitioner respondent in the main case without any protest or demur of any sort and he had no grievance whatsoever against the petitioner and no such grievance was ever raised at any point of time against the petitioner. Therefore, Mr. Ankit Mittal could not have claimed anything better than the original allottee and by no stretch of imagination he could have been paid or allowed any compensation for the period for which he was never in the picture as the purchase was made by him from open market from the original allottee on 17.06.2020 and he got possession of the Villa on 06.07.2020 itself. Thus,



there was no delay and hence the calculation depicted in the table of the order dated 26.07.2022 in Para No. 4 is contrary to the facts and the documents on record and is clearly and inadvertent error which has resulted in miscarriage of justice.

3. Today, during course of hearing ld counsel for complainant reiterated the brief facts of the application relied on judgments titled as M/s Laureate Buildwell Pvt. Ltd vs. Charanjeet Singh, Civil Appeal No. 7042 of 2019, DLF Homes Panchkula Pvt. Ltd. vs D.S. Dhanda Etc. Civil Appeal No. 4910-4941 of 2019 and Emaar India Ltd vs. Dharampal Sheoran, Appeal no.268 of 2020.
4. Authority is of the view that order dated 26.07.2022, was passed after duly taking into consideration the facts and documents placed on record by both the parties. It is admitted fact that respondent has endorsed rights in favour of complainant Mr. Ankit Mittal on 17.06.2020. At the time of such endorsement dated 17.06.2020, RERA Act, 2017 already came into force and the respondent was aware of the statutory right of the complainant with respect to delay interest. All the rights and obligations of the predecessor got transferred to the subsequent allottee at the time of endorsement and right of delay interest also gets transferred along with other rights. Mere endorsement does not change the timeline stipulated in the agreement for sale for handing over of possession, as the Act of 2016 does not differentiate between allottee and subsequent allottee.



5. Further, it is worthwhile to understand the term allottee as per the RERD Act and whether subsequent allottee is also an allottee as per provisions of the Act? The RERD Act 2016, provides the definition of the term "allottee" in Section 2 (d). The definition of the allottee as provided in the Act is reproduced as under:

"2

*In this Act, unless the context otherwise requires-(d)*

*"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*

6. The term "allottee" as defined in the Act also includes and means the subsequent allottee. An original allottee is a person to whom an apartment, plot or building has been allotted or sold by the promoter. Thereafter, a person who acquires the said allotment of apartment, plot or building through sale, transfer or other wise and in whose name the transfer of rights has been endorsed by the promoter, becomes a subsequent allottee.
7. From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee.





This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that the act does not differentiate between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the builder buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature, "subsequent allottee" shall only remain for identification/use by the promoter. The Authority does not draw any difference between the allottee and subsequent allottee per se. Therefore, subsequent allottee is entitled to all rights conferred upon him by original allottee, as per the buyer agreement.

8. The Authority is of the view that when the subsequent allottee/Mr.Ankit Mittal has stepped into shoes of the predecessor then his statutory right of delay interest cannot be denied.
9. Authority under section 39 of the RERD Act, 2016 is only mandated to rectify only clerical mistakes apparent on the face of record. The RERD



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

10. 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.

11. For the above stated reasons, the present application for rectification of the final order dated 26.07.2022 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.



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



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**NADIM AKHTAR**  
[MEMBER]