



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		8
Day and Date	Tuesday and 05.03.2024	
Complaint No.	MA NO. 38/2024 in CR/691/2020 Case titled as PETER HARVEY VS ORRIS INFRASTRUCTURE PRIVATE LIMITED	
Complainant	PETER HARVEY	
Represented through	None	
Respondent	ORRIS INFRASTRUCTURE PRIVATE LIMITED	
Respondent Represented through	Ms Charu Rustogi, Advocate	
Last date of hearing	Rectification application	
Proceeding Recorded by	H.R.MEHTA	

Proceedings-cum-order

The present complaint was disposed of by the authority vide order dated 06.10.2022 directing the respondent to refund the paid-up amount of Rs.20,09,000/- to the complainant after deduction of 10% of the basic sale consideration along with interest @ 10% p.a. on the refundable amount from the date of filing of complaint i.e., 06.02.2020 till the date of realization of amount after adjustment of the amount of assured return paid to the complainant.

The complainant has moved an application for rectification of order dated 06.10.2020 before the authority on 18.01.2024 stating that the authority has inadvertently adjusted the assured return paid by the complainant with the refund of monies. It is further stated that it is an error apparent on the face of the record and a mistake for the following reason:

- The assured return paid by the complainant has no correlation with the payments made by the complainant to the respondent and its consequent refund.
- As per the agreement, the assured return was never to be repaid by the complainant to the respondent.



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MANO 28/2024 Jh CR/691/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

- c. The point of assured return is that if the complainant had leased the unit in question, he would have earned monies from such lease.
- d. There is no correspondence of the complainant that leads to the conclusion that the complainant waived any right to claim refund. It is matter of record that the complainant has signed a letter dated 29.05.2019 thereby waiving off future rights to claim assured return from the respondent in future. This in no way implies that the complainant waived off its right to claim refund of the paid up amount.

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 seeking specific direction that adjusted the assured return paid by the complainant with the refund of monies is inaccurate and inadvertent, 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.



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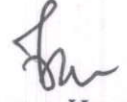
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Thus, in view of the legal position discussed above, there is no merit in the application dated 18.01.2024 filed by the respondent for rectification of order dated 06.10.2022 passed by the authority and the same is hereby declined.

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


Sanjeev Kumar Arora
Member


Arun Kumar
Chairman
05.03.2024


Vijay Kumar Goyal
Member