

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no.	MA No. 454/2023 in CR/1369/2021
Date of Decided	21.05.2024

1. Shri Bhagwan Sharma s/o Umrao Singh 2. Smt. Krishna w/o Shri Bhagwan Sharma Both R/o: House no. C-116, Mianwali Colony, District- Gurugram	Complainants
Versus	
1. Corona Housing Pvt. Ltd. R/o: 504, DLF City Court, MG Road, Sikanderpur, gurugram 2. Government officials Welfare Organisation R/o: B-227, Spacedgo Tower, Sector 47, Sohna Road, Gurugram	Respondent
CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Mohit Dua (Advocate)	Complainants
Shri Ramanand Yadav (Advocate)	Respondent

ORDER

1. The above-mentioned complaint was heard and disposed of vide order dated 23.11.2022 wherein, the Authority has directed the respondent to pay delay possession charges at the prescribed rate i.e., 10.35% per annum for every month of delay on the amount paid by the complainants from the

due date of possession, i.e., 25.12.2014 till the date of receipt of occupation certificate (20.02.2017) plus two months, i.e., upto 20.04.2017 only.

A. Brief facts of rectification application filed by the applicant/respondent:

2. The applicant/respondent has filed an application dated 08.12.2023 for rectification of the said order dated 23.11.2022 stating that the Authority has inadvertently mentioned the total sale consideration amount as Rs.39,67,200/- at para no. 2, serial no. 12 on page no. 26 of the said order, instead of Rs.43,97,629/-. Following pleadings were advanced in this regard by the respondent-
 - (i) The complainants have mentioned the amount paid by them as Rs.41,85,589/- in their complaint, therefore, the total sale consideration amount could not have been Rs.39,67,200/-.
 - (ii) The respondent had intimated and informed the complainants vide its possession letter dated 18.02.2017 that the amount due and payable is for a sum of Rs.43,97,629/-. The complainants themselves have filed the said document at page no. 50 and 51 of their complaint.
 - (iii) The said amount of Rs.43,97,629/- includes charges such as increase in area, service tax, VAT and other charges as particularly detailed in the Statement of Accounts dated 18.02.2017 annexed along with the offer of possession letter.
3. Further, the amount paid by the complainants have also been inadvertently recorded as Rs.41,85,589/- in the said order dated 23.11.2022, instead of Rs.38,61,064/-. Following pleadings were advanced in this regard by the respondent-
 - (i) As per the Statement of Accounts of respondent no.1 dated 07.12.2023, a cheque no.2406 dated 21.03.2012 for an amount of Rs.3,24,525/- drawn on the State Bank of India was bounced/returned unpaid due to insufficient funds of the complainants.

- (ii) As per the said order dated 23.11.2022, the Authority directed respondent no.1 to pay delay possession charges at prescribed rate of 10.35% per annum for every month of delay on amount paid by complainants from the due date i.e., 25.12.2014 till the receipt of occupation certificate, i.e., 20.02.2017 plus two months, i.e., upto 20.04.2017 only. The said rate is required to be calculated on total amount paid by the complainants to respondent no. 1, i.e., on Rs.38,61,064/, which comes after deducting an amount of Rs.3,24,525/- (cheque bounce)

B. Rectifications sought by the respondent vide the said rectification application dated 08.12.2023:

4. The respondent no. 1 vide its rectification application dated 08.12.2023 has sought the following rectifications in final order dated 23.11.2022: -
- (i) To rectify the total sale consideration amount of Rs.39,67,200/- and correctly mention it as Rs.43,97,629/-.
- (ii) To rectify the total amount paid by the complainants to be Rs.38,61,064/-instead of Rs.41,85,589/-.

C. Reply to rectification application filed by the complainants dated 23.01.2024:

5. All the averments made by the respondent in the said rectification application dated 08.12.2023 are denied in toto by the complainant in its reply to the said application dated 23.01.2024. It is further submitted that-
- (i) The objection as to total amount paid by the complainants was also taken by the respondent no. 1 in its oral objections before the Adjudicating Officer of the Authority, in execution proceedings, leading to a remand of the Accounts Officer of this Authority for verification of the calculation sheets. The supporting statement of accounts, receipts and bank statements of the complainant were also subject to this scrutiny.
- (ii) Further, specifically regarding the bounced cheque, it has neither been mentioned nor claimed in the calculation sheet submitted by the complainants in the pending execution proceedings before the Adjudicating Officer.

D. Bank account statements dated 19.03.2024 filed by the complainants:

6. The Authority vide its order dated 19.03.2024 directed the complainants to give details of any amount paid which is not part of the bank statement and if any, the details along with the bank account statement showing the debit entry of the same.
7. In adherence to the same, the complainants filed compiled records for payment made against the unit comprising of excel sheet, all pertinent receipts issued against payment for the unit and the necessary bank statements pertinent to specified payments made against the consideration of the unit. A brief account of payments made by the complainants is reiterated as under:

Sr. No.	Date of Payment	Total Amount Paid	Reference Annexure
1.	24.12.2010	1,00,000/-	Bank Statement dated 29.12.2010
2.	24.12.2010	4,30,000/-	Bank Statement dated 04.01.2011
3.	31.01.2011	1,89,520/-	Bank Statement dated 02.02.2011
4.	09.05.2011	3,96,720/-	Bank Statement dated 19.05.2011
5.	21.09.2011	4,16,000/-	Bank Statement dated 21.09.2011
6.	11.11.2011	3,32,056/-	Bank Statement dated 12.11.2011
7.	30.01.2012	3,24,524/-	Bank Statement dated 17.02.2012
8.	07.04.2012	1,90,000/-	Bank Statement dated 10.04.2012
9.	07.04.2012	1,34,525/-	Bank Statement dated 10.04.2012
10.	26.05.2012	44,466/-	Bank Statement dated 28.05.2012
11.	26.05.2012	2,00,000/-	Bank Statement dated 28.05.2012
12.	11.07.2012	2,03,722/-	Bank Statement dated 12.07.2012
13.	19.11.2012	53,721/-	Bank Statement dated 17.11.2012
14.	19.11.2012	1,50,000/-	Bank Statement dated 20.11.2012
15.	08.01.2013	2,03,722/-	Bank Statement dated 10.01.2013



16.	09.03.2013	2,03,722/-	Bank Statement dated 12.03.2013
17.	18.05.2013	2,03,722/-	Bank Statement dated 21.05.2013
18.	02.08.2013	2,03,722/-	Bank Statement dated 21.05.2013
19.	27.09.2014	2,03,722/-	Bank Statement dated 29.09.2014
		41,83,864/-	

E. Reply on behalf of respondent no. 1 to the bank account statement filed by the complainants:

8. The respondent filed their reply to the bank account statement being filed by the complainants on 30.04.2024 and made the following submissions:
- The complainants vide para 9 of the complaint and para 3 of their reply to the application initially claimed an amount of Rs.41,85,589/- paid to respondent no. 1 for the unit in question.
 - That the amounts mentioned at serial no. 1 to 3 above, i.e., were never received by respondent no. 2 and has been wrongly mentioned by the complainants. The reference being taken by the complainants to receipts dated 24.12.2014 and 31.01.2011 were never issued by respondent no.1. These amounts were also not part of ledger details of respondent no. 1's SOA filed by complainants at Annexure P5 at page 47, 48 and 49 of complaint. The manipulations in amount paid to respondent no. 1 is clearly evident from ledger details dated 28.06.2017.
 - The amounts stated in bank account statement dated 28.06.2017 of respondent no.1, includes an amount of Rs.1,33,280/- and Rs.1,89,520/- totalling to a sum of Rs.3,22,800/- which is now being claimed by complainants from respondent no.1. The said amounts have been paid by the complainants to respondent no.2 (GOWO) and IAHS as agreed upon by the complainants vide Annexure P2 at page 24 and letter dated 24.12.2010 at para no. 5(c).
 - The respondent no. 1 is not liable to pay any interest accounting on the aforesaid sum of Rs.3,22,800/- as this amount cannot be accounted for by respondent no.1. Also, if the total amount is reduced by the said

amount of Rs.3,22,800/-, amount paid by complainant comes out to be Rs.38,61,064/-.

- (v) As per the Statement of Accounts of respondent no.1 dated 07.12.2023, a cheque no.2406 dated 21.03.2012 for an amount of Rs.3,24,525/- drawn on the State Bank of India was bounced/returned unpaid due to insufficient funds of the complainants.

F. Findings of the Authority:

9. The applicant/respondent has filed the present application to rectify the total amount paid by the complainant/allottee, stating that the complainant/allottee has paid the amount of Rs.38,61,064/- instead of Rs.41,85,589/-. Further, submitted that the said statement of account dated 07.12.2023, of the respondent /promoter it has been clearly stated that vide cheque bearing no. 2406, of an amount of Rs.3,24,525/- dated 21.03.2012, drawn on State Bank of India, the said cheque was bounced and return unpaid due to insufficient funds by the complainants. However, as per annexure R1/1 at page 55 and 56 of the reply filed by the applicant/respondent on 22.12.2021 in the Authority, the respondent has itself admitted that the total amount paid by the complainant is Rs.41,85,589/- (Inclusive of cheque bounce amount of an Rs.3,24,525/-). Therefore, in view of the above, the Authority observes that the respondent/promoter is an under obligation to pay the delayed possession interest on the amount paid by the complainant/allottee.
10. The respondent has further contended that the total sale consideration of the unit was Rs.43,97,629/- instead of Rs.39,67,200/- On consideration of the documents and submissions made by the parties in the main complainant as well as in the rectification application, the Authority is of the view that in the present case, as per (annexure -A at page no. 42 of the complaint and page no. 49 of reply) schedule of payment cum payment plan

annexed with the buyer's agreement the total sale consideration of allotted unit was Rs.39,67,200/- plus other charges (Interest Free Maintenance Security) IFMS and others. Further, the complainants and the respondent annexed the statement of account (annexure-A at page no. 51 of the complaint and page no. 58 of the reply) wherein, the total sale consideration of the said unit is mentioned as Rs.42,37,659/-. Therefore, the said rectification is allowed being matter apparent from record and does not constitute amendment of substantive part of this order under Section 39 of the Real Estate (Regulation and Development) Act, 2016. Section 39 of the Real Estate (Regulation and Development) Act, 2016:

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."

11. In light of the afore said circumstances, the rectification application stands disposed of. File be consigned to registry.

(Ashok Sangwan)
Member

V.I - 
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.05.2024