

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

Complaint no. : 3615 of 2021
Date of complaint : 14.09.2021
Order reserved on 23.04.2024
Miscellaneous Application

1. Shashi Saha
2. Nilendu Indu Saha

Both R/o: - Flat 2C, Block 22, Diamond City North, 68
Jessore Road, Kolkata, West Bengal-700055.

Complainants

Versus

1. M/s Martial Buildcon Private Limited.

Regd. Office at: Paras Twin Towers, Tower-B, 6th Floor,
golf Course Road, Sector-54, Gurugram-122002.

2. M/s M3M India Private Limited

Regd. Office at: Unit No. SB/C/SL/Office/008, M3M
Urbana, Sector-67, Gurugram, M

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Shubham Kaushik (Advocate)
Ms. Shriya Takkar (Advocate)

Complainants
Respondent

ORDER

1. An application dated 22.12.2023, has been filed by the respondent for rectification of order dated 05.12.2023 under section 39 of the Act, 2016 passed by the authority wherein it is stated that while passing the directions, the deduction of pre-handover amount has not been recorded which was allowed by the Authority vide proceeding dated 17.05.2023. which reproduced below as:

Order pronounced

The respondent is directed to refund the deposited amount to the complainant after deduction of 10% and pre-handover amount alongwith prescribed rate of interest i.e. 10.70% per annum from the date of cancellation till its realization.

Detailed order will follow. Matter stands disposed off. File be consigned to the registry.

Brief Background:

2. The aforesaid complaint was disposed of vide order dated 17.05.2023. While preparing the order it was observed that there was an inadvertent error in the proceeding dated 17.05.2023 wherein it was recorded "...from the date of each payment..." while the matter was that of cancellation. Thereafter, the matter was listed for re-hearing on 04.10.2023.
3. On 04.10.2023, the matter was adjourned to 17.10.2023 before full bench wherein the respondent sought rectification of order dated 17.05.2023 that the refund should be allowed from date of cancellation instead of date of each payment deposit till its realization as the unit in question was cancelled on 21.06.2021 due to payment default on part of the complainant. The Authority reserved the matter for the pronouncement of orders on 05.12.2023. On that date, the matter was listed, and the Authority passed the following orders:

Order pronounced.

Refund is allowed after deduction of 10% earnest money alongwith prescribed rate of interest i.e. 10.75% per annum from the date of cancellation of the unit i.e. 21.06.2021 till its realization.

Matter stands disposed off. Detailed order will follow. File be consigned to the registry.

4. The respondent builder filed another rectification application, M.A. No. 482-2023, on December 22, 2023, seeking rectification of the order dated December 5, 2023. The respondent's counsel has requested rectification of the order, stating that the respondent had paid an amount of Rs.7,11,336/- towards pre-handover, in the form of post-dated cheques vide letter dated May 6, 2019 (page 111 of the reply). The builder


contends that this amount should also be deducted from the refundable amount, in addition to the 10% earnest money deduction.

5. After consideration of all the facts and circumstances, Authority is of the view that the rectification required is a error apparent from record and is admissible under the provision section 39 of the Act of 2016.

H. Directions of the authority

6. Hence, the authority hereby allows the rectification application and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. *The respondent is directed to refund the deposited amount to the complainant after deduction of 10% and pre-handover amount alongwith prescribed rate of interest i.e. 10.70% per annum from the date of cancellation till its realization.*
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
7. The rectification application stands disposed of.
8. This shall be read as part of the order dated 05.12.2023.


Ashok Sangwan
Member


Arun Kumar
Chairman


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.04.2023