



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		24
Day and Date	Wednesday and 03.07.2024	
Complaint No.	MA No. 341/2024 in CR/1948/2023 Case titled as Mohinder Pal Rawal and Renu Sethi and Kapil Rawal VS ST. Patrick's Reality Private Limited	
Complainant	Mohinder Pal Rawal and Renu Sethi and Kapil Rawal	
Represented through	Complainant in person	
Respondent	ST. Patrick's Reality Private Limited	
Respondent Represented through	Shri Pankaj Chandola Advocate	
Last date of hearing	Application u/s 39 of the Act	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings-cum-order		
<p>The above-mentioned matter was heard and disposed of vide order dated 03.04.2024 wherein, the Authority has directed the respondent to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession, i.e., 26.01.2021 till the date of offer of possession(16.02.2023) plus two months, i.e., 16.04.2023 as per Section 18(1) of the Act read with Rule 15 of the Rules, 2017.</p> <p>The respondent has filed an application dated 30.05.2024 for rectification of the said order under Section 39 of the Act, 2016 on the grounds that the Authority has made the following inadvertent errors in the said order, dated 03.04.2024:</p> <p>(i) That the Authority inadvertently mentioned complaint bearing no. 2203 of 2023 on page no. 5 at serial no.4 and the title of same be removed from final order dated 03.04.2024.</p>		



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MANO-311/2024/CR/A/19-23

New PWD Rest House, Civil Lines, Gurugram, Haryana

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- (ii) That the due date of possession is inadvertently recorded as 26.01.2021 instead of 26.07.2021 because as per clause 7.1 of the agreement, possession was to be handed over within 36 months plus 6 months grace period from the date of Agreement. Further, the respondent is also entitled to 6 months extension for Covid-19 period which was allowed and granted by learned Authority to all the promoters.
- (iii) That the present complaint also related to the issue pertaining to Pre-EMIs of Rs.23,88,015/- paid by the respondent to the bank on behalf of the complainant. Since the respondent has already paid Pre-EMIs to the bank on behalf of the complainants, thus, the complainants have suffered no loss against the said amount disbursed by the bank and granting interest on the said disbursed amount would amount to double jeopardy. Therefore, the said Pre-EMI amount is entitled to be adjusted against the delayed possession interest to the complainants.

Before proceeding with the matter, it would be appropriate to refer to the provisions of Section 39 of the Act, 2016 under which the present application has been preferred.

"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."

The above-mentioned matter was heard and disposed of vide order dated 03.04.2024 wherein, the Authority has passed the following directions under Section 37 of the Act:

"67. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession till the date of offer of possession plus two months, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so*



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MA No 3/12024/19 CRJA/8/23

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far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.

- ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(z) of the Act.
- iii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- iv. The respondent is directed to handover the physical possession of the allotted unit to the complainants with completion in all aspects of buyer's agreement.
- v. The respondent is not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided in 14.12.2020.
- vi. The respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.
- vii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement."

After going through the verbal and written submissions of both the parties, the Authority is of the view that:

- (i) The authority has inadvertently mentioned complaint bearing no. 2203 of 2023 on page no. 5 at serial no.4 and therefore, title of the same shall be removed from final order dated 03.04.2024.
- (ii) Secondly, the plea of the respondent that the due date of possession is inadvertently recorded as 26.01.2021 instead of 26.07.2021 is devoid of merits as the Authority had already deliberated upon this issue in para no.29 and 30 of the said order dated 03.04.2024 and therefore, no grace period over and above grace period of 6 months ought to be provided to the respondent. The due date of possession remains to be the same as mentioned in the order dated 03.04.2024, i.e., 26.01.2021.
- (iii) As far as the issue pertaining to Pre-EMIs of Rs.23,88,015/- paid by the respondent to the bank on behalf of the complainant is concerned, the direction with effect to the same has been inadvertently left out to be



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mentioned in the directions part of the final order dated 03.04.2024 and therefore, para no. 67 of the "H. Directions issued by the Authority" stands rectified as under:

"67. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of a delay from the due date of possession till the date of offer of possession plus two months, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*. **Further, an amount of Rs.23,88,015/- paid by the respondent towards pre-EMI shall be adjusted towards delay possession charges to be paid by the respondent.***
- ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.*
- iii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.*
- iv. The respondent is directed to handover the physical possession of the allotted unit to the complainants with completion in all aspects of buyer's agreement.*
- v. The respondent is not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided in 14.12.2020.*
- vi. The respondent shall not demand the advance maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.*
- vii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement."*



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MANE-341/2024/19 CR/1948/2023

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This order shall be read as part and parcel of final order dated 10.05.2023.

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

Ashok Sangwan
Member
03.07.2024