



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		21
Day and Date	Wednesday and 03.07.2024	
Complaint No.	MA NO. 247/2024 in CR/199/2021 Case titled as SMT POONAM VERMA VS SPLENDOR BUILDWELL PVT. LTD	
Complainant	SMT POONAM VERMA	
Represented through	Ms. Preeti Jha Advocate	
Respondent	SPLENDOR BUILDWELL PVT. LTD	
Respondent Represented through	Ms. Shriya Takkar and Ms. Smriti Srivastava Advocates	
Last date of hearing	27.05.2024	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings-cum-orders

The above-mentioned matter was heard and disposed of vide order dated 22.03.2023 wherein, the Authority has directed the respondent to refund the amount paid by the complainant i.e., Rs.61,16,679/- after deducting 10% of the sale consideration of the unit being earnest money as per Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10.70% p.a. on the refundable amount, from the date of surrender i.e., 03.09.2020 till the date of realization of payment.

The complainant has filed an application dated 26.04.2024 for rectification of the said order stating that the said order was pronounced on 10.05.2023 and the case was disposed of with the following order:

"The respondent is directed to refund the deposited amount after deduction of 10% along with prescribed rate of interest i.e., 10.70% per annum from the date of deposit till its realization."

However, later in in para no. 31(i) of the detailed order, following directions were passed by the Authority:



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MANO-297/2024 in CR/199/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

"31(i) The respondent promoter is directed to refund the amount i.e., Rs.61,16,679/- after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with interest @ 10.70% p.a. on the refundable amount, from the date of surrender i.e., 03.09.2020 till the date of realization of payment after the Act of 2016."

On the last date of hearing, i.e., on 22.05.2024, the learned counsel for the respondent sought one week time to file reply to the said application filed by the complainant. In compliance of the same, the respondent filed objections to the said rectification application dated 25.06.2024, wherein the following submissions were made:

- i. That the present rectification application is not maintainable as the complainant is seeking amendment in substantial part of final order dated 10.05.2023 by way of enhancement of the alleged refundable amount awarded to the complainant.
- ii. That the complainant in garb of filing the present application is seeking review of the order passed by Authority which cannot be allowed as the Authority is merely empowered to rectify any mistake apparent from the record.
- iii. That occupation certificate (OC) was received with respect to the subject unit on 06.09.2019. The respondent informed the complainant to pay the outstanding dues and get the conveyance deed registered. A demand letter dated 20.08.2020 was also sent to the complainant by the respondent informing about the receipt of OC and further asking the complainant to clear the outstanding dues of Rs.38,43,715/-. The last payment towards the unit was made in August, 2017. A frivolous legal notice dated 03.09.2020 was sent by the complainant asking the respondent to refund the amount along with interest and compensation, i.e., almost after an year after grant of OC for the said unit in question.

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.



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MA No. 27/2023 CA/19/2021

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

"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."

In the factual matrix of the present case, the respondent had obtained the occupation certificate on 06.09.2019. Thereafter, the complainant sent a legal notice dated 03.09.2020 to the respondent asking for refund of amount paid by her. The complainant intended to withdraw from the project after occupation certificate of the project in which unit of the complainant was situated was obtained by the respondent. It was also incumbent upon the complainant-allottee to take possession of the unit within a period of 2 months of the occupation certificate after clearing all the outstanding dues in terms of Section 19(10) of the Act. In view of the same, the complainant was found not entitled to relief under Section 18(1) of the Act of 2016. Therefore, in its detailed final order dated 10.05.2023, the Authority directed the respondent to refund the amount deposited by the complainant against the unit after deducting 10% of the sale consideration of the unit being earnest money along with interest @ 10.70% p.a. on the refundable amount, from the date of surrender i.e., 03.09.2020 till the date of realization of the payment.

Therefore, it had been inadvertently recorded in the proceedings dated 10.05.2023 that the complainant is entitled to refund after deduction of 10% along with prescribed rate of interest i.e., @ 10.70% per annum from the date of deposit till its realization.

The Authority is of the view that there is no error in the detailed order passed by the Authority dated 10.05.2023. The complainant is entitled to the relief of refund after deduction of 10% earnest money along with interest @ 10.70% per annum from date of surrender, i.e., 03.09.2020 till date of realization of payment.



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MA NO-247/2023

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

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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