



HARERA
GURUGRAM

Complaint No. 139 of 2022

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

Complaint no. : 139 of 2022
Date of application : 19.02.2024
Date of decision : 03.04.2024

Rajesh Mittal

R/o: House No.-1710, Sector-17 Huda, Jagadhari
Yamunagar, Haryana.

Complainant

Versus

Advance India Projects Ltd.

Regd. Office At: 232-B, 4th Floor, Okhla Industrial
Estate, Phase-III, New Delhi-110020.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Shri. Vipin Raina (Advocate)

Shri. M.K. Dang (Advocate)

Complainant
Respondent

ORDER

1. An application dated 19.02.2024, has been filed by the respondent for rectification of order dated 29.11.2023 under section 39 of the Act, 2016 passed by the authority wherein it is stated that besides assured return, the authority has also directed the respondent to handover the actual physical possession of the unit. In view of the same, the authority fixed the matter for hearing on 03.04.2024.



2. The respondent has filed the application for rectification of order dated 29.11.2023 w.r.t direction of the authority mentioned in para 20-point no. (ii). The relevant para of the order is reproduced below:

"The allottee shall make the payment of outstanding dues towards the unit as per builder buyers agreement along with equitable rate of interest as per section 2(za) of the act, within 2 weeks and thereafter, the respondent would hand over the possession within next 2 weeks after completing the unit along with fixtures as per specifications and making it fully habitable.."

[Emphasis supplied]

3. The respondent in its application dated 19.02.2024 stated that the authority vide order dated 29.11.2023 has directed the respondent to hand over physical possession of the unit. The relief regarding physical possession granted is based on alleged clause 12 of the application form reproduced in para no. 16 of the detailed order dated 29.11.2023. the actual clause 12 of the booking application form is reproduced below:

" 12. In the event that variation in the super area of the unit is beyond +/- 10% at the time of final measurement and the same is not acceptable to the applicant, every attempt shall be made by the company to offer the applicant an alternative unit of a similar size within the project subject to availability. In the event that such an alternative unit is available and the applicant accepts the alternative unit, the sale consideration and all other charges including PLC shall be payable for the alternative unit at the rates agreed herein. No other claim, whatsoever, monetary or otherwise, shall lie against the company nor shall be raised otherwise or in any other manner whatsoever by the applicant against the company. "

[Emphasis supplied]

4. It is stated by the respondent/applicant that a perusal of the said clause 12 reveals that the same does not in any manner deal with handing over of physical possession.



A. Finding by the authority

5. 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."

6. The authority observes that the issue regarding handing over of physical possession to the allottee has already been dealt by this Authority in para 16 and para 17 of the order dated 29.11.2023. Therefore, no further question w.r.t. the handing over of physical possession arises. Further, this Authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue has already been heard and decided by this Authority.
7. However, it is observed by the Authority that in Para 16 of the said order there is a clerical error i.e Clause 12 of the 'application form' instead of clause 12 of the 'buyer's agreement' dated 25.01.2017 has been recorded. Relevant clause 12 of the buyer's agreement is reproduced below:-

"HANDING OVER OF POSSESSION That the Allottee shall be handed over possession of the Unit from the Company only after the Allottee has fully discharged all his obligations and entire Total price (including interest due, if any, thereon) against the Unit has been paid and all other applicable charges/dues/taxes



of the Allottee have been paid and Conveyance deed has been executed and registered in his favour. The Company shall handover possession of the Unit to the Allottee provided the Allottee is not in default of any of the terms and conditions of this Agreement and has complied with all provisions, formalities, documentation, etc as may be prescribed by the company in this regard. The Allottee shall be liable to pay the Maintenance Charges from the date referred in the notice for taking possession of the unit. After taking possession of the Unit, it shall be deemed that the Allottee has satisfied himself with regard to the construction or quality of workmanship”

8. The above being an error apparent from record can be corrected and rectification is directed to be made to the extent that the reference in para 16 of the order dated 29.11.2023, **to clause 12 of the application form may be read as clause 12 of the BBA.** Further, during the proceedings dated 03.04.2024, the counsel of the complainant stated that his name has been misspelt in the order as **Shri Vipin Rana in place of Vipin Raina.** Thus, the same is also directed to be rectified.
9. Thus, in view of the legal position discussed above, there is no merit in the application dated 19.02.2024 filed by the respondent for rectification of order dated 29.11.2023 w.r.t handing over of possession passed by the authority and the same is hereby declined.
10. However, rectification is directed to be made in terms of para no. 8 above being errors apparent from record.

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.04.2024