

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

Complaint no. : 551 of 2023
Date of application : 06.03.2024
Order reserved on : 10.04.2024

Rajender Kumar Goyal
R/o: I-GF-135, Emerald Hills Floors, Sector-65,
Gurugram- 122018

Complainant

Versus

M/s Vatika Limited
Regd. Office At: Unit A002, INXT City Centre, Ground
Floor, Block A, Sector-83, Vatika India Next,
Gurugram-122012, Haryana

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Shri Satish Kumar Goyal
Sh. Mayank Grover (Advocate)

Complainant
Respondent

ORDER

1. An application dated 06.03.2024, has been filed by the complainant for rectification of order dated 03.01.2024 under section 39 of the Act, 2016 passed by the authority wherein it is stated that the view/observation made by the Authority in para no. 38 under part "G.IV Direct the respondent to withdraw its demand regarding the maintenance charges" has been inadvertently omitted to be written in "Directions of the Authority" in para no. 39 under part H and hence requested for rectification of the order vis a vis the direction as to maintenance charges. In view of the same, the authority fixed the matter for a hearing on 10.04.2024.

A. Finding by the authority

2. The above-mentioned matter was heard and disposed of vide order dated 03.01.2024 wherein, the Authority has passed the following directions under Section 37 of the Act:

- i. *The respondent is directed to pay the amount of assured return at the agreed rate i.e., pay the deficient Assured Return since March 2016 at Rs. 78/- per sq. ft. Instead of Rs. 65/- per sq. ft., and at @ Rs. 78/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., August 2018 till the date of completion of the building, and thereafter, at Rs. 65/- per sq. ft. per month after the completion of the building or as per the agreed rates as per Addendum A to BBA dated 08.04.2010 in the event of lease of unit.*
- ii. *The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.*
- iii. *The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.*
- iv. *The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.*

3. The complainants in their rectification application dated 06.03.2024 stated that the view/observation made by the Authority in para no. 38 under part "G.IV Direct the respondent to withdraw its demand regarding the maintenance charges" of the final order dated 03.01.2024 has been inadvertently omitted to be written in "Directions of the Authority" in para no. 39 under part H.

4. During the hearing dated 10.04.2024, learned counsel for the respondent submitted that he had not received the copy of rectification application and the same was handed over to him during the course of proceedings. A

reasonable period of one week was also given to the respondent to file reply to the said application. However, the said period of one week has expired and no reply has been filed by the respondent.

5. The Authority had already dealt in with relief pertaining to maintenance charges in para no. 38 of its final order dated 03.01.2024. However, the direction pertaining to the same has been inadvertently left out to be recorded in directions part of the final order of the Authority dated 03.01.2024. Same is a mistake apparent on 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 is reproduced below for ready reference:

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. Accordingly, the said application dated 06.03.2024 filed by the complainant for rectification of order dated 03.01.2024 is held to be maintainable being covered under the ambit of Section 39 of the Act, 2016, *ibid.* Para 39 of the final order dated 03.01.2024 shall now be substituted and read as under:

- i. *The respondent is directed to pay the amount of assured return at the agreed rate i.e., pay the deficient Assured Return since March 2016 at Rs. 78/- per sq. ft. Instead of Rs. 65/- per sq. ft., and at @ Rs. 78/- per sq. ft. per month from the date the payment of assured return has not been paid i.e., August 2018 till the date of completion of the building, and thereafter, at Rs. 65/- per sq. ft. per month after*

the completion of the building or as per the agreed rates as per Addendum A to BBA dated 08.04.2010 in the event of lease of unit.


- ii. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 8.85% p.a. till the date of actual realization.*
- iii. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the final offer of possession after the receipt of the OC from the concerned authority and upon payment of requisite stamp duty as per norms of the state government.*
- iv. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.*
- v. The respondent shall demand maintenance charges from the complainant only for a period of one year and that too after obtaining the occupation certificate and handover of possession of the unit.*

7. Application allowed. This para no. 39 as amended shall form part of the main order dated 03.01.2024.

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

Dated: 18.04.2024

HARERA
GURUGRAM


Ashok Sangwan
Member
Haryana Real Estate
Regulatory Authority,
Gurugram