



PROCEEDINGS OF THE DAY		11-12
Day and Date	Tuesday and 27.02.2024	
Complaints No.	MA No. 406/2023 in CR/5082/2021 Case titled as Vishal Narula V/s Splendor Buildwell Pvt Ltd.	
	MA No. 405/2023 in CR/5112/2021 Case titled as Kamal Narula V/s Splendor Buildwell Pvt Ltd	
Complainants	Vishal Narula and Kamal Narula	
Represented through	Shri Gaurav Rawat Advocate	
Respondent	Splendor Buildwell Pvt Ltd.	
Represented through	Ms. Shriya Takkar Advocate	
Last date of hearing	Rectification	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceeding-cum-order		
<p>This order shall dispose off two applications MA No. 406/2023 and 405 /2023 dated 25.10.2023 filed u/s 39 of the Act of 2016 by the respondent.</p> <p>The aforesaid complaints were disposed of vide order dated 09.08.2023 by the Authority wherein the respondent was directed to pay the arrears of assured return from October 2018 till September 2019. The respondent filed an application dated 25.10.2023 for rectification of order dated 09.08.2023.</p> <p>Vide said application for rectification of order dated 09.08.2023, the respondent-promoter has sought following rectification:</p>		
<u>S.no</u>	<u>Changes proposed</u>	<u>Finding of the authority</u> <u>Proposed change as per application filed by the complainant</u>



1. The respondent submitted that in operative para i.e. 67 of the judgement, assured return has been allowed in perpetuity as per clause 5 without considering the maximum liability fixed in clause 39 of MoU

Finding: After consideration of the facts and circumstances, the Authority is of the view that clause 5 of the MoU is unconditional and complete in itself. Clause 5 cannot be read with clause 39 of the MoU as clause 39 is ambiguous and conditional on clause 26(a). It even restricts the statutory rights of the allottee pertaining to refund/interest/damages etc which makes it evident that the same has been inserted by the promoter being in a dominant position. Further, Clause 26 pertains to an option of buying back the subject unit at a prescribed rate in case of cancellation. In the present case, the cancellation has been set aside. Moreover, the promoter has already paid an amount of Rs. 92,05,161/- to the complainant in terms of clause 5 of the MoU, against a total consideration amount of Rs. 51,54,500/-, which already breaches the limit statedly fixed in clause 39 read with clause 26(a). It is further seen that assured return is not allowed in perpetuity rather it is payable till the said unit is leased out to the perspective lessee(s). Hence, no rectification is required.



2	<p>The respondent submitted that assured return allowed from October 2018 till September 2019 as per clause 5 of the MoU instead of January 2019 till September 2019</p>	<p>Finding: Assured return shall be allowed from January 2019 till September 2019. The above rectification is allowed being an error apparent from the facts on record.</p>
3	<p>The respondent submitted that in para 67 of the order, the respondent was directed not to charge anything which is not part of buyer agreement as there is no buyer agreement executed between the parties</p>	<p>Finding: It is observed that there is inadvertent error where MoU is inadvertently mentioned as Buyer agreement. Therefore, buyer's agreement may be read as MoU.</p>
4	<p>The respondent submitted that in dot 2 of para 67 the arrears of such interest accrued from due date of possession till its admissibility has been allowed but there is no possession clause in the MoU and due date cannot be ascertained</p>	<p>Finding: It is observed that this para needs to be deleted as it is inadvertently written and not relevant to the above complaint.</p>



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

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The respondent submitted that both delay possession charges and assured return cannot be allowed to the complainant as per dot 4 of para 67

Finding: It is observed that the said para is inadvertently written as it is a case of assured return. Hence para 67 (dot 4) may be read as "*the respondent is directed to pay outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of order after adjustment of outstanding dues, if any, failing which that amount would be payable with interest @8.70% p.a till the date of actual realization*". The authority observes that the said error is inadvertent in nature and hence, the said rectification is allowed.

This shall be read as part of the order dated 09.08.2023.

Matter stands disposed off. File be consigned to the registry.

Ashok Sangwan
Member

v.1-3
Vijay Kumar Goyal
Member
27.02.2024