

PROCEEDINGS OF THE DAY
22

Day and Date	Wednesday and 07.08.2024
Complaint No.	MA NO. 245/2024 in CR/5318/2022 Case titled as Surender Kumar and Anar Kali VS Elan Buildcon Private Limited
Complainant	Surender Kumar and Anar Kali
Represented through	Ms. Ritu Bhalla Advocate
Respondent	Elan Buildcon Private Limited
Respondent Represented	Shri Ishaan Dang Advocate
Last date of hearing	Application u/s 39 of the Act
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings-cum-order

The complainant/applicant has filed two applications dated 25.04.2024 and dated 06.05.2024 w.r.t rectification of order dated 10.04.2024 passed by this Authority. The complainant/applicant submits in the application that the Authority has directed the respondent to pay assured return of Rs.20,424/- as per the Letter of Assurance dated 05.07.2017 after deducting the amount already paid by the respondent/promoter w.e.f. 05.07.2017 till the obtaining of occupation certificate.

The complainant/applicant vide the said application dated 25.04.2024 stated that the amount of Rs.20,424,-/ on account of assured return was on the provisional booking amount i.e., Rs.18,56,458/- and for this amount the respondent/promoter issued post-dated cheques upto 31.03.2018. The respondent has paid an amount of Rs.33,840/- per month to the complainant/applicant on account of assured return till July, 2020. As per the statement of account at Annexure-R-14 of the reply, the assured return was approximately Rs.40,000/- which was paid by the respondent/promoter. Thus, the respondent/promoter is liable to pay an amount of Rs.39,753.14/- per month as assured return to the applicant/complainant.



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

MANO 24.5/2024/H CR/538/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. सी. विश्राम गृह, मिथिल नार्ड्स, गुरुग्राम, हरियाणा

Also, vide application dated 06.05.2024, the complainant/applicant, stated that the date of obtaining the occupation certificate was 15.03.2023 while the authority have mentioned in the order dated 10.04.2024 that the occupation certificate was obtained on 15.03.2022 and prayed that the rectification may be made in this regard.

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 Authority observes that the issue regarding the payment of assured returns has been already decided by the Authority in the detailed order dated 10.04.2024. The complainant/applicant is seeking revised assured returns on the basis of the adjustments made by the respondent in the statement of accounts. It is very clear that the obligation of the respondent/promoter of assured return emerges from and is guided by the letter of assurance dated 05.07.2017 as agreed between both the parties. As per Clause 1 of the Letter of Assurance dated 05.07.2017, it was agreed between both the parties that an fixed amount of Rs.20,424/- was payable on account of assured return per month to the complainant/applicant on the provisional booking of the subject unit. The relevant clause is reproduced below:

"1. That Elan Buildcon Private Limited (herein after referred to as "Company"), agrees to pay to the applicant, a Fixed Amount of Rs.20,424,- (Rupees Twenty Thousand Four Hundred and Twenty Four Only) per



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month, subject to Tax Deduction at Source, on the provisional booking in our upcoming project titled as "Elan Miracle" situated at Sector-84, Gurgaon, on the amount of Rs.18,56,458/- (Rupees Eighteen Lakhs Fifty Six Thousand Four Hundred and Fifty Eight Only) received through Ch. No. 703880 dated 12.06.2017, Ch.No. 703881 & Ch. No. 799643 dated 28.06.2017 all drawn on Axis Bank and Ch. No. 074564 dated 28.06.2017 drawn on Punjab National Bank".

[Emphasis supplied]

Herein, the amount of assured return is clearly being mentioned. The complainant/applicant stated that the amount of Rs.20,424,-/ was payable only upto 31.03.2018 as post-dated cheques of the assured return were issued by the respondent/promoter upto 31.03.2018. However, it is nowhere mentioned that the amount of the assured return would be revised after the said date. The relevant clause is reproduced below:

"The Company agrees to pay fixed amount to the application arrears on monthly basis. However, Post dated cheques (PDCs) upto 31st March, 2018 shall be handed over to the applicant upon signing and accepting this letter. The details of the cheques are annexed with the present letter as annexure "A" the receipt of which the applicant admits and acknowledges.

On expiry of 31st March, 2018 the Company would pay fixed amount to the applicant through post-dated cheques subject to clearance of dues as per the following payment plan"

[Emphasis supplied]

It has been clearly mentioned in the said clause that post dated cheques have been issued upto 31.03.2018 of an amount of Rs.20,424/-/. However, on the expiry of 31.03.2018 the respondent would pay the assured return through post-dated cheques subject to clearance of the dues by the complainant/applicant. Thus, it nowhere states that the amount of assured return will revise after 31.08.2018.

Therefore, the Authority is of the view that the order dated 10.04.2024 have dealt the relief of assured return in detail and no rectification w.r.t is required.

Further, w.r.t the date of obtaining the occupation certificate, the Authority is of the view that the date of obtaining the occupation certificate has been inadvertently mentioned as 15.03.2022 instead of 15.03.2023 in the table of details of the project and also, in the directions.



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MA No 213/2024/1h CR/5318/2022

New PWD Rest House, Civil Lines, Gurugram, Haryana

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The date of obtaining the occupation certificate in respect of the subject matter unit is 15.03.2023. Thus, the same being an error apparent on the record stands rectified.

This order shall be read as part and parcel of the order dated 10.04.2024
Application stands disposed off. File be consigned to the registry.

Ashok Sangwan
Member
07.08.2024