

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

Complaint no. : 3882 of 2023
Date of complaint : 28.08.2023
Order reserved on 16.08.2024
Miscellaneous Application

1. Lavish Buildmart Pvt Ltd
2. M Worth Facility Services Pvt Ltd
Regd. Office at: Cabin 1, Unit No. Sb/C/51/Office/008,
M3m Urbana, Sector 67, Gurugram 122002

Complainants

Versus

Natasha Puri
Both R/o: - D-3, Vikas Puri, West Delhi-110018

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Sh. Shubham Kaushik (Advocate)
Ms. Shriya Takkar (Advocate)

Complainants
Respondent

ORDER

1. An application dated 25.07.2024, has been filed by the complainants/promoter for rectification of order dated 09.02.2024 under section 39 of the Act, 2016 passed by the authority wherein it is stated that while passing the directions, the deduction of pre-handover amount has not been recorded in the main order .However in the order in para 3 (e) it is noted that an amount of Rs. 11,61,357/- has been already paid/refunded by the complainant developer on account of pre - handover as per terms. However the same is not mentioned in the directions of the order.

Brief Background:

2. The aforesaid complaint was disposed of vide order dated 09.02.2024 , and the Authority passed the following orders:

Order pronounced.

- a. *The respondent is directed to take physical possession of the unit to the complainants within 2 months from the date of this order and thereafter, execute a conveyance deed in their favour as per the provisions of the Section 17 of the Act. Further , if the respondent / allottee fails to take the possession within the timeframe mentioned above then the complainant/promoter is at liberty to terminate the subject unit of the respondent/ allottee under section 11(5) of the Act of , 2016 after forfeiting the earnest money of 10% 0.5% brokerage and the statutory dues which are not refundable/adjustable*
- b. *The respondent is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days from the date of this order and the respondent shall take the possession within 60 days.*
- c. *The complainant shall not charge anything from the respondent which is not the part of the agreement. However, holding charges shall not be charges by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.*

3. The complainant promoter in its application stated that the complainant / promoter requested the respondent/allottee to come forward and take possession and the respondent/allottee failed to take the possession and execute the conveyance deed. The complainant/promoter then cancelled the unit of the respondent/allottee as per the direction of the order. The complainant/promoter's counsel has requested rectification of the order, stating that the respondent had paid an amount of Rs.11,61,357/- towards pre-handover, through cheques /RTGS. The complainant/promoter contends that this amount should also be deducted from the refundable amount, in addition to the 10% earnest money deduction.

4. After consideration of all the facts and circumstances, Authority is of the view that the rectification required is a error apparent from record and is admissible under the provision section 39 of the Act of 2016.

H. Directions of the authority

5. Hence, the authority hereby allows the rectification application and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The if the respondent/allottee fails to take the possession within the time framed mentioned then the complainant/promoter is at liberty to terminate the subject unit of the respondent/allottee under section 11(5) of the Act, 2016 after forfeiting the earnest money of 10% 0.5% brokerage , statutory dues which are not refundable/adjustable and pre handover charges already paid.

6. The rectification application stands disposed of.
7. This shall be read as part of the order dated 09.02.2024.

HARERA
GURUGRAM

(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2024