

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

Complaint no. : 1124 of 2021
Date of application : 07.05.2024
Date of decision : 09.07.2024

Rajender Kumar
R/o: H.No: 185, Kherki Daula, Tehsil-Manesar
Gurgaon, Haryana-India - 122004.

Complainant

Versus

M/s Spaze Towers Private Limited
Address: UG-39, Upper ground floor, Somdutt
Chambers – II, 9, Bikaji Cama Place, New Delhi-
110066.

Respondent

CORAM:

Sh. Arun Kumar
Sh. Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Sh. Sukhbir Yadav (Advocate)
Sh. Harshit Batra (Advocate)

Complainant
Respondent

ORDER

1. An application, has been filed by the complainant on 07.05.2024 for rectification of order dated 15.03.2022 passed by the Authority. Following directions were passed vide order 15.03.2022 of Authority:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession + six months of grace period is allowed i.e.*

27.02.2017 till the expiry of 2 months from the date of offer of possession (01.12.2020) which comes out to be 01.02.2021 The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

- ii. Also, the amount of Rs.4,71,649/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.*
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.*
- iv. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.*
- v. Direct the respondent to provide the calculation of super area of the project as well as of the allotted unit within a period of 30 days.*
- vi. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.*

2. That the complainant-applicant prayed for "Direction to the respondent to handover the physical possession of the flat", but the same could not become part of the final order. Moreover, there is a clerical/typo error in the amount adjusted by the respondent in the offer of possession. It is admitted fact that the respondent credited Rs. 2,99,065/- towards compensation for the delay in possession, but in order it was written Rs. 4,71,649/-.
3. During proceeding dated 09.07.2024, the counsel for the respondent stated that an appeal has been filed before the Hon'ble Appellate Tribunal in Appeal no. 250/2023 against the order of the Adjudicating officer in execution proceedings. Therefore, the present rectification application cannot be allowed in terms of the proviso to Section 39 of the Act, 2016. Further the counsel for the complainant states that the appeal which has been filed

before the Hon'ble Appellate Tribunal does not pertain to the order of this Authority, and therefore the proviso to section 39 of the Act does not apply in the present matter.

4. Upon perusal of the document the Authority gives the following finding.

A. Finding by the Authority

5. In the present rectification application the complainant has requested that the respondent credited Rs. 2,99,065/- towards compensation for the delay in possession, but in order it was written Rs. 4,71,649/- and to direct the respondent to handover the physical possession of the flat.

6. The Authority observes that section 39 deals with the *rectification of orders* which **empowers the authority to make rectification within a period of 2 years from the date of order made under this Act**. Under the above provision, the authority may rectify any mistake apparent from the record and make such amendment, if the mistake is brought to its notice by the parties. However, rectification cannot be allowed in two cases, *firstly*, orders against which appeal has been preferred, *secondly*, to amend substantive part of the order. The relevant portion of said section is reproduced below:

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.

7. It has been observed by the Authority that an appeal has been filed before the Hon'ble Appellate Tribunal in Appeal No. 250/2023 against the

execution order passed by the Adjudicating officer, not the order passed by the Authority. Therefore, this appeal is not barred under the proviso to Section 39 of the Act, 2016.

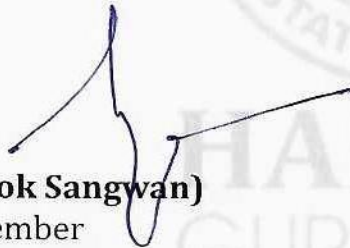
8. In the present case, the complainant is seeking rectification regarding the amount credited by the respondent. The respondent credited an amount of Rs. 2,99,065/- as compensation for the delay in possession, but it was incorrectly mentioned as Rs. 4,71,649/- in the final order. It is observed that order dated 15.02.2022 against which such rectification has been sought, records correct amount of compensation for the delay in possession is Rs. 2,99,065 and the same is mentioned at page no. 3 & 20. However, the same has been recorded inadvertently as Rs. 4,71,649/- at the later stage in direction no. ii of the Authority at page no. 39 of the order. Thus, the error apparent, on the face of it and needs to be rectified; to avoid any prejudice to any of the parties to the complaint. Therefore, the amount shall be read same as Rs. 2,99,065/-.
9. As far as the issue w.r.t. possession handover is concerned, Authority is of considerate view that the provisions of Act dealing with delay possession charges, were intended not only to provide punitive action on ground of delay in handing over of possession but also aims at handing over of the possession of subject unit to the allottee. If this were not the case, rationale behind levying DPC for such delay in handing over of possession would be of no use. The respondent-promoter is trying to find an escape-route by playing with the words and interpretation of order. Furthermore, it is a statutory obligation of the promoter under section 17(1) of the Act, 2016. The relevant para of section 17(1) is reproduced below.

17. Transfer of title.-

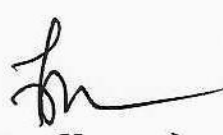
*(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, **and hand over the physical possession of the plot**, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

10. In view of the above section, the respondent is required to hand over the physical possession of the unit, as this is a statutory obligation of the respondent.
11. This order be read with and in continuation of order dated 15.03.2022 passed by the authority.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Arun Kumar)
Chairman

Dated: 09.07.2024