



**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

<b>PROCEEDINGS OF THE DAY</b>		<b>5</b>
Day and Date	Tuesday and 02.07.2024	
Complaint No.	MA NO. 458/2023 in CR/180/2020 Case titled as Girish Narang VS Athena Infrastructure Limited	
Complainant	Girish Narang	
Represented through	Shri Harsh Vardhan proxy counsel	
Respondent	Athena Infrastructure Limited	
Respondent Represented	Shri Rahul Yadav Advocate	
Last date of hearing	07.05.2024	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
<b>Proceedings-cum-orders</b>		
<p>The present case was disposed off on 20.07.2021 with the directions of delayed possession charges from the due date of possession i.e. 29.03.2014 till handover of possession.</p> <p>Further, the respondent filed an application u/s 39 of the Act, 2016 to rectify the order dated 20.07.2021 wherein the respondent submitted that in the abovesaid order the Authority captured that the unit has not been offered to the complainant till the date of order. However, the respondent/promoter has already offered the possession of the subject unit to the complainant vide letter dated 20.12.2019 and for the same communication was made to the complainant vide email at their registered email id i.e. <a href="mailto:nanrang.girish@gmail.com">nanrang.girish@gmail.com</a> and vide said letter the complainant was called upon to pay the outstanding dues of Rs.1,49,78,907/-. The respondent did not mention the said letter for offer of possession in its reply and was also not disclosed by the complainant before the Authority.</p>		



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MANR 458/2023 In CA 180/200

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

On contrary to it the complainant states that the respondent cannot be permitted to take recourse of Section 39 for its alleged omission of letter dated 20.12.2019 which was never produced by the respondent in the pleadings or arguments in the matter. Section 39 provides that Authority shall not amend the substantive part of its order and moreover the application is liable to be dismissed as barred by limitation.

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 passed order dated 20.07.2021, as per the facts on record submitted by both the parties. The respondent failed to submit the alleged letter for offer of possession dated 20.12.2019 before the Authority during the proceedings and as on this later stage the respondent is seeking to rectify the substantive part of the order which is barred under the provisions of Section 39 of the Act, 2016.

It is also brought to the notice of the Authority that the matter is already pending execution before the Adjudicating Officer of the Authority. It is also admitted that an appeal was filed against the order of the Adjudicating Officer before the Hon'ble Appellate Tribunal and the matter has been remanded to the Adjudicating Officer to decide the issue. In view of the above, it is for the Adjudicating Officer to decide the matter and the same does not lie before the Authority at this belated stage application is dismissed being not maintainable.



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MANA 458/2023 IN CR/180/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

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In view of the above findings the application stands dismissed. File be consigned to registry.

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

  
Arun Kumar  
Chairman  
02.07.2024