



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Reopened for deciding rectification application u/s 39 of RERA Act, 2016

COMPLAINT NO. 1416 OF 2020

Naman Kumar & Mayank Kumar

....COMPLAINANTS

VERSUS

Zion Promoters and Developers Pvt Ltd

.....RESPONDENT

CORAM:

Parneet Singh Sachdev

Chairman

Nadim Akhtar

Member

Dr. Geeta Rathee Singh

Member

Date of Hearing: 19.09.2024

Hearing: 1st

Present: - Mr. Mahesk Kumar, ld. counsel for complainants through VC.

Mr. Neeraj Goel, ld. counsel for respondent through VC.

ORDER (PARNEET SINGH SACHDEV-CHAIRMAN)

1. Learned counsel for the complainant filed an application on 05.04.2024 praying for the rectification/review of the disposal order dated 02.03.2022 passed in captioned complaint, under section 39 of Real Estate (Regulation and Development) Act, 2016.

2. Vide said application, it has been submitted that captioned complaint was disposed of vide order dated 02.03.2022. Judgment of same was uploaded on 06.05.2022 granting refund of paid amount of Rs 28,09,037/- with interest of Rs 33,16,404/-. Now, counsel for complainant had filed an application in registry on 05.04.2024 seeking review of order dated 02.03.2022 passed by the Authority on the ground that relief sought by complainant in complaint no. 1416/2020 was for possession but Authority while observing in para 4 (vi) and para 5 of order dated 02.03.2022 that *'project in question is already delayed by more than 10 years. It is unlikely to receive occupation certificate in the foreseeable future. The ongoing litigation in respect of overall project will take some time to resolve. The Authority, therefore cannot force complainant to continue with this project'* had allowed refund of paid amount with interest. Thereafter, execution application no. 1644/2022 was filed wherein large number of hearings have already taken place. Respondent has not made any payments and thereby failed to make any payment to the decree holder. Zion promoter did not give any valid offer of possession but at present nearly 30 families have occupied flats and are accordingly living. That the possibility of recovery of amount is remote so the complainant shall suffer irreparable loss if, even flat is not given to the complainant. Accordingly, it is prayed by complainant that:

a. Hon'ble Authority is requested to restore the allotment of flat no. 801 of 8th floor, S-4 Tower to complainants in terms of prayer of original complaint no. 1416-2020.

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b. Direct the respondent to pay the interest amounting to Rs 46,79,370/-to the complainants accrued from date of deposit based on rule 15 of HRERA Rules,2017

3. Accordingly, a notice dated 04.07.2024 was issued to respondent to appear and file reply if any, to review application. Same got delivered successfully on 08.07.2024. As per office record, no reply has been filed by the respondent till date.

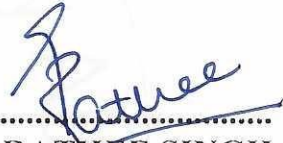
4. Today, ld. counsel for the complainants insisted upon allowing of application filed for review stating that his prayer in original was for possession so disposal order dated 02.03.2022 be rectified to said extent. On the other hand, ld. counsel for respondent stated that section 39 of RERA Act,2016 deals only with correction of typographical/clerical error so the application of complainant cannot be allowed at this stage.

5. Authority is of the view that order dated 02.03.2022, was passed after duly taking into consideration the facts and documents placed on record by both the parties. Vide said order complainant was awarded refund of the paid amount stating its reasons in para 5 of said order. Furthermore, it is pertinent to mention here that the proceedings before Authority are summary proceedings and the Authority following the principle of natural justice passed the order while considering arguments/submissions of both the parties.

6. Authority under section 39 of the RERA Act, 2016 is mandated to rectify only clerical mistakes apparent on the face of record. The RERA Act, 2016

does not entrust the power of review of the order of the Authority. In fact the proviso 2 to section 39, categorically provides that the Authority "shall not" while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the Act. As such there is no clerical error pointed out by complainant which needs rectification and as explained aforesaid substantive part of the order cannot be reviewed.

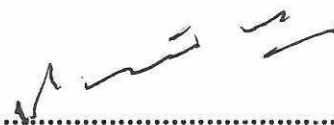
7. For the above stated reasons, the present application for rectification of the final order dated 02.03.2022 deserves to be rejected and the same is **hereby dismissed**. File be consigned to record room after uploading of this order on the website of the Authority.



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DR .GEETA RATHEE SINGH
[MEMBER]



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NADIM AKHTAR
[MEMBER]



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PARNEET SINGH SACHDEV
[CHAIRMAN]