

PROCEEDINGS OF THE DAY		107
Day and Date	Tuesday and 22.10.2024	
Complaint No.	MA NO. 171/2024 in CR/584/2021 Case titled as Madhukar Mishra VS Athena Infrastructure Limited	
Complainant	Madhukar Mishra	
Represented through	Shri Abhinav Sharma Advocate	
Respondent	Athena Infrastructure Limited	
Respondent Represented	Shri Rahul Yadav Advocate	
Last date of hearing	Application u/s 39 of the Act	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings-cum-orders		
<p>The present complaint was disposed off vide order dated 02.03.2022 with the directions of delayed possession charges from the due date till handing over of possession or offer of possession plus two months whichever is earlier.</p> <p>The counsel for the applicant-respondent has filed an application u/s 39 on 13.03.2024 stating that as per para 65 and 66(i) the respondent was directed to pay delayed penalty interest from the due date 05.04.2015 till handing over of possession or offer of possession plus two months whichever is earlier.</p> <p>However as per para 66(ii) it is directed that the respondent will pay monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th each succeeding month. Therefore, in view of the directions given by the authority in para 65 & 66(i), the directions at para 66(ii) shall be rectified accordingly.</p> <p>On 24.09.2024 the authority directed the complainant to file the reply to the said application whereas, the complainant failed to file the same. Accordingly, the authority presumes that the complainant has nothing to say on his behalf w.r.t. the said application and is proceeding accordingly.</p>		

On perusal of the documents placed on record and submissions made by the parties, the authority observes that since as per order dated 02.03.2022 the DPC have been awarded by the authority from due date of possession i.e., 05.04.2015 till handing over of possession or offer of possession plus two months whichever is earlier in para 65 & 66(i) of the said order. However, para 66(ii) provides for the payment of arrears of interest accrued within 90 days from the date of order and thereafter the monthly payment of interest shall be paid till handing over of possession whereas, the monthly payment of interest should have been paid till handing over of possession or offer of possession plus two months whichever is earlier.

In view of the facts stated above and arguments advanced by the parties during the course of hearing dated 22.10.2024, the Authority observes that the directions in para 65 & 66(i) are very clear and it is understood that the arrears shall be paid according to the directions given above and the same has been inadvertently skipped in para 66(ii) of the detailed order dated 02.03.2024. Furthermore, Section 39 deals with the *rectification of orders* which empowers the authority to make rectification of 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.

Since the present application neither involves amendment of substantive part of the order nor any appeal has been preferred therefore, the said application seeking rectification in the direction passed by the authority in para 66(ii) of the order dated 02.03.2022 is allowed.

In view of the above, the application stands disposed off. File be consigned to the Registry.


Ashok Sangwan
Member


Arun Kumar
Chairman
22.10.2024


Vijay Kumar Goyal
Member