

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

Complaint no.	:	4708 of 2022
MA No.	:	394 of 2024
Date of application	:	28.06.2024
Date of decision	:	13.09.2024

RAJEEV MEHTA R/o - 147, Kalyan Vihar, New Delhi-110009	Complainant
Versus	
BESTECH INDIA PRIVATE LIMITED Address: Bestech House, 124, Sector-44, Gurugram - 122001, Haryana	Respondent

CORAM:	
Sh. Vijay Kumar Goyal	Member

APPEARANCE:	
Sh. K.K. Kohli (Advocate)	Complainant
Sh. J.K. Dang (Advocate)	Respondent

ORDER

1. An application has been filed by the complainant on 28.06.2024 for rectification of order dated 31.05.2024 passed by the Authority. Following directions were passed vide order 31.05.2024 of Authority:

- i. The respondent is directed to refund of the paid-up amount of Rs.36,33,104/- after deducting 10% of the basic sale consideration of Rs.1,10,96,190/- being earnest money along with non-refundable statutory charges as per settled law of the land along with an interest @10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date + 2% as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of surrender i.e., 17.03.2021 till actual refund of the amount within timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

2. During proceedings dated 13.09.2024, the counsel for respondent has stated that there is no mistake apparent from the record of the case. The Authority after duly considering the facts and circumstances of the case vide order dated 31.05.2024 has directed to refund the paid-up amount after deducting 10% of the basic sale consideration being earnest money alongwith non-refundable statutory charges as per settled law of land with prescribed rate prescribed rate of interest from the date of surrender i.e., 17.03.2021 till actual refund of the amount. Further stated that the Authority held the date of surrender to be 17.03.2021 i.e. the date of legal notice sent by the complainant while holding that the email dated 04.05.2015 whereby the complainant purportedly requested for refund to be prior to the due date of possession which was specifically denied by the respondent as no such email or letter was ever received by the respondent. Furthermore, the Authority has held in para 21 of its order that the complainant withdrew from the project after issuance of valid offer of possession after obtaining OC from the competent authority. The counsel for the respondent further stated that complainant had not placed certificate under section 65-B of Indian evidence Act, 1872 in support of said mail dated 04.05.2015. He further stated that the respondent had denied the said email in reply to the legal notice sent by the complainant. Hence, the said email cannot be taken into consideration by the Authority.
3. Counsel for respondent further stated that Section 39 of the Act, 2017 rectifies any mistake apparent from the record. 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 and the changes proposed by the complainant in the present application is not a mistake apparent from record, but it is part of directions of the

Authority, which is a substantial change and hence, it is beyond the scope of section 39.

4. During the proceedings dated 13.09.2024, the counsel for the complainant states that the e-mail is verified, and correct as respondent counsel has only denied receipt of any mail but, not denied the fact that the email id on which the said email is sent is not the correct email id. Complainant further undertakes to file affidavit under section 65-B of the Indian Evidence Act, 1872 to prove the said email, if so required. Although, e-mail is a valid form of communication as already held even by Hon'ble Apex Court. Furthermore, counsel for complainant draws attention of the authority towards point 3 at page 3 of Authority order dated 31.05.2024, which clearly shows that "refund request made by the complainant vide email dated 04.05.2015" is part of record. But, in order no reasoning or findings are given for date of surrender and hence it is very much an error required to be rectified under provisions of Section 39. Pursuance to the refund email sent by the complainant, respondent cancelled the unit. Hence, the Rectification may be allowed and it in no way alters the substantial part of order.

A. Finding by the Authority

5. In the present rectification application, the complainant has requested rectification in the directions part "the date of surrender i.e., 17.03.2021" mentioned in the order dated 31.05.2024, whereas the complainant vide email dated 04.05.2015 has already requested for refund which was prior to the due date of possession. Accordingly, the complainant is seeking directions from the authority to rectify the error of date of surrender i.e. from 17.03.2021 to 04.05.2015.
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 the respondent has not given any reasoning as such on what basis it had denied the email dated 04.05.2015 sent by complainant for seeking refund. However, respondent had not denied the e-mail id on which the said e-mail was sent but only denied receiving any such e-mail. Whereas it is evident from the email on record that the said email had not bounced back and is delivered to the authorised person of the respondent. And the same was taken into consideration by the authority in its order dated 31.05.2024, it is evident from para 3 of page 3 of the said order, which clearly states that complainant has made request for refund of the paid-up amount with interest on 04.05.2015, which the respondent denies in his reply to the legal notice dated 17.03.2021 that no such mail letter was ever received by the respondent. Although on the basis of the refund request made on 04.05.2015, the said unit has been cancelled by the respondent on 12.06.2017, it is evident from page 25 of the order

dated 31.05.2024. The said rectification is filed within period of 2 years from the date of order and the rectification sought in regard to date of surrender is mentioned in the same order at page 3 and 25, it is a mistake apparent from record and not a substantial change. Therefore, this rectification 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 date of surrender. The complainant has surrendered the unit and made a request for refund on 04.05.2015, but it was incorrectly mentioned as 17.03.2021 in the directions of the final order. It is observed that in order dated 31.05.2024 against which such rectification has been sought, records correct date of surrender and request of refund as 04.05.2015 and the legal notice for refund is 17.03.2021 and the same is mentioned at page no. 3 of the order dated 31.05.2024. However, the same has been recorded inadvertently as date of surrender i.e., 17.03.2021 at the later stage in direction no. "a" of the Authority at page no. 24 of the order. Surrender date i.e., 04.05.2015 when the complainant made request for refund, after which the cancellation was made by the respondent in 2016. Hence, no question of surrender arises in 2021, as evident, it was only legal notice sent by complainant. 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 date of surrender shall be read same as 04.05.2015 and interest @10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, to be paid from the date of surrender i.e., 04.05.2015 till actual refund of the amount within the timelines provided in rule 16 of Haryana Rules 2017 ibid

9. The mistake is found to be clear by looking to the earlier part of Order dated 31.05.2024. Hence, the mistake is held to be inadvertent and clerical and is liable to be corrected.
10. Thus, in view of the factual as well as legal provisions, the present application for rectification is allowed and the date of surrender is taken as 04.05.2015.
11. This order be read with and in continuation of order dated 31.05.2024 passed by the authority.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.09.2024

HARERA
GURUGRAM