

PROCEEDINGS OF THE DAY		10
Day and Date	Wednesday and 18.09.2024	
Complaint No.	MA NO. 308/2024 and 578/2024 in CR/1501/2019 Case titled as Azad Dabas VS VSR Infratech Private Limited	
Complainant	Azad Dabas	
Represented through	Shri Gaurav Rawat Advocate	
Respondent	VSR Infratech Private Limited	
Respondent Represented through	Ms. Shriya Takkar and Ms. Smriti Srivastava Advocates	
Last date of hearing	Application u/s 39 of the Act/4.9.2024	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings-cum-orders

1. The above-mentioned matter was heard and disposed of vide order dated 22.03.2023 wherein, the Authority has directed the respondent to pay delayed possession charges from the due date of possession, i.e., 25.02.2017 till the occupation certificate (02.08.2019) plus 2 months, i.e., 02.10.2019. The relevant part of same is reiterated as under:

"51.Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. *The respondent is directed to pay delayed possession charges as per the proviso to Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 25.02.2017 till the occupation certificate i.e., 02.08.2019 plus two months which comes to 02.10.2019 as pr proviso to Section 18(1) of the Act read with Rule 15 of the Rules.*



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MA No. 308/2024 In CA/1501/2019
नया पी.डब्ल्यू.ओ. विश्राम गृह सिविल लाईस गुरुग्राम हरियाणा

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ii. *The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per the specifications of buyer's agreement within two months from the date of this order.*

iii. *The rate of interest chargeable from the 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 is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default, i.e., the delayed possession charges as per section 2 (za) of the Act."*

2. The respondent has filed an application dated 17.05.2024 for rectification of the said order on the ground that the complainant has preferred an execution petition no. 2734 of 2023 before the Ld. Adjudicating Officer wherein the Ld. Adjudicating Officer has refused to acknowledge the adjustment made by the respondent on the pretext that same is not recorded in judgment passed by the Authority. Therefore, the respondent is seeking the following changes:

(i) The Authority had duly considered the fact that there are certain outstanding dues payable to the respondent by the complainant to the tune of Rs.17,15,935/- plus interest on delayed payments of Rs.2,43,638/-, however, on account of the oversight it did not find mention in the final directions passed by the Authority. Though it is clearly mentioned in direction no. (iii) that the complainants are also liable to make the payment of certain outstanding dues and therefore allowed the respondent to charge the same interest as awarded to the complainant with a purpose.

(ii) As per the terms of the agreement agreed between the parties, the unit purchased by the complainant is for the purpose of leasing and it was never the understanding between the parties that physical possession would be handed over to the complainant. Therefore, judgment needs to be rectified for a very limited purpose by including that respondent is directed to handover the symbolic/paper possession of the allotted unit to the complainant as per the terms agreed between the parties and unit shall be complete in all aspects as per specifications of buyer's agreement within two months of this order.



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3. Further, the **respondent filed another application dated 28.08.2024 for placing on record additional grounds for the rectification of the said order dated 22.03.2022**, which are as follows:

(i) That the authority had recorded that the agreed sale consideration of the unit was Rs.52,94,730/- however the said price excludes the taxes and other charges as specified in clauses 2, 3, 4, 7, 9, 10, 41, 42 and 63 of the space buyer's agreement dated 25.11.2013. The Authority had duly considered the fact that there are certain outstanding dues payable to the respondent by the complainant to the tune of Rs.17,15,935/- plus interest on delayed payments of Rs.2,43,638/-, however, on account of the oversight it did not find mention in the final directions passed by the Authority. Though it is clearly mentioned in direction no. (iii) that the complainants are also liable to make the payment of certain outstanding dues and therefore allowed the respondent to charge the same interest as awarded to the complainant with a purpose.

(ii) The Authority had allowed similarly situated matter titled **Faisal Mumtaz vs. VSR Infratech Pvt. Ltd.**, bearing complaint no. 2396 of 2019 vide its order dated 12.07.2024.

4. The **complainant has filed his reply dated 11.09.2024 to said rectification application** wherein it is stated that:

(i) On 30.08.2018, a possession letter was sent to the complainant through post demanding a sum of Rs.17,15,935.03/- on account of electric supply, maintenance fee, GST, stamp duty, registration charges, advocate charges, etc. However, the respondent had not obtained occupation certificate from the competent authority till 30.08.2018.

(ii) Till date, the respondent has not offered a valid offer of possession. Offer dated 30.08.2018 had been issued without obtaining an occupation certificate. Offer dated 26.02.2020 and 08.12.2020 were both issued when the case was sub judice. Otherwise too, both these offers are also illegal as they have illegal demands attached to them which are as follows:

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- (a) Advance payment charges for 18 months.
(b) Late payment charges.
(c) Administrative charges and contingency charges.
(d) GST.
(e) Holding charges.
- (iii) Offer dated 15.09.2023 has all the above five demands and also an additional demand of more than Rs.22 lakhs including demand of more than Rs.10 lakhs for fit out charges which was never listed in earlier three demands.
- (iv) The respondent even increased the area of unit by 23.25 sq. ft. vide offer of possession dated 30.08.2018. Vide offer dated 08.12.2020, the complainant decreased the area by 11.84 sq. ft.

5. A short rejoinder dated 11.09.2024 has also been filed by the respondent to the reply filed by complainant to the said rectification application filed by the respondent wherein the respondent has made the following submissions:

- (i) The complaint had already been decided by the authority vide its order dated 22.03.2023 and respondent has filed the present application merely for seeking rectification qua the limited aspect of changing the directions from handing over possession to handing over symbolic/paper possession and further regarding recovery of outstanding dues from the complainant and same falls within the purview of rectification under the Act of 2016.
- (ii) Further, clause 24 read with Annexure IV of the buyer's agreement mentions that physical possession shall be handed over to the operator and the symbolic possession of the unit shall be granted to the allottee after making payment of the outstanding dues.
- (iii) Clause 20 of the agreement was of the essence to make payments as demanded by the respondent wherein the complainant for the reasons best known to himself has not cleared the dues till date.
- (iv) The charges and demands disputed by the complainant is beyond the scope and jurisdiction of this authority under the rectification application however, the same has direct bearing on the rectification qua adjustment.



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6. 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."

7. The Authority is of the view that as far as direction to the effect of handing over of possession of the service apartment allotted to the complainant is concerned, same has already been duly incorporated by the authority in its final order dated 22.03.2023. Same is reiterated as under:

"51. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i.

ii. *The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per the specifications of buyer's agreement within two months from the date of this order."*

8. Further, as far as contention of the respondent with respect to certain outstanding dues payable by the complainant to the respondent amounting to Rs.17,15,935/- plus interest on delayed payments of Rs.2,43,638/- is concerned, the Authority observes that as far as default in relation to direction passed by authority in para 51 (iii) is concerned, it only implies default on part of the complainant in not making timely payment of installments and not the payment of any other charges as enumerated by the respondent mentioned in the present rectification application.

9. Further, the relief as to various charges cannot be deliberated upon by the authority at this stage as this would amount to amendment in substantive part of order passed by the authority dated 22.03.2023. Further, the



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Authority cannot re-write its own order and lacks the jurisdiction to review its own order as the matter in issue has already been heard and decided by this Authority. Therefore, the said rectification application filed by the respondent hereby stands dismissed.

10. This order shall be read as a part and parcel of final order dated 22.03.2023.

11. Rectification application stands disposed of. File be consigned to the registry.

Ashok Sangwan
Member
18.09.2024