



# 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. 843 OF 2019**

Manoj Kumar Gupta

....COMPLAINANT

Versus

M/s Ferrous Infrastructure Pvt Ltd.

.....RESPONDENT

**CORAM:**

**Parneet S Sachdev  
Nadim Akhtar  
Dr. Geeta Rathee Singh  
Chander Shekhar**

**Chairman  
Member  
Member  
Member**

**Date of Hearing:** 21.11.2024

**Hearing:** 6<sup>th</sup> rehearing

**Present:** Mr. Dinesh Kumar Kakoria, Counsel for the complainant in person.

None for the respondent

## **ORDER (PARNEET S SACHDEV- CHAIRMAN)**

1. Learned counsel for the respondent, Mr. Sourabh Goel, had filed an application on 24.01.2023 praying for the rectification of the disposal order dated 12.05.2022

passed in complaint no. 843 of 2019 titled as "*Manish Kumar Gupta v. Ferrous Infrastructures Pvt. Ltd*" under section 39 of Real Estate (Regulation and Development) Act, 2016. It is pertinent to note that the said order dated 12.05.2022 had already been rectified by this Authority on the application filed by the complainant. Consequently, vide order dated 07.12.2022, the case was disposed of once again after incorporating the necessary corrections, and the respondent was directed to refund the total amount of ₹48,08,788/-, inclusive of interest, to the complainant. Now, Respondent in the present application has raised the following grounds-

A. the Authority has allowed refund to the allottees in the cases along with delay interest calculated from the date of each deposit made by the respective customer.

B. He alleges that the Authority has wrongly based its calculations of delay interest from date of each deposit. He relied on the case titled as "*Ireo Grace Realtech Pvt Ltd. V. Abhishek Khanna & Anr* in Civil Appeal No.5785 of 2019.

That the Apex Court in the instant case has held that in case of refund, the developer is liable to refund the amount deposited by the customer along with interest calculated from due date of handing over possession in terms of Builder Buyer Agreement.



C. That the interest calculations done by the Authority are in contradiction to the said judgment and are prejudicial to the respondent. Thus, it may be rectified.

2. Today, Adv. Dinesh Kumar Dakoria, counsel for the complainants was present and stated that the present application may be dismissed. None appeared for the Applicants- respondent.
3. In light of the given circumstances, Authority is of the view that order dated 07.12.2022, was passed by the Authority after duly taking into consideration the facts and documents placed on record by both the parties. Authority observes that the issue raised by the applicant respondent has been dealt by the Authority in detail. There is no issue left undisputed. There is no scope left to be covered for the clarification.
4. Moreover, upon reviewing the legal precedent cited by the applicant it is pertinent to note that the issue at hand in the present matter diverges from those addressed in the referenced case. Additionally, the reasoning applied in the earlier judgment are grounded on different set of facts and situation which cannot be equated with the present case. The operative part of the judgment cited by the applicants is the judgment which had its core issue emanating from the controversy between National consumer forum and RERA. On taking strength from the same judgment it is evident that the Supreme Court has taken a view that RERA should be given primacy from national commission since it is a fact checking institution.



5. Thus, in view of above situation and dwelling upon the above reasoning, reference has to be made to the statute dealing with the real estate sector. For this purpose section 18 of the act is reproduced below which deals with the refund of amount and interest.

**Section 18. Return of amount and compensation.**

*(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.*

*(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.*

6. Authority also takes strength from section 2(za) of the RERA Act for better clarity which deals with definition of interest. section 2(za) of the Act is reproduced below-



*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation.—For the purpose of this clause— (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

7. It is clarified that the calculations have been made from the respective date of payments which are in consonance with the definition of interest as per section 2(za) along with section 18 of the RERA Act, 2016 and Rule 15 of the HRERA Rules, 2017. Thus, it is a usual practice followed by the Authority in all the refund matters. It is only in the case of relief of possession that the delay interest is being calculated from deemed date of possession till handing over of possession.
8. Furthermore, Authority under section 39 of the RERA Act, 2016 is mandated to rectify only mistakes apparent on the face of record. The RERA Act, 2016 does not entrust the power of review of the order on the Authority.
9. 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.




10. For the above stated reasons, the present application for rectification of the final order dated 07.12.2022 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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**CHANDER SHEKHAR**  
[MEMBER]

  
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**DR. GEETA RATHEE SINGH**  
[MEMBER]

  
.....  
**NADIM AKHTAR**  
[MEMBER]

  
.....  
**PARNEET S SACHDEV**  
[CHAIRMAN]