

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

Complaint no. : 3079-2021
Date of application : 01.10.2024
Date of decision : 17.12.2024

Praveen Jain
R/o: 221, Deep Plaza Complex, Opp. Civil Court,
Gurugram.

Complainant

Versus

M/s Ireo Pvt. Ltd.
Address: A-11, first floor, Neeti Bagh, New Delhi.

Respondent

CORAM:

Sh. Arun Kumar
Sh. Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Sh. Sanjeev Kumar Sharma (Advocate)
Sh. Rahul Thareja (Advocate)

**Complainant
Respondent**

ORDER

1. An application has been filed by the complainant on 01.10.2024 for rectification of order dated 14.03.2023 passed by the Authority in **CR No. 3079-2021 titled as Praveen Jain Versus M/s Ireo Pvt. Ltd.**
2. The applicant-complainant has stated as under: -
The complainant was filed on 03.08.2021 against the respondent M/s Ireo (Pvt.) Ltd. the order against the complainant was issued by the worthy Authority on 14.03.2023.

The order directed as under as per clause 53 of the order:

- i. *The respondent is directed to pay the interest at the prescribed rate i.e. 10.70% per annum for every month of delay from the due date of possession i.e., 14.02.2017 till the offer of possession of the subject plot after obtaining completion certificate from the competent authority plus two months or handing over of possession whichever is earlier.*
- ii. *The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.*
- iii. *The complainant is also directed to pay the outstanding dues, if any.*
- iv. *The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.*

That the complainant-applicant prayed for "Direction to the respondent to handover the physical possession of the unit", but the same could not become part of the final order.

3. During the proceedings dated 17.12.2024, the counsel for the respondent stated that the present application under Section 39 of the Act, 2016, is not maintainable in view of the fact that an appeal, dated 13.08.2024, vide No. H-REAT No. 567/2024 (GRG), has been filed against the said order under the title ***M/s Ireo Pvt. Ltd. vs. Parvee Jain***. In reply, the complainant stated that the appeal has not yet been admitted. Therefore, the proviso to Section 39 of the Act does not apply in the present matter.
4. Upon perusal of the document the Authority gives the following finding.
 - A. **Finding by the Authority**
5. In the present rectification application, the complainant prayed to direct the respondent to handover the physical possession of the unit.
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. So far, as the objection of the respondent with respect to appeal filed before the Haryana Real Estate Appellate Tribunal in H-REAT No. 567/2024 against the order passed by the Authority is concerned, it is observed that the said appeal has not yet been admitted by the Haryana Real Estate Appellate Tribunal. Therefore, this appeal is not barred under the proviso to Section 39 of the Act, 2016.
8. In the present case, the complainant is seeking rectification w.r.t. possession handover of the unit, Authority is of considered view that the provisions of Act dealing with delay possession charges, were intended not only to provide punitive action on ground of delay in handing over of possession but also aims at handing over of the possession of subject unit to the allottee. If this were not the case, rationale behind levying DPC for such delay in handing over of possession would be of no use. The respondent-promoter is trying to find an escape-route by playing with the words and interpretation of order.


Furthermore, it is a statutory obligation of the promoter under section 17(1) of the Act, 2016. The relevant para of section 17(1) is reproduced below.

17. Transfer of title.-

*(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, **and hand over the physical possession of the plot**, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:*

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

9. Moreover, it is a fact that handing over of possession was one of the reliefs sought by the complainant in the complaint originally filed in the matter.
10. In view of the above, the respondent is required to hand over the physical possession of the unit, as this is a statutory obligation of the respondent.
11. This order be read with and in continuation of order dated 14.03.2023 passed by the Authority.


Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram


Arun Kumar
Chairman

Dated: 17.12.2024