

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

**Complaint no.** : 7770 of 2022  
**M.A. No.** : 217 of 2024  
**Date of application** : 09.04.2024  
**Date of decision** : 09.07.2024

**Ruhi Roy And Santosh Kumar Roy**  
Both R/o: Flat No.1102, Tower-3, Orchid Petals, Sector  
49, Sohna Road-122018

**Complainants**

**Ashiana Dwellings Pvt. Ltd**  
Address: 3H Plaza M6, Dist. Center, Jasola, New Delhi-  
110025

**Respondent**

**CORAM:**

Sh. Arun Kumar  
Sh. Ashok Sangwan  
Sh. Sanjeev Kumar Arora



**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. K.P. Singh (Advocate)  
Sh. Deepshika Mishra and Nitish Harsh Gupta (Advocates)

**Complainants**  
**Respondent**

**HARERA**  
**ORDER**

**GURUGRAM**

1. An application, has been filed by the applicant-respondent on 09.04.2024 for rectification of order dated 30.05.2023 passed by the Authority. Following directions were passed vide order 30.05.2023 of Authority:

- "The respondent shall pay interest at the prescribed rate i.e. 10.70% pe annum for every month of delay on the amount paid by the complainants from the due date of possession i.e., 23.02.2021 till the date of offer of possession (03.11.2022) plus two months i.e. 03.01.2023; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- The respondent is further directed to adjust the payment of pre-EMI interest for the time being borne by the complainants; as agreed between the parties as per

tri-partite agreement dated 07.11.2017 and email dated 12.07.2019 of respondent.

- c. It is further clarified that after due date of possession i.e. 23.02.2021 till offer of possession i.e. 03.11.2022; amount higher among pre-EMI or delay possession charges as described above; shall be borne by the respondent.
- d. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
- e. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(z) of the Act.
- f. The respondent/promoter is further directed to issue fresh statement of account after taking into consideration finding of Authority w.r.t. charges, delay possession charges and pre-EMI at G.I, G.II, G.III and G.IV respectively within four weeks from date of this order.
- g. The complainants are directed to pay outstanding dues, if any, in next two months and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 15 days and if no dues remains outstanding the possession shall be handed over within four weeks from date of this order.
- h. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.

2. That the respondent-applicant prayed for "rectification of amount paid of Rs.76,92,087/- by the complainants to the respondent at serial no.14 in para no.2 of the judgement", stating that the amount of Rs.41,778/- vide receipts dated 14.09.2017, 04.11.2017 & 17.09.2018 are actually the discounts given by the respondent-applicant to complainants on account of input credit benefit of GST. Thus, actual amount received by the respondent-applicant is Rs 76,50,309/-, but the same could not become part of the final order. It is admitted fact that the respondent credited Rs.41,778/- towards Discounts given by respondent to complainants on account of input credit benefit of GST.

3. During proceedings dated 09.07.2024, the counsel for the respondent-applicant states that execution of the said complaint was disposed off vide order dated 22.02.2024, and an order to issue the recovery certificate has already been passed by the Adjudicating officer.

4. Upon perusal of the document the Authority gives the following finding:

**A. Findings by the Authority:**

5. In the present rectification application, the respondent-applicant has requested for the rectification of amount paid of Rs.76,92,087/- by the complainants to the respondent at serial no.14 in para no.2 of the judgement", stating that the amount of Rs.41,778/- vide receipts dated 14.09.2017, 04.11.2017 & 17.09.2018 are actually the discounts given by the respondent to complainants on account of input credit benefit of GST. Thus, actual amount received by the respondent is Rs.76,50,309/-, but the same could not become part of the final order.

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.

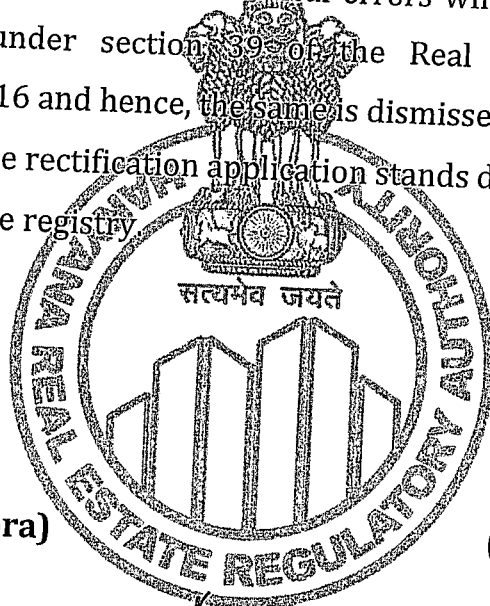
Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

7. In the present case, the complainant is seeking rectification regarding the amount credited by the respondent. The respondent credited an amount of Rs.41,778/- vide receipts dated 14.09.2017, 04.11.2017 & 17.09.2018 <sup>are actually the discounts</sup> given by the respondent to complainants on account of input credit benefit of GST, but the fact and document proving the same was never produced during the


pendency of the main complaint and it is only brought on record at the time of rectification only along with rectification application. It is observed that order dated 30.05.2023 against which such rectification has been sought, records correct amount paid by the complainant as per the documents submitted and available on record during the pendency of the matter and the same is mentioned at serial no.14 of para 2 at page no.3 of the order dated 30.05.2023. Thus, there is no error apparent from the record which needs to be rectified. The present application is beyond the scope of clerical or arithmetical errors which are apparent from the record as defined under section 39 of the Real Estate (Regulations and Development) Act, 2016 and hence, the same is dismissed.

8. In view of the same, the rectification application stands disposed of.
9. File be consigned to the registry

(Demitted Office)  
(Sanjeev Kumar Arora)  
Member



(Ashok Sangwan)  
Member

  
(Arun Kumar)  
Chairman

**HARERA**  
**GURUGRAM**

Haryana Real Estate Regulatory Authority, Gurugram

Dated:09.07.2024