

PROCEEDINGS OF THE DAY		15
Day and Date	Wednesday and 05.03.2025	
Complaint No.	MA NO. 975/2024 and 1075/2024 in CR/1646/2023 Case titled as Sharad Malhotra VS Mangalam Multiplex Private Limited & M3M India Pvt Ltd.	
Complainant	Sharad Malhotra	
Represented through	Shri Mohan Singh Advocate	
Respondent	Mangalam Multiplex Private Limited & M3M India Pvt Ltd.	
Respondent Represented through	Ms. Shriya Takkar and Ms. Smriti Srivastava Advocates	
Last date of hearing	Appl. u/s 39 of the Act/8.1.2025	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings-cum-order

The above-mentioned matter was heard and disposed of vide order dated 30.10.2024 wherein, the cancellation was held valid and the Authority has directed the respondent to refund the deposited amount of Rs.33,52,347/- after deducting 10% of the sale consideration i.e. Rs.1,12,62,373/- being earnest money alongwith interest @ 11.10% on the refundable amount, from the date of cancellation i.e. 1.12.2021 till the date of realization of payment. Further, it was also directed that out of the amount so assessed, the respondent shall deduct the amount already paid to the complainants from the above refundable amount.

The counsel for the complainant has filed an application bearing no. 975/2024 u/s 39 of the Act, 2016 seeking rectification of order dated 30.10.2024 stating that if 10% deduction is to be made, then the same has to be made from the deposited amount only and cannot be in relation to the total sale consideration. Further, the direction for refund has to be from the date of deposit and not



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

from the date of cancellation and the rate of interest has to be 18% as is being awarded in similar cases.

The counsel for the respondent vide reply to the rectification application has submitted that the rectification application is not maintainable as the complainants are seeking change in substantial portion of the order.

The counsel for the respondent has also filed an application bearing no. 1075/2024 u/s 39 of the Act, 2016 seeking rectification of the order stating that the respondent had already refunded the balance amount (after deducting 10% of the sale consideration and GST loss) alongwith interest as per RERA norms at the prescribed rate at that time i.e. 10.75% per annum amount from the date of cancellation i.e. 10.12.2021 till 20.11.2023. Thus, by any stretch of imagination the respondent can be burdened with interest @11.10% p.a. on the amount already refunded by it.

After considering the application as well as reply to the said application, the authority is of considered view that this authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue has already been heard and decided by this Authority.

It is further observed 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."

Since the present application involves amendment of substantive part of the order, this would amount to review of the order. Accordingly, the said



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application is not maintainable being covered under the exception mentioned in 2nd proviso to section 39 of the Act, 2016.

A reference in this regard may be made to the ratio of law laid down by the Haryana Real Estate Appellate Tribunal in case of **Municipal Corporation of Faridabad vs. Rise Projects vide appeal no. 47 of 2022**; decided on 22.04.2022 and wherein it was held that the authority is not empowered to review its orders.

Thus, in view of the legal position discussed above, there is no merit in the applications dated 05.12.2024 and 23.12.2024 filed by the parties for rectification of order dated 30.10.2024 passed by the authority and the same are hereby declined.

Rectification applications stand disposed of. File be consigned to registry.

Ashok Sangwan
Member
05.03.2025