



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

RECTIFICATION No. 2038 OF 2024 IN COMPLAINT NO. 743 of 2021

Tripta Sharma & Kusum Guar

.....COMPLAINANT

Versus

TDI Infrastructure Ltd.

.....RESPONDENT

CORAM:	Parneet S Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member
	Chander Shekhar	Member

Date of Hearing: 20.03.2025

Hearing: 1st (re-opened)

Present:- None for the complainants

Mr. Anjanpreet Singh, proxy counsel for Adv Shubhnit Hans for the respondent through VC

ORDER (PARNEET S SACHDEV - CHAIRMAN)

1. That the present application has been filed by the Respondent/Applicant, TDI Infrastructure Ltd., under Section 39 of the Real Estate (Regulation and Development) Act, 2016, seeking rectification/review of the final order

dated 20.04.2023 (uploaded on 19.06.2023) passed by this Authority in Complaint No. 743 of 2021, on account of errors/mistakes apparent from record.

2. In the rectification complaint, the respondent has stated that the following errors/mistakes have been pointed out in the final order:

“6.....Offer of possession has been issued to the Complainants after completion of the project in the year 2014. An NOC after clearing of all dues was issued on 17.06.2015. Complainants, after duly inspecting their units, signed the NOC and accepted the physical possession of the unit in 2015 itself. Complainants have been residing in the unit since the year 2015 after issuance of NOC to them on 17.05.2015, therefore, respondent is not liable to pay interest for delay in delivery of possession till receipt of Occupation Certificate to the Complainants.

4.

i. That the project in which the unit of the Complainants is situated is a part of a larger township, namely ‘TDI City,’ which has a fully functional club. In the event the Club Membership Charges paid by the Complainants are waived, the Complainants shall forfeit their right to Club Membership and will no longer be entitled to utilize its facilities. The Complainants, in this regard, must give an undertaking that they or any member of their family will not use it.



ii That the Complainants, after inspecting the said unit, themselves accepted the physical possession of the unit with the amended area in 2015 and signed the NOC. Furthermore, the area of the said unit is final, and the Occupation Certificate has been applied based on the final area of the flat and the same is awaited by the Respondent Company. The principles laid down in the case of Vivek Kadian Vs. M/s TDI Infrastructure Pvt. Ltd. shall be considered for the calculation of charges for the increased area.

5. That it would be unjust to hold the Respondent Company accountable for delays beyond its control, particularly when the issuance of the Occupation Certificate is solely dependent on the department, and the Respondent Company has no control over this process. It would potentially obligate the Respondent Company to pay the Complainants for an indefinite period.”

3. That on the date of hearing, Adv. Anjanpreet Singh, proxy counsel for Adv. Shubhnit Hand, appeared on behalf of the respondent through VC and pressed for rectification of delayed possession charges and other issues raised in the rectification application.
4. Upon perusal of the rectification application, it is observed that the Applicant/Promoter, i.e., TDI Infrastructure Ltd., is not seeking any rectification of a typographical or clerical error but is, in fact, seeking a review of the final order dated 20.04.2023 by requesting reconsideration of



the substantive findings and operative portion of the disposed-of order, which has been passed on merits.

5. That it is pertinent to note that Section 39 of the Real Estate (Regulation and Development) Act, 2016, reads as follows:

“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.”

6. It has been observed by the Apex Court in *Asharfi Devi (D) Thr LRs v. State of U.P. and others* 2019(5) SCC 86, that the error must be apparent on the face of the record of the case. As the phrase suggests, an error must be such, which may strike one on a mere look at the record and would not require a long-drawn process of reasoning to reach the conclusion that there has been a mistake or error. A mistake which is discovered after a process of reasoning would not qualify to be "an error apparent". The following observations explaining the meaning of "error apparent on the face of record" in "**Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale**", AIR 1960 SC 137 are worth noting: -



"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record."

7. Only a "patent error" and not a "mere wrong decision" can be said to be an error apparent on the face of record. In **Hari Vishnu Kamath v. Ahmad Ishaque**, AIR 1955 Supreme Court 233, also reiterated the view. Similar observations were made by the Apex Court in the case of **Parison Devi v. Sumitri Devi** (1997) 8 SCC 715 holding that an error which has to be detected by reasoning can hardly be called as an error apparent on the face of record. A petition for correcting an error cannot be allowed to be 'an appeal in disguise'.

Thus, the scope of Section 39 is clearly limited to include the following

- i. An error of fact
- ii. An arithmetic mistake,
- iii. A small clerical error
- iv. Error due to overlooking of compulsory provisions of law.

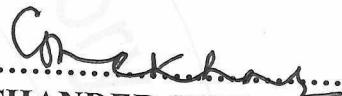
However, the relief sought by the Respondent in the present rectification complaint amounts to substantive review of the decisions. This is beyond the purview of Section 39 of the Act.


8. Further, the final order dated 20.04.2023 was passed after considering the arguments of both parties in compliance with the principles of natural justice. The second proviso to Section 39 explicitly prohibits amending the

substantive part of an order while rectifying mistakes. Therefore, the relief sought by the Respondent cannot be entertained under the scope of Section 39.

9. Accordingly, the present application for rectification of the final order dated 20.04.2023 (uploaded on 19.06.2023) is devoid of merit and is hereby **disposed of as rejected.**

File be consigned to the record room after uploading 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]


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PARNEET S SACHDEV
[CHAIRMAN]