



**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Rectification of application U/S 39 of RERA Act for rectification of order dated 13.03.2019 in Complaint No. 366 of 2018 titled Namrata Jain Vs DLF Homs, Pvt. Ltd.

The Authority after consideration decided to modify its orders dated 13.03.2019 passes in Complaint No. 366 of 2018 titled Namrata Jain Vs DLF Homes, Pvt. Ltd. to the extent that in Para-3, the word 'Complainant' be read as 'Respondent'. However, the limitation period shall be counted from the date of uploading of the original order.



**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint No. RERA-PKL-366 of 2018

Date of hearing: - **13.03.2019**

(7th Hearing)

Namrata Jain

...Complainant

Versus

DLF Homes Pvt. Ltd.

...Respondent

Coram:

1. Shri Rajan Gupta, Chairman
2. Shri Anil Kumar Panwar, Member

...Chairman

...Member

Appearance:

1. Sh. Tarjit Singh, Counsel for complainant.
2. Sh. Shekhar Verma, Counsel for respondent.

ORDER: -

The matter has been heard six times earlier and the issues are already settled by the authority vide its last order dated 06.03.2018. The operative part of which is reproduced as follow:

"Complainant herein booked a flat on second floor bearing No. DVF-D9/2-SF and she was later shifted to first floor flat bearing No. D4/12-FF. She had already occupied the said unit on the first floor but its conveyance deed has not yet been executed in her favour. She has filed the present complaint for directing the respondent to execute the conveyance deed in her favour.

2. The respondent's plea in this case is that the price of unit located on first floor is more than the price of a unit located on second floor. Since the flat of the complainant was shifted from second floor to the first floor therefore, she is liable to bridge a gap between these two prices.

3. The case on the last date of hearing was adjourned for today with a direction to the respondent to place on record the documents proving the rates charged from the allottees to whom the flats were given on first floor of the building.

4. The complainant has produced the application forms dated 16.03.2013 and 05.10.2013 for proving the prices charged from the allottees of the first floor. No doubt that the prices charged in these documents was at the rate of Rs. 4550/- and Rs. 4400/- respectively. However, it is pertinent to mention that the respondent with his reply has attached a copy of agreement dated 05.06.2015 entered between the parties of the present case and thereby the respondent has agreed to price the flat allotted to the complainant on 1st floor @ Rs. 3720/-. So, the respondent cannot be allowed to charge the price @ on which he has allotted the flats on first floor to other persons. He is rather bound by the agreement entered with the complainant and can only charge the complainant @ Rs. 3720/-

5. Learned counsel for the respondent has then drawn the attention of the Authority to allotment letter dated 27.02.2015, wherein, the price quoted @ Rs. 4400/-. The arguments sought to be built up from this document is that this was the price agreed between the parties but the same was wrongly entered in the agreement dated 5.6.2015 as Rs. 3720/- instead of Rs. 4400/-. The Authority will not accept the arguments because the document duly signed by both the parties and which bears the terms and conditions of the agreement entered between them has to be read as such and no party can be allowed to take a different stand with regard to the terms and conditions specifically laid down in the said document. Reference in this regard can be made to Section 91 of the Evidence Act which reads as under:-

"Section-91: Evidence of terms of contracts, grants and other dispositions of property reduced to form of document When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.-When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved. **Exception 2.-**Wills 2 [admitted to probate in 3 [India]] may be proved by the probate.

Explanation 1.-This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation. 2.-Where there are more originals than one, one original only need be proved. Explanation 3.-The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact."

So, there is no scope to hold that the price quoted in agreement dated 5.6.2015 shall be read as Rs. 4400/- instead of Rs. 3720/-

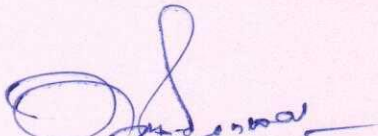
6. Faced in this situation, learned counsel for the respondent seeks adjournment to verify whether or not some other document was executed between the parties which may have the effect to over-riding the price quoted in the agreement dated 05.06.2015.

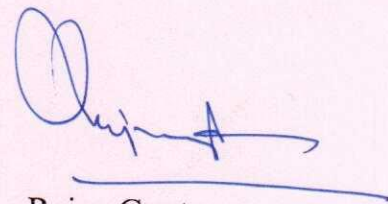
7. On the request of the learned counsel for the respondent, case is adjourned to 13.03.2019".

2. Today, learned counsel for respondent conceded that they will execute the conveyance deed with a request for reserving their liberty to file a civil suit to prove that the agreement was made under mistake.

3. Therefore, the authority is directing the respondent to execute the conveyance deed within 30 days. All the payables shall be paid as per the agreement and respondent shall not demand any enhanced cost. The authority also grants the liberty the complainant to file a civil suit for rectification of the agreement on the ground that the agreement was made under mistake.

Disposed of. File be consigned to record room after uploading of this order on the website of the authority.


Anil Kumar Panwar
Member


Rajan Gupta
Chairman