



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

PROCEEDINGS OF THE DAY		47
Day and Date	Friday and 04.02.2022	
Rectification Proceedings under section 39 of the Act, 2016 in the judgments/detailed orders in complaint Numbers.	CR/660/2021, CR/622/2021, CR/633/2021, CR/2332/2021, CR/1119/2021, CR/1118/2021, CR/2331/2021, CR/1239/2021, CR/831/2019, CR/4373/2020, CR/442/2021, CR/4371/2020, CR/1205/2021, CR/1262/2021, CR/1665/2021, CR/1155/2021, CR/1212/2021, CR/443/2021, CR/2071/2021	
Respondent	Vatika Limited	
Respondent Represented through	Shri Aashish Chopra Advocate	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings through V.C

The items listed at serial Nos. 47 to 65 were taken together as on filing of rectification applications in item listed at serial No. 48, 57, 58 and 65 the authority noticed mistake apparent from the record in respect of all the items listed today from No.47 to 65. Therefore, notices for rectification of mistake apparent from the record in respect of individual matters in these cases were sent to both the parties and matters were listed for hearing today. In these matters, the orders pronounced in open court are at variance with the detailed orders issued in individual matters. In all these matters except in CR No.443 of 2021 and CR No.2071 of 2021 the assured return relief was granted to the complainants as announced in the open court and also recorded in the zimni orders but in the detailed orders, assured return plus DPC relief was mentioned which need to be considered for rectification/amendment as the same is mistake apparent from record. In CR No. 443 of 2021 and CR No.2071 of

2021 the assured return relief was announced in the open court but in the zimni orders and also in the detailed orders, assured return plus DPC relief was mentioned which need to be considered for rectification/amendment as the same is the mistake apparent from record keeping in view provisions of section 39 of the Act, 2016.

As a background to the present matters, the L.O. of the Authority briefed that on 10.11.2021 the following assured return matters were listed and decided :-

Details of Vatika Limited Disposed of complaints on 10.11.2021

Note: No need for rectification in the following cases.

Sr. No.	Complaint No. (Serial No. in the cause list dated 04.02.2022)	Relief Sought	Relief announced in the court	Direction in Proceeding of the day dated 10.11.2021	Direction in detailed Order dated 10.11.2021	Advocates
				Upoded on 18.11.2021	Uploaded on 11.11.2021	
Part: 1						
1	CR/518/2021	Assured Return	Assured Return	Assured Return	Assured Return	C: Gaurav Rawat R: Venket Rao
2	CR/2136/2019	Assured Return	Assured Return	Assured Return	Assured Return	C: Gaurav Rawat R: Venket Rao
3	CR/3957/2019	Assured Return	Assured Return	Assured Return	Assured Return	C: Rohan Srivastava R: Venket Rao
4	CR/1241/2021	DPC + Assured Return	Assured Return	Assured Return	Assured Return	C: Abhijeet Gupta R: Ankur Berry
5	CR/3942/2020	Assured Return	Assured Return	Assured Return	Assured Return	C: Manish Yadav R: Ankur Berry
6	CR/3810/2020	Assured Return	Assured Return	Assured Return	Assured Return	C: Manish Yadav R: Ankur Berry
7	CR/1391/2021	DPC + Assured Return	Assured Return	Assured Return	Assured Return	C: Abhijeet Gupta R: Dhruv Dutt

Details of Vatika Limited Disposed of complaints on 10.11.2021 requiring rectification as apparent from the record.

Part: 2						
8	CR/660/2021 (S.N 60)	Assured Return	Assured Return	Assured Return	Assured Return + DPC	C: Sukhbir Yadav R: Dhruv Dutt
9	CR/622/2021 (S.N 55)	Assured Return	Assured Return	Assured Return	Assured Return + DPC	C: Sukhbir Yadav R: Dhruv Dutt
10	CR/633/2021 (S.N 56)	Assured Return	Assured Return	Assured Return	Assured Return + DPC	C: Sukhbir Yadav R: Dhruv Dutt

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
 Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
 भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16

11	CR/2352/2021 (S.N 60)	Assured Return + Interest on assured return	Assured Return	Assured Return	Assured Return + DPC	C: Virat Tomar R: Ankur Berry
12	CR/1119/2021 (S.N 58)	Assured Return + Interest on assured return	Assured Return	Assured Return	Assured Return + DPC	C: Virat Tomar R: Ankur Berry
13	CR/1118/2021 (S.N 57)	Assured Return + Interest on assured return	Assured Return	Assured Return	Assured Return + DPC	C: Virat Tomar R: Ankur Berry
14	CR/2331/2021 (S.N 48)	Assured Return + Interest on assured return	Assured Return	Assured Return	Assured Return + DPC	C: Virat Tomar R: Ankur Berry
15	CR/1239/2021 (S.N 52)	Assured return	Assured Return	Assured Return	Assured Return + DPC	C: Abhijeet Gupta R: Ankur Berry
16	CR/831/2019 (S.N 49)	Assured Return	Assured Return	Assured Return	Assured Return + DPC	C: Pawan Kumar R: Ankur Berry
17	CR/4373/2020 (S.N 50)	Assured Return	Assured Return	Assured Return	Assured Return + DPC	C: Lavish Bhola R: Ankur Berry
Part: 3						
18	CR/442/2021 (S.N 54)	DPC + Assured Return	Assured Return	Assured Return	DPC + Assured Return	C: Chaitanya R: Dhruv Dutt
19	CR/4371/2020 (S.N 47)	DPC + Assured Return	Assured Return	Assured Return	DPC + Assured Return	C: Lavish Bhola R: Dhruv Dutt
20	CR/1205/2021 (S.N 62)	DPC + Assured Return	Assured Return	Assured Return	DPC + Assured Return	C: Abhijeet Gupta R: Ankur Berry
21	CR/1262/2021 (S.N 51)	DPC + Assured Return	Assured Return	Assured Return	DPC + Assured Return	C: Abhijeet Gupta R: Ankur Berry
22	CR/1665/2021 (S.N 64)	DPC + Assured Return	Assured Return	Assured Return	DPC + Assured Return	C: Abhishek Rao R: Ankur Berry
23	CR/1155/2021 (S.N 61)	DPC + Assured Return	Assured Return	Assured Return	DPC + Assured Return	C: Abhijeet Gupta R: Ankur Berry
24	CR/1212/2021 (S.N 63)	DPC + Assured Return	Assured Return	Assured Return	DPC + Assured Return	C: Abhijeet Gupta R: Ankur Berry
Part: 4						

25	CR/443/2021 (S.N 53)	DPC + Assured Return	Assured Return	DPC + Assured Return	DPC + Assured Return	C: Chaitanya R: Dhruv Dutt
26	CR/2071/2021 (S.N 59)	DPC + Assured Return	Assured Return	DPC +Assured Return	DPC + Assured Return	C: Daggar Malhotra R: Dhruv Dutt

All these matters were scrutinized and put up before the Authority as a mistake apparent from the record was noticed in 19 matters out of the 26 matters decided on 10.11.2021 as listed above and uploaded on the website on 11.11.2021. In recording the proceedings and judgment (detailed order) some clerical mistake has happened and also some mistake occurred while editing. The arguments regarding whether an allottee who is getting/entitled for assured return even after expiry of due date of possession, can claim both the assured return as well as delayed possession charges, were somehow did not find mention in the final order.

In item Nos.1,2, 3,5 and 6 in the above table, the relief of assured return was sought and assured return relief was announced and recorded in the zimni orders and also in the detailed order, the relief of assured return was granted. Similarly, in item Nos. 4 and 7, relief of delayed possession charges and assured return was sought by the complainants and the relief of assured return only was announced in the open court and recorded in the zimni orders and also in the detailed order. There is no error in these judgments. But in the judgments listed from serial Nos. 8 to 17, the relief of assured return was sought by the complainants and relief of assured return was announced in the court and also recorded accordingly in the zimni orders but by mistake in the detailed order the relief of assured return plus DPC was granted.

In item Nos. 18 to 24 in the above table, the complainants sought relief of DPC and assured return and relief of assured return was announced in the court and also recorded accordingly in the zimni orders but by mistake in the detailed order, the relief of assured return plus DPC was granted.

In item Nos. 25 and 26 in the above table the complainants sought delayed possession charges and assured return and in the open court, the relief of assured return was announced but by mistake both in the zimni orders as well as in the detailed orders, the relief of DPC plus assured return was mentioned. The mistake has occurred inadvertently due to multiplicity of similar cases and Legal Officer requested the authority to consider rectification by giving opportunity to the parties in the matters.

Shri Aashish Chopra Senior Advocate appeared on behalf of respondent in the matters listed at serial No.47 to 65 of the cause list for today i.e. 04.02.2022. He submitted that items listed at serial Nos.48, 49, 50, 52, 55, 56, 57, 58, 60 and 65, the zimni orders as recorded in the proceedings of the day by the Authority are in order as the relief of assured return was announced and same has been recorded in the zimni orders but in the detailed orders

assured return and delayed possession charges have been mentioned which was even not the relief sought by the complainants.

In matters mentioned in the above para, only assured return relief was prayed for by the complainants and assured return relief was granted by the Authority in the open court as has been recorded in the zimni orders of the proceedings of the day but by mistake assured return and DPC relief was mentioned in the detailed order. No appeal has been filed in these cases as confirmed by the counsels present in the respective matters. Accordingly the Authority decided to rectify the mistake apparent from the record and decided to amend the detailed order passed by it on 10.11.2021 and uploaded on the website of the authority on 11.11.2021 which was later-on withdrawn on having noticed the mistake and only the relief of assured return is allowed in these cases. Even though the arguments have been advanced in respect of the jurisdiction of Authority to grant assured return as also DPC simultaneously, the said arguments inadvertently do not find mention in the detailed order. However, it is the view of the Authority that DPC cannot be granted if there is a direction for grant of assured return in as much as they both would stand on the same parameters/platform and having granted the assured return grant of DPC would amount to double jeopardy. This inadvertent error came to the notice of the Authority subsequently when rectification applications have been filed in some of the connected cases, notices were issued to the respondent as to why the mistake apparent on the record be not corrected and the order be not amended accordingly. Keeping in view that it is mistake apparent on the record in as much as being order announced in the open court did not grant DPC whereas in the detailed orders, the same is shown to have been granted by mistake though inadvertently. The direction of granting DPC and any findings in respect thereof are required to be deleted from the detailed order.

However, in item No.63 the counsel for the respondent submitted that as per provisions of Section 39 of the Act, 2016 where appeal has been filed no amendment shall be made in respect of any order against which an appeal

has been preferred under this Act. A copy of the interim order passed by the Tribunal in appeal No.647 of 2021 was produced wherein till next date of hearing the operation of impugned order has been stayed. Accordingly, authority is not rectifying its order in the instant **CR No.1212 of 2021** but the stand of the Authority on having noticed mistake apparent from the record need to be brought to the notice of the Appellate Tribunal as in this case although the complainant sought relief of DPC and assured return and the authority during its proceeding as has been recorded in the proceedings of the day only allowed assured return but somehow in the detailed order by mistake DPC and assured return both were allowed which is at variance with the orders pronounced in the open court. The Authority has also taken a consistent stand that keeping in view the origin and the very basis and foundation of the DPC which is statutory right created by the Act of 2016 and assured return emerging from the BBA, out of the two only one relief is granted post expiry of the due date of possession. The arguments advanced in this regard which also inadvertently did not find mention in the detailed order in these cases where assured return and DPC have been simultaneously prayed for but the authority directed that only assured return or DPC one shall be payable which is higher and in the interest of the allottee. Accordingly, registry may convey the viewpoint of the authority to the Appellate Tribunal during next hearing in the matter pending before the Appellate Tribunal in appeal titled as Vatika Limited Versus Vinod Agarwal appeal No.647 of 2021.

In items listed at serial Nos. 47, 51, 53, 54, 59, 61, 62 and 64, the complainants prayed for relief of DPC and assured return whereas the authority in the open court announced relief of assured return as recorded in the zimni orders (proceedings of the day) but by mistake in the detailed order assured return and DPC relief was mentioned except item number mentioned at serial no.53 and 59. In these two cases, DPC and assured return relief was prayed for by the complainants and the authority announced in open court relief of assured return but both in the zimni orders as well as in detailed orders, delayed possession charges and assured return relief was mentioned.

No appeal has been filed in these cases. Accordingly the Authority decided to rectify the mistake apparent from the record and decided to amend the detailed order passed by it on 10.11.2021 and uploaded on the website of the authority on 11.11.2021 which was later-on withdrawn on having noticed the mistake and only the relief of assured return is allowed in these cases and include arguments on admissibility of either DPC or assured return post expiry of due date of possession and also to amend zimni orders in item number mentioned at serial No.53 and 59 bearing CR No.443 of 2021 and CR No.2071 of 2021.

In all these cases, detailed arguments were heard from both the sides regarding admissibility of assured return including jurisdiction of the authority to decide assured return matters arising out of the BBA and also admissibility of assured return and/or DPC post expiry of due date of possession but somehow the arguments regarding admissibility of assured return or DPC whichever is higher post expiry of due date of possession were not detailed out in the order. To that extent, the basis of arriving at decision by the Authority needs to be added in the detailed orders.

In Items listed at serial No.55, 56 and 60, Shri Sukhbir Yadav Advocate on behalf of the complainant stated that he was in concurrence of what has been submitted by the counsel for the respondent.

In item Nos.48, 57, 58 and 65 Shri Virat Tomar Advocate appeared on behalf of the complainant. He was also in concurrence with the counsel for the respondent except that the assured return allowed in item Nos.48 and 65 shall be granted from October 2018 instead of November 2018 as per the record submitted to the Authority and available in the case file.

Similarly in item No.59, Ms. Daggar Malhotra Advocate submitted that the assured return in this matter has been allowed from October 2018 whereas the same should have been allowed as per record at the same rate from March 2018 upto September 2018 from which the assured return amount was reduced.

In item No.49 Shri Pawan Kumar Advocate appeared on behalf of the complainant. He also concurred with the submissions made by counsel for the respondent.

In item No.53 and 54, Shri Chaitanya Singhal Advocate insisted that he has demanded DPC and assured return both, accordingly this rectification should not be done. The Authority in its detailed order has considered his viewpoint and keeping in view that only assured return relief was announced in the open court, hence rectification is allowed.

The purpose of delayed possession charges after due date of possession is served on payment of assured return after due date of possession as the same is to safeguard the interest of the allottee as his money is continued to be used by the promoter even after the promised due date is over and in return, he is paid either the assured return or delayed possession charges whichever is higher. Accordingly, the authority decides that in cases where assured return is reasonable and comparable with the delayed possession charges under section 18 and assured return is payable even after due date of possession till offer of possession/till completion of building (as applicable), then the allottee shall be entitled to assured return or delayed possession charges, whichever is higher.


The authority directs the respondent/promoter to pay assured return from the date the payment of assured return has not been paid till offer of possession/ till completion of building (as applicable) and declines to offer any amount on account of delayed possession charges as his interest has been protected by granting assured returns till the offer of possession/ till completion of building (as applicable) of the allotted unit. The respondent is directed to pay the outstanding accrued assured return amount till date at the agreed rate within 90 days from the date of this order after adjustment of outstanding dues, if any, from the complainant and failing which that amount would be payable with interest @ 7.30% p.a. till the date of actual realization. Now, in order to rectify mistake apparent from the record, the final order 10.11.2021 is to be rectified under section 39 of the Act, 2016 and taking into consideration the provisions of section 114 read with order 47 Rule 1 of CPC, 1908 and the law laid down in cases of ***K. Ajit Babu v. Union of India, (1997)6***

SCC 473, Ajit Kumar Rath V. State of Orissa, (1999) 9 SCC 596, State of West Bengal V. Kamal Sengupta, (2008) 8 SCC 612, followed in cases of M/S Promotional Club Thru Sh. Keshav Verma Vs. Chief executive officer, bearing writ petition no. 56046 of 2013 decided on 13.04.2021 by a division bench of the hon'ble Allahabad High Court and Smt. Rajeswari and Ors. V. Smt. Mehrunnishan & Ors. civil miscellaneous review application defective no. 86 of 2021 and decided on 15.07.2021 as the same is at variance from the order recorded in the proceedings of the day dated 10.11.2021 by the authority.

Thus, the proceedings of the day as well as the final order 10.11.2021 are ordered to be rectified under section 39 of the Act, 2016 as the genesis of both the reliefs being the same, one on higher side is being allowed declining any other relief.

Necessary rectification be made in the final orders dated 10.11.2021, uploaded on 11.11.2021. It is clarified that the period of appeal and period of payments of decretal amount shall be counted from the date the amended/rectified orders are uploaded on the website of the Authority.

Vijay Kumar Goyal
Member


Dr. KK Khandelwal
Chairman
04.02.2022

