



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		62
Day and Date	Friday and 18.02.2022	
Complaint no.	CR/3165/2020 Case titled as Hewa Private Limited V/s Emaar MGF Land Ltd.	
Complainant	Hewa Private Limited	
Complainant represented	Shri Jaivardhan Jeph Advocate	
Respondent	Emaar MGF Land Ltd.	
Respondent represented through	Shri J.K. Dang Advocate	
Last date of hearing	12.08.2021	
Proceeding recorded by	Naresh Kumari and HR Mehta	

Proceedings through V.C.

The complainant had vide application dated 12.10.2021 has requested the authority for rectification of order dated 12.08.2021 in present complaint which was disposed of by the authority on 12.08.2021. The complainant submitted that there was error in calculating due date of handing over possession as per the possession clause of the buyer's agreement and time period of delay so caused.

The complainant further submitted that as per the clause 14 of the buyer's agreement dated 13.10.2010, the respondent was to hand over possession within 30 months for projects having four stories and an extra 3-month grace period was given for acquiring the occupancy/ completion certificate which meant possession was to be handed over on or before 33 months from the date of construction even after considering the grace period. That clause 14 (a) of the buyer's agreement is produced here below for ready reference as under:

"14(a): *Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer*

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



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CR/3165/2020

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shall make all efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) within a period of thirty (30) months from the date of commencement of construction, and for the Unit (which falls within ground plus thirteen floors tower/building) within a period of thirty six (36) months from the commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project."

The complainant further submitted that the respondent had applied for the OC on 27.05.2015 and the same was issued by the Director Town and Country Planning Department on 13.02.2017 vide memo no. ZP-308/SD(BS)/2017/2699. That the hon'ble authority in para 233 page 192 of the order has disallowed the grace period of 3 months where the promoter has not applied to the concerned authority within those 3 months for obtaining the completion/occupancy certificate. Therefore, therefore as per the said order the respondent not being allowed any grace period for the handing over of possession, the due date of handing over possession ought to be 11.12.2014 being 30 months from the date of start of construction.

Further, the complainant submitted that the authority has erred in para 229 at page 187 serial no. 34, of the order dated 12.08.2021 having mistakenly taken the due date of offer of possession to be 11.06.2015 by stating that the delayed possession charges to be given to the allottee was to be "w.e.f. 11.06.2015 till 16.05.2017", whereas the due date of handing over possession was 11.12.2014 after calculating 30 months from the construction date being 11.06.2012. The complainant prayed that the mistake apparent from record be therefore rectified and the complainant be given interest for 2 years 5 months and 5 days for the period of delay in possession.

The counsel for the respondent submitted that an appeal bearing no. 66 of 2022 has been filed before the Hon'ble Appellate Tribunal against the order dated 12.08.2021 passed by the authority and has placed on record, the documents in respect of the same. The respondent has deposited an amount of Rs.16,56,120/- in Hon'ble Appellate Tribunal in compliance of section 43(5) of the Act and has placed copy of DD to that effect on record.

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 and the authority may



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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."

(Emphasis Supplied)

In view of the pendency of appeal bearing no. 66/2022 before the Hon'ble Appellate Tribunal, the rectification in the order dated 12.08.2021 cannot be made as per first proviso to section 39 of the Act which states that "*no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act*". The application dated 12.10.2021 filed by the complainant stands rejected and the complainant may take up this issue before the Hon'ble Appellate Tribunal. File be consigned to registry.


Vijay Kumar Goyal
Member


Dr. KK Khandelwal
Chairman
18.02.2022