

REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH.

M.A. No. 4 of 2021

In

Complaint no. RERA/HP/KACTA0718006

In the matter of:

Sh. Ramesh Chandra Saxena son of Uma Charan Saxena through his authorised representative Sh. Rahul Saxena resident of Village- Tharu Near Cold Store, Tehsil- Nagrota Bagwan, District- Kangra, HP Pin- 176047

....Applicant/Complainant

Versus

1. M/s Shri Builders through its proprietor Uday Swaroop Bhardwaj resident of Shop no. 122, First Floor Old Bus Stand Market, Tehsil- Nagrota Bagwan, District- Kangra, H.P. Pin 176047
2. Dr. Naresh Virmani son of Sh. Dayal Dass along with Smt. Kalpna Virmani wife of Dr. Naresh Virmani, resident of Panchsheel, Upper Nagrota Bagwan, District- Kangra, H.P.

..Non-Applicant/Respondents

Present:- Sh. Ramesh Chandra Saxena with Rahul Saxena for the complainant

Sh. Munish Katoch, advocate along with Sh. Uday Swaroop Bhardwaj prop. M/s Shri Builders, respondent no. 1.

Sh. Kunal Davar, advocate for Respondent no. 2

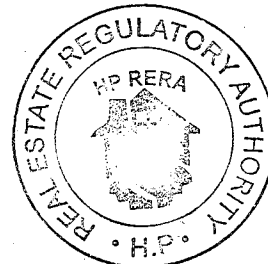
Date of hearing (Through Webex): 28.12.2021

Date of pronouncement of order: 20.01.2022

ORDER

CORAM: CHAIRPERSON AND BOTH MEMBERS

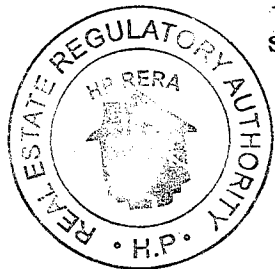
1. Through this order, the Authority is disposing of the application filed by the complainant/ applicant for rectification of errors under Section 39 of the Real Estate (Regulation and Development) Act 2016 in order of the Authority dated 29.11.2021 passed in complaint no. RERA/HP/KACTA0718006.
2. It was submitted that on page no. 61 of the order, the relief no (i) of the order reads as under:



- "i. *The Complaint is allowed and the Respondents no. 1 (M/s Shri Builders through its proprietor Uday Swaroop Bhardwaj) is directed to pay the delayed possession charges in the form of simple interest, at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017. The present highest MCLR of SBI is 7.3% hence the rate of interest would be 7.3% +2% i.e. 9.3% per annum on the amount paid by the complainant i.e. 14,00,000/- for every month of delay from the date of possession till the date when possession was delivered (09.09.2019), total 73 months as per the proviso of section 18(1) of the Act read with Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017 within a period of 60 days.*"

It was submitted by the complainant by way this application that the word 'due' is missing before the word date of possession in relief (i) of the judgment and further it was also submitted by way of this application that delay of 73 months has wrongly been mentioned in relief (i) of the order and instead actual delay was of 97 months.

3. A reply was filed by respondent no. 1. It was submitted by respondent no. 1 that the application is not maintainable and is therefore liable to be dismissed. It was further submitted that the applicant has the remedy of appeal to the order of the Hon'ble Authority if the applicant is aggrieved from any findings given by the Authority. It was further submitted that the issue decided regarding the date of possession is vague and the applicant and the respondent no. 2 have executed the sale deed in question as per their convenience and respondent no. 1 was not a party to the same and has wrongly been penalised by the Authority. It was further submitted that applicant has not disclosed any date of possession in his complaint. It was further submitted that the Authority has wrongly decided the date of possession on the basis of sale deed. It was then submitted that the possession has been delivered way back to the applicant i.e. in June, 2013 and after that he has got done his interior work as per his demand form the replying respondent without paying him any charges qua the same. It was then submitted that the Authority has no jurisdiction to reopen the case.
4. The Authority has heard both the sides and gone through the record. The complainant reiterated the averment made in the application and submitted that the mistakes are purely clerical in nature and can be



corrected by the Authority by exercising powers under Section 39 of the Act. In reply respondent no. 1 has submitted that that possession was to be delivered within nine months after full money was received from the allottee. He argued that full payment was made by 3rd August, 2011 then how date for delivery of payment can be 31st July, 2011 as reflected in the judgment dated 29.11.2021. Further it was also argued that the complainant has still not made payment for extra work done. Respondent no. 2 has neither filed reply nor contested the application.

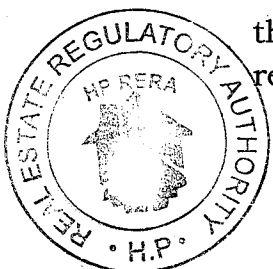
5. The relevant provisions of Section 39 of the Act are reproduced as under:

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.

From the language of Section 39 it is clear that the Authority suo moto or at the instance of any party, at any time within a period of two years from the date of the order for the purpose of rectifying/correcting any mistake apparent from the record, amend any order passed by it. In the present case, due to typographical mistake word 'due' has not been written and '73' months instead of '97' months has been mentioned in relief no. (i) of the order dated 29.11.2021. A typographical mistake can be corrected in terms of Section 39 of the Act. The word 'due' has been omitted due to typographical mistake and also 73 months have been written in relief part instead of 97 months which is also a typographical/ clerical error, in view of the findings given under the issue number C at page number 34-35 of the order dated 29-11-2021, and both these mistakes are apparent from the record and can be corrected by way this order, exercising powers under Section 39 of the Act. As per the reply filed by the respondent, he has made an attempt to raise the



issues which deal with the merits of the case which he is not permitted to raise in a proceeding under Section 39 of the Act as it has very limited and specific scope. A bare perusal of this section shows that the scope of this section is limited to the extent of correcting/ amending mistake apparent from record, but, this power cannot be exercised to amend the substantive part of the order

6. Therefore, relief no. (i) of the order dated 29.11.2021 in Ramesh Chandra Saxena versus M/s Shri Builders complaint no. RERA/HP/KACTA0718006 is hereby rectified to the following effect:

"i. The Complaint is allowed and the Respondents no. 1 (M/s Shri Builders through its proprietor Uday Swaroop Bhardwaj) is directed to pay the delayed possession charges in the form of simple interest, at the SBI highest marginal cost of lending rate plus 2% as prescribed under Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017. The present highest MCLR of SBI is 7.3% hence the rate of interest would be 7.3% +2% i.e. 9.3% per annum on the amount paid by the complainant i.e. 14,00,000/- for every month of delay from the **due** date of possession till the date when possession was delivered (09.09.2019), total **97** months as per the proviso of section 18(1) of the Act read with Rule 15 of the Himachal Pradesh Real Estate (Regulation & Development) Rules 2017 within a period of 60 days."

With these corrections/ amendments, this application for rectification/ amendment of the order dated 29.11.2021 stands disposed of. This order may be treated as addendum to the judgment dated 29.11.2021 and relief no. (i) after correction shall be read as mentioned above. This order shall be tagged with the main judgment/ order and a copy of the same be sent to all the parties to this litigation free of cost. The period of 60 days for payment of the delayed possession charges will commence from today i.e. **20-1-2022**.


B.C. Badalia
MEMBER


Dr. Shrikant Baldi
CHAIRPERSON


Rajeev Verma
MEMBER

