



**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no. :	2083/2021
Date of filing complaint:	13.04.2021
First date of hearing:	21.05.2021
Date of decision :	02.08.2022

Nitin Bhayana R/o: H.No. 57, Sunder Nagar, Mathura Road, New Delhi	<b>Complainant</b>
Versus	
Chintels India Ltd R/o: A-11, Kailash Colony, New Delhi 110048	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Gaurav Sinha (Advocate)	Complainant
Sh. S.K Kaushik (Advocate)	Respondent

**ORDER**

1. The present complaint dated 21.01.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the act or the rules and regulations

made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details	
1.	Name of the project	"Chintels Paradiso", Sector 109, Gurugram Haryana	
2.	Project Area	Not Mentioned	
3.	Nature of the project	Residential Group Housing	
4.	DTCP License no. & validity status	251 of 2007 dated 02.11.2007 upto 01.11.2017	9 of 2008 dated 17.01.2008 upto 16.01.2018
5.	Name of Licensee	Chintel Exports Pvt. Ltd and 1 other	Intels India Pvt. Ltd
6.	Acres	12.07	
7.	RERA Registered / not registered	Not Registered	
8.	Unit no.	904, 9 <sup>th</sup> floor, Tower H (Annexure B page no. 19 of complaint)	
9.	Unit admeasuring	2630 sq.ft. (Annexure B page no. 19 of complaint)	
10.	Allotment Letter	03.05.2012 (Annexure B page no. 19 of complaint)	
11.	Date of execution of buyer's agreement	15.05.2012	
12.	Date of Start of construction	01.04.2011	



		(Annexure J) vide order dated 28.03.2019 of CR/1731/2018 on page no.246 of complaint)
13.	Possession clause	<b>11</b> <b>The possession of the said apartment is proposed to be delivered by the company to the allottee within 36 months within a grace period of 6 months from the date of start of the construction of a particular tower/building in which the registration for allotment is made, subject always to timely payment of all charges including the BSP, stamp duty registration fees and other charges as stipulated herein or as maybe demanded by the company from time to time in this regard.</b> <b>(Emphasis supplied).</b>
14.	Due date of delivery of possession	01.10.2014 Inadvertently mentioned as 01.04.2014 in the proceedings of the day (Annexure J) vide order dated 28.03.2019 of CR/1731/2018 on page no.246 of complaint)
15.	Total sale consideration	Rs.1,18,87,750/- (As per payment plan on page no. 127 of complaint)
16.	Total amount paid by the complainant	1,14,85,827/- (Annexure J) vide order dated 28.03.2019 of CR/1731/2018 on page no.245 of complaint)
17.	Occupation certificate	18.08.2016 ,20.06.2017 (As mentioned on the dtcp website)

18.	Offer of possession	22.06.2017 (Annexure F on page no. 79 of complaint)
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**B. Facts of the complaint**

3. That in the month of January 2012, one of the executives of the respondent company approached the complainant with a proposal for offering sale of a residential apartment in the project called "Chintels Paradiso" being developed by the respondent.
4. That vide application dated 21.01.2012, the complainant applied in the said housing project and booked an apartment no. H-904 in residential group housing project known as "Chintels Paradiso" situated at Sector -109, Gurgaon, Haryana. An allotment letter dated 03.05.2012 was issued in this regard under a construction linked payment plan. A buyer's agreement was executed between the parties on 15.05.2012, against the total sale consideration of Rs. 1,18,87,750/- plus taxes. That in pursuant to agreement, the complainant started making payments and paid a total sum of Rs. 1,14,85,827/-.
5. That in accordance with clause 11 of agreement, the possession of the unit was supposed to handed over till 01.04.2014. The respondent started construction of Tower 'H' on 1.04.2011 and failed to deliver the possession of the unit.
6. That the respondent after a period of almost 3 years offered possession of the unit to the complainant vide its letter dated 22.06.2017.
7. That in the offer of possession letter, the complainant was asked to sign an indemnity/undertaking in a standard format prior to taking the possession

requiring the complainant to confirm that after accepting the offer of possession, he would not make any further demands or claims against respondent and the same was conditional for the delivery of possession. The objective of taking such an undertaking was only to prevent the complainant from making genuine claim against respondent including any claim on account of delay in delivery of possession or with respect to any kind of discrepancies in the statement of accounts and deficiency or defects in the apartment.

8. That there had been inordinate delay in delivery of possession of the apartment in question to the complainant by the respondent. So, he filed a complaint before this Hon. Authority seeking possession of the apartment in question along with delayed possession charges. The said complaint was registered as RERA complaint No. 1731 of 2018. The respondent filed its reply to the said complaint leading to a rejoinder to the reply.
9. That the Hon'ble Authority after hearing arguments of both the parties passed the following order: -

*"37. As per clause 11 of the apartment buyer agreement dated 15.05.2012 for unit no H 904, 9<sup>th</sup> floor, tower H in the project Chintels Paradiso, sector 109, Gurugram, possession was to be handed over to the complainant within a period of 36 months from date of start of construction of tower H i.e., 01.04.2011 as submitted by the respondent in his reply plus grace period of 6 months which comes out to be 01.10.2014. However, the respondent has not delivered the unit in time. The complainant*

*has already paid Rs. 1,14,85,827/- to the respondent against a total sale consideration of Rs. 1,18,87,750/-. The respondent has already offered the possession of the unit to the complainant on 22.06.2017.*

10. The direction given by the authority was that the respondent is directed to pay the interest at the prescribed rate i.e., 10.75% per annum for every month of delay in handing over the possession on the amount paid by the complainant. The respondent was directed to pay interest accrued from 01.10.2014 to 22.06.2017 on account of delay in handing over of possession to the complainant within 90 days from the date of order.
11. The said order was passed on 28.03.2019 and was to be enforced upto 28.06.2019. The complainant after the passing of the order by the authority approached the respondent for seeking the possession of the unit along with the interest amount calculated from 1.10.2014 to 22.06.2017 @ 10.75% as per the order dated 28.03.2019. The complainant further wrote letter dated 4.8.2018 seeking possession of the apartment along with the interest amount. However, the respondent till date has neither given possession of the unit to the complainant nor has paid the interest amount accrued @ 10.75 from 1.10.2014 to 22.06.2017.
12. That the respondent failed to comply the order dated 28.03.2019 passed by this Hon'ble Authority and refused to pay delay possession charges to the complainant. So, the complainant filed an execution petition No. E/111 of 2019 seeking execution of the order dated 28.03.2019. The respondent handed over possession of the unit only after the filling of the execution

petition. The respondent also executed the conveyance deed of the unit pursuant to the order dated 5.11.2020 passed by this Hon. Authority.

13. That along with the execution petition, the complainant filed its calculation of the compensation in terms of the order dated 28.03.2019 passed by this Hon'ble Authority. The complainant claimed the compensation of Rs. 31,37,772/- as awarded to it by the Hon. Authority by way of order dated 28.03.2019.
14. That after the complainant filed the execution petition and its sheet of calculation and the respondent raised certain new facts and filed its counter claim illegally claiming an amount of Rs. 21,81,337/-. The complainant immediately filed objections by way of an application and thereafter a counter claim filed by the respondent.
15. That the respondent sent an email dated 20.07.2020 to the complainant clearly and unequivocally stating that no charges of any kind are pending from him apart from the registration and conveyance deed charges. So, the Authority vide its order dated 12.02.2020 appointed a chartered accountant to verify the claim of both the parties and submit its report and clearly noted that the respondent was filling the counter claim in the present execution petition.
16. That the chartered accountant submitted its report dated 4.11.2020 before the Authority and wrongly adjusted / allowed the counter claim of the respondent for an amount of Rs. 21,81,337/- and adjusted the same towards the delayed compensation of Rs. 31,37,772/- to which the complainant was entitled to. Then, the CA in its report held that the complainant is entitled to amount of Rs. 9,56,435/- as originally against Rs. 31,37,772/-. The

complainant immediately thereafter filed objection to the report dated 4.11.2020 of the chartered accountant before this Hon'ble Authority.

17. That pursuant to the report filed by the chartered accountant, the respondent paid an amount of Rs. 9,41,975/- to the complainant and as on date of filling the present petition, an amount of Rs. 13,61,139/- is pending to be claimed by the complainant.
18. That the Authority vide its order dated 26.03.2021 disposed of the execution petition. At the same time, the Authority made an observation that the complainant would be entitled to file a separate petition claiming recovery of illegal and extra amount which the respondent had charged and claimed by way of a counter claim in the execution petition being E/111/2019.
19. That the present petition is being filed by the complainant seeking recovery of amount of Rs. 13,61,139/- which has been illegally and unlawfully claimed by the respondent by way of a counter claim in the execution petition.
20. That the respondent charged BSP of Rs. 6,59,604/-, IFMS of Rs. 1,31,500/-, additional charges as electricity & water of Rs. 4,53,675/-, and the amount the complainant is entitled to recover is Rs. 4,11,039/-, common area maintenance of Rs. 2,04,824/- and the amount complainant is entitled to recover is Rs 2,04,824/-, HVAT of Rs. 76,141/-, Holding charges of Rs. 4,31,057/- and the amount complainant is entitled to recover is Rs.4,31,057/- and the interest charged from 22.06.2017 - 31.12.2019 is Rs. 3,14,219/- and the amount complainant is entitled to recover is Rs. 3,14,219/- and all of this totals to Rs. 13,61,139/-
21. That since the order passed by the Hon'ble authority was not complied with for recovery of amount of Rs. 13,61,139/- illegally charged by the respondent



in the counter claim and for delay possession charges, the complainant was left with no other option but to file the present complaint seeking delay possession charges.

**C. Relief Sought**

This Authority may be pleased to direct the respondent as follows:

- Allow the complainant to recover an amount of Rs. 13,61,139/- from the respondent as the same has been charged and claimed illegally and unlawfully.
- Direct the respondent to pay compensation in form of interest @10.75/- p.a over the amount of Rs. 13,61,139/- to which the complainant is entitled to recover.
- An interest for every month of delay at prevailing rate -10.75% on Rs. 1,14,85,827/-.

**D. Reply by the respondent**

The respondent contested the complaint on the following grounds:

22. That the Hon'ble Authority decided the matter between the parties in complaint no. 1731/2018 on 28.03.2019 and as per the same, the respondent complied the order of authority and paid the amount as per the details issued by the chartered accountant of Haryana Real Estate Regulatory Authority in the presence of both the parties.
23. The complainant also filed a execution petition u/s 30(2) of the Real Estate (Regulations and Development) Act, 2016 and the Authority also decided the said execution dated 26-03-2021 and decretal amount of Rs.9, 56,435/- was paid to the complainant and he also received possession. There is nothing outstanding between the respondent and complainant. But the complainant

intentionally filed the present complaint and wants to harass and humiliate the respondent.

24. That the complainant is neither owner nor in possession at this time of the unit as he sold the above said flat to Manraj Singh Anand and Mrs. Manpreet Anand W/o Sh. Balraj Singh Anand both resident of Flat No. 5091 ATS Kocoon, Tower 5, Sector 109, Gurugram 122017. The amount of Rs.92,00,000/- was received by the complainant and he also declared and undertook that he would now left with no right or interest in lieu on the said property on dated 06.07.2021.
25. That copies of the aadhar card of purchaser and sale deed executed by the complainant bearing vasika no.1969 dated 6-7-2021 before the office of Sub registrar, Gurugram under para no. 2 of the sale deed, the complainant very clearly mentioned that the vendor being in sound mind by free will without any pressure do herein grants conveys and transfer all their rights, titled and interests in the apartment No. H-904
26. That the complainant also intentionally did not disclose the above said present complaint in the sale deed and he also declared that the said property transferred herein was freehold and free from all encumbrances such as claims demands liens, mortgages, decrees, litigations prior sales, agreement to sell gift court attachment etc. But the complainant malfidely and intentionally did not mention the present litigation in the sale deed.
27. The complainant also gave vacant possession of the said property to his vendees. There is absolutely no outstanding due from respondent. That the present complaint is fictitious and concocted one as flat No.H-904, has already been sold by the complainant and at present, he is neither owner nor in

possession of the said flat and as such the present complaint may kindly be dismissed.

28. That the Hon'ble Authority decided the matter between the parties, and the complainant never filed any appeal against the order of the Hon'ble authority so far. As such the present complaint is barred by res- judicata.

29. Copies of all the relevant documents have been duly filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

**The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.**

**E.I Territorial jurisdiction**

30. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

The Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***Section 11(4)(a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

***Section 34-Functions of the Authority:***

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

31. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the relief sought by the complainant:**

**F.1 Allow the complainant to recover an amount of Rs. 13,61,139/- from the respondent as the same has been charged and claimed by them illegally and unlawfully.**

**F.2 Direct the respondent to pay compensation to the complainant in form of interest @10.75/- p.a over the amount of Rs. 13,61,139/- that the complainant is entitled to recover.**

**F.3 An interest for every month of delay at prevailing rate -10.75% on Rs. 1,14,85,827/-.**



32. The subject unit was allotted to the complainant on 03.05.2012 under the construction linked payment plan. He paid a sum of Rs. 1,14,85,827/- and approached the authority seeking delayed possession charges at the prescribed rate. A buyer's agreement was executed between the parties on 15.05.2012. Thus, the due date for handing over possession comes out to be 01.10.2014 (Inadvertently mentioned as 01.04.2014 in the proceedings of the day).
33. **Admissibility of delay possession charges at prescribed rate of interest:** Some of the admitted facts of the case are that a complaint bearing number 1731 of 2018 was filed with regard to the subject unit seeking delay possession charges and possession. The complaint filed in this regard was allowed by the authority vide its orders dated 28.03.2019. Even a petition to execute the direction given in that complaint was filed before the authority bearing number E/111 of 2019. It is not disputed that the possession of the allotted unit was handed over to the complainant and conveyance deed of the same has been executed in his favour on 05.11.2020. Though in the execution petition, the complainant claimed compensation to the tune of Rs. 31,37,772/- but by way of the counter claim, the respondent claimed an amount of Rs.21,81,337/- . It is also a fact that keeping in view the claim and the counter claim raised by the parties, the matter was referred to the CA of the authority for his report and who held a sum of Rs. 9,56,435/- to be due towards the respondent instead of Rs. 31,37,772/- as claimed by the complainant. Though the complainant filed objections

to that report, but the execution petition was disposed off by the authority with observations that he would be entitled to file a separate petition claiming recovery of illegal and extra amount charged by the respondent builder and raised in the counter claim. This is how the second complaint qua the allotted unit has been filed.

34. It is pleaded by the complainant that the respondent charged a sum of Rs. 13,61,139/- illegally under the various heads such as Bsp , Ifms , additional charges as electricity and water , common area maintenance , Hvat , Holding charge and interest on those amounts from 22.06.2017 to 31.12.2019 and for which a separate complaint is maintainable . But the plea advanced in this regard is devoid on merit. First of all, the first complaint filed by him was disposed of on merits by the authority vide orders dated 28.03.2019. The amount now being claimed to have been charged from him in excess was not raised / paid after the filing of the first claim petition. He was very well aware that he has paid those charges and did not raise the plea with regard to their illegality while filing the earlier complaint. So, the second complaint to challenge the legality of those charges is not maintainable and is barred under order 2 rule 2 of code of civil procedure 1908. It is not the case of complainant that he was not aware of the dues, the vaility of which is being challenged in the complaint. Even no permission to leave those claims was obtained while filing the earlier complaint. It is well settled that there should be end to litigation and a person should not be vexed again and again for the same cause of action. A reference in this regard may be made to the ratio of law laid down in cases of Gurbux Singh v. Bhoora



Lal , AIR 1964 Supreme Court 1810 and followed in Alka Gupta Vs Narender Kumar Gupta AIR 2011 SC 860 wherein it was held that the object of order 2 Rule 2 of the code is twofold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of order 2 rule 2 of the code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action.

35. Secondly, the issue with regard to validity of certain claims has already been decided by the authority vid its order dated 28.03.2019. The complainant did not challenge that order by way of appeal before the higher authority. So, the same became final. Thus, the filing of second complaint on the same cause of action operates as res-judicata as provided under section 11 of CPC. In case *Kunjan Nair Sivaraman Nair Vs. Narayan Nair, 2004 AIR SCW 894* it was held that section 11 does not affect the jurisdiction of the court but operates as a bar to the trial of the suit or issue, if the matter in the suit was directly or substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a court. The issue now being raised in the complaint was already substantially in issue in the earlier complaint and the same has been disposed of by the authority. So, the second complaint filed on the same cause of action is barred by the principle of res-judicata.



36. Thirdly though the authority in its order dated 28.03.2019 allowed the complainant to file a fresh claim but the same is barred in view of provisions of section 47 of CPC providing as under:

*All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and **not by a separate suit.***

37. If the complainant had any grievance against the respondent with regard to any claim now being challenged, then he could have raised that issue at that time and not by way of separate claim as held by the Honb'le Kerala High Court in case **Zachario Vs. Jolly Cherian 2009 (82) AIC 453**. Even the Hon'ble apex court of the land in case **Devidayal Rolling Mills Vs. Prakash Chiman Lal Parikh AIR 1993 SC 1993** has gone to the extent that the payment of mesne profit is consequential to the execution of the ward for unlawful retention of the possession and thus the court has power and jurisdiction to award mesne profit as concomitant of the order for delivery of possession. Thus, keeping in view, the legal as well as factual position as detailed above the second complaint seeking relief with regard to recoveries under certain heads is not maintainable and is liable to be rejected.
38. So, keeping in view the factum that the second complaint filed is not maintainable, neither the complainant is entitled to recover any amount along with interest nor to any compensation





**HARERA**  
**GURUGRAM**

Complaint No. 2083 of 2021

**G. Directions of the authority**

39. Complaint stands disposed of.
40. File be consigned to registry.

*V.K. Goyal*

**(Vijay Kumar Goyal)**  
Member

*Dr. K.K. Khandelwal*

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 02.08.2022**



**HARERA**  
**GURUGRAM**

