



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		33
Day and Date	Thursday and 07.07.2022	
Complaint No.	CR/2559/2021 Case titled as Harun Nisha and Rana Imam Vs pioneer urban land and infrastructure pvt. ltd.	
Complainant	Harun Nisha and Rana Imam	
Represented through	Shri Nishant Nagpal proxy counsel for Shri K.K. Kohli Advocate	
Respondent	Pioneer urban land and infrastructure pvt. ltd.	
Respondent Represented	Shri Venket Rao Advocate	
Last date of hearing	20.5.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings

The complainants filed the present complaint i.e., CR/2559/2021 dated 12.07.2021. In this complaint, they sought various reliefs such as provided as under

- i. The respondent to pay the balance amount due to the complainants from the respondent on account of interest.
- ii. To reissue valid offer of possession.
- iii. Not to charge any amount on amount of EDC, IDC, and PLC as per increase in super area.
- iv. To remit back the amount charged on account of fixed deposits of HVAT.
- v. To remit back the amount charged on account of advance monthly maintenance charges for a period of 12 months.
- vi. To remit back the amount charged on account of the interest free maintenance security.



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- vii. Not to charge any amount on account of electricity substation charge and legal charge under the head other charges.
- viii. To pay the interest on delay payment charge for every month of delay till the date of physical possession.

The complainants earlier filed a complaint for the same unit numbered as complaint no. 121 of 2019 in the authority, which has been already decided on 07.04.2021 in which they had sought only relief for delay possession charges. The cause of action for claiming other reliefs against the respondent/builder had already arisen while filing the previous complaint. After receiving occupation certificate, the possession of the allotted unit was offered to complainants on 20.11.2018. It is not the case of complainants that the cause of action to file the present complaint arose after the decision of the earlier complaint on 07.04.2021. Even the complainants did not take any permission to omit the relief now being claimed in the present complaint and sought liberty to sue afterwards in respect of the portion so omitted or relinquished.

Thus, the complaint is barred by the order II rule 2 of the Civil Procedure Code, 1908. The relevant clause is produced as under:

2. Suit to include the whole claim

(1) every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

The object of Order II Rule 2 of the Code is two-fold. 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 II 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.



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This issue arose for consideration before the hon'ble Apex Court of the land in case **Vurimi Pullarao versus Vemari Vyankata Radharani** civil appeal no **9066 of 2019** decided on 27.11.2019 and wherein, it was observed as under:

"Order 2 Rule 2(1) is premised on the foundation that the whole of the claim which a plaintiff is entitled to make in respect of a cause of action must be included. However, it is open to the plaintiff to relinquish any portion of the claim in order to bring the suit within the jurisdiction of the Court. Order 2 Rule 2(1) adopts the principle that the law does not countenance a multiplicity of litigation. Hence, a plaintiff who is entitled to asserts a claim for relief on the basis of a cause of action must include the whole of the claim. A plaintiff who omits to sue in respect of or intentionally relinquishes any portion of the claim, shall not afterwards be entitled to sue in respect of the portion omitted or relinquished. This is the mandate of Order 2 Rule 2(2). Order 2 Rule 2(3) stipulates that a person who is entitled to more than one relief in respect of the same cause of action may sue for all the reliefs, without the leave of the Court, shall not afterwards sue for any relief so omitted. The leave of the Court will obviate the consequence which arises under Order 2 Rule 2(3). In the absence of leave being sought and granted, a plaintiff who has omitted to sue for any of the reliefs to which they were entitled to sue in respect of the same cause of action would be barred from subsequently suing for the relief which has been omitted in the first instance. The grant of leave obviates the consequence under Order 2 Rule 2(3). But equally, it is necessary to note that Order 2 Rule 2(2) does not postulate the grant of leave. In other words, a plaintiff who has omitted to sue or has intentionally relinquished any portion of the claim within the meaning of Order 2 Rule 2(2), shall not afterwards be entitled to sue in respect of the portion so omitted or relinquished.

So, in view of the settle proposition of law the second complaint filed by the complainant on the same cause of action without relinquishing the relief now sought to be claimed in the present complaint is not maintainable. File be consigned to the registry.

V.1-3

Vijay Kumar Goyal
Member

Dr. KK Khandelwal
Chairman
07.07.2022