

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

Order pronounced on: 06.01.2023

Name of the Builder		Krrish Green Homes Private Limited now known as ILC Infracon Pvt Ltd	
Project Name		Krrish Green Montagne	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2155/2019	Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd. and now known as ILC Infracon Pvt Ltd	Sh. Vikas Deep Sh. M K Dang
2.	CR/2156/2019	Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd. now known as ILC Infracon Pvt Ltd	Sh. Vikas Deep Sh. M K Dang
3.	CR/2157/2019	Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd. now known as ILC Infracon Pvt Ltd	Sh. Vikas Deep Sh. M K Dang
4.	CR/2158/2019	Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd. now known as ILC Infracon Pvt Ltd	Sh. Vikas Deep Sh. M K Dang
5.	CR/2159/2019	Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd. now known as ILC Infracon Pvt Ltd	Sh. Vikas Deep Sh. M K Dang
6.	CR/2160/2019	Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd. now known as ILC Infracon Pvt Ltd	Sh. Vikas Deep Sh. M K Dang
7.	CR/2161/2019	Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd. now known as ILC Infracon Pvt Ltd	Sh. Vikas Deep Sh. M K Dang

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

ORDER

1. This order shall dispose of all the 7 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant in the above referred matters had signed an MOU with the respondent for purchase of apartments in the project, namely, Krrish Green Montagne being developed by the same respondent/promoter i.e., Krrish Green Homes Private Limited. The terms and conditions of the MOU forms the fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to issue allotment letter, deliver timely possession of the units in question, seeking award of delayed possession charges.
3. The details of the complaints, reply status, unit no., date of MOU, possession clause, due date of possession, offer of possession, conveyance deed, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Sr. no	Complaint no./title/date of complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment buyer's agreement and date of signing of MOU.	Due date of possession & offer possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought



1.	CR/2155/ 2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd.	Reply received on 26.02.2020	No Allotment	Not Executed DOM: 10.06.2013	No Mention	TSC: No Mention. BSP: Rs.1,44,00,000/- AP: 23,57,142/-	1. Possession 2. DPC 3. Issue Allotment letter 4. Execution of title deed.
2.	CR/2156/ 2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd.	Reply received on 26.02.2020	No Allotment	Not Executed DOM: 10.06.2013	No Mention	TSC: No Mention BSP: Rs. 1,44,00,000/- AP: 23,57,142/-	1. Possession 2. DPC 3. Issue allotment letter 4. Execution of title Deed.
3.	CR/2157/ 2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd.	Reply received on 26.02.2020	No Allotment	Not Executed DOM: 10.06.2013	No Mention	TSC: No Mention BSP: Rs. 1,44,00,000/- AP:23,57,142/-	1. Possession 2. DPC 3. Issue allotment letter 4. Execution of title deed.
4.	CR/2158/ 2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd.	Reply received on 26.02.2020	No Allotment	Not Executed DOM: 10.06.2013	No Mention	TSC: No Mention BSP: Rs. 1,44,00,000/- AP: 23,57,142/-	1. Possession 2. DPC 3. Issue allotment letter 4. Execution of title deed.
5.	CR/2159/ 2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd.	Reply received on 26.02.2020	No Allotment	Not Executed DOM: 10.06.2013	No Mention	TSC: No Mention BSP: Rs. 1,44,00,000/- AP: 23,57,142/-	1. Possession 2. DPC 3. Issue allotment letter 4. Execution of title deed.

6.	CR/2160/ 2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd.	Reply received on 26.02.2020	No Allotment	Not Executed DOM: 10.06.2013	No Mention	TSC: No Mention. BSP: Rs. 1,44,00,000/- AP: 23,57,142/-	1. Possession 2. DPC 3. Issue allotment letter. 4. Execution of title deed.
7.	CR/2161/ 2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd.	Reply received on 26.02.2020	No Allotment	Not Executed DOM: 10.06.2013	No Mention	TSC: No Mention BSP: Rs. 1,44,00,000/- AP: 23,57,142/-	1. Possession 2. DPC 3. Issue allotment letter. 4. Execution of title deed.

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOM- Date of Signing of MOU

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainant against the promoter on account of violation of MOU dated 10.06.2013, executed between the parties *inter se* in respect of purchase of apartments for seeking award of possession, delayed possession charges and issuance of allotment letter.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case CR/2155/2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green

Homes Pvt. Ltd. are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges and execution of conveyance deeds.

A. Project and unit related details

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

CR/2155/2019 titled as Combitic Global Caplet Private Limited V/s Krrish Green Homes Pvt. Ltd.

S. No.	Heads	Information
1.	Name and location of the project	"Krrish Green Montagne", Sector 71, Gurugram
2.	Nature of the project	Group housing project
3.	Area of the project	10.89 acres
4.	DTCP License	15 of 2013 dated 13.04.2013
	valid up to	12.04.2019
	Licensee name	Raj Buildwell Pvt. Ltd.
5.	RERA registered/ not registered	Unregistered
6.	Allotment letter	No allotment
7.	Date of apartment buyer agreement	Not Executed
8.	Date of Signing of MOU	10.06.2013
9.	Unit no.	No Mention
10.	Super area admeasuring	3600 Sq. ft. (Tentative)
11.	Possession clause	Not Mentioned
12.	Due date of delivery of possession	Not Mentioned
13.	Payment plan	Construction linked payment plan (P-19 of complaint)
14.	Total consideration	No Mention.

15.	Total amount paid by the complainants in respect of all the seven apartments	Rs.1,65,00,000/- (As alleged by the complainant on page no. 22 of complaint, Annexure C/4)
16.	Occupation certificate	No Mention.
17.	Date of offer of possession to the complainant	No Mention

B. Facts of the complaint

8. That, the complainant is a Private Limited Company duly incorporated under Companies Act, 1956, and, the respondent is engaged in the business of real estate development. It represented that on account of the collaboration agreement with M/s Raj Buildwell Pvt. Ltd., it has got rights for development, construction, marketing, sales and transferring of units in group housing project in respect to project named as 'Krrish Green Montagne'.
9. That on the basis of representations, the respondent invited bookings of residential apartments of various sizes in its aforesaid Project.
10. That, a Memorandum of Understanding (MOU) dated 10-06-2013 was entered and executed between complainant and respondent. By means of the said MOU, the respondent agreed to sell and the complainant agreed to purchase seven apartments of tentative super area of 3600 sq. ft. each at the basic sale price (BSP) of Rs.4,000/- per sq. ft.
11. That, the respondent has fixed the value of each apartment at Rs.1,44,00,000/- as basic sales price (BSP).
12. That, at the time of booking, an amount of Rs.35,00,000/- was deposited by complainant against all the seven apartments booked via MOU dated 10-06-2013, by way of cheque dated 10-06-2013. This booking amount of Rs.35,00,000/- was duly acknowledged by the respondent in the MOU dated 10-06-2013.

13. That later on, several payments were made by the complainant to the respondent vide various cheques amounting to Rs.1,65,00,000/-. Against all the payments of Rs.1,65,00,000/-, a combined receipt was issued by the respondent on 15-10-2013. The deposited amount of Rs.1,65,00,000/- as well as the TDS amount of Rs.1,65,000/- is reflected in the ledger account issued by the respondent.
14. That it was stipulated in the MOU dated 10-06-2013 that, "... Project drawings / building plans are pending approval from the competent authority. After the approvals have been obtained, the allotment letters as well as the apartment buyer's agreement shall be issued/ executed by the seller in favour of Purchaser"
15. That, as per MOU dated 10-06-2013, it was further agreed that 30% of BSP is payable on completion of RCC structure of building in which the apartments are housed. The balance BSP with EDC, IDC, IFMS etc. was payable when the seller obtained the Occupation Certificate for the Building(s)/ project.
16. That, despite lapse of more than five years from the purchase/bookings and execution of MOU dated 10-06-2013, the respondent neither intimated the status of Project drawings/ building plans nor supplied the copies of same. Even, the BBA or allotment letter has not been issued till date.
17. That despite lapse of period of about 6 years, the respondent did not offer any apartment buyer's agreement in terms of MOU dated 10.06.2013. Further, it failed to complete the RCC structure.
18. That the complainant on 01.09.2016 served a legal notice on the respondent through his counsel. But the respondent neither complied with the same nor even bothered to reply to it.
19. That the complainant had earlier filed the Civil suit in the court of Senior Civil Judge Delhi but the same was dismissed for non-prosecution by the Ld. Court of Civil Judge, Delhi vide order dated 25.03.2019.

C. Relief sought by the complainants:

20. The complainant has sought following relief(s):

- i. Direct the respondent to issue the allotment letter for all seven apartments.
- ii. Direct the respondent to give possession and execution of title deed.
- iii. Direct the respondent to pay interest on the amount deposited from dates of the respective deposits till possession.

21. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

22. The respondent has contested the complaint on the following grounds.

- a. That the Memorandum of Association (MoU) was executed between the complainant and M/s. Kriss Green Homes Pvt. Ltd (now known as M/s ILC Infracon Pvt. Ltd) prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively. Furthermore, the complaint is barred by statute of limitation.
- b. That, the complaint is bad for non-joinder of necessary parties. Mr. Amit Katyal and Mr. Rajesh Katyal are necessary parties to the present amended complaint, so in their absence, the complaint cannot be adjudicated effectively, completely, and properly.
- c. That, the complainant as per Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 does not fall within the ambit of the definition of 'allottee'. As per the definition, the term 'allottee' would cover a person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through



sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent. In the instant case, no plot, apartment or building has been allotted or transferred to the complainant as is evident from a bare perusal of the MoU as attached by the complainant. It is neither an allottee, representative of an allottee, an agent nor any other concerned person who has suffered due to any fault, if the same would have occurred, on the part of respondent. The complainant has no right to file the present complaint and is misusing the provisions of RERA Act, HRERA Rules and Regulations to unnecessarily harass and pressurize the respondent.

- d. That, the complaint is not maintainable for the reason that the MoU contains a Disputes Resolution Clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. Clause 11 of the Memorandum of Association, which states that:

"In case of any dispute between the Parties, the Parties shall amicably try to resolve the dispute amicably amongst themselves and if it still remains unresolved, either or both the parties make invoke pre-litigation mediation through the Mediation and Conciliation Centre, Delhi High Court. In case such disputes remain unresolved, it shall be finally referred to and resolved through arbitration. The number of arbitrators shall be One (1), to be mutually appointed by the Parties. The arbitration proceedings shall be as per the provisions of Arbitration & Reconciliation Act, 1996. The seat of arbitration shall be conducted in English Language. The award rendered by the arbitral tribunal shall be final and binding upon the Parties."

- e. That, the complainant has suppressed and concealed material facts which has direct and substantive bearing on the current issue. The respondent company was earlier managed and looked after by Mr. Amit Katyal, Mr. Rajesh Katyal and their associates. The said company had entered into a Collaboration

Agreement dated 07.11.2012 with Raj Buildwell Private Limited (hereinafter called 'RBPL'). The said RBPL was owner in possession of land measuring 10.89 acres approx. in Village Fazilpur Jharsa, Sector 71, Tehsil and District Gurgaon. RBPL had obtained license no. 133 of 2008 dated 28.6.2008. M/s. Kriss Green Homes Pvt. Ltd in Collaboration with RBPL had proposed to make a project on the said land.

- f. That earlier, the management of the respondent company was in the need of funds for the operations of M/s. Kriss Green Homes Pvt. Ltd. The directors and officials of the complainant company along with one Mr. Pavel Garg had offered to advance money to Mr. Amit Katyal and Mr. Rajesh Katyal on payment of interest @ 8% per annum. However, the directors and officials of the complainant company and the said Mr. Pavel Garg had demanded security for repayment of the said loan. For this purpose the complainant and the said Pavel Garg obtained some documents from Mr. Amit Katyal and Mr. Rajesh Katyal which was styled as memorandum of understanding and being expression of interest in the proposed project of the respondent.
- g. That, the complainant and the directors and officials of the M/s Combitic Global Caplet Pvt Ltd has categorically admitted that the said MOU and documents were never meant to be acted upon as the same were only for security of repayment. The complainant was well aware that no property was allotted to it.
- h. That, around January 2014, Mr. Amit Katyal, Rajesh Katyal, and their associates had approached Mr. Sanjay Khurana and represented that the respondent were running a lucrative business of real estate. They offered sale of shares of M/s Krrish Green Homes Pvt Ltd to Mr. Sajay Khurana and Mr. Kamal Kapoor, categorically asserting that the same were free from all types of encumbrances,

and that they had absolute rights to sell the same and thereafter hand over the management of the respondent company to them.

- i. Furthermore, a share subscription cum shareholder agreement dated 28.02.2014 was signed between the then management of M/s Krrish Green Homes Pvt. Ltd. through Mr. Rajesh Katyal, Mr. Amit Katyal, & associates and Mr. Sanjay Khurana and Mr. Kamal Kapoor for which they paid a huge amount to Mr. Amit Katyal and associates. As per Clause 3.6 of Schedule III of the said agreement, Mr. Amit Katyal was liable for all claims/ demands / actions to the complainant and Pavel Garg and other persons mentioned therein and all such claims have to be satisfied and discharged by Amit Katyal, Rajesh Katyal and their associates. Thus, the current management of the respondent or the respondent is not liable or responsible in any manner to satisfy the claims raised by the complainant in the present case.
 - j. Furthermore, RBPL started committing default of the terms and conditions of the collaboration agreement dated 07.11.2012. Thereafter, RBPL filed an application under Section 9 of the Arbitration and Conciliation Act before the High Court of Delhi at New Delhi. The respondent contested the case and ultimately, a Settlement Agreement dated 11.1.2017 was made between RBPL and the respondent whereby the said collaboration agreement was terminated. RBPL undertook to pay the amount advanced by the respondent and also cost of development incurred by the respondent. Hence the said matter was ultimately settled before the Delhi High Court vide order dated 18.01.2017.
23. Copies of all the relevant documents have been 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 submission made by the parties.

E. Jurisdiction of the authority

24. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

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

So, in view of the provisions of the Act of 2016 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.

25. **Objection regarding complaint not being maintainable due to presence of arbitration clause in the Memorandum of Understanding between the parties.**

26. The respondent submitted that the complaint is not maintainable for the reason that the MOU contains a dispute resolution mechanism clause to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

“11. Arbitration

“In case of any dispute between the Parties, the Parties shall amicably try to resolve the dispute amicably amongst themselves and if it still remains unresolved, either or both the parties make invoke pre-litigation mediation through the Mediation and Conciliation Centre, Delhi High Court. In case such disputes remain unresolved, it shall be finally referred to and resolved through arbitration. The number of arbitrators shall be One (1), to be mutually appointed by the Parties. The arbitration proceedings shall be as per the provisions of Arbitration & Reconciliation Act, 1996. The seat of arbitration shall be conducted in English Language. The award rendered by the arbitral tribunal shall be final and binding upon the Parties.”

27. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the MOU as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of the authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The authority further puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, followed in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, by the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force. Consequently, the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. It was also held in the latter case that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer.
28. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil**

appeal no. 23512-23513 of 2017 decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

29. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

F. Findings on the relief sought by the complainant:

30. Following reliefs have been claimed by the complainant in all the cases. The claims being connected, are taken up together hereunder.

F.I Direct the respondent to issue the allotment letter for all seven apartments.

F.II Direct the respondent to give possession and execute title deed.

F.III Direct the respondent to pay interest on amount deposited from dates of the respective deposits till possession.

31. In the instant case, an MOU was signed between the then management of the respondent company (which included Mr. Rajesh Katyal, Mr. Amit Katyal &

Associates) on one hand and the complainant company through Mr. Pavel Garg on the other hand. As per the said MoU, the complainant company was to be offered 07 number of apartments having a tentative super area of 334.448 sq. meters (equal to 3600 sq. ft) of each apartment in a semi furnished condition in an upcoming project. Through this MOU, the respondent has assured that a licence bearing No.15 of 2013 for the project land has been received from DTCP and the allotment letter as well as BBA shall be signed after approvals of drawings/building plans of the project by the competent authority. Further, in lieu of the said MoU, an amount of Rs.1,65,00,000/- besides TDS of Rs.70,000/- was paid through various cheques drawn on Axis Bank Ltd as per details at Annexure C4 and which stood duly credited to the respondent-company. However, in spite of repeated follow ups, the respondent promoter did not issue any allotment letter/BBA and hence the above complaint was filed for issuance of allotment letter/BBA and handing over of possession and title in respect of above 7 units. It was further contended in the complaint that the complainant company falls within the definition of "allottee" as payment and agreement can be in any form and MoU has been duly signed by the director of the company for allotment of units in that upcoming project.

32. However, the respondent contended that the above complaint is not maintainable as the complainant does not fall in the category of an allottee, and as neither any BBA has been executed nor any allotment letter has been issued. It was only a financial arrangement between one of the directors of the company and the complainant company. No specific flat or unit number has been assigned in above MoU and project was not even approved on the

date of MoU and the same being only a stop-gap financial arrangement for raising of finances only and as a surety, the above MoU was signed. Furthermore, after change in the shareholdings of the company on 28.02.2014, the signatory director Shri Amt Kaytal is no longer in Board of Directors and hence, he is responsible for its payment and be made as a necessary party. Further, the complainant company had earlier filed a civil suit before Civil Judge, District Courts, Saket and which was dismissed vide order dated 25.03.2019. Therefore, in view of the above, the complaint is not maintainable before this authority and is liable to be dismissed.

33. The authority has considered the rival contentions advanced by the parties and has also gone through the written submissions filed in this regard.
34. It is not disputed that M/s Krrish Greens Homes Pvt Ltd is now known as M/S ILC Infracon Pvt Ltd. Mr. Amit Katyal, Rajesh Katyal and their associates were earlier in the management of the respondent and who entered into a collaboration agreement dated 07.11.2012 with Raj Buildwell Pvt Ltd to make a project on the land owned by the latter. It is contended that the respondent was earlier in need of money leading to execution of memorandum of understanding dated 10.06.2013 and which was in lieu of amount taken and as a security in favour of the complainant. Except the MOU dated 10.06.2013, there is no other document in favour of the complainant with regard to allotment of the units in the project detailed above and any formal agreement of sale of those units. Rather in the provisional receipt dated 15.10.2013, the amount received by the respondent has been shown as advance towards an expression of interest in the upcoming project. The use of expression of interest without any formal agreement to sell shows that it was not to be acted upon. In cases of **Tilak Raj Bhagat Vs Ranjit Kaur & Ors., 2012(21)R.CR.(Civil) 304,**



Hansa V Gandhi Vs Deep Shankar Roy & Ors., 2013(3) Civil Law Journal 734, and Nikhil Adhesives Ltd Through Dharmeshbhai Dhirajbhai Pandya Vs Kandla Port Trust 2011(58) R.C.R (Civil) 269, a similar issue arose as in the present case and wherein it was held that in the absence of formal agreement and there being a mere letter of intent which was subject to several conditions, it would not give any right to the plaintiff to purchase the flat in question. Though there is formal memorandum of understanding executed between the parties but mentioned as expression of interest later on without any formal execution of letters of allotment and registered agreements for sale, no reliance on same can be placed though contended otherwise on behalf of the complainant. It may be entitled to recover the amount paid to the respondent if the law so permits but not to the relief sought by it.

35. While filing written reply, a specific plea was taken by the respondent that in January 2014, Mr. Amit Katyal, Rajesh Katyal and their associates were directors of the company and who approached the present directors of the company and leading to agreement cum shareholder agreement dated 28.02.2014. The clause 3.6 of that document provides as under:

“AK shall indemnify the Company against (i) past undisclosed liabilities of the Company which are not disclosed in the financials of the Company or otherwise to SK and KK and (2) for any claims being made and established by any person or authority on the shares of the Company allotted to SK and KK. All liabilities pertaining to, and all claims/ demands/ actions from, Pavel Garg, Combatic Global Caplet Pvt. Limited, Surender Modi, Dreamworld Properties Pvt. Ltd. and Krrish Realtech Private Limited shall be remain liabilities of AK and he shall discharge the same and be responsible for the same; and AK shall keep the Company indemnified in this regard.

36. It is apparent from the perusal of above mentioned terms and conditions of the subscription agreement that Amit Katyal was a shareholder in the respondent company holding 501000 shares of the face value of Rs. 10 per share and on entering into agreement with Sanjay Khurana and Kamal Kapoor made himself responsible and keep the company indemnified with regard to liabilities pertaining to and all claims/demands/actions from Pavel Garg, Combitic Global Pvt It, and others. When a specific plea in tis regard was taken by the respondent in the written reply with regard to non-joinder of Amit Katyal as one of the respondent and no steps in this regard were taken by the complaint then the complaint on that score is liable to be rejected. A reference in this regard may be made to the ratio of law laid down in cases of **Abdul Rashid Vs Delhi Waqf Board 2015(45) R.CR (Civil) 55, Bharat Kumar Dhanjibhai Kuber Vs Markand Umedlal Joshi 2019(1) GLR 278 and Expo Freight Pvt Ltd Vs Supreme Overseas Exports Pvt Ltd 2019 (5) C.T.C 30** and wherein it was held that when a proper party is not included in the suit, then non-joinder is fatal to the case and the plaint is liable to be rejected. Though it is contended on behalf of complainant that it has joined the respondent and who is a necessary party to the litigation but in view of specific objection with regard to joining of Amit Katyal as one of the respondent on the basis of agreement dated 28.02.2014 and not meeting out that objection, the complaint is liable to be rejected.
37. Thirdly, it is not disputed that the complainant earlier approached the civil courts at Delhi for the relief now being sought from the authority. The suit filed in this regard was dismissed for non-prosecution on 25.03.2019 by the Civil Judge, District Courts, Saket, New Delhi. Though it is pleaded that the dismissal of that suit does not create any bar for the present complaint after

the Act of 2016 came into force but the plea advanced in this regard is devoid of merit. The complainant has already availed the appropriate remedy i.e by filing a civil suit before the competent forum and the same having been filed in the year 2016 as evident from order dated 25.03.2019 bearing CS SCJ 52871/16. Thus, keeping in view these facts the complaint filed seeking the same relief is barred by the principle of res-judicata as a person can't be vexed twice for the same cause of action.

38. Fourthly, it is pleaded on behalf of the respondent that MOU dated 10.06.2013 entered into between the parties was in fact a financial arrangement and was not a concluded contract with regard to the subject units. While discussing above, it has been held that a mere execution of a MOU does not create any right, title, or interest in the subject units unless followed by any formal letter of allotment and agreement of sale. Though the learned Counsel for respondent placed reliance on the ratio of law laid down in cases of **Kaliyaperumal Vs Senthilvel 2018(3) CCS 17** and **Prem Saini Vs Kuldeep & Ors., 2021 (1) RCR (Civil) 561** to show that MOU dated 10.06.2013 was in fact a financial arrangement between the parties but failed to substantiate the same by any documentary evidence. However, it is otherwise evident that mere execution of MOU does not entitle the complainant to any relief against the respondent with regard to the subject units.
39. Thus in view of discussion above, there is no merit in reliefs prayed by the complainant. Hence, there is no merit in the complaint and the same is hereby ordered to be rejected.
40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

41. Complaint stands disposed of. True certified copies of this order shall be placed in the case files of each matter.
42. Date of uploading of this order shall be treated as date of this order.
43. File be consigned to registry.


Sanjeev Kumar Arora
(Member)


Ashok Sangwan
(Member)


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.01.2023

Uploaded on 17.04.2023

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