

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

**Complaint no.** : 2496 of 2022  
**Date of complaint** : 31.05.2022  
**Date of order** : 28.02.2024

Rajdeep Aggarwal,  
**R/o:** - House no. 387, Sector-A,  
Pocket-C, Vasant Kunj, New Delhi-110070.

**Complainant**

**Versus**

Pareena Infrastructure Private Limited.  
**Regd. Office at:** C-(7A), 2<sup>nd</sup> Floor, Omaxe City Centre,  
Sohna Road, Gurugram-122018.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Sukhbir Yadav (Advocate)  
Devender Sharma (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint was dismissed being not maintainable vide order dated 20.09.2023 on the ground of res-judicata as the matter in issue between the same parties has already been heard and decided by this Authority vide order dated 20.03.2019 in former complaint bearing no. 2191 of 2018 vide which delay possession charges @10.75% was allowed to the complainant from the due date of possession till offer of possession. In order to execute the order dated 20.03.2019, the complainant approached the Adjudicating Officer by filing execution

petition bearing no. 4119/2021. During proceedings dated 12.04.2022, the counsel for the complainant made a statement before the Adjudicating Officer that the respondent has paid an amount of Rs.23,82,814/- to the complainant and a sum of Rs.1,38,373.75/- is still due to be recovered. Thereafter, on proceedings dated 02.09.2022, the counsel for the respondent made a statement before the Adjudicating officer that the respondent has already made the payment as per the decree and undertakes to pay the remaining as per the decree. However, the counsel for the complainant refuted the claim of the respondent and at the same time requested the Adjudicating officer to allow him to withdraw the execution petition. Accordingly, the same was dismissed as withdrawn.

2. The counsel for the complainant has filed the present complaint seeking refund of the paid-up amount along with interest on failure of the respondent to handover the possession of the unit as per section 18(1) of the Act and the same is reproduced below for ready reference:

***"Section 18: - Return of amount and compensation***

***18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-***

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***
- (b) due to discontinuance of his business: as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:***

***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be***

*prescribed.”*  
*(Emphasis supplied)*

3. However, in the instant case no liberty was granted to the complainant to approach this Authority in case the respondent fails to hand over the possession in due time. Further, this Authority cannot re-write its own orders and lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and decided by this Authority in the former complaint bearing no. 2191 of 2018. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored. Therefore, subsequent complaint on same cause of action is barred by the principle of res-judicata as provided under Section 11 of the Code of Civil Procedure, 1908 (CPC). Section 11 CPC is reproduced as under for ready reference:

*“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

**Explanation I.**—*The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.*

**Explanation II.**—*For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

**Explanation III.**—*The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.*

**Explanation IV.**—*Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.*

**Explanation V.**—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

**Explanation VI.**—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

**1[Explanation VII.**—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

**Explanation VIII.** —An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

4. The authority is of view that though the provisions of the Code of Civil Procedure, 1908 (CPC) is, as such, not applicable to the proceedings under the Act, save and except certain provisions of the CPC, which have been specifically incorporated in the Act, yet the principles provided therein are the important guiding factors and the authority being bound by the principles of natural justice, equity and good conscience has to consider and adopt such established principles of CPC as may be necessary for it to do complete justice. Moreover, there is no bar in applying provisions of CPC to the proceedings under the act if such provision is based upon justice, equity and good conscience. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.02.2024