



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 1526 OF 2023

Ganga Yamuna Welfare Association Faridabad ....COMPLAINANT

VERSUS

1. BPTP Resort Pvt Ltd
2. Countrywide Promoters Pvt Ltd
3. Business Park Maintenance Services Pvt Ltd ....RESPONDENTS

<b>CORAM:</b>	<b>Parneet Singh Sachdev</b>	<b>Chairman</b>
	<b>Nadim Akhtar</b>	<b>Member</b>
	<b>Dr. Geeta Rathee Singh</b>	<b>Member</b>
	<b>Chander Shekhar</b>	<b>Member</b>

**Date of Hearing:** 05.09.2024

**Hearing:** 6<sup>th</sup>

**Present:** Mr. Randeep Tanwar, Counsel for the Complainant  
Mr. Hemant Saini & Mr. Himanshu Monga, Counsels for  
the respondents through VC.

### ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Captioned complaint was filed by complainant in registry on 12.07.2023 representing all residents of Park Elite Flats and plots and Parklands plot

holders of Sector-85, Faridabad seeking primary relief of handing over of maintenance and operation of society to the resident welfare association along with completion of basic amenities like installation of electricity sub-division, construction of club, construction of proper STP and refund of maintenance charges. It has been alleged in the complaint that respondents are neither providing the basic services at the site nor handing over the maintenance to complainant association.

2. Respondents had filed an application challenging maintainability of complaint in registry on 19.12.2023. In said application it has been apprised that complainant had already filed two separate matters before the Civil Judge Senior Division, Faridabad titled as: "Ganga Yamuna Welfare Association vs M/s Business Park Maintenance Services and ors" CS No. 961 of 2020 and "Ganga Yamuna Welfare Association vs M/s Country Wide Promoters Private Limited and ors." CS No. 2241 of 2020 which are still pending for adjudication. A copy of the petition in CS No. 961 of 2020 is annexed and marked as Annexure 1. A copy of the petition of CS No. 2241 of 2020 is annexed and marked as Annexure 2.
3. Further, it is submitted that the complainant had filed the above-mentioned matters against M/s Business Park Maintenance Services; M/s Country Wide Promoters Private Limited and BPTP Resorts Pvt. Ltd. wherein these three parties are common and primarily reliefs are sought



from them in the present Complaint as well. That before the Civil Court, the Complaint seek reliefs regarding electricity connections, restrain the Respondent from charging illegal charges, direction to not supply electricity at commercial rates or industrial rates and similar reliefs have been sought before this Ld. Authority. In light of the pendency of the complaints before Civil Court, Faridabad, the present Complaint is bound to be dismissed and cannot be continued as per section 10 of the Civil Procedure Code, 1908.

4. Detailed order dated 20.12.2023 recording submissions and issues was passed in captioned complaint which is as follows:-

*“Case was fixed for filing reply. Ms Neha, proxy counsel appearing on behalf of the respondents has submitted that respondents have filed an application challenging maintainability of the captioned complaint on grounds that the complainant association has filed two separate matters before the Civil Judge Senior Division, Faridabad titled as “Ganga Yamuna Welfare Association Vs Business Park Maintenance Services Pvt Ltd and ors” CS No 961 of 2020 and “Ganga Yamuna Welfare Association vs Countrywide Promoters Pvt Ltd” CS No. 2241 of 2020. It has been stated that the complainant has filed the above mentioned matters against Business Park Maintenance Services Pvt Ltd, BPTP Resort Pvt Ltd and Countrywide Promoters Pvt Ltd, wherein these three parties are common and primarily reliefs are sought from them in present complaint as well. That in light of pendency of the complaints before Civil Court, Faridabad, present complaint is bound to be dismissed.*





*Ms Neha, learned counsel further submitted that during the last hearing dated 04.10.2023, respondent had already apprised the Authority with regard to pendency of Civil Suit. 2241 of 2019 before Civil Court, Faridabad, wherein complainant was seeking identical relief to that as prayed in the interim application filed by the complainant on 24.08.2023. Since Civil Suit is stated to be pending before Civil Court on similar grounds, this Authority had decided that interim relief sought by the complainant vide application dated 24.08.2023 cannot be allowed. Learned counsel for the complainant had sought time to withdraw particular reliefs from the Civil Suit filed before the Civil Court. However, complainant association has still not withdrawn the same. Now the respondent has also come to know of the second suit, i.e., Complaint no. 961 of 2020 filed by the complainant against remaining respondents on similar grounds.*

*2. At this point, a specific query was put to the learned counsel for the complainant with regard to the pendency of aforementioned suits before the Civil Court, Faridabad and status of withdrawal of Civil Suit. 2241 of 2019. In response, learned counsel for the complainant submitted that he had conveyed the observations of the Authority made during the course of hearing dated 04.10.2023 to the complainant. However, the complainant chose not to withdraw the said suit.*

*3. Keeping in view with the submissions recorded above, it is observed that complainant has not approached this Authority with clean hands at the time of filing of the present complaint and failed to highlight material facts. As a matter of practice and in the interest of justice litigants cannot be allowed to prosecute parallel litigations before different forums.*

*4. Complainant is directed to file reply, if any, to the application filed by the respondents within 3 weeks with an advance copy supplied to the*



*opposite parties. On next date arguments shall be heard on maintainability of present complaint before the Authority in light of pendency of Complaint no. 2241 of 2019 and Complaint no. 961 of 2020 before Civil Court, Faridabad.*

*5. Case is adjourned to 07.03.2024.”*

5. Today, ld. counsel for complainant stated that one complaint has been withdrawn from Civil Court, Faridabad. However, one is still pending. Ld. counsel for respondent requested to dismiss the complaint as two complaints for same reliefs cannot be proceeded with together.

6. At this stage, it is pertinent to refer judgment dated 05.04.2013 passed by Hon'ble Supreme Court in Civil Appeal No. 2908/2013 titled as Aspi Jal & Anr. Vs Khushroo Rustom Dadyburjor wherein it has been observed as follows:-

*“Section 10 of the Code which is relevant for the purpose reads as follows:*

*“ 10. Stay of suit.- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court. Explanation.- The pendency of a suit in a foreign Court does not preclude the Courts in India from trying a suit founded on the same cause of action.”*



*From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a Court to which provisions of the 8 Page 9 Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10, i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the Court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of 9 Page 10 the same relief and is aimed to protect the defendant from multiplicity of proceeding. The view which we have taken finds support from a decision of this Court in National Institute of Mental Health & Neuro Sciences vrs. C.Parameshwara, (2005) 2 SCC 256 in which it has been held as follows:*

*" 8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is*





*referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the 10 Page 11 previous instituted suit. The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."*

*In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether "the matter in issue is also directly and substantially in issue in previously instituted suits". The key words in Section 10 are "the matter in issue is directly and substantially in issue in the previously instituted suit". The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit."*

8. Keeping in view the fact that complaint between same parties as is in present complaint with the same reliefs is pending before Civil Court,



Faridabad, the present complaint cannot be proceeded with any further. Furthermore, Authority is of considered view that present complaint is not maintainable because otherwise two parallel proceedings would continue before two different fora, which may end up with contrary findings on same issues.

9. In aforesaid circumstances, complaint is thus liable to be dismissed being not maintainable and accordingly stands **disposed off** with liberty to file it fresh, should the civil suits in question be withdrawn. File be consigned in the record room after uploading of the order on the website of the Authority.

  
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CHANDER SHEKHAR  
[MEMBER]

  
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DR .GEETA RATHEE SINGH  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]

  
.....  
PARNEET S SACHDEV  
[CHAIRMAN]