

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

Complaint no. :	1005 of 2024
Order reserved on:	13.12.2024
Order pronounced on:	21.02.2025

Aditi Sawhney

Address at: B-78, Greater Kailash-I,
New Delhi-110048

Complainant

Versus

M/s Puri Construction Pvt. Ltd.

Regd. office: 4-7B, Ground Floor, Tolstoy
Marg, New Delhi-110001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Sanjeev Kumar Sharma
Ms. Smriti

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 provisions of the Act or the Rules and regulations made there under or to the allottees 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:

S. N.	Particulars	Details
1.	Name and location of the project	"Emerald Bay" at sector 104, Gurgaon, Haryana
2.	Nature of the project	Residential Group housing
3.	Project area	17.1745 acres
4.	Rera registered or not	Registered Vide no. 136 of 2017 issued on 28.08.2017 upto 28.02.2021
5.	DTCP License no.	68 of 2012 dated 21.06.2012 32 of 2013 date 17.05.2013
6.	Unit No.	1502, 15 th floor, Block B2
7.	Unit area admeasuring	1550 sq. ft.
8.	buyer agreement	29.10.2013
9.	Total sale consideration	Rs. 1,26,82,348/-
10.	Amount paid by the complainant	Rs. 1,26,19,843/- (as alleged by respondent at page 9 of complaint)
11.	Occupation certificate	21.11.2018
12.	Offer of possession	07.02.2019
13.	Conveyance deed	Not executed

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:



- I. That after taking the possession of the apartment no. B2-1502, Tower B2, admeasuring 1550 sq. ft. the complainant filed complaint against respondent/builder vide complaint no. 2471 dated 16.06.2021 which was decided vide order dated 08.09.2021.
- II. The amount of DPC has been received by the complainant now after repeated request and mails the respondent builder is not coming forward to execute the conveyance deed in favor of the complainant as revenge to settle the scores with him. This is causing delay and mental harassment to the complainant.
- III. Kindly order the respondent builders to get the conveyance deed executed immediately.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s).
- (i) Order the respondent/builder to get the conveyance deed executed immediately.
5. 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.**
6. The respondent has contested the complaint on the following grounds.
- I. That the complaint filed by the complainant is not maintainable as vide order dated 08.09.2021 passed by Hon'ble Haryana Real Estate Regulatory Authority, Gurgaon the complaint with regard to the delay possession charges was adjudicated and no other issue viz. amount of balance sale consideration/credit note passed for compensation/passed inadvertently was ever adjudicated between the



- parties. Further till date the complainant has not made payment of any stamp duty and registration charges which are still payable by the complainant to the respondent for the execution and registration of conveyance deed hence present complaint is not maintainable.
- II. That the complainant has got no cause of action to file the present complaint. The whole complaint is based upon the execution and registration of conveyance deed which the respondent is ready to execute and register subject to making payments of stamp duty and registration charges as well as balance sale consideration for which earlier a credit note amounting to Rs.2,02,593/- for delay possession charges but the complainant having filed a complaint for the same and the respondent having paid the same, now the amount of balance sale consideration has become payable.
- III. That the complainant is guilty of concealment and misrepresentation. It is the complainant who has never made any payment of stamp duty, registration charges as well as amount of balance sale consideration for which credit note at the time of offer of possession was passed to set off the delay possession charges / passed inadvertently though the allottee has taken possession of the unit long back. The respondent has never refused to execute and register the conveyance deed and has also sent the request letter / reminder to make payment of requisite stamp duty and registration fee etc. but the complainant always stated that the payment of stamp duty etc. and execution of conveyance deed is the matter between the complainant and the state of Haryana and respondent cannot force to execute the conveyance deed. Hence the present complaint is devoid of merits.
- IV. That the present complaint is barred under Order 2 Rule 2 CPC as the said cause of action was available to the complainant at the time of filing





of previous complaint hence the complainant has got no right to file another complaint.

7. Copies of all the relevant documents have been filed and placed on 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.
8. In the proceedings dated 13.12.2024, the matter was reserved for orders and both the parties were given the liberty to submit written submissions within a period of 2 weeks with advance copy to each other. No such written submissions have been filed by either of the parties.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

11. 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) The promoter shall-

(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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

12. 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 objections raised by the respondent:

F.I Objection regarding complaint barred by Order II Rule 2.

13. The respondent has raised an objection that the present complaint filed by the complainant is barred by the Order II Rule 2 of The Code of Civil Procedure, 1908, which clearly states that the suit which is filed by the complainant shall include the whole claim which the plaintiff is entitled in respect of the cause of action. In the present matter the complainant earlier filed a complaint bearing no. 2471 of 2021 which was decided on 08.09.2021. In the aforementioned complaint, complainant sought a relief pertaining to the handover of possession and delay possession charges. And now complainant by filing another complaint seeking relief regarding execution of conveyance deed. So, the present complaint should be dismissed on this ground.
14. The Authority observes that in terms of Section 11(4)(f) read with Section 17 of the Act of 2016, it is the statutory obligation of the respondent to get the conveyance deed executed in the name of the allottee. The complaint cannot be construed being barred by res-



judicata on this ground. In fact, the act of the respondent in not getting the conveyance deed executed has led to unnecessary litigation which could have been avoided. Execution of conveyance deed is a logical corollary to the allotment, execution of buyer agreement and handing over of the possession of the allotted unit. Therefore, in view of the above, the objection of the respondent w.r.t. the complaint being barred by Order II Rule 2 stands rejected.

G. Findings on the relief sought by the complainant:

- (i) Order the respondent/builder to get the conveyance deed executed immediately.
15. The complainant is seeking direction to execute the conveyance deed of the unit in favour of the complainant. The complainant booked a unit bearing no. 1502 on 15th floor in Block B2 admeasuring 1550 sq. ft. The builder buyer agreement was executed on 29.10.2013. The complainant has been offered possession of the allotted unit on 07.02.2019 after obtaining of occupation certificate on 21.11.2018 as per clause of the agreement. Through an order dated 08.09.2021, the Authority had directed the respondent to pay delay possession charges to the complainant in CR no. 2471 of 2021. The respondent has stated that some 'credit note' was passed to set of the delay possession charges/passed 'inadvertently' though the allottee has taken possession of the unit long back. This issue cannot be raised at the present stage as the said order stands satisfied and has attained finality.
16. So far as the relief of execution of conveyance is concerned, it is relevant to reproduce the provisions of Section 11 (4) (f) and Section 17 (1) of the Act of 2016 which lay down as under:

Section 11 (4) (f)

execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with

the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

17. To the above provisions leave no iota of doubt that it is the statutory obligation of the promoter to get the conveyance deed executed in favour of the allottee.
18. Further, the obligation has to be read in conjunction with section 19(11) of the Act of 2016 which provides a mutual duty on the allottee to participate towards registration of the conveyance deed as provided in section 17(1) of the Act. The same is reproduced below:

Section 19. Rights and duties of allottees

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

19. As the occupation certificate of the unit has been obtained from the competent authority on 21.11.2018, there is no reason to withhold the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent to execute the conveyance deed in favour of the complainant after payment of

applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if not already paid, within 90 days from the date of this order.

H. Directions of the authority

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to execute the conveyance deed in favour of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if not already paid, within 90 days from the date of this order.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint as well as applications, if any, stands disposed off accordingly.

22. File be consigned to registry.

HARERA
GURUGRAM

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2025