

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

Complaint no. : 915 of 2024
Date of complaint : 21.03.2024
Date of order : 24.01.2025

M/s Maninderjit Singh Sekhon (HUF)
Through its Karta
Maninderjit Singh Sekhon
R/o: Ivory 55, Emerald Hills, Sector-65,
Golf Course Extension Road, Gurugram.

Complainant

Versus

M/s Parsvnath Developers.
Regd. Office at: Parsvnath Tower,
Near Shahdara Metro Station,
Shahdara, Near Delhi-110032.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. P.K Pandey (Advocate)

Sh. Aishwarya Jain (Advocate)

Complainant
Respondent

HARERA
ORDER
GURUGRAM

1. The present complaint has been filed by the complainant/allottee 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.	Project name and location	IT Project, Sector 48, Village Tikri, Gurugram
2.	Nature of project	Commercial Project
3.	MOU	08.01.2007 (Page no. 08 of complaint)
4.	Unit area	1000 sq. ft. (page no. 09 of complaint)
5.	Total sale consideration	₹ 15,00,000/- (page no. 09 of complaint)
6.	Paid up amount	₹ 13,50,000/- (page no. 10 of complaint)
7.	Assured return clause	2. That First Party shall after receipt of party consideration @ Rs. 1350/- per square foot of the entire super area i.e., Rs. 13,50,000/- given an investment return @ Rs. 26.09 per sq. ft. per month i.e., Rs. 26,090/- by way of interest (subject to deduction of tax at source) w.e.f. 01.01.2007 on quarterly intervals at the end of every quarter for which it is due. That the First Party shall give an investment return (interest) @ Rs. 27.50/- per sq. ft. per month of area of the Proposed Premises subject to the timely payment of balance consideration amount @ Rs. 150/- per sq. ft. of the space area i.e., Rs. 1,50,000/- by the Second Party till the date of offer of possession of space in the Complex.
8.	Occupation certificate	Not obtained

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9.	Offer of possession	Not Offered
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B. Facts of the complaint

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

- I. That the complainant after going through the advertisement published by the respondent as per the brochure provided by the respondent booked a commercial space with super area of 1000 sq. ft. @ Rs. 1500 per ft. in the project initiated by the respondent under the name and style of IT park complex, in sector -48, Village – Tikri, Main Gurgaon – Sohna Road, Distt.- Gurugaon, Haryana. The total cost of the space in the project was Rs. 15,00,000/-.
- II. That the complainant was asked to pay a sum of Rs. 13,50,000/- on or before the signing the memorandum of understanding dated 08.01.2007 and remaining amount of Rs. 1,50,000/- was to be paid by the complainant to respondent at the time of handing over of said space in the complex.
- III. That the complainant on 05.01.2007 paid the consideration of Rs. 13,50,000/- to the respondent on 08.01.2007, memorandum of understanding was executed between complainant and respondent on 08.01.2007.
- IV. That the respondent assured the complainant that after receipt of Rs. 13,50,000/-, respondent will provide an investment return of Rs. 26,090/- w.e.f 01.01.2007 on quarterly intervals at the end of every quarter for which it is due. The respondent further assured to provide an investment return of Rs. 27.50/- per sq. ft. per month i.e. Rs. 1,50,000/- by complainant till the date of offer of possession of space in the complex.

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- V. That as per the terms and conditions of MOU, respondent had pay to Rs. 26,090/- per month from 01.01.2007 till the offer of possession of the above said space and the same become due quarterly at the end of every quarter. The respondent had the paid the above said investment return till 31.03.2014 thereafter respondent had not paid any single penny to complainant.
- VI. That the complainant had requested the respondent many times verbally as well as emails to pay the above said amount but the respondent did not pay any heed to the just and genuine request of the complainant.
- VII. That the respondent had neither provide the possession of the above said commercial space nor provided the investment return to the complainant as per said MOU to the complainant, despite repeated request of complainant, which caused great mental agony, harassment and financial loss to the complainant. Thus, respondent has also cheated and defrauded the complainant just to cause wrongful loss to the complainant and to cause wrongful gain to himself/themselves.
- VIII. That the complainant has filed a consumer complaint no. 186 of 2020 on 16.06.2020 before Dispute Consumer Redressal Commission, Gurgaon and same was decided on 28.04.2022 and award was passed against the respondent. However, the respondent had even not pay the single penny to complainant even after the award.
- IX. That the complainant is ready and willing to pay to remaining amount of Rs. 1,50,000/-to respondent as and when respondent hand over the possession of above commercial space.
- X. That the complainant has filed execution upon the abovesaid before consumer district redressal forum. However, respondent had not paid single penny to complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- (i) Direct the respondent to pay arrear of investment return from period 31.04.2014 to 31.12.2023 of Rs. 30,52,530/- along with interest from 24% p.a.
- (ii) Direct the respondent to handover a commercial space with super area of 1000sq. ft. @ Rs. 1500 per sq. ft. in the project initiated by the respondent under the name and style of IT Park Complex.
- (iii) Direct the respondent to pay a compensation of Rs. 10,00,000/- to complainant for harassment, mental agony and pain as well as delay to handover the space to complainant.

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 filed an application for dismissal of complaint on 13.06.2024 and contested the complaint on the following grounds.

- I. That the complaint is liable to be rejected and dismissed by the Authority, as the complainant has intentionally concealed that he had already preferred an execution application before the District Consumer Disputes Redressal Commission (DCDRC), Gurugram, Haryana for execution of the order passed by the Hon'ble DCDRC, bearing no. EA/142/2023 titled as "Maninderjit Singh Shekhon vs. Parsvnath Developers Ltd." and as such no reliefs can be sought from this Authority.
- II. That as per Section 71 of the Real Estate (regulation and Development) Act, 2016 it is mandatory for the complainant to withdraw any complaint filed under the Consumer Protection Act, before approaching this Authority.



- III. That since an execution application before DCDRC, Gurugram is already pending qua the same property. Hence the complaint is hit by the principle of Res subjudice.
- IV. That the complainant has filed the present complaint in violation of settled law and in case the Authority permits the complainants to continue with the present complaint respondent would suffer irreparable loss, therefore, complaint is liable to be rejected.

E. Reply by complainant to the application filed by respondent

7. The complainant on 16.08.2024 has filed a reply to the application of the respondent for dismissal of complaint.
- I. That the present application filed by the opposite party is not maintainable and the same is a gross abuse and misuse of process of law and has been filed on the basis of misconceived documents in order to cause unnecessary delay; harassment and humiliation to the complainant. The application under reply is neither maintainable nor sustainable in the eyes of law and the same is liable to be dismissed with heavy cost.
- II. That the application of opposite party is not maintainable, as the applicant has not approached this Hon'ble court with clean hand and has suppressed the true and material facts from this Hon'ble Court. The averments made by opposite party in the application are absolutely false, vague concocted and are without any substance. Thus, the application is liable to be dismissed with heavy cost.
- III. That the application under reply is not maintainable as the opposite party had not file the reply to complaint of complainant and the present application was preferred just to delay the proceeding by one way or other and extend the limit deadline to file reply.

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- IV. That the complaint in his complaint has clearly mentioned that he has filed the execution petition before the consumer District Redressal Forum and the said is pending.
- V. That section 71 of The Real Estate (Regulation and Development) Act, 2016 does not cast mandatory duty upon the complainant/aggrieved person to withdraw his complaint filed under consumer protection act, before approaching this Hon'ble Authority rather its gives option to complainant/aggrieved persons.
- VI. That the allottee/aggrieved person/complainant has concurrent remedy either under consumer protection Act and The Real Estate (Regulation and Development) Act, 2016
8. 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.
- F. 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

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(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.

G. Findings on the relief sought by the complainant:

- i. Direct the respondent to pay arrear of investment return from period 31.04.2014 to 31.12.2023 of Rs. 30,52,530/- along with interest from 24% p.a.
 - ii. Direct the respondent to handover a commercial space with super area of 1000sq. ft. @ Rs. 1500 per sq. ft. in the project initiated by the respondent under the name and style of IT Park Complex.
 - iii. Direct the respondent to pay a compensation of Rs. 10,00,000/- to complainant for harassment, mental agony and pain as well as delay to handover the space to complainant.
13. The complainant in the present complaint is seeking relief w.r.t the payment of pending assured return, handover of possession and compensation. The complainant booked a commercial unit of 1000 sq.



ft. in the project of the respondent situated at Sector-48, Gurugram. The Memorandum Of Understanding (MOU) was executed between the parties on 08.01.2007. The total sale consideration as per MOU was ₹ 15,00,000/- out of which complainant has paid an amount of ₹ 13,50,000/-.

14. The respondent contends that the complaint is neither maintainable nor tenable and, therefore, should be dismissed in its entirety. The respondent asserts that the complainant has previously filed a complaint before the Hon'ble District Consumer Dispute Redressal Commission (DCDRC), Gurugram, under complaint no. CC/186/2020, which has already been adjudicated by the said forum. Additionally, the execution of the aforementioned complaint is still pending.
15. The Authority is of the view that the present complaint has been filed by the complainant/allottee under the provisions of the Real Estate (Regulation and Development) Act, 2016, seeking relief regarding payment of pending assured return, handover of possession and compensation. Upon perusal of the records and submissions made by both parties, it has come to the notice of this Authority that the complainant had previously approached the District Consumer Disputes Redressal Commission (DCDRC), Gurugram in respect of the same grievance. The said forum has already adjudicated upon the matter and passed an order in favour of the complainant, but the execution of that order is still pending. The complainant has now preferred this fresh complaint before this Authority seeking the same relief. Further, the complainant has also contended that they have the liberty to approach different authorities for redressal of their grievance.
16. The fundamental issue that arises in the present matter is whether the complaint is maintainable before this Authority given that the



- complainant has already availed an alternate legal remedy before another forum, i.e., the DCDRC, and has obtained an order in their favor.
17. The present complaint is barred under the principles of Res Sub Judice as provided under Section 10 of the Code of Civil Procedure, 1908 (CPC), which states that when a matter is already pending before a competent court or tribunal between the same parties for the same cause of action, a parallel proceeding in another forum is impermissible. In the instant case, the complainant has already initiated legal proceedings before the DCDRC, Gurugram which has resulted in an adjudication, and its execution is still pending. The complainant, instead of seeking execution of the order before the appropriate forum, is attempting to file a fresh complaint before this Authority, which is legally untenable.
 18. Furthermore, the present complaint is also hit by the doctrine of Res Judicata as enshrined under Section 11 of the Code of Civil Procedure, 1908 (CPC), which mandates that once a matter has been adjudicated upon by a competent court/tribunal, the same cannot be re-agitated between the same parties on the same cause of action. The principle of Res Judicata prevents multiple proceedings on the same issue and ensures finality in litigation. The Hon'ble Apex Court in **Satyadhyan Ghosal v. Deorajin Debi** has held that the doctrine of Res Judicata applies not only to civil courts but also to quasi-judicial and administrative tribunals, including regulatory authorities like Haryana Real Estate Regulatory Authority. Given that the DCDRC has already adjudicated upon the complainant's grievance and passed an order, this Authority cannot entertain a fresh complaint on the same issue.
 19. Moreover, the complainant argued that he can approach different authorities for the same relief. The authority observes that it amounts to forum shopping, which is a disapproved practice in law. It is a settled



legal principle that a litigant cannot be permitted to choose multiple forums to obtain reliefs in a manner that is detrimental to the principle of judicial discipline and consistency.

20. In light of the above, the present complaint is held to be non-maintainable and is accordingly dismissed. The complainant is advised to seek appropriate execution proceedings before the DCDRC for enforcement of the order already passed in their favour.
21. File be consigned to the registry.

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.01.2025



V.K.G.
(Vijay Kumar Goyal)
Member

HARERA
GURUGRAM