

BFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Appeal No.38 of 2023

Date of Decision:April 21, 2025

Nitin Bhayana, 57, Sunder Nagar, Mathura Road, Gurugram

Appellant.

Versus

1. Chintels India, A11, Kailash Colony, New Delhi-11048
2. M/s Chintels India Pvt. Ltd., A-11, Kailash Colony, New Delhi
3. Prashant Solomon, Managing Director, A-11, Kailash Colony, New Delhi
4. Ashok Solomon, A-11, Whole Time Director, Kailash Colony, New Delhi
5. Rohan Solomon, Director, A-11, Kailash Colony, New Delhi
6. Satyashiva Prasad Nedury Venkta Narshima Sasha, Director, A-11, Kailash Colony, New Delhi
7. Ajit Nath Jha, Director, A-11, Kailash Colony, New Delhi
8. Haryana Real Estate Regulatory Authority, PWD Rest House, Civil Lines, Gurugram

Respondents

Present : Mr.Gaurav Seth, Advocate for the appellant.
Mr. Shubham Dayma, Advocate for respondent No. 1.
Mr. Sidhant Arora, Advocate for respondent No. 8.

CORAM:

**Justice Rajan Gupta
Rakesh Manocha**

**Chairman
Member (Technical)**
(Joined through VC)

O R D E R:

RAJAN GUPTA, CHAIRMAN

Present appeal is directed against order dated 02.08.2022 passed by the Authority¹, operative part whereof reads as under:

¹ Haryana Real Estate Regulatory Authority, Gurugram

“So, keeping in view the factum that the second complaint filed is not maintainable, neither the complainant is entitled to recover any amount along with interest nor to any compensation.”

2. The facts, emanating from the record, are that on 21.01.2012, the appellant booked an apartment in residential group housing project -Chintels Paradiso', Sector 109, Gurugram total consideration being Rs.1,18,87,750/-. Allotment letter dated 03.05.2012 was issued. Buyer's agreement was executed between the parties on 15.05.2012. The appellant paid total sum of Rs.1,14,85,827/-. The possession of the unit was to be handed over till 01.10.2014. The promoter offered possession of the unit to the allottee vide letter dated 22.06.2017. As there was inordinate delay on the part of the promoter to deliver possession of the unit, the allottee preferred a complaint before the Authority seeking possession of the unit along with DPC².

3. Vide order dated 28.03.2019, the Authority directed the promoter to pay interest @10.75% p.a. for every month of delay in handing over the possession on the amount paid by the allottee. Thus, the promoter was also directed to pay interest from 01.10.2014 to 22.06.2017 on account of delay in handing over of possession to the complainant.

4. As the promoter failed to comply with the order dated 28.03.2019 passed by the Authority, the allottee filed execution petition. The promoter handed over possession of the unit to the allottee only after filing of execution petition. Pursuant to order dated 05.11.2020 passed by the Authority,

² Delayed Possession Charges

the promoter also executed the conveyance deed. In the execution petition, the allottee claimed compensation of Rs.31,37,772/-, awarded by the Authority vide order dated 28.03.2019.

5. The promoter raised objections to the calculation made by the allottee and filed its counter claim amounting to Rs.21,81,337/-.

6. Vide order dated 12.02.2020, the Authority appointed a Chartered Accountant to verify the claim of both the parties, who submitted its report dated 04.11.2020. The Authority disposed of the execution petition vide order dated 26.03.2021. At the same time, the Authority made an observation that the allottee would be entitled to file a separate petition claiming recovery of alleged illegal amount raised by the promoter by way of counter-claim. The allottee filed second complaint which was dismissed vide impugned order.

7. We have heard learned counsel for the parties and given careful thought to the facts of the case.

8. It appears that liberty was granted by the Authority to file a fresh complaint claiming recovery of illegal and extra amount which the promoter had charged and claimed by way of a counter claim in the execution petition. Earlier complaint was preferred, which was adjudicated upon and the promoter was directed to pay interest @ 10.75% per annum for every month of delay in handing over the possession on the amount paid by the appellant. It is not clear how permission was granted to file a fresh complaint on the same cause of action. In any case, if any other relief had to be sought, the same should have been

included in the earlier complaint. Any liberty granted to file a fresh complaint would be hit by the bar of constructive *res judicata*. If this approach is allowed, it would lead to multiplicity of litigation. A party who is aggrieved by an order passed by the Authority/Adjudicating Officer can always resort to remedy provided under Section 43(5) of the Real Estate (Regulation & Development) Act, 2016.

9. Thus, the appeal is without any merit and is hereby dismissed.

10. Copy of this order be communicated to the parties/counsel for the parties and the Authority.

11. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Rakesh Manocha
Member (Technical)
(Joined through VC)

April 21, 2025
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