

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

**Complaint no.:** 109 of 2024  
**Date of decision:-** 16.04.2025

1. Narender Pal Riat  
2. Urmala Rani Riat  
**Both R/o:** - N-2/4, DLF Phase-II,  
Gurugram, Haryana.

**Complainants**

**Versus**

1. M/s. Countrywide Promoters Private Limited  
**Regd. office:** OT-14, Floor-3<sup>rd</sup>,  
Next Door Parklands, Sector-76,  
Faridabad-121004.

M/s. Anjali Promoters and Developers Pvt. Ltd.  
**Regd. Office:** M 11, Middle Circle,  
Connaught Circus, Delhi.

**Respondents**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sanjeev Sharma

Harshit Batra

**Complainants**

**Respondents**

**ORDER**

1. The present complaint dated 15.01.2024 has been filed by the complainants/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 as provided under the provision 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Centra One", Sector-61, Gurugram.
2.	Nature of the project	Commercial Complex
3.	Area of project	3.675 acres
4.	DTCP license	License no. -277 of 2007
5.	RERA Registered	Registered
6.	Provisional Allotment letter	10.06.2008 (As on page no. 33 of reply)
7.	Shop/Space/Unit/Office no.	1204A, Floor-12 <sup>th</sup> (As on page no. 42 of reply)
8.	Unit area	1000sq.ft (As on page no. 33 of reply)



9.	Date of execution of Space Buyer's Agreement	29.12.2011 (As on page no. 37 of reply)
10.	Possession Clause	<b>Clause 2 Possession</b> <i>2.1 The possession of the said Premises shall be endeavored to <b>be delivered to the Intending Purchaser by 31<sup>st</sup> December 2011</b>, however, subject to clause 9 herein and strict adherence to the terms and conditions of this Agreement by the Intending Purchaser. The Intending Seller shall give Notice of possession to the Intending Purchaser with regard to the date of handing over of possession, and in the event the Intending Purchaser fails to accept and take the possession of the said Premises on such date specified in the notice the Intending Purchaser shall be deemed to be custodian of the said Premises from the date indicated in the notice of possession and the said Premises shall remain at the risk and cost of the Intending Purchaser.</i> [Emphasis supplied] (As on page no. 47 of reply)
11.	Due date of possession	31.12.2011
12.	Addendum to Agreement	27.12.2011 (As on page no. 67 of reply)
13.	Total sales consideration	Rs.80,65,399/- (As on page no. 43 of complaint)
14.	Total amount paid by the complainant	Rs.67,91,371/- (As on page no. 81 of complaint)

15.	Occupation certificate	09.10.2018 (As on page no. 76 of reply)
16.	Offer of possession	29.11.2018 (As on page no. 78 of reply)

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint:

- I. That the complainants have previously filed a complaint bearing no. 512 of 2018 for delayed possession charges and handing over of possession of the subject unit. The matter was disposed of vide order dated 09.01.2019 with directions to the respondent to pay delay possession charges from 31.12.2011 till offer of the possession i.e. November 2018. Simultaneously in clause (ii) of the directions they stressed for handing over of possession and other amounts within 90 days from the date of decision i.e. 08.04.2019.
- II. That the respondent miserably failed to comply with both the directions as he neither offered a valid legal possession nor paid delay possession charges. When the respondent did not comply with the directions of the Authority, an execution petition was filed before the Adjudicating Officer on 31.10.2019 which is still pending.
- III. Neither any adjustment of delay possession interest was adjusted in the offer of possession nor any amount was paid to the complainant from 03.04.2023 to 03.09.2023 @ Rs. 2,57,785/- in 9 cheques which are duly uncashed amounting to Rs.30,93,421/-. There are number of emails exchanged between the complainant and the respondent regarding the possession and the amount to be paid to the complainant. Despite

number of cheques given to the complainant, the interest is not fully paid.

- IV. That the respondents have taken a plea before the Adjudicating Authority which is accepted that there is no particular direction for handing over of possession hence fresh complaint is filed before this authority for clear directions regarding handing over of physical possession to the complainant and a proper legal offer of possession be made through demand letter after adjusting the interest accrued to the complainant. Interest be orders till the revised date of legal offer of possession and the possession be handed over to the complainant immediately.
- V. That the complainant has not been offered possession of the unit in question even till date and therefore, the complainant has approached the Authority and filed the present complaint relating to issue handover the possession along with delay of possession charges.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):-
- Direct the respondent to not alienate the unit to the third party.
  - Direct the respondent to pay interest for delayed possession charges till the actual handover of possession.

**D. Reply by the respondents.**

5. The respondent no.1 has made the following written submissions:
- That at the outset, it is submitted that the name of the respondent no. 1 i.e., M/s Countrywide Promoters Private Limited be deleted from the array of parties as the same is merely a confirming party to the agreement. Moreover, no reliefs are sought by the complainants against

the respondent no. 1. Hence, the name of respondent no. 1 shall be deleted from the array of parties.

- II. That the complainants being interested in the group housing project of the respondent no. 2 "Centra One", situated at Sector 61, Gurugram, Haryana applied for the purchase of a unit and in furtherance of the same were allotted a tentative unit bearing no. O12-1204A on 12<sup>th</sup> Floor admeasuring tentative super area of 1000 sq. ft., hereinafter referred to as the "Old Unit").
- III. That prior to the purchase of the said Old Unit in question, the complainants conducted extensive research with regards to the project and only after being completely satisfied with the development and construction status of the same, had willingly and voluntarily made an independent decision for the purchase of the unit.
- IV. Thereafter, a Builder Buyer Agreement dated 29.12.2011 was executed between the complainants and the respondents. That the relationship between the parties is contractual in nature and therefore, the rights and obligations are governed by the afore-mentioned Agreement.
- V. It is imperative to note that along with the Agreement, an Addendum dated 29.12.2011 was also executed between the complainants and the respondent no. 2. That as per Clause 2 and 3 of the said Addendum, the respondent no. 2 is free to lease out the said unit. Moreover, it is imperative to note that as per the Addendum, the complainants are only entitled to the constructive possession of the Old Unit and the actual possession shall remain with the respondent no. 2.
- VI. That it was upon the request of the complainants, the allotment of the old unit was cancelled and another unit was allotted. The complainants



were allotted unit bearing no. 09-904, 9<sup>th</sup> Floor and therefore, no objections had been raised by the complainant regarding the same.

- VII. That as per the Agreement dated 29.12.2011, the construction of the project was subjective in nature and depended upon various Force Majeure circumstances and remittance of timely instalments by the complainants. It is imperative to note that the project was hampered due to various Force Majeure circumstances. Moreover, the complainants' delayed in remitting the due instalments in timely manner due to which the respondent no. 2 was constrained to issue various demands and reminder letters due to which the construction of the project was also hampered.
- VIII. That allegedly being aggrieved by the same, the complainants filed a complaint bearing no. 512 of 2018 before the Authority. It is imperative to note that during the pendency of the previously filed complaint, the respondent no. 2 rightly offered possession of the unit to the complainants vide Offer of Possession dated 29.11.2018 which was accepted and agreed by the complainants.
- IX. That after due consideration, the said complaint was disposed of by the Authority vide order dated 09.01.2019 allowing the delayed possession charges from the due date of possession i.e. 31.12.2011 till Offer of possession of the unit, i.e., November 2018. It is pertinent to mention herein that the Authority has appreciated the Offer of Possession of the unit as a valid Offer of Possession.
- X. That post disposal of the complaint, an execution petition bearing no. 5013 of 2019 was filed by the complainants before the Adjudicating Officer. During the pendency of the said execution petition, the

respondent No. 2 paid an amount of Rs.30,93,421/- to the complainants towards the delayed possession charges.

- XI. That despite offering possession of the unit to the complainants way back in the year 2018 and getting an amount of Rs.30,93,421/-, the complainants, in order to satisfy their greed, have approached the Authority once again seeking the delayed possession charges i.e. the same cause of action and relief from respondent no. 2 and thus, the present complaint is liable to be dismissed at the very outset as the same is barred by the principle of Res Judicata.
- XII. That before filing of the present complaint, the complainants had filed a similar complaint pertaining to the same cause of action and seeking the similar relief which was disposed off by the Authority vide order dated 09.01.2019.
- XIII. That vide the present complaint, the complainants are seeking the following reliefs:
- “1. The Unit shall not be alienated to third party.*
  - 2. Interest for delayed possession charges till the actual handover of the unit in question.*
  - 3. Pass any other order(s) as the Hon'ble Authority deems fit and proper”*
- XIV. That it is evidently clear that the present complaint is barred by the principle of Res Judicata. That the principle of Res Judicata flows from the maxim *“Exceptio res judicatae”* which means that a previous judgment is a bar to a subsequent suit.
- XV. Hence, all the claims put forth by the complainants in the present complaint are wrong and frivolous. That in light of the *bona fide* conduct of the respondent no. 2, no delay in the construction of the unit, the peaceful possession had already been offered to the complainants, non-



existence of cause of action and the frivolous complaint filed. Hence, the present complaint is liable to be dismissed.

6. 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.

**E. Jurisdiction of the authority:**

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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**

9. 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)(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*

*allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

10. 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 complainants at a later stage.

**F. Findings on objections raised by the respondent**

**F.I Objection regarding wrongful impleadment of respondent no.1 i.e., M/s. Countrywide Promoters Private Limited.**

11. The respondent no. 2 have raised an objection of wrongful impleadment of respondent no.1 i.e., M/s. Countrywide Promoters Pvt. Ltd. in the array of parties. The respondent no.2 stated that respondent no. 1 is only a confirming party in the Agreement and no specific relief has been sought by the complainant from respondent no.1.
12. As per record available the respondent no.1 is a Confirming party to the Agreement dated 29.12.2011 and was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 277 of 2007. The respondent no. 1 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).
13. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -

**"2. Definitions.** — In this Act, unless the context otherwise requires —

(zk) "promoter" means, —

(i)

(ii) a person who develops land into a project, whether or not the person also constructs structures or any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures there; or

(iii) xxx

(iv) xxx

14. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas, the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers. In view of the same, the contention/objection of respondent no.2 stands rejected

**F.II. Objections regarding present complaint being barred by Res judicata.**

15. Another objection raised by the respondent is that the present complaint is barred by the principle of Res Judicata. That the principle of Res Judicata flows from the maxim "*Exceptio res judicatae*" which means that a previous judgment is a bar to a subsequent suit.

16. The Authority observes that the complainants have previously filed complaint bearing no. 512 of 2018 and vide order dated 09.01.2019 the same was disposed of and delay possession charges was allowed to the complainants from the due date of possession i.e., 31.12.2011 till offer of possession i.e., November,2018. In order to execute the order dated 09.01.2019, the complainants approached the Adjudicating Officer by filing execution petition bearing no. 5013 of 2019. During the pendency of

the said execution petition, the respondent no. 2 M/s. Anjali Promoters and developers Pvt Ltd had paid an amount of Rs.30,93,421/- to the complainants towards the delayed possession charges.

17. The complainants have filed the present complaint seeking delayed possession charges along with interest till the handing over of 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)***

18. Vide proceedings dated 19.02.2025, the complainants stated that the order dated 09.01.2019, have not dealt with the grant of relief of possession and the same has been denied by the Adjudicating officer and thus the complainants have filed the present complaint seeking directions for handing over possession. On perusal of the complaint, it is clear that the complainants have nowhere sought relief regarding the handing over of possession in the present complaint and have only sought relief regarding

the payment of delayed possession charges. 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. 512 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.]”

19. Thus, the present complaint is barred by the principle of Res Judicata. The


principle of Res Judicata flows from the maxim “Exceptio res judicatae” which means that a previous judgement is a bar to a subsequent suit. The principle of res judicata enacts that once a matter is finally decided by a competent court, no party can be permitted to open it in a subsequent litigation, otherwise there will be no end to litigation and the parties would be put to constant trouble, expenses.

20. 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. Prior to the filing of the present complaint, the complainants had originally filed a complaint which has been duly adjudicated by the Authority and hence, the complainants, at this stage, cannot seek the same relief. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable.

21. File be consigned to registry.



**Ashok Sangwan**  
(Member)  
Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 16.04.2025

**HARERA**  
GURUGRAM