

BEFORE THE HARYANA REAL ESTATE APPELLATE TRIBUNAL

Date of Decision: 02.08.2025

1. Appeal No.221 of 2023

Pavel Garg s/o Sh. Sita Ram Garg, R/o H.No. 32, Sector 15, Sonapat.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt.Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

2. Appeal No.223 of 2023

Pavel Garg s/o Sh. Sita Ram Garg, R/o H.No. 32, Sector 15, Sonapat.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt.Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

3. Appeal No.238 of 2023

Pavel Garg s/o Sh. Sita Ram Garg, R/o H.No. 32, Sector 15, Sonapat.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt.Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

4. Appeal No. 217 of 2023

M/s. Combitic Global Caplet (P) Ltd. (A Private Limited Company through its authorized person Mr. Shashank Garg s/o Sh. Pavel Garg, R/o H.No. 32, Sector 15, Sonapat, Regd. Office : 2027/7, Chuna Mandi, Paharganj, New Delhi – 110 055 Also at : M-15, Industrial Area, Sonapat, Haryana.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt.Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

5. Appeal No. 218 of 2023

M/s. Combitic Global Caplet (P) Ltd. (A Private Limited Company through its authorized person Mr. Shashank Garg s/o Sh. Pavel Garg, R/o H.No. 32, Sector 15, Sonapat, Regd. Office : 2027/7, Chuna Mandi, Paharganj, New Delhi – 110 055 Also at : M-15, Industrial Area, Sonapat, Haryana.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt. Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

6. Appeal No. 219 of 2023

M/s. Combitic Global Caplet (P) Ltd. (A Private Limited Company through its authorized person Mr. Shashank Garg s/o Sh. Pavel Garg, R/o H.No. 32, Sector 15, Sonapat, Regd. Office : 2027/7, Chuna Mandi, Paharganj, New Delhi – 110 055 Also at : M-15, Industrial Area, Sonapat, Haryana.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt. Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

7. Appeal No. 239 of 2023

M/s. Combitic Global Caplet (P) Ltd. (A Private Limited Company through its authorized person Mr. Shashank Garg s/o Sh. Pavel Garg, R/o H.No. 32, Sector 15, Sonapat, Regd. Office : 2027/7, Chuna Mandi, Paharganj, New Delhi – 110 055 Also at : M-15, Industrial Area, Sonapat, Haryana.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt. Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

8. Appeal No. 240 of 2023

M/s. Combitic Global Caplet (P) Ltd. (A Private Limited Company through its authorized person Mr. Shashank Garg s/o Sh. Pavel Garg, R/o H.No. 32, Sector 15, Sonapat, Regd. Office : 2027/7, Chuna Mandi, Paharganj, New Delhi – 110 055 Also at : M-15, Industrial Area, Sonapat, Haryana.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt.Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

9. Appeal No. 241 of 2023

M/s. Combitic Global Caplet (P) Ltd. (A Private Limited Company through its authorized person Mr. Shashank Garg s/o Sh. Pavel Garg, R/o H.No. 32, Sector 15, Sonapat, Regd. Office : 2027/7, Chuna Mandi, Paharganj, New Delhi – 110 055 Also at : M-15, Industrial Area, Sonapat, Haryana.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt.Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

10. Appeal No. 243 of 2023

M/s. Combitic Global Caplet (P) Ltd. (A Private Limited Company through its authorized person Mr. Shashank Garg s/o Sh. Pavel Garg, R/o H.No. 32, Sector 15, Sonapat, Regd. Office : 2027/7, Chuna Mandi, Paharganj, New Delhi – 110 055 Also at : M-15, Industrial Area, Sonapat, Haryana.

Appellant

Versus

M/s. Krrish Green Homes Pvt. Ltd. (Now known as M/s. ILC Infracon Pvt.Ltd.) 41A, Ring Road, Lajpat Nagar-IV, New Delhi – 110 024.

Respondent

CORAM:

Justice Rajan Gupta
Shri Rakesh Manocha

Chairman
Member (Technical)

Argued by: Mr. Vikas Deep, Advocate,
 for the appellant.

Mr. Mehtab Singh Bhatti, Advocate
 for the respondent.

O R D E R:**RAJAN GUPTA, CHAIRMAN :**

This order shall dispose of above-mentioned ten appeals, as facts of all these cases are identical and common question of law is involved therein. However, the facts have been extracted from Appeal No. 221 of 2023.

2. Present appeals have been preferred by the appellant against order dated 06.01.2023 passed by the Authority¹ at Gurugram, whereby the complaints filed by the appellant were dismissed.

3. Factual matrix of the case is that respondent-promoter represented to the appellant that on account of collaboration with M/s. Raj Buildwell Pvt. Ltd. (for short 'RBPL'), it has got rights of construction, sell and transfer units in the project, namely, 'Krrish Green Montagne', Sector 71, Gurugram and thereby invited bookings of residential apartments in the said project. Appellant-allottee booked ten apartments in the said project against sale consideration of Rs.2,52,00,000/- each for three apartments and Rs.1,44,00,000/- each for seven apartments. MOU dated 10.06.2013 was executed between the appellant-allottee with regard to all apartments. It was stipulated in the MOU that project drawings/building plans are pending approval and after obtaining the approval, allotment letter

¹ Haryana Real Estate Regulatory Authority, Gurugram

as well as Apartment Buyer Agreement (for short, 'ABA') will be issued in favour of the appellant-allottee. Despite lapse of more than five years, respondent-promoter neither intimated the status of project's drawings/building plans nor issued any allotment letter or ABA. Legal notice was served upon the respondent, but to no effect. Appellant had earlier filed a civil suit in the court of learned Senior Civil Judge, Delhi, but the same was returned under Order 7 Rule 10 CPC vide order dated 19.01.2017. Appeal preferred against that order was dismissed for non-prosecution vide order dated 28.09.2018. Thereafter, appellant filed a complaint before the Authority seeking possession and delay possession compensation.

4. The complaint was contested by the respondent on the plea that MOU was executed between the complainant and M/s. Krrish Homes Green Pvt. Ltd. (now known as M/s. ILC Infracon Pvt. Ltd.) prior to enactment of Real Estate (Regulation and Development) Act, 2016 (for short 'RERA Act') and provisions of RERA Act cannot be applied retrospectively. It was further pleaded that complaint is not maintainable being barred by limitation and non-joinder of necessary parties (Mr. Amit Katyal and Mr. Rajesh Katyal) and for having arbitration clause for dispute resolution in the MOU. Further, complainant does not fall within the ambit of definition of an 'allottee' as no plot, apartment or building was ever allotted or transferred to the complainant as is clear from MOU. Complainant has, thus, no right to file the present complaint and the same is liable to be dismissed.

5. Further, it was stated that respondent-company was earlier managed by Mr. Amit Katyal, Mr. Rajesh Katyal and their associates. Said company entered into a Collaboration Agreement dated 07.11.2012 with RBPL, which was owner of the land and had obtained license. Management of respondent-company was earlier in

need of funds for operation of M/s. Krrish Green Homes Pvt. Ltd. Complainant along with Directors of M/s. Combitic Global Caplet Pvt. Ltd. had offered to advance money to Mr. Amit Katyal and Mr. Rajesh Katyal on payment of interest @ 8% per annum. Complainant demanded security for repayment of loan and obtained some documents from Mr. Amit Katyal and Rajesh Katyal, styled as MOU. Said MOU and documents were not be acted upon and were only for the purpose of security. Around January, 2014, Mr. Amit Katyal, Mr. Rajesh Katyal and their associates offered sale of shares of M/s. Krrish Green Homes Pvt. Ltd. to Mr. Sanjay Khurana and Mr. Kamal Kapoor with categoric assertion that same were free from all types of encumbrances. This led to signing of an agreement dated 28.02.2014 between the then management of M/s. Krrish Green Homes Pvt. Ltd. through Mr. Amit Katyal, Mr. Rajesh Katyal and associates, Mr. Sanjay Khurana and Mr. Kamal Kapoor. As per Clause 3.6 of the said agreement, Mr. Amit Katyal was liable for all claims/demands of the complainant and other persons mentioned therein and the current management or respondent-company is not liable to satisfy the claim of the complainant.

6. Further, RBPL started committing default of the terms of collaboration agreement dated 07.11.2012 and then filed an application under Section 9 of the Arbitration and Conciliation Act before High Court of Delhi. A settlement agreement dated 11.01.2017 was thereafter made and RBPL undertook to pay the amount advanced by the respondent-company and also cost of the development. The matter was settled before Delhi High Court vide order dated 18.01.2017.

7. Learned Authority, after considering the pleadings of the parties, dismissed the complaint vide order dated 06.01.2023.

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

9. Learned counsel for the appellant has contended that the appellant had booked ten apartments with the respondent company and paid advance for all the ten apartments vide cheques dated 10.06.2013. Appellant thereafter had made further payments. MOU dated 10.06.2013 was executed between the parties, so the appellant was/is an allottee and is entitled to invoke the provisions of Real Estate (Regulation & Development) Act, 2016. Learned Authority below erred in holding that MOU dated 10.06.2013 does not give any right to appellant to purchase apartments in question in absence of formal letters of allotment and registered agreements of sale. It was further contended that Mr. Amit Katyal is not at all a necessary party. MOU was executed with the respondent-company and not with Mr. Amit Katyal in his personal capacity. Mere fact that amount was received by the respondent-company when Mr. Amit Katyal and Mr. Rajesh Katyal were Directors or that in an agreement with the present Directors they took over the liabilities, is meaningless and complaint cannot be rejected for non-impleadment of Mr. Amit Katyal. It was further contended that filing of a suit in the civil court does not at all bar the complaint before the learned Authority, Gurugram and there is no applicability of principles of res judicata.

10. Per contra, learned counsel for the respondent-company has argued that amount was paid by the appellant to the earlier Directors, Mr. Amit Katyal and Mr. Rajesh Katyal as they were in need of money. Towards security of the amount, a formal MOU dated 10.06.2013 was executed, which was not at all to be acted upon. No apartment number or details thereof were, therefore, mentioned in the MOU. It was further argued that Mr. Amit Katyal

and Mr. Rajesh Katyal executed an agreement dated 28.02.2014 with the present Directors, Mr. Sanjay Khurana and Mr. Kamal Kapoor and as per Clause 3.6 thereof, took over all the liabilities of the appellant and such like creditors. As such, Mr. Amit Katyal was a necessary party to adjudicate upon the entire dispute between the parties completely. It was also argued that dismissal of an earlier suit by the Civil Court and the same having attained finality, the present complaint was barred by the principles of res judicata.

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

12. The Authority has erred in law in dismissing the complaint by invoking the principle of *res judicata*. As the complaint was returned under Order 7 Rule 10 CPC and appeal filed against the same was dismissed in default, the principles of res judicata would not be attracted. Besides, after the special enactment (RERA Act) came into force, the appellant had no option but to invoke jurisdiction of the empowered Authority. It needs to be kept in mind that the enactment has specific provisions to deal with disputes of this nature. The Authority ought to have considered the matter on merits and not proceeded to dismiss the same summarily on the ground that same was barred under Section 11 CPC.

13. As regards other issue, whether the appellant would fall within the definition of an 'allottee', same can be decided by the Authority after re-appraising the evidence on record and the terms of MOU.

14. As regards non-joinder of necessary parties, the issue would squarely fall within the jurisdiction of the Authority as impleadment of necessary parties is permissible which the Authority

feels that its presence is required to enable it to completely and effectually adjudicate upon the issues.

15. Under these circumstances, this Tribunal need not to delve upon any further into the controversy and deems it appropriate to set aside the order and remit the matter to the Authority for decision afresh after affording opportunity of hearing to the parties.

16. The parties shall appear before the Authority on 01.09.2025 in light of aforesaid, whereafter the Authority shall proceed afresh in terms of above order.

17. The appeals are allowed on these terms.

18. Copy of this order be sent to the parties/their counsel and the Authority.

19. File be consigned to records.

Justice Rajan Gupta
Haryana Real Estate Appellate Tribunal
Chandigarh

Rakesh Manocha
Member (Technical)
(joined through VC)

August 02, 2025
dg

Appeal No.221 of 2023 & Ors.