



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

46

Day and Date	Friday and 25.04.2025
Complaint No.	CR/1544/2024 Case titled as Naresh Kumar Aggarwal VS IREO Grace Realtech Private Limited
Complainant	Naresh Kumar Aggarwal
Represented through	Shri Prashant Kumar, proxy counsel
Respondent	IREO Grace Realtech Private Limited
Respondent Represented through	Ms. Shivani Dang, Advocate
Last date of hearing	24.01.2025
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings-cum order

That the complainant filed the present complaint before this authority on 15.04.2024, wherein it is stated that he had booked a residential apartment in the project of the respondent, namely "Corridors," situated at Sector-67A, Gurugram, Haryana, for a total sale consideration of ₹1,27,90,442/-. It is submitted that the allotment of the said unit was made in favour of the Complainant on 07.08.2011. The Complainant now seeks refund of the entire amount paid by him on the ground that the said unit was cancelled by the Respondent in the year 2014, and despite repeated requests, the Respondent has failed to refund the said amount till date.

An application for dismissal of complaint was filed on behalf of the respondent on 19.07.2024 stating that the complaint herein along with the co-allottee had previously filed an identical complaint bearing no. 6802 of 2019 seeking the same relief as sought in the present complaint i.e., refund of the cancelled unit bearing no. CD-C11-10-1004 in the project "The Corridors".

Upon consideration of the submissions and record, the Authority is of the view that the present complaint is not maintainable on the principle of res judicata,



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

the issue having already been adjudicated upon by this Authority in its order dated 24.08.2022 in Complaint No. 6802 of 2019, wherein the complaint was held to be barred by limitation and accordingly dismissed and the relevant portion is reproduced for ready reference:-

.....
39. Now the question for consideration arises as to after a gap of more than 5 years, the authority can reopen the matter of cancellation of the allotted unit and payment of remaining amount due if any against the builder. It is not disputed that after cancellation of unit on 17.11.2014 the complainants did not move any authority challenging cancellation of the allotted unit and seeking refund. They were at liberty to move civil/consumer forum seeking the desired relief but no such effort in this regard was made which shows that they slept over their right qua the allotted unit.

40. Secondly, the cancellation of unit was made on 17.11.2014 and the complaint to challenge that action was filed on 13.01.2020 i.e., after gap of more than 5 years and which is barred by limitation. The cause of action for the complainants to challenge cancellation and refund arose on 17.11.2014 and the complaint in this regard was filed on 13.01.2020 i.e., after more than 5 years. No doubt there is no provision in the Act of 2016 providing limitation to file a complaint, but the period of limitation would definitely be attracted in case in hand. A reference in this regard will be made to the ratio of law laid down in cases of **Central Coal Fields vs. Lilawati Devi, 2001(1) LLJ 1477** wherein was held that in terms of section 3 of the Limitation Act, 1963 a court cannot pass a decree if the suit is barred by limitation.

41. Similarly, in **Smt. Mira Madhubani vs. Ireo Grace Realtech Pvt. Ltd. (HRERA- Gurugram Complaint Case No. 242/2018 dated 05.09.2018)** it was observed by the Authority that when a complaint was filed after more than three years from the date of cause of action then the same is not maintainable being barred by limitation and is not maintainable.

42. Thus, keeping in view the factual and legal position discussed above, the complaint seeking refund of the paid-up amount is not maintainable being barred by limitation is ordered to be rejected.

Furthermore, this Authority does not possess the jurisdiction to review or re-write its own orders, particularly when the matter in issue, between the same parties, has already been heard and finally decided in the aforementioned complaint. Undoubtedly, one of the primary objectives of the enactment of the Act is to safeguard the interests of consumers. However, such protection cannot be extended to the extent of disregarding fundamental principles of jurisprudence.



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM


हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

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).

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. Thus, in view of the factual as well as legal provisions, the present complaint stands dismissed being not maintainable. File be consigned to the registry.


(Vijay Kumar Goyal)
Member
25.04.2025