

PROCEEDINGS OF THE DAY		11
Day and Date	Friday and 11.04.2025	
Complaint No.	MA NO. 240/2025 in CR/3110/2024 Case titled as Sunil Kumar Jain and Anupam Jain VS Exact Developers And Promoters Private Limited	
Complainant	Sunil Kumar Jain and Anupam Jain	
Represented through	Shri Bhrigu Dhami Advocate	
Respondent	Exact Developers And Promoters Private Limited	
Respondent Represented	Dr. Vipin Kumar Dwivedi Advocate	
Last date of hearing	10.01.2025	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings-cum-order

The present complaint has been received on 16.07.2024 and the reply on behalf of respondent was received on 11.10.2024.

The complainants contended that the complainants were allotted unit bearing No. 212 Block-A admeasuring 1390 sq. ft. Thereafter a buyer's agreement was executed inter se parties on 20.02.2010. As per clause 15 of the buyer's agreement, the respondent-promoter has proposed to hand over the possession of the said unit within 24 months from the date of execution of agreement or approval of completion building plans by the competent authority, whichever is later. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 20.02.2012. It is matter of fact that the respondent has failed to offer possession of the subject unit on or before 20.02.2012. As the promoter has failed to offer possession of the subject unit to the complainants as per the terms of the buyer's agreement executed inter se parties, the complainants have filed the present complaint for seeking refund of the amount paid along with interest.

The respondent in its written submission dated 01.04.2025 contended that the said complaint is barred by the principal of Res judicata and estoppel and is



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

MA No. 240/2025 In CR/310/2024

liable to be rejected, since the complainants earlier filed a complaint before NCDRC for seeking possession of the subject unit. The same was dismissed as withdrawn vide order dated 07.07.2017 in terms of settlement agreement executed inter-se parties. Moreover, the complainants have already taken the possession of the said unit in terms of the settlement agreement and the respondent also gave a rebate of Rs. 7,79,321/- and a wavier of Rs. 98,516/- to the complainants. Therefore, the present complaint does not lie before this Authority and the complainants are bound by the Principal of Promissory Estoppel.

The Authority after due consideration of the facts, the documents placed on record and the arguments advanced by the party observes that the parties arrived at a settlement and have also acted upon the said settlement therefore, now the complainants are bound by the principal of estoppel. Moreover, the principles of waiver and estoppel applies when a party knows the material facts and is cognizant of the legal rights in that matter and yet for some consideration consciously abandons the existing legal rights, advantage, benefit, claim or privilege. The waiver can be contractual as in the present case or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct like by wanting to take a change of a favourable decision. The fact that the other side had acted on it is sufficient consideration. The waiver being an intentional relinquishment is not to be inferred by mere failure to take action. These observations were made by the Hon'ble Apex Court of the land in case **Arce Polymers Private Limited Vs. Alphine Pharmaceuticals Private Limited and Ors.** MANU/SC/1184/2021.

Also, the purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the court of competent jurisdiction once and for all. Rule 3A of Order 23 CPC puts a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The aim and objective behind the provision is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. Thus, creation of further litigation should never be the basis of a compromise between the parties. The settlement agreement executed in May 2017 was placed on record before the authority and in terms of the same, the complaint bearing no. CC/1383/2016 was disposed of by the Hon'ble NCDRC on 07.07.2017. Order 23 rule 3A expressly bars instituting a fresh suit for which a compromise decree is passed and Order 23 rule 3A is reproduced hereinbelow for ready reference:



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"3A. Bar to suit- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

In the light of the above-mentioned reasoning and provisions, the reliefs for which the present complaint has been filed by the complainants are hereby declined being not **maintainable**. File be consigned to the registry.

Arun Kumar
Chairman
11.04.2025