



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	88 of 2024
Date of filing:	16.01.2024
First date of hearing:	09.09.2024
Date of decision:	26.05.2025

Rakesh Sharma

S/o Sh. B.L. Sharma

R/o House no. 593, Sector-9,

Faridabad-121006

Versus

.....COMPLAINANT

BPTP Ltd.

Registered office- Plot no. 28,

ECE House, K.G. Marg,

Connaught Circus,

New Delhi-110001

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Mr. Rakesh Sharma, complainant himself through VC.

Adv. Hemant Saini, Adv. Neha, Adv. Himanshu Monga, counsels for the respondent.

ORDER (NADIM AKHTAR –MEMBER)

1. Case of the complainant is that the complainant was allotted Unit No. VL1-11-GF in the BPTP Project, Sector-81, Faridabad. A sum of ₹35,14,259.18/- has already been paid by the complainant to the respondent. The respondent offered the possession on 22.07.2020, which the complainant declined due to absence of road connectivity and lack of supporting infrastructure. Consequently, Complaint No. RERA-PKL-1011-2020 was filed by the complainant before the Hon'ble HRERA, Panchkula. The matter was heard and an order was passed on 08.09.2021, directing the respondent to issue a revised demand notice in accordance with the rules. (Annexure C/1)
2. On 02.12.2021, the complainant requested the respondent to comply with the said order. However, the respondent failed to act, leading to the filing of Execution Complaint No. RERA-PKL-109-2022 on 08.01.2022. During the proceedings before the Hon'ble adjudicating officer, the respondent deposited six cheques totaling ₹7,89,881/- , which is recorded in the order dated 21.07.2022 (Annexure C/3). In an application dated 28.09.2022, the respondent submitted revised calculations, claiming that ₹9,23,804/- had been adjusted and ₹7,89,880/- paid. The complainant filed an IA to the Authority on 28.09.2022 wherein it is stated that the correct decretal amount is



₹17,13,683/- instead of ₹15,24,160/-. The same was considered and recorded in orders of the Authority dated 22.09.2022 (Annexure C/4).

3. Multiple hearings followed and during the 6th hearing held on 12.07.2023, the respondent reiterated their offer of possession, despite not having obtained the Occupation Certificate (OC), therefore, complainant declined possession, citing the absence of a legal approach road and a valid OC. (Annexure C/5).
4. During subsequent hearings dated 05.09.2023 and 07.11.2023, the respondent repeatedly assured the Authority that remaining dues would be cleared soon. However, no such payments were made, and the respondent continued to rely on the previously paid amount of ₹7,89,882/- to delay compliance (Annexure C/6).
5. On 06.01.2024, the respondent emailed the complainant stating that the OC for the unit had been obtained on 27.12.2023. However, the communication lacked the actual copy of the OC, a statement of account (SOA) and details of balance compensation. The complainant visited the site on 07.01.2024, discovering that no proper access road existed. The west side was blocked by a tin-sheet barrier involving a parcel of land under litigation in the High Court. On the east, a stay order (CS-3184-2023 dated 15.12.2023) was passed by the District Court. Temporary access created by the respondent was



declared illegal by DTP (E) Faridabad, citing it was not part of the approved sanctioned plan (Annexure C/8).

6. Due to the lack of a proper approach road, complainant suspects that the OC was obtained by misrepresentation. The complainant raised concerns about the validity of the OC issued by Architect Rajni Lakhani (Reg. No. CA/2007/41289) and urged the Authority to investigate the matter. A formal representation was made to the AO on 09.01.2024 (Annexure C/9).
7. The Authority had earlier appointed a Local Commissioner, who inspected the site on 18.07.2022 and confirmed that the project lacked proper road connectivity. As of today, the condition remains the same (Annexure C/10). The BBA reflected a super area of 1402 sq. ft., but the OC now records it as 1478 sq. ft., with FAR 303.478 sq. mtrs and Non-FAR 29.863 sq. mtrs (Annexure C/11). Despite this discrepancy, the respondent has failed to issue a revised SOA and continues to delay registry and payment of due compensation.
8. Complainant has filed applications dated 14.03.2024, 08.04.2024, 27.08.2024, 02.09.2024, 16.12.2024, 20.03.2025, 16.05.2025 and 21.05.2025 in the registry in support of his pleadings. The Authority has duly taken all these applications on record and considered the same for the proper and just adjudication of the matter.



9. Complainant has sought following reliefs:

- i. Direct the respondent to expeditiously complete the project and construct the connectivity of the link road up to the front of the floor, addressing pending fit- out work. Ensure that the monthly interest continues until the handover of the floor, with proper road access and a valid Occupation Certificate in accordance with the approved Sanction Plan and promptly execute the conveyance deed in favor of the complainant at the earliest convenience.
- ii. Direct the respondent to pay complainant the remaining balance amount of delay compensation and monthly interest as per prevailing Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR +2% (10.75%) HRERA regulations.
- iii. Direct the respondent to pay the complainant Rs 8,00,000/- (Rupees Eight Lac Only) for mental agony/harassment and for deficiency of service and Rs 50,000/- (Rupees Fifty Thousand only) towards cost of legal expenses; and
- iv. Pass any other order(s)/ Direction(s) that this Hon'ble Court may deem fit and proper in the present facts and circumstances.



A. REPLY ON BEHALF OF RESPONDENT

10. Respondent in his reply has submitted that the present complaint is completely frivolous, vexatious and filed with malafide intentions to harass the Respondent. The complainant has deliberately suppressed material facts and misrepresented the contractual terms to mislead this Hon'ble Authority.
11. The complaint is barred by the doctrine of res judicata under Section 11 of CPC since identical issues were already adjudicated in Complaint No. 1011 of 2020 which was disposed of vide order dated 08.09.2021. The Hon'ble Supreme Court in its judgement titled as "Satyadhan Ghosal v. Deorjin Debi" reported as (AIR 1960 SC 941) has held that matters once finally decided cannot be reopened.
12. The complaint violates Order II Rule 2 of CPC as the complainant has omitted to raise certain claims like connectivity of link road, GST and EDC in the earlier complaint and cannot now seek these reliefs in fresh proceedings. This position stands fortified by Gurbux Singh v. Bhooralal (AIR 1964 SC 1810).
13. The complaint is time-barred under Article 113 of Limitation Act, 1963 as the alleged cause of action, if any, arose much before filing of the present complaint.



14. The rights and obligations of the parties are strictly governed by the Flat Buyer's Agreement (FBA) dated 11.04.2012 (Annexure R-3), which unequivocally stipulates the terms of the agreement. Clause 5.1 of the FBA explicitly provides that the possession timeline is 24 months from the date of execution of the Agreement, along with a grace period of 180 days, subject to the Complainant's compliance with all payment obligations. Furthermore, Clause 14 of the FBA comprehensively covers force majeure events, including but not limited to government orders, labor strikes, and other unforeseen circumstances beyond the Respondent's control. Additionally, the Complainant was contractually obligated to make timely payments as per the agreed schedule, a duty reinforced under Section 19(6)-(7) of the RERA Act, 2016, which mandates allottees to adhere to payment timelines without default.
15. The project faced unprecedented and unavoidable delays due to circumstances entirely beyond the Respondent's control. These included:
- The Hon'ble Supreme Court's ban on sand mining in *Deepak Kumar v. State of Haryana* [(2012) 4 SCC 629], which severely disrupted the supply of essential construction materials.



- The National Green Tribunal's (NGT) stay on mining activities in OA No. 171/2013, which further exacerbated the shortage of raw materials.
- Environmental restrictions and labor shortages, which were compounded by regulatory hurdles and unforeseen market conditions.

Despite these formidable challenges, the Respondent diligently pursued the completion of the project and successfully obtained the Occupation Certificate on 15.12.2023 (Annexure R-6), thereby fulfilling its contractual obligations. The Respondent has also annexed photographic evidence of the completed project as Annexure R-10.

16. The Complainant, however, has been in material default of its contractual obligations. The records clearly demonstrate that the complainant:

- Failed to make timely payments as per the payment schedule stipulated in the FBA and in compliance of Section 19(6) and 19(7) of RERA Act, 2016.
- Ignored multiple reminders and demand notices (Annexure R-5) issued by the Respondent, which were sent to the Complainant to rectify the payment defaults.
- Outstanding dues amounting to ₹7,06,478/- remain unpaid by the Complainant, as detailed in the Statement of Final Dues.



- Refused to take possession of the unit despite the Respondent's offer of possession letters dated 21.08.2024 and 07.09.2024 (Annexures R-7 and R-8), thereby further violating the terms of the FBA.

17. The Complainant's conduct estops them from making any claims against the Respondent. The Complainant is a subsequent purchaser who acquired rights in the unit only through an Endorsement Form dated 01.12.2011 (Annexure R-4). As held by the Hon'ble Supreme Court in *Laureate Buildwell Pvt. Ltd. v. Charanjeet Singh* [(2021) SCC OnLine SC 479], a subsequent purchaser cannot claim delays that occurred prior to their purchase. This position has been further reinforced by the Maharashtra RERA in *Sandeep Sahebrao Valase v. Glomore Constructions* (Complaint No. CC006000000193435), which categorically held that subsequent buyers are not entitled to compensation for delays under Section 18 of the RERA Act. Moreover, the Complainant's continued payments despite being aware of the delays demonstrates their acquiescence and precludes them from now raising grievances about the same.
18. The Complainant has deliberately and maliciously suppressed material facts in their complaint, including:
- Their own payment defaults, which are documented in the payment records (Annexure R-5).



- The Respondent's possession offer letters dated 21.08.2024 and 07.09.2024 (Annexures R-7 and R-8), which unequivocally demonstrate that the Complainant was given the opportunity to take possession but refused to do so.
 - The Occupation Certificate dated 15.12.2023 (Annexure R-6), which conclusively proves that the project was completed and ready for possession.
19. The Complainant's allegations regarding the incomplete status of the project are patently false and are contradicted by Photographic evidence of the completed project (Annexure R-10), which visually confirms the project's readiness for occupation.
20. Respondent has filed applications dated 22.04.2024 and 23.05.2025 in the registry in support of his pleadings. The Authority has duly taken both these applications on record and considered the same for the proper and just adjudication of the matter.

B. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

21. Complainant has contended that although there may not be a physical obstruction to the unit, there exists a legal hindrance in the form of a stay order, which restricts construction over the access road leading to the unit.



According to the Complainant, this constitutes a legal obstruction, adversely affecting accessibility and thereby justifying a claim for compensation for delayed possession, allegedly effective from 16.03.2010. The complainant has further submitted that in the final decision dated 08.09.2021 passed in Complaint No. 1011 of 2020, the amount paid by the Complainant was incorrectly recorded as ₹32,24,160/-, whereas the actual amount paid was ₹33,10,622/-. The Authority is of the considered view that if the Complainant seeks rectification of the recorded amount, the appropriate remedy is to file a rectification application before the Authority under the prescribed procedure. However, even for such rectification, the statutory limitation period of 2 years has already lapsed. Therefore, the request of complainant to correct the amount paid cannot be entertained on this ground.

22. On the other hand, the learned counsel for the Respondent submitted that the Complainant, in paragraph 14 of the complaint, has specifically stated: *"the complainant wishes to bring to your attention the non-compliance of the respondent in the matter of execution proceedings as directed by your esteemed Authority."* It was argued that the complainant had earlier filed Complaint No. 1011 of 2020, arising from the same cause of action, which was duly adjudicated and disposed of by the Authority vide order dated 08.09.2021. Subsequently, the Complainant had also initiated Execution



Complaint No. 109 of 2022 seeking enforcement of the said order. The present complaint, therefore, constitutes a second round of litigation on the same subject matter and is clearly barred by the principle of *res judicata*. On this ground alone, the complaint deserves outright dismissal. The Respondent has further submitted that a substantial amount of ₹21,62,281/- has already been paid to the Complainant. However, some dues are still pending on the Complainant's part. He referred to page 17 of the complaint, where the Complainant demands the construction of a link road "up to the front door" and completion of pending fit-out work. It was argued that such assertions are only an attempt by the Complainant to prolong the dispute and unjustly increase the period for which delay interest can be claimed. The Respondent has filed an application dated 23.05.2025 with the Registry stating that the Occupation Certificate (OC) has been restored on the same date under the provisions of the Haryana Building Code, 2017, since there was no violation of OC conditions. Reliance was placed on the judgment in *Bharti Knitting Co. v. DHL Worldwide Express Courier Division of Airfreight Ltd.* (1996) 4 SCC 704, particularly para 6, which held that "*when there is a specific term in the contract, the parties are bound by the terms of the contract.*" Accordingly, the Complainant is bound by the terms of the executed Agreement. Regarding the Local Commissioner (LC) report, the learned counsel submitted that this



Authority, by its order dated 16.12.2024, had directed the LC to verify the following two aspects:

- Whether the unit is complete and habitable;
- Whether there is unhindered access to the unit via road.

It was submitted that the LC has clearly confirmed the completion and habitability of the unit, with photographs annexed as proof. However, on the issue of road accessibility, the LC did not attach any photographs and merely observed that a dispute concerning a cultivated portion of land is pending before the Hon'ble Punjab & Haryana High Court. The Complainant has also submitted an order dated 15.12.2023 passed by the Civil Judge, Faridabad, but has failed to provide photographic proof of any road obstruction.

23. The learned counsel emphasized that the LC's mandate was limited to recording factual conditions—not opinions or legal conclusions. As per Order 26 Rules 9 and 10 of the CPC, a Local Commissioner is not empowered to give legal findings or recommendations; his role is confined to reporting physical facts on the ground.
24. The Respondent also relied on the affidavit dated 23.05.2025 and pointed to the annexed photographs at pages 10, 125–137, and 154 of the reply, showing that the access road to the unit is clear and functional. Additionally, it was brought to the Authority's notice that other allottees have taken possession,



are residing in the project and that conveyance deeds have already been executed, confirming that the project is operational.

25. The Respondent also referred to **Clause 6.1** of the Flat Buyer's Agreement, which provides that:

"6.1 Subject to terms & Conditions mentioned in this agreement specifically in Clause no 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities, the Seller/Confirming Party is unable to or fails to deliver possession of the Floor to the Purchaser(s) within 42 months from the date of sanction of the building plan or execution of the Floor Buyer's Agreement, whichever is later, as envisaged under this Agreement, then in such case, the Purchasers) shall be entitled to give notice to the Seller/Confirming Party, within 90 (ninety) days from the expiry of the said period of 42 months for terminating this Agreement. In that event, the Seller/Confirming Party shall be at liberty to sell and/or dispose of the Floor to any other party at such price and upon such terms and conditions as the Seller/Confirming Party may deem fit without accounting to the Purchasers) for the sale proceeds thereof. Thereafter, the Seller/Confirming Party shall, after sale of the Floor, within (120) one hundred and twenty days from the date of full realisation of the sale price, refund to the Purchaser(s), without any interest, the balance of the amounts paid by him in respect of the Floor, without deduction of Earnest Money but after deduction of any interest paid, due or payable, and any other amount of a non-refundable nature including brokerage paid by the Seller/Confirming Party to the broker, in case the booking is done through a broker.."

In view of the above, it was submitted that if the Complainant is not satisfied with the possession offered, the Respondent is ready and willing to refund the amount received from the Complainant in terms of the Agreement.



26. Lastly, the Respondent reiterated that the Occupation Certificate dated 15.12.2023 (annexed at page 119 of the reply) and the Offer of Possession dated 21.08.2024 (at page 120) have already been duly communicated to the Complainant. The Statement of Accounts annexed clearly sets out all receivables and payables, demonstrating that the Respondent has fulfilled its obligations in full. Accordingly, the present complaint, being repetitive and devoid of merit, is liable to be dismissed.

C. ISSUE FOR ADJUDICATION

27. Whether the present complaint is maintainable under RERA Act 2016 in view of principle of *res judicata* under Section 11 of the CPC, in light of the earlier adjudication in Complaint No. 1011 of 2020 and Execution Complaint No. 109 of 2022?
28. Whether the reliefs sought can be granted to the complainant?

D. OBSERVATIONS AND DECISION OF AUTHORITY

29. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that the complainant booked a unit in the real estate project; "Park-81, Faridabad" being developed by the promoter namely; "BPTP Ltd." and in consonance to the same, complainant was allotted unit no. VL1-11-GF, in the project known as "Park-81, Faridabad.



Floor Buyer Agreement was executed between the parties on 11.04.2012. Complainant has earlier filed Complaint no. 1101 of 2020 titled as "Rakesh Sharma vs. M/s BPTP Ltd." which was disposed by the Authority on 08.09.2021. Thereafter, the execution complaint no. 109 of 2022 was filed by the complainant titled as "Rakesh Sharma vs. M/s BPTP Ltd." which was listed for hearing for the first time on 21.07.2022 and is still being adjudicated upon.

30. The issue which has to be adjudicated by the Authority is that whether the present complaint is maintainable under RERA in view of principle of *res judicata* under Section 11 of the CPC, in light of the earlier adjudication in Complaint No. 1011 of 2020 and Execution Complaint No. 109 of 2022.
31. Authority is of the view that the present complaint pertains to the same unit and essentially the same subject matter which has already been adjudicated upon by this Authority in Complaint No. 1011 of 2020, the final order in which was passed on 08.09.2021. Thereafter, an Execution Complaint No. 109 of 2022 was also filed for compliance of the said order.
32. Authority has perused Section 11 of the Code of Civil Procedure (CPC), same is reproduced as under:

"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."

Authority is of the view that the principle of res judicata, as enshrined under **Section 11 of the Code of Civil Procedure (CPC)**, is a fundamental legal doctrine that ensures finality in litigation by preventing parties from re-litigating the same cause of action or issue once it has been finally adjudicated by a competent court or tribunal. This doctrine not only promotes judicial efficiency but also safeguards parties from the hardship, expense, and vexation of repeated litigation on identical issues. Further, in the landmark decision of the Hon'ble Supreme Court passed in "**Satyadhyan Ghosal v. Deorjin Debi**" reported as (1960) AIR 941, the Court succinctly articulated the scope of res judicata, holding that no court shall try any suit or issue in which the matter directly and substantially in a former suit between the same parties and has been heard and finally decided by such court. This pronouncement highlights two critical elements: (i) the identity of the parties, and (ii) that the matter must have been directly and substantially in issue and conclusively decided in prior litigation. The doctrine thereby bars re-opening of disputes that have received final judicial or quasi-judicial determination,



ensuring respect for judicial pronouncements and preventing contradictory decisions.

33. The Authority, after carefully perusing the documents filed in the captioned complaint, observes that the earlier complaint No. 1011 of 2020 comprehensively and conclusively adjudicated the disputes relating to possession, compensation, and payment pertaining to the unit in question. The said complaint was decided on its merits and the issues involved were thoroughly examined by the Authority. Subsequently, Execution Complaint No. 109 of 2022 was filed by the complainant with the sole objective of enforcing compliance of the order passed in Complaint No. 1011 of 2020.
34. The captioned complaint, filed subsequent to the aforesaid proceedings, amounts to a second round of litigation in respect of the same cause of action. The grounds advanced by the complainant in the instant complaint are essentially technical or peripheral in nature, which ought to have been raised and considered during the earlier proceedings. It is a settled legal principle under Section 11 of the Code of Civil Procedure, 1908, that once a matter has been finally decided by a competent forum, the parties are estopped from re-opening the same issue either directly or indirectly.
35. Further, it is significant to note that no liberty was granted to the complainant vide the order passed by the Authority in Complaint no. 1011 of 2020 dated



08.09.2021 to initiate any fresh complaint on the same subject matter. The absence of such permission explicitly bars the complainant from filing a fresh complaint in respect of issues that were or could have been adjudicated earlier. Allowing the complainant to re-agitate the same cause of action would amount to a gross abuse of the regulatory process and would defeat the very purpose of expeditious adjudication envisaged under the Real Estate (Regulation and Development) Act, 2016.

36. Further, the Apex Court in **K.K. Modi v. K.N. Modi** [(1998) 3 SCC 573] underscored the need for judicial and quasi-judicial bodies to guard against abuse of process by emphasizing that the court or tribunal must guard against abuse of its process and must prevent multiplicity of proceedings which causes delay and vexation. This guiding principle is vital to ensuring that the adjudicatory process remains efficient, effective and just, avoiding protracted disputes that drain judicial resources and impose needless hardship on the parties.
37. Given the settled legal principles on the doctrine of res judicata and abuse of process, coupled with the facts and material on record, the Authority is convinced that permitting the present complaint to proceed would constitute a clear abuse and misuse of the regulatory forum established under the Real Estate (Regulation and Development) Act, 2016. Such repeated litigation not



only causes undue hardship and harassment to the respondent, compelling them to engage in protracted and unnecessary legal battles, but also disrupts the very purpose and integrity of the regulatory mechanism.

38. Moreover, the Act envisages a framework that facilitates swift, effective, and final resolution of disputes between promoters and allottees, thereby safeguarding the interests of homebuyers while ensuring fairness to the promoters. Allowing this complaint to proceed despite an earlier adjudication on identical subject matter would frustrate these legislative objectives by promoting endless litigation and undermining judicial discipline.
39. Furthermore, the continuation of multiple proceedings on the same cause of action dilutes the finality of decisions, promotes inconsistency in orders, and imposes an avoidable burden on the Authority's resources, which are meant to be judiciously allocated for genuine grievances. This repetitive litigation also causes avoidable delay in the administration of justice, contrary to the express mandate of the Act to deliver prompt relief. Hence, the Authority concludes that the present complaint is not maintainable under RERA Act, 2016.
40. As the Authority has already held that the present complaint is not maintainable under RERA Act, 2016 as such, the reliefs claimed by the complainant cannot be granted. Thus, the Authority is not commenting on the merit of this case at this stage.




41. Lastly, the complainant is also seeking compensation of ₹8,00,000/- for mental agony/harassment and for deficiency of service and ₹50,000/- towards cost of legal expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & Ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.
42. After thorough consideration, Authority concludes that the present complaint lacks merit and appears to be an attempt to misuse of legal proceedings for personal gain. This case is an example of litigation pursued in bad faith, aimed at exerting undue pressure on the respondent rather than addressing genuine grievances. Furthermore, under the Real Estate (Regulation and Development) Act, 2016, the legislation is intended to protect the interest of allottees who suffered due to the unfair practices of real estate promoters, not



to facilitate unjust enrichment at the expense of developers who have acted in accordance with the law. Given that the complainant received a discount and compensation as per the terms of the agreement, the reliefs sought are not maintainable under HRERA Act, 2016.

43. Thus, Authority decides to dispose of the captioned **complaint as dismissed**. Hence, the captioned complaint is accordingly **disposed of as dismissed** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]