



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. सी. विभाग गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY		89-116
Day and Date	Tuesday and 20.05.2025	
Complaints No.	Complaint no. 2649, 2627, 2639, 2637, 2644, 2628, 2663, 2615, 2616, 2645, 2623, 2636, 2630, 2629, 2640, 2635, 2625, 2646, 2666, 2634, 2621, 2647, 2617, 2648, 2638, 2650, 2664 and 2665 of 2024 All Cases titled as Essel Housing Projects Private Limited and Platinum Tower Maintenance LLP VS Ranbir Singh and Ajay Yadav	
Complainants	Essel Housing Projects Private Limited and Platinum Tower Maintenance LLP	
Represented through	Shri Garvit Gupta Advocate	
Respondents	Ranbir Singh and Ajay Yadav	
Respondents Represented	Shri Sushil Yadav Advocate	
Last date of hearing	01.05.2025	
Proceeding Recorded by	H.R. Mehta	
Proceedings-cum-order		
The above mentioned complaint(s) have been filed by the complainants/promoter of the project namely "Platinum Towers" situated in sector- 28, Gurugram on 07.06.2024 and seeking following reliefs:-		
a. Direct the Respondents to make the payment of the due amount towards CAM charges of Rs.2,70,888/- for the period from April, 2023 to June, 2024 along with interest @ 12 % p.a. w.e.f. due date up to realization in favour of Complainants.		
b. Direct the respondents to continue to pay the CAM charges as per the		

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भारत की संसद द्वारा पारित 2016 का अधिनियम संख्या 16



- invoices raised for the period from the period April, 2023 onwards.
- c. Direct the Respondents to take possession of the said apartment allotted to them by the Complainants by clearing the dues towards GST.

The respondents have filed an application for dismissal of complaint on 30.01.2025 in which the respondents requested to dismissed the complaint on the ground that multiple litigations pertaining to the same subject matter are going on between the complainant and the respondent in District Courts as well as Hon'ble High Court, details of which are as under:-

- I. CS/1332/2024 in the Court of Sh. Vikram Jeet ACJM, Gurugram (Ajay Yadav V/s Essel).
- II. CS/985/2024 in the Court of Sh. Viren Kadyan, CJ JD, Gurugram (Ajay Yadav V/s Essel). Regarding Common Maintenance Charges i.e., CAM Charges, which is still sub judice and the counsel of the complainant has also appeared.
- III. COMI/308/2021 in the Court of Ms. Anshuman, JMJC, Gurugram (Ajay Yadav V/s M/s Essel and Ors.)
- IV. CWP No. 7095 of 2022, Ranbir Singh and Anr. V/s State of Haryana and others, pending before the Hon'ble Punjab and Haryana High Court.
- V. CWP No. 12499 of 2022, Essel V/s State pending before the Hon'ble Punjab and Haryana High Court.

After considering the above, the authority observed that the complainant/promoter has filed the complaint for seeking directions against the respondent to pay the outstanding common area maintenance charges, handing over of possession and to pay the GST. In this regard, CS/985/2024 is still sub-judice in the Court of Sh. Viren Kadyan, CJ JD, Gurugram (Ajay Yadav V/s Essel) regarding Common Maintenance Charges and CWP No. 7095 of 2022, Ranbir Singh and Anr. V/s State of Haryana and others and CWP No. 12499 of 2022, Essel V/s State are still pending before the Hon'ble Punjab and



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Haryana High Court for handing over of the possession.

In view of the above, subsequent complaint on same cause of action between the same parties of the matter already sub-judice before the court of competent jurisdiction is clear abuse of the process of law and is barred by the principle of res sub-judice as provided under Section 10 of the Code of Civil Procedure, 1908 (CPC). Section 10, CPC is reproduced as under for ready reference:

*"10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of [India] established or continued by [the Central Government ***.] and having like jurisdiction, or before [the Supreme Court].*

Explanation. —The pendency of a suit in a foreign Court does not preclude the Courts in [India] from trying a suit founded on the same cause of action."

Further, 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.

The Authority further observes that as per Collaboration Agreement dated

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01.02.2016 executed between Ranbir Singh and Parmeshwari Devi and M/s Essel Housing Projects Pvt. Ltd. the respondents are joint owners in possession of land bearing Rectangle No.18 Killa No.18/1(7-0) and 23/2(7-0) totaling 14 kanals situated in the revenue estate of Village Sukhrali Tehsil and District Gurugram. Respondent no.1 owns a $\frac{1}{2}$ share, while respondent no.2 owns a $\frac{1}{4}$ share of the land. As per clause 6 of the Collaboration Agreement, the respondents herein are entitled to 45% of the saleable area in respect of aforesaid land which are re-produced for ready reference :-

6. That 45% (forty five, percent) of the saleable area in respect of aforesaid land inclusive of the proportionate obligation of providing Economically Weaker Sections (EWS) apartments with proportionate, undivided, indivisible or impartible ownership rights in the land underneath the said complex including common areas shall belong to and be owned by the OWNERS (herein referred to as OWNERS ALLOCATION) and the remaining 55% (fifty five percent) built/unbuilt saleable area of the said complex together with proportionate undivided, indivisible or impartible ownership rights in the land underneath the said complex and common areas including the entire common facilities of the Club, Nursery School and Commercial (herein referred to the DEVELOPER's ALLOCATON) shall fall to the share of the DEVELOPER in consideration of the obligations undertaken by it under these presents and shall belong to and be owned by the DEVELOPER. It is clarified that in the event no club is constructed in the complex to be developed on the Said Land the proportionate area (FAR) of the existing club facilities in the adjacent building/block being built with a total FAR of 20698.246 sq mt. corresponding to 292 acres of land on pro-rata basis will be deducted from the saleable area of the OWNERS ALLOCATION as specified herein above. The OWNER shall be entitled to recover 7 charge Club membership from the allottees out of its own allocation.

Further, the preamble of the Act of 2016 itself says that the Act was enacted for regulation and promotion of real estate sector and to protect the interest of consumers i.e., allottees in the real estate sector and not to resolve the disputes between the licensee and the promoter. The preamble of the Act is

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disputes between the licensee and the promoter. The preamble of the Act is reproduced below for the ready reference:

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

As per the Act of 2016, the allottee is a person to whom a plot, apartment or building is allotted, sold or otherwise transferred. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

Thus in the present case, the respondents herein are not covered under the definition of allottee as neither any booking application form, allotment letter and buyer's agreement had been executed between the parties herein nor any specific units number has been allotted by the complainant/promoter in favour of the respondents. As per Collaboration Agreement dated 01.02.2016, executed between the parties the complainant/promoter has allocated 45% (forty five, percent) of the saleable area to the respondents and as per the section 2(zk) of the Act, 2016, both the parties are covered under the definition of the promoters. Therefore, the Authority observes that the dispute



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covered under the definition of allottee as per Haryana Real Estate (Regulation and Development) Act, 2016. 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.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairman
20.05.2025