

PROCEEDINGS OF THE DAY
41

Day and Date	Wednesday and 03.12.2025
Complaint No.	CR/159/2025 Case titled as Umesh Vashisht and Rachna Vashisht VS Shine Buildcon Private Limited
Complainant	Umesh Vashisht and Rachna Vashisht
Represented through	None
Respondent	Shine Buildcon Private Limited
Respondent Represented through	Sh. Deepak Gautam, proxy counsel
Last date of hearing	15.10.2025
Proceeding Recorded by	H.R. Mehta & Kiran Chhabra

Proceedings-cum-Order

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.
2. **Unit and Project related details-** The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram
2.	Project area	2.893 acres
3.	Nature of the project	Commercial Complex



New PWD Rest House, Civil Lines, Gurugram, Haryana

मता पी.डब्ल्यू.डी. विश्वाम गृह, सिविल लाईस, गुरुग्राम, हरियाणा

4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 valid upto 14.04.2020
5.	Name of licensee	Shine Buildcon
6.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 valid upto 30.06.2022
7.	Unit no.	C-118, First Floor (Page no. 23 of complaint)
8.	Unit area admeasuring	509 Sq. Ft. (Super Area) (Page no. 28 of complaint)
9.	Date of execution of BBA	12.05.2015 (Page no. 24 of complaint)
10.	Possession clause	<p>Clause 13. POSSESSION AND HOLDING CHARGES</p> <p><i>"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."</i></p> <p><i>(Emphasis supplied)</i> (As per BBA at page no. 80 of complaint)</p>
11.	Due date of possession	12.05.2019 (Calculated to be 42 months from the date of execution of BBA + Grace period of 6 months being unqualified and unconditional)
12.	Basic Sale Price	Rs. 45,43,334/- (As per BBA at page no. 35 of complaint)
13.	Amount paid by the complainants	Rs. 32,38,872/-

New PWD Rest House, Civil Lines, Gurugram, Haryana

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

		(As per receipts annexed by complainant and agreed to by respondent at page 4 of reply)
14.	Occupation certificate	10.10.2023 (Page no. 23 of reply)
15.	Offer of possession	15.10.2023 (Page no. 26 of reply)

Relief sought by the complainants -

- I. Set aside the illegal second demand letter dated 23.11.2024 issued by the respondent.
- II. Direct the respondent to handover legal and rightful possession of the unit to the complainant.
- III. Direct the respondent to pay delay possession charges to the complainant till the actual date of handing over of possession.
- IV. Direct the respondent to execute a legitimate and lawful conveyance deed for the plot after the handover of possession.

3. An application dated 05.05.2025 has been filed by the respondent challenging the maintainability of present complaint on the ground of res judicata wherein it is alleged by the respondent that the dispute inter se the parties has already been decided by the Authority vide order dated 21.08.2024 in complaint no. 261 of 2024. Thus, the claim of the complainant is barred by Res Judicata in view of Section 88 of the RERA Act, 2016 read with Section 11 of the CPC, 1908. Even as per the mandate of Order 2 Rule 2, CPC, 1908 every suit shall include the whole claim which the plaintiff is entitled to make in respect of the cause of action. The complainant being satisfied with the order had also preferred execution thereto but still filed the present complaint. Thus, the present complaint is non-maintainable and bad in law.

4. Issue involved- Whether the present complaint filed by the complainant is maintainable or not?
Today, the matter was fixed for arguments on the application filed by the respondent. However, none has appeared on behalf of the complainant and nor has any request for adjournment been received.

5. Findings of the Authority- It is important to note that the complainant had previously filed CR No. 261 of 2024, which was disposed of by the Authority on 21.08.2024. Subsequently, the complainant filed an execution petition



(bearing no. 6926 of 2022) which is still pending, and the next date of hearing is 02.01.2026.

6. After going through the written as well as verbal submissions of both the parties, the Authority observes that the said complaint no. 261 of 2024 had earlier been filed between the same parties and the relief(s) sought in the complaint were as under-

- I. Direct the respondent to pay the delay payment charges on the amount already paid (Rs.34,38,872/-) from 12.11.2018 (promised possession date as per the builder buyer agreement to 15.10.2023 (offer of possession) @ SBI lending rate + 2%.
- II. Direct the respondent not to ask for any money which was not part of builder buyer agreement i.e., additional charges for specifications upgradation.
- III. Direct the respondent that the above charges need to be adjusted in the due payment.

7. The operating part of the order passed by the Authority on 21.08.2024 is as under:

- I. *The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of a delay from the due date of possession, i.e., 12.05.2019 till the date of offer of possession (15.10.2023) plus two months i.e., 15.12.2023, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, ibid.*
- II. *The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.*
- III. *The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.*
- IV. *The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.*

8. The Authority observes that a detailed order on merits has already been passed on 21.08.2024 between the same parties on same subject matter litigating under same title after considering facts of the case. Further, the relief of delay possession charges was already pressed by the complainant in the former case. In case the complainant was dissatisfied with the order of the Authority, he was free to file an appeal against the said order before the appropriate forum.

9. The Authority is of the view that it cannot re-examine a case that has already been conclusively decided by the same forum, involving the same parties, subject matter, and under the same title. The Authority lacks the jurisdiction to review its own order as the matter in issue between the same parties has been heard and finally decided by this Authority in the former complaint case no. 261 of 2024. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of allottees. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.

10. It is also observed that a 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). Section 11 CPC is reproduced as under for ready reference:

“11. Res judicata.—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.

Explanation I.—The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

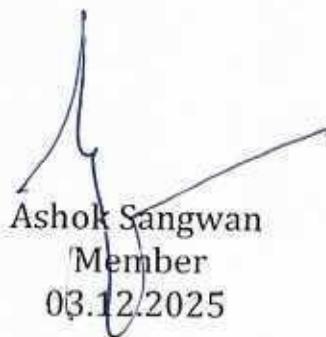
Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.—An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]

(Emphasis supplied)

11. Although the provisions of the Code of Civil Procedure, 1908 (CPC) are, strictly 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.
12. The Authority also takes ~~delays~~ notice of the fact that the execution proceedings arising out of the order passed in Complaint No. 261 of 2024 are still pending before this Authority. The reliefs being claimed by the complainant would be looked into by the Executing Authority in terms of the order already passed in this regard. Accordingly, the present complaint, being founded on the same cause of action, is not maintainable and is barred by the doctrine of Res Judicata.

13. 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
03.12.2025