

BEFORE THE REAL ESTATE REGULATORY AUTHORITY HIMACHAL PRADESH AT SHIMLA

Complaint no. HPRERA2024012/C
MA no. 1-R2/32-2024

In the matter of:-

Mrs. Bithu Indrajit Basu, age 42 years, Wife of Sh. Indrajit Basu, Resident of A/1201 Tulip, Garden City, P.K. Road Near Seven Square Academy, Mira Road, Thane-401107, Maharashtra

..... Complainant

Versus

- 1 Mr. Rajdeep, Son of Sh. Sansar Chand, Proprietor of M/s Rajdeep and Company Infrastructure(P) Ltd, SCO-12, 1st Floor, Hollywood Plaza, VIP Road, Zirakpur, Punjab-140603.
- 2 M/s Rajdeep and Company Infrastructure(P) Ltd, SCO-12, 1st Floor, Hollywood Plaza, VIP Road, Zirakpur, Punjab-140603 through its proprietor Mr. Rajdeep Son of Sh. Sansar Chand.

..... Respondent(s)

Present: Sh. Sameer Thakur Ld. Counsel for the complainant

Sh. Shakti Bhardwaj vice Sh. Ravi Tanta Ld. Counsel for the respondent M/s Rajdeep and co. Infrastructure Pvt. Ltd.

Final date of hearing:28.11.2025

Date of pronouncement of order:22.12.2025

INTERIM ORDER

Coram: Chairperson and Members

1. That the facts emerged from the application are that the present application has been filed by the respondents (herein, the Applicants), primarily, on the ground of privity of contract between the non-applicant/ complainant and the respondents. It is averred in the application that complainant/ non-applicant failed to disclose the fact that the flat in Tower-D was purchased from Smt. Shakuntala Sharma and the present applicants have no concern with the said transaction as the flat was never sold by them to the complainant. As such, there exists no privity of contract between the complainant and the respondents. The only privity of contract, if any, is between the complainant and Smt. Shakuntala Sharma, who has no business relationship or connection with M/s Rajdeep & Company as the Applicant no. 1/ Sh. Rajdeep Sharma is only a GPA holder of Smt. Shakuntala Sharma, and such relationship cannot in any circumstance be interpreted as a sale executed through M/s Rajdeep & Company. The complainant is, therefore, guilty of misrepresenting facts by suggesting a contractual linkage where none exists. It is

further averred in the application that the Joint Development Agreement between Smt. Shakuntala Sharma and M/s Rajdeep & Company already stands dissolved and the complainant had been apprised of this fact before execution of the sale deed. The mere fact that applicant no. 1 is GPA holder of Smt. Shakuntala Sharma and also Managing Director of applicant no. 2, does not render the sale deed executed by Smt. Shakuntala Sharma as one executed by M/s Rajdeep & Company. Thus, this Hon'ble Authority lacks jurisdiction in the present matter. On the complainant's own documents i.e. emails dated 07.05.2024 (Annexures A-3 and A-5) establishes that applicant no.1 had clearly informed that the sale was executed by him solely as GPA holder of Smt. Shakuntala Sharma, and the complainant acknowledged the same. The payment receipts (Annexure A-4 colly) further show that all payments were made into the personal account of applicant no. 1 and not into the account of applicant no. 2, thereby, confirming his limited role as GPA holder. The Municipal Corporation, Shimla, vide letter dated 11.08.2019, has also approved the building plan in the name of Smt. Shakuntala Sharma, thereby, affirming her sole ownership and responsibility for construction. The complainant has no legal right to seek remedy before this Hon'ble Authority as its jurisdiction is confined to projects registered or required to be registered under Section 3 of the RERA Act, which is not the situation in the present matter. In view of the facts and legal submissions stated hereinabove, the complaint deserves to be rejected with exemplary costs in the interest of justice and fair play.

2. That in rebuttal, the non-applicant/ complainant submitted for dismissal of application on its sustainability, delaying the proceedings at the last moment when the matter was already fixed for final hearing on 05.10.2024 and being an abuse of the process of this Ld. Authority. It was further submitted that, upon the matter being taken up again on 09.10.2024, the newly engaged counsel sought time to file the power of attorney and to prepare the matter for final hearing. Thereafter, on 19.10.2024, instead of advancing arguments, though the complainant had already concluded the submissions, the respondents filed the present application only to delay the adjudication of the complaint. Further, the present application has been wrongly and belatedly filed at a stage when the matter is already fixed for final hearing on 28.10.2024. The settled law, as laid down by the Hon'ble Supreme Court, is, that such applications are intended to be considered at the threshold, before any trial or evidentiary process, whereas RERA proceedings are summary proceedings where no recording of evidence is contemplated. Hence, at this advanced stage, the application is not maintainable and deserves dismissal. It is further averred that the application is contrary to the settled law of the Hon'ble Supreme Court and the Hon'ble High Court of Himachal Pradesh, which consistently hold that a cause of action comprises all material facts that the plaintiff must prove to establish entitlement to relief, and whether a plaintiff

discloses a cause of action is to be determined solely on the averments in the plaint, assuming them to be true in their entirety. The complaint and documents clearly disclose a valid cause of action as payments for the proposed flat were made to respondent No. 1 (Annexure A-3), duly acknowledged by him in his capacity as a registered promoter under the RERD Act, who assured completion and delivery of possession by June 2024. The non-delivery of possession is evident from Annexure A-6 colly, which depicts the incomplete construction. Therefore, the complaint as well as documents reveals a clear and enforceable cause of action against the respondents, who having received substantial sums from the complainant, failed to deliver possession. It is specifically asserted that there is no privity of contract between the complainant and Smt. Shakuntala Sharma, and that the flat was never purchased but only booked upon payment to respondents No. 1 and 2 (Annexure A-2 & A-4). The respondents construct and hand over the flat by June 2024 as registered promoters (Annexure A-3). It is denied that respondent No. 1 acted as GPA of Shakuntala Sharma or that any sale deed was executed. The respondents are liable under the RERD Act to refund the sum of ₹36,50,000/-. No joint development agreement was ever disclosed to the complainant, and Annexure A-3 shows that the respondents themselves projected as promoters of Tower D and assured possession by June 2024. It is further stated that no GPA exists as alleged, and due to failure of construction, the complainant sought refund (Annexure A-5). Payments were made to respondent No. 1 for construction through his construction company i.e. respondent No. 2, his proprietary concern. In view of the above submissions, it is humbly prayed that the application under Order VII Rule 11 CPC be dismissed and the complaint be allowed as prayed for, in the interest of justice.

3. That, after having gone through submissions of both the parties, the following points have emerged for adjudication:

“Whether the present application is maintainable or not” ?

4. **ANALYSIS:** That, upon consideration of the plea raised vide present application, rebuttal thereon as well as the documents placed on record, it is settled position that the question as to maintainability of the petition or the lack of jurisdiction, involving a pure question of law, shall have to be tried as a preliminary issue. As such, the findings of previously constituted Authority contained in order dated 19.11.2024 has less significance in view of settled position of law and it is observed that the present application is required to be decided before pronouncing order on merit of the present case. Further, it is also observed that the application has been filed by the respondents at a highly belated stage, particularly at the stage of pronouncement of order. The Hon'ble Supreme Court in **Popat and Kotecha Property v. State Bank of India Staff Association, (2005) 7 SCC 510**, has held that such applications cannot be entertained where the plaint discloses a cause of action and the matter requires adjudication on merits. In the said

matter, the Hon'ble Apex Court ultimately addressed whether the suit was barred by limitation. It found that the Division Bench had erred in restricting the plaint to a single cause (the non-execution of the lease) and ignoring other independent reliefs sought by the appellant. The court emphasized that the limitation period could not be determined solely based on the plaint and that various claims required further evidence. The ruling highlighted the importance of considering the broader context of the claims made by the appellant, including damages and the respondent's conduct in granting leases, which acknowledged the appellant's rights and potentially reset the limitation period. This case illustrates the complexities involved in contractual disputes and the interpretation of limitation laws in civil proceedings, emphasizing the need for thorough examination of all claims and circumstances surrounding a case. Further, as repeatedly held in catena of judgments, that an application under Order VII Rule 11 CPC must be considered only at the initial stage of proceedings. While deciding such an application, the Authority can look only at the statements made in the complaint itself and must assume those statements to be true. Order VII Rule 11 can be invoked only when, on the face of the complaint, no cause of action is disclosed or the complaint is clearly barred by law. In the present case, a bare reading of the complaint in its entirety shows that the complainant has categorically pleaded for delayed possession, tendering of payments to the respondents and failure of respondents to complete construction within prescribed time. These averments clearly disclose a valid, substantive, and actionable cause of action under Sections 11, 12, 18, and 19 of the Real Estate (Regulation and Development) Act, 2016. The complaint alleges non-delivery of possession, delay in completion, and breach of statutory obligations by a promoter, which directly falls within the jurisdiction of the Authority. On the contrary, the respondent pleaded that the complainant purchased the flat from a third party (Smt. Shakuntala Sharma) raises a highly disputed factual issue, which cannot be adjudicated at the stage of Order VII Rule 11. Further, whether the respondents were acting as promoters, whether they received money, and whether they undertook to deliver possession are factual matters requiring adjudication on merits and cannot form the basis for rejection of the complaint at the threshold. Significantly, the documents annexed with the complaint—including payment receipts, email communications, and registration details under the RERA Act indicate that respondent No.1 acted as a promoter and received payments directly from the complainant and these facts clearly constitute, a prima-facie, cause of action. Hence, no further observations as well as findings, at this stage, is warranted which is a subject matter to be thorough examination on merit. Now, coming to the issue of maintainability of present application, filed by the respondent, it is apt to examine the relevant provision contained under the Act, 2016. Section 35(2) explicitly prescribes the provisions of the CPC that are applicable to the proceedings before RERA. This section

specifically enumerates the CPC provisions that are applicable to the proceedings before RERA and the remaining provisions of the CPC are intentionally excluded from applying to the proceedings before RERA. This exclusion is based on the principle of expressio unius, which means that only the provisions mentioned in the RERA Act are applicable to the proceedings before RERA. At this juncture, the observation of Hon'ble High Court of HP, in **CMPMO no. 408 of 2024 a/w connecting matter, titled as Sumit Khanna & anr. vs Kanchan Sunil Adani & ors.**, is worth reproducing in which the similar question of law has been discussed. The relevant paras are reproduced below:

13. At the outset, the moot question is whether the provisions of the CPC in its entirety would apply to the proceedings of RERA or only those provisions as specifically find mention in the Act alone would be applicable.

14. In order to decide this question, one would have to refer to Section 35 of the Real Estate (Regulation and Development) Act, 2016 (for short 'Act'), which reads as under: "35. Powers of Authority to call for information, conduct investigations—(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be. (2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:— (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) issuing commissions for the examination of witnesses or documents; (iv) any other matter which may be prescribed."

15. A perusal of sub-section(2) of Section 35 of the Act would go to indicate that the Authority has been vested with the same powers as are vested in the Civil Court under the CPC while trying a suit in respect of the matters set out in sub-section and nothing more and nothing less.

16. Meaning thereby, the RERA clearly enumerates those provisions of CPC that are applicable to the proceedings before it. Thus, the Legislature has expressly made only the aforementioned provisions of CPC applicable to the RERA and is, therefore, deemed to have

intentionally excluded the other provisions of CPC from its applicability to the proceedings. Therefore, according to the principles of expressiounius, it can conveniently be held that vide the expressiounius principle, the RERA clearly enumerates the provisions of CPC that are applicable to the proceedings before it and on the same principle, the Legislature is, therefore, deemed to have intentionally excluded all other provisions of CPC from applying to the proceedings before the RERA.

17. In taking this view, this Court is duly supported by the judgment of the Hon'ble Supreme Court in Ethiopian Airlines vs. Ganesh Narain Saboo (2011) 8 SCC 539 wherein it was observed as under:

"65. However, notwithstanding the fact that proceedings of the National Commission are "suits" under the Carriers Act, vide the expressiounius principle, The Consumer Protection Act, 1986 clearly enumerates those provisions of the CPC that are applicable to proceedings before the consumer fora. Such provisions include 13(4), in which the Consumer Protection Act, 1986 vests those powers vested in a civil court under the CPC to the District Forum. However, according to the principle of expressiounius, because the legislature expressly made the aforementioned provisions of the CPC applicable to the consumer proceedings, the legislature is, therefore, deemed to have intentionally excluded all other provisions of the CPC from applying to the said proceedings. This is particularly true since, as explained above, the Consumer Protection Act, 1986 sets forth an exhaustive list of procedures, distinguishable from those required under the CPC, that the consumer redressal fora must follow. Therefore, since the Consumer Protection Act does not state that Section 86 applies to the consumer Fora's proceedings, that Section of the CPC should be held to be not applicable."

On the strength of settled legal principles, the pleadings in the complaint, and the materials on record, the application under Order VII Rule 11 CPC fails to satisfy any of the grounds prescribed under the said provision and, moreover, this Authority is of considered view that present application has no applicability to the proceedings of RERA.

5. Conclusion

Hence, the application filed by the respondents under Order VII Rule 11 CPC has no sustainability given that the complaint discloses a prima-facie cause of action as well as jurisdiction of this Authority and further the application is also not sustainable on the ground of applicability of provision of Order VII Rule XI to the proceedings of RERA. The application is, therefore, dismissed.


(Amit Kashyap)
MEMBER


(R.D. Dhiman)
CHAIRPERSON


(Vidur Mehta)
MEMBER