



PROCEEDINGS OF THE DAY		13
Day and Date	Thursday and 04.05.2023	
Complaint No.	CR/512/2022 Case titled as Shivani Sholapur Vs Ireo Victory Velly Private Limited	
Complainant	Shivani Sholapur	
Represented through	Shri Kanish Bangia Advocate	
Respondent	Ireo Victory Velly Private Limited	
Respondent Represented	Shri M.K. Dang Advocate	
Last date of hearing	09.12.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings		
<p>The complainants filed the present complaint i.e., CR/512/2022 dated 28.02.2022. In this complaint, they sought various reliefs such as provided as under:</p>		
<p>i. Direct the respondent to refund the additional amount charged for increased area and paid by the complainant.</p>		
<p>ii. To direct the respondent to refund amounts collected towards EDC/IDC together with interest.</p>		
<p>iii. To direct the respondent to refund additional amount collected towards replacement fund maintenance security along with interest.</p>		
<p>iv. To direct the respondent to refund additional amount collected towards infra-augmentation charges along with interest.</p>		
<p>v. To direct the respondent to refund additional amount collected towards applicable carrying cost along with interest.</p>		
<p>vi. To direct the respondent to refund additional amount collected towards utility advances along with interest.</p>		



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HARYANA REAL ESTATE REGULATORY AUTHORITY
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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

- vii. **To direct the respondent to refund additional amount collected towards VAT liability along with interest.**
- viii. **To direct the respondent to refund additional amount collected towards CGST/SGST along with interest.**
- ix. **To direct the respondent to refund additional amount collected towards stamp duty along with interest.**
- x. **To direct the respondent to refund Rs. 7,83,351/-**
- xi. **To direct the respondent to not charge anything which is not a part of BBA.**

The counsel for the complainant requests for refund of the amount of Rs. 7,83,351/- which was promised by the respondent vide email dated 04.11.2019 (Annexure D).

The counsel for the respondent states that in pursuance to the orders passed by the authority on 09.01.2019 the delayed possession charges allowed has been paid after adjusting the above amount and thus the complaint is now not maintainable.

The complainants earlier filed a complaint for the same unit numbered as complaint no. 995 of 2018 in the authority, which has been already decided on 09.01.2019 in which they had sought for refund of the paid-up amount along with interest. The authority vide its order dated 09.01.2019 decided the matter by rejecting the claim of refund and granted delayed possession interest to the complainant @ 10.75% per annum on the entire amount paid by her w.e.f. 07.10.2017 till 26.09.2018.

That subsequently for enforcement of the order dated 09.01.2019 complainant filed an execution petition bearing no. 3479 of 2020 wherein the respondent has paid an amount of Rs. 7,66,875/- towards the decretal amount and the said application was stands disposed of.

The cause of action for claiming other reliefs against the respondent/builder had already arisen while filing the previous

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अर्तगत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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complaint. After receiving occupation certificate, the possession of the allotted unit was offered to complainant on 26.09.2018. It is not the case of complainant that the cause of action to file the present complaint arose after the decision of the earlier complaint on 09.01.2019. Even the complainant did not take any permission to omit the reliefs now being claimed in the present complaint and sought liberty to sue afterwards in respect of portion so omitted or relinquished. Thus, the present complaint is barred by the order II rule 2 of the Civil Procedure Code, 1908. The relevant clause is produced as under:

2. Suit to include the whole claim

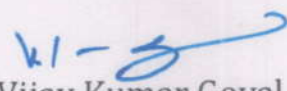
(1) every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) Relinquishment of part of claim- Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Both the counsels to file written submission within 15 days with advanced copy to each other.

Arguments heard.

Order Reserved.


Vijay Kumar Goyal
Member