

**BEFORE THE REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL PRADESH AT SHIMLA**

Complaint no. HPRERA2023009/C

In the matter of,

Sh. Pankaj Kumar, S/O Narinder Kumar, R/O. H. No. - 2307, Housing Board Colony Sector-4, Rewari -123401

.....Complainant

Versus

1. M/s Rajdeep and Company Infrastructure Private Limited, registered office at SCO 12, First Floor, Hollywood Plaza, VIP Road, Zirakpur, Chandigarh, Chandigarh, 140603
2. Rajdeep & Co. Infrastructure Pvt.Ltd. Office At SCO 91 Sector - 3 Panchkula-Haryana Through Its Authorized Signatory Sh.Jasbir Singh S/O Sh.Hemraj Saini, R/O H/NO 1 Aashiana Colony Derabassi -Punjab

.....Respondent/Applicant

Present: Sh. Ravi Shankar Sood for complainant Sh. Pankaj Kumar

Sh. Shakti Bhardwaj vice Sh. Ravi Tanta for the respondent promoter M/s Rajdeep and Co. Infrastructure Pvt. Ltd.

Sh. Leeladhar, Ld. Counsel for Respondent No. 2 HDFC

Date of hearing: 02.08.2025

Date of Pronouncement of Order: 12.09.2025

Interim Order

Coram: Chairperson and Members

1. That the present complaint was filed by complainant praying for refund of the sum paid and for direction to respondent to settle the loan liability with the bank, since there has been gross failure on part of respondent in timely possession of the unit in question. To this complaint a reply was filed by the respondent no.1. However, with the

reply an application was filed under Order 7 Rule 11 of the Code of Civil Procedure praying that before proceeding with the main case it is imperative for this Authority to decide the instant application.

2. Contents of application in brief-

The respondents have moved an application under Order 7 Rule 11 CPC seeking rejection of the complaint on the ground that it is frivolous, vexatious, and discloses no cause of action. It is contended that the dispute is already the subject matter of Civil Suit No. 16 of 2022 titled *M/s Rajdeep & Co. Infra Ltd. v. Pankaj Kumar & Another*, pending before the Civil Judge (Sr. Divn.), Shimla, and allowing the present proceedings would amount to permitting parallel litigation and forum shopping, leading to conflicting outcomes. Reliance has been placed on *Azhar Hussain v. Rajiv Gandhi* (AIR 1986 SC 1253), *T. Arivandandam v. T.V. Satyapal* (1977) 4 SCC 467, *Church of Christ Charitable Trust v. Ponniamman Educational Trust* (2012) and *Meghmala v. G. Narasimha Reddy* (2010), to urge that a plaint/complaint not disclosing a clear cause of action must be rejected at the threshold. It is further argued that the present dispute involves highly disputed questions of fact to be adjudicated in the civil suit, and that this Authority lacks jurisdiction as the project falls within the exemption under Section 3(2) of the RERD Act, 2016, being less than 500 sq. meters with fewer than eight units and completed prior to the commencement of the Act.

3. Reply to the application-

The complainant has filed a detailed reply opposing the respondent's application under Order 7 Rule 11 CPC, terming it misconceived, baseless, and not maintainable in law. It is urged that the Hon'ble Authority is not bound by the technical provisions of the CPC, and the bar of Order 7 Rule 11 does not apply to proceedings under the RERA Act, 2016. The complainant emphasizes that Section 79 of the Act expressly bars the jurisdiction of civil courts in matters within the domain of RERA, and reliance is placed on the judgment of the Hon'ble Supreme Court in *Imperia Structures Ltd. v. Anil Patni* (MANU/SC/0811/2020), which clarified that disputes between allottees and promoters fall squarely within the exclusive jurisdiction


of the Authority. It is further contended that the plea of “parallel proceedings” is wholly misconceived since the complainant has not approached any other forum for relief, and that the civil suit filed by the respondent is itself not maintainable being barred under Section 79. The complainant has also pointed out that this Authority has already held in earlier matters involving the same respondent that the project in question is covered by the RERA Act. Accordingly, the complainant prays that the application be dismissed as a frivolous attempt to defeat the consumer’s statutory remedy.

4. Findings-

The Authority has carefully considered the pleadings, the application under Order VII Rule 11 CPC, and the reply. The central issue is whether the complaint is liable to be rejected as frivolous, lacking cause of action, or due to pendency of a civil suit. The Real Estate (Regulation and Development) Act, 2016 is a special statute providing exclusive jurisdiction to this Authority under Section 79, which bars civil courts. The Hon’ble Supreme Court in Imperia Structures Ltd. v. Anil Patni (2020) has affirmed this bar. Thus, the pendency of Civil Suit No. 16/2022 is no ground to dismiss the complaint; in fact, the civil suit itself is barred.

5. Order VII Rule 11 CPC applies to civil courts and cannot be mechanically invoked here, since Section 35 of the Act empowers the Authority to regulate its procedure based on natural justice. The project in question is already held registrable under RERA in Vivek Gupta v. Rajdeep and Co. (2020), negating exemption under Section 3(2). The complaint alleges breach of obligations under Sections 11 and 18, constituting a valid cause of action. The plea of frivolous litigation is misplaced, as this forum’s jurisdiction arises statutorily. Accordingly, the application is dismissed, and the matter shall proceed on merits.


(Amit Kashyap)
MEMBER


(R.D. Dhiman)
CHAIRPERSON


(Vidur Mehta)
MEMBER