

**BEFORE THE REAL ESTATE REGULATORY AUTHORITY,
HIMACHAL**

PRADESH AT SHIMLA

Complaint no. HPRERA2023008/C

In the matter of,

Ms. Madhvi Kumari, D/O Late Sh. S.P. Verma, Resident of Old Income Tax Building B, Mall Road, Solan, Himachal Pradesh, 173212

.....Complainant

Versus

1. M/sRajdeep 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 - 3Panchkula-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 Smt. Madhvi Kumari

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 filed the present application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the complaint on the ground that it is frivolous, vexatious, and devoid of cause of action. It is contended that the subject matter in dispute is already sub judice before the Civil Judge (Sr. Division), Shimla, in Civil Suit No. 17 of 2022 titled *M/s Rajdeep and Co. Infra Ltd. v. Madhvi Kumari & Another*, wherein the relief of specific performance has been sought. The pendency of said proceedings, according to the respondents, bars the maintainability of the present complaint, which amounts to parallel proceedings and forum shopping. Reliance is 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. Ponnamman Educational Trust* (2012), and *Meghmala v. G. Narasimha Reddy* (2010) to emphasize that complaints lacking cause of action or disclosing vexatious litigation must be dismissed at the threshold. It is further urged that the project falls within the exemption under Section 3(2) of the RERA Act, 2016, being below 500 sq. meters with less than eight units, and having been completed prior to the Act's enforcement.
3. **Reply to the application**-In reply, the complainant has opposed the application filed under Order VII Rule 11 CPC, terming it misconceived, frivolous and not maintainable. It is contended that the Code of Civil Procedure does not strictly govern proceedings before this Authority and, in any event, Section 79 of the Real Estate (Regulation and Development) Act, 2016 expressly bars the jurisdiction of civil courts in matters covered under RERA, vesting exclusive adjudicatory power in this Authority. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Imperia Structures Ltd. v. Anil Patni & Ors.* (2020) MANU/SC/0811/2020, wherein it has been held that civil suits in respect of matters falling within RERA are barred. It is further urged

that the plea of “parallel proceedings” is unfounded, as the complainant has not instituted any other proceedings; rather, the respondent himself has wrongly approached the civil court in contravention of Section 79. The complainant also asserts that the project is squarely covered within the ambit of the RERA Act, as already held in *Vivek Gupta v. Rajdeep & Co. Infra Pvt. Ltd.* (2020, HP-RERA) and other connected matters. It is therefore prayed that the application of the respondent be dismissed in limine as an abuse of process, and the complaint be proceeded with on merits.

4. Findings-

The Authority has examined the respondent’s application under Order VII Rule 11 CPC, the complainant’s reply, and the relevant provisions of the Real Estate (Regulation and Development) Act, 2016 (“the Act”). The objections raised rest on two grounds: (i) pendency of a civil suit, and (ii) project exemption under Section 3(2). Both are untenable.

5. Section 79 of the Act expressly bars civil court jurisdiction in matters within the domain of this Authority. Section 88 further clarifies that the Act operates in addition to other laws. The respondent himself instituted Civil Suit No. 17/2022, contrary to Section 79, and the complainant cannot be penalized for pursuing her statutory remedy. In *Imperia Structures Ltd. v. Anil Patni* (2020), the Hon’ble Supreme Court held that civil suits in such disputes are not maintainable.
6. Order VII Rule 11 CPC has no application, as this Authority regulates its own procedure under Section 35. Rejection under Rule 11 lies only when no cause of action exists. Here, allegations of payment, delayed possession, and liability towards the lending bank disclose a valid cause of action under Sections 12, 14, 18, and 19. The plea of exemption under Section 3(2) stands rejected in *Vivek Gupta v. Rajdeep & Co. Infrastructure Pvt. Ltd.* (HP-RERA, 2020), binding on this Authority. Authorities cited by the respondent relate to frivolous pleadings and are inapplicable. Accordingly, the application under Order VII Rule 11 CPC is dismissed, and the matter shall proceed on merits.


(Amit Kashyap)
MEMBER


(R.D. Dhiman)
CHAIRPERSON


(Vidur Mehta)
MEMBER