



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Miscellaneous Appeal No. 2577/2026
URN: CMA / 4519U / 2026

Churchika Gupta, D/o. Mr. Ashwini Gupta, R/o Plot No. 13,
Shubham Enclave, Near Civil Lines Phatak, C-Scheme, Jaipur-
302001

----Appellant

Versus

F. S. Housing Pvt. Ltd., Through Its Director- Charan Singh
Khangarot, Having Its Registered Office At Plot No. A-4, Airport
Enclave Scheme, Durgapura, Tonk Road, Jaipur.

----Respondent

For Appellant(s)	:	Ms. Pallavi Mehta
For Respondent(s)	:	

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SANDEEP TANEJA
Order (Oral)

Reportable

03/07/2026

Per: Arun Monga, J.

1. Appeal here is directed against an order dated 10.04.2026, whereby the learned Commercial Court rejected the application of the appellant herein filed under Order VII Rule 10 CPC seeking to return her plaint in in light of the objection of the respondents qua maintainability of the suit for not having availed the remedy by approaching the RERA, Jaipur.

1.1. While on the other hand, by the same common order, the application preferred by the respondent seeking dismissal of the suit under Order VII Rule 11 CPC was allowed by way of dismissing/rejecting the suit instead of returning the plaint.

2. Briefly speaking, the appellant booked Apartment No. 008 (Type 4 BHK-A2, Ground Floor, Wing-3) in the residential project "The Crest,"

developed by the respondent at Plot No. A-4, Airport Enclave Scheme, Durgapura, Tonk Road, Jaipur, for a total sale consideration of ₹1,45,26,800/-. The entire consideration was paid through banking channels and the applicable TDS was deposited with the Income Tax Department. Although the respondent furnished a draft Agreement for Sale, it was never signed or executed.

2.1. Despite receipt of the entire consideration, the respondent neither handed over possession nor executed the sale deed. Apprehending transfer of the apartment to a third party, the appellant filed a suit for specific performance and permanent injunction before the learned Commercial Court, which, by its order dated 03.05.2025, directed the parties to maintain status quo in respect of the apartment.

2.2. During the pendency of the suit, the respondent filed an application under Order VII Rule 11 CPC in which, apparently the promoter/allottee relationship governed by the Real Estate (Regulation and Development) Act, 2016 stood acknowledged. The appellant thereupon moved an application under Order VII Rule 10 CPC seeking return of the plaint for presentation before the forum having jurisdiction under the RERA Act.

3. However, by the impugned order dated 10.04.2026, the learned Commercial Court rejected the plaint under Order VII Rule 11 CPC and dismissed the appellant's application under Order VII Rule 10 CPC. Hence this appeal.

4. Given the nature of the order we propose to pass, notice to the respondent is unnecessary, as no prejudice would be caused to it.

5. The respondent's objection was only *qua* the maintainability of the suit on the ground of an alternative remedy under the RERA Act i.e., an objection to the forum, not to the existence of the appellant's claim.

6. Rejection of a plaint under Order VII Rule 11 CPC is warranted where the plaint itself discloses no cause of action or is otherwise barred, whereas where the grievance is real but lies before a different forum, the proper course under Order VII Rule 10 CPC is to return the plaint for presentation before that forum. Even if the respondent's objection were upheld in full, it could sustain only the latter course, not the former.

7. In rejecting the plaint outright, the learned Commercial Court lost sight of this distinction and thus misdirected itself. The irregularity is not merely technical. An outright dismissal may risk foreclosure of the appellant's remedy altogether viz. the alternative forum and/or respondent may raise the objection of prior dismissal as an adjudication of negating her claim, and it may also attract the trappings of Order II Rule 2 CPC. Return of the plaint, preserves the adjudication of claim for presentation before the competent forum, without any adverse implication on its merits.

8. The impugned order is accordingly modified. Instead of rejection/dismissal of the suit, the appellant shall be entitled to the return of her plaint, together with refund of the court fee deposited by her in accordance with law, with liberty to approach RERA, Jaipur. Accordingly, the application filed by the respondent under VII Rule 11 CPC is dismissed and the one filed by the appellant under Order VII Rule 10 CPC is allowed.

9. The appeal stands disposed of accordingly.

10. All pending applications also stand disposed of.

(SANDEEP TANEJA),J

(ARUN MONGA),