

M/S. IMPERIA STRUCTURES LTD.

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v.

ANIL PATNI AND ANOTHER

(Civil Appeal Nos. 3581-3590 of 2020)

NOVEMBER 02, 2020

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[UDAY UMESH LALIT AND VINEET SARAN, JJ.]

Consumer Protection Act, 1986 – s.23 – Real Estate (Regulation and Development) Act, 2016 (RERA Act) – ss.18,79 and 88 – Applicability and effect of the RERA Act – A housing scheme was launched by appellant in 2011 – The respondents-complainants had booked apartments – The appellant had executed Builder Buyer Agreement dated 30.11.2013 with each of the respondents – On 01.05.2016, the Real Estate (Regulation and Development) Act, 2016 came into force – A considerable amount was paid by the respondents for their booked apartments – However, even after four years there were no signs of the project getting completed – In 2017, the respondents filed consumer cases before the National Consumer Disputes Redressal Commission – The Commission concluded that the appellant was deficient in rendering service and all the complaints were allowed by granting relief of refund of the amounts deposited by each of the complainants with simple interest @ 9% p.a. from the respective dates of deposits with Rs. 50,000/- towards costs – Aggreived, the appellant filed appeal before the Supreme Court – The appellant contended that the respondents were not ‘consumers’ within the meaning of the Consumer Protection Act – Further, once the RERA Act, came into force all questions concerning the project including issues relating to construction and competition thereof, would be under the exclusive control and jurisdiction of the authorities under the RERA Act – The Commission, therefore, ought not to have entertained the consumer cases – Held: The Commission had concluded that; (i) all the complainants were ‘consumers’ within the meaning of the Act and that; (ii) there was delay on part of the appellant in completing the construction within time – The conclusions drawn by the National Commission were absolutely correct and do not call for any

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- A *interference – As far as applicability and effect of the RERA Act is concerned, s.79 of the RERA Act bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine – It is settled law*
- B *that the proceedings before the National Commission are although judicial proceedings, but at the same time it is not a Civil Court within the meaning of the provisions of the CPC – Thus, s.79 of the RERA Act does not in any way bar the Commission or forum under the provisions of the Consumer Protection Act to entertain any complaint – Further, s.88 specifies that the provisions of the RERA*
- C *Act would be in addition to and not in derogation of the provisions of any other law – Also, s.18 itself specifies that the remedy under the said section is ‘without prejudice to any other remedy available’ – Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the Consumer Protection Act or file an application under the RERA Act – Therefore, all the respondents are entitled to execute the order passed by the Commission in their favour.*
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Dismissing the appeals, the Court

E **HELD : 1. It has consistently been held by this Court that the remedies available under the provisions of the Consumer Protection Act, 1986 are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act. [Para 21][405-D-E]**

F **2. Section 79 of the Real Estate (Regulation and Development) Act, 2016 bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine. Section 88 specifies that the provisions of the RERA Act would be in addition to and not in derogation of the provisions of any other law, while**

G **in terms of Section 89, the provisions of the RERA Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force. [Para 25][406-F-H]**

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3. On plain reading of Section 79 of the RERA Act, an allottee described in category (B), who does not fulfil the requirements of being a ‘consumer’, would stand barred from invoking the jurisdiction of a Civil Court. However, as regards the allottees who can be called “consumers” within the meaning of the CP Act, two questions would arise; a) whether the bar specified under Section 79 of the RERA Act would apply to proceedings initiated under the provisions of the CP Act; and b) whether there is anything inconsistent in the provisions of the CP Act with that of the RERA Act. [Para 26][407-A-B]

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4. On the strength of the law so declared in *Malay Kumar Ganguli vs. Sukumar Mukherjee*, Section 79 of the RERA Act does not in any way bar the Commission or Forum under the provisions of the CP Act to entertain any complaint. [Para 27][407-C-E]

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5. Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to the concerned complainant but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act. As against that the mandate in Section 12(4) of the CP Act to the contrary is quite significant. Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a Civil Court and express saving under Section 88 of the RERA Act, make the position quite clear. Further, Section 18 itself specifies that the remedy under said Section is “without prejudice to any other remedy available”. Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act. [Para 28][407-E-H; 408-A-B]

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A **6. This Court may now consider the effect of the registration**
of the Project under the RERA Act. In the present case the
apartments were booked by the Complainants in 2011-2012 and
the Builder Buyer Agreements were entered into in November,
2013. As promised, the construction should have been completed
B in 42 months. The period had expired well before the Project
was registered under the provisions of the RERA Act. Merely
because the registration under the RERA Act is valid till
31.12.2020 does not mean that the entitlement of the concerned
allottees to maintain an action stands deferred. It is relevant to
C note that even for the purposes of Section 18, the period has to
be reckoned in terms of the agreement and not the registration.
Condition no. (x) of the letter dated 17.11.2017, issued by the
Haryana Authority regarding registration certificate, also entitles
an allottee to withdraw from the project due to discontinuance of
promoter's business or promoter fails to give possession of the
D apartment/plot in accordance with the terms and condition for
sale and makes promoter liable to return the amount with interest.
Therefore, the entitlement of the Complainants must be
considered in the light of the terms of the Builder Buyer
Agreements and was rightly dealt with by the Commission. [Para
33][409-C-F]

E *Secretary, Thirumurugan Cooperative Agricultural*
Credit Society vs. M. Lalitha (dead) through LRs. and
others (2004) 1 SCC 305 : [2003] 6 Suppl. SCR 659 ;
National Seeds Corporation Limited vs. M.
Madhusudhan Reddy and another (2012) 2 SCC 506 :
F *[2012] 2 SCR 1065 ; Virender Jain vs. Alaknanda*
Cooperative Group Housing Society Limited and others
(2013) 9 SCC 383 : [2013] 2 SCR 1058 ; Malay
Kumar Ganguli vs. Dr. Sukumar Mukherjee (2009) 9
SCC 221 : [2009] 13 SCR 1 ; Pioneer Urban Land
G *and Infrastructure Limited and another vs. Union of*
India and another (2019) 8 SCC 416 : [2019] 10
SCR 381 – relied on.

Emaar MGF Ltd and anr. vs. Aftab Singh (2019) 12
SCC 751 : [2018] 14 SCR 791 – referred to.

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Case Law Reference

[2003] 6 Suppl. SCR 659	relied on	Para 20 (i)	A
[2012] 2 SCR 1065	relied on	Para 20 (ii)	
[2013] 2 SCR 1058	relied on	Para 20 (iii)	
[2018] 14 SCR 791	referred to	Para 22	B
[2009] 13 SCR 1	relied on	Para 27	
[2019] 10 SCR 381	relied on	Para 31	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3581-3590 of 2020.

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From the Judgment and Order dated 12.09.2018 of the National Consumer Disputes Redressal Commission, New Delhi in Consumer Case No. 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019 & 3020 of 2017.

With

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Civil Appeal No. 3591 of 2020 (@ Civil Appeal Diary No. 9793 of 2019)

Vikas Singh, Sr. Adv. Simranjeet Singh, Gautam Talukdar, Ms. Neha Gupta, Ms. Rhea Dube, Aadhar Nautiyal, Rohit Sharma, Ram Mohan, Gautam Talukdar, Ms. Priyanjali Singh, Rahul Rathore, Karunesh Kumar Shukla, Advs. for the appearing parties.

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Respondent-in-person

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

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1. These appeals* under Section 23 of the Consumer Protection Act, 1986 (hereinafter referred to as “the CP Act”) are directed against the common judgement and order dated 12.09.2018 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as “the Commission”) in Consumer Case Nos.3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019 and 3020 of 2017. The relevant facts leading to the filing of the aforesaid Consumer Cases are almost identical and for the present purposes the facts leading

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*Arising out of Civil Appeal Diary No. 9796 of 2019

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A to the filing of Consumer Case No.3011 of 2017 are set out in detail and the appeal arising therefrom is taken as the lead appeal. The connected appeal* seeks to challenge the judgment and order dated 09.08.2018 passed by the Commission in Consumer Case No.1605 of 2017 and raises same issues of fact and law. Delay in filing these appeals is condoned.

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 2. A Housing Scheme called “The ESFERA” in Sector 13C, Gurgaon, Haryana (hereinafter referred to as ‘the Project’) was launched by the Appellant sometime in 2011 and all the original Complainants booked their respective apartments by paying the booking amounts and thereafter each of them executed Builder Buyer Agreement (hereinafter referred to as “the Agreement”) with the Appellant.

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 3. The Respondents in the leading appeal (hereinafter referred to as “the Respondents”) booked Apartment No.1803 on the 18th Floor of Tower No. “C” having super built up area 153.34 Sq. meters (1650 Sq. feet approx.) @ Rs.36530.2 per Sq. meter (Rs.3395/- per Sq. foot).
 D The basic price was thus Rs.56,01,750/- to which additional charges such as preferential location charges for “corner” “park facing” and for “higher floor” as well as charges for reserve parking, club membership and development were added; the aggregate price being Rs.76,43,000/.

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 4. Clauses 11.1 and 11.2 of the Agreement dated 30.11.2013 entered into by the Respondents dealt with “delay due to reasons beyond the control of the Developer/Company” and “failure to deliver possession due to Government Rules, Orders, Notifications, etc.” respectively. Clause 11.4 of the Agreement was:-

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 “11.4 FAILURE TO DELIVER POSSESSION: REMEDY TO THE COMPANY

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 The intending Allottee(s) agrees that in consequence of the Developer/Company abandoning the Scheme or becoming unable to give possession within three years from the date of execution of this Agreement to such extended periods as permitted under this Agreement, the Developer/Company shall be entitled to terminate this Agreement whereupon the Developer/Company’s liability shall be limited to the refund of the amounts paid by the Intending Allottee(s) with simple interest @ 9% per annum for the period such amounts were relying with the Developer/Company

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*Arising out of Civil Appeal Diary No.9793 of 2019

and to pay no other compensation whatsoever. However, the Developer/Company may, at its sole option and discretion, decide not to terminate this Agreement in which event the Developer/Company agrees to pay only to the original Intending Allottee(s) and not to anyone else and only in cases other than those provided in Clauses 11.1, 11.2, 11.3 and Clause 41 and subject to the Intending Allottee(s) not being in default under any term of this Agreement, compensation @ Rs.5/- per sq. ft. equal to Rs.53.8/- Per Sq. Meter of the super area of the said Apartment per month for the period of such delay beyond three & half years or such extended periods as permitted under this Agreement. The adjustment of such compensation shall be done only at the time of settling the final accounts for handing over/conveyancing the said Apartment to the intending Allottee(s) first named in this Agreement and not earlier.”

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Clause 41 of the Agreement was as under:-

“41. FORCE MAJURE

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“The Developer/Company shall not be held responsible or liable for not performing any of its obligations or undertakings provided for in this Agreement if such performance is prevented, delayed or hindered by an act of God, fire, flood, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock outs, action of labour unions or any other cause (whether similar or dissimilar to the foregoing) not within the reasonable control of the Developer/Company.”

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5. On 01.05.2016, the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as, “the RERA Act”) came into force.

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6. Over a period of time the Respondents had paid Rs. 63,53,625/- out of the agreed sum of Rs.76,43,000/-. However, even after four years there were no signs of the Project getting completed. In the circumstances Consumer Case No.3011 of 2017 was preferred by the Respondents on 11.10.2017 before the Commission submitting, *inter alia*,:-

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“11. That the complainants regularly visited the site but were surprised to see that the construction was never in progress. No one was present on the site to address the queries of the buyers/

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- A allotees/purchases including the present complainant. The O.P despite taking a substantial amount towards the consideration deliberately did not construct the towers in which house of the complainant was situated. The entire site seems to be an abandoned piece of land with semi constructed structure. Despite a delay of many months, the construction of the apartment has not been completed. It can hence be seen that the O.P is deficient in renderings services and after extracting most of the money from the buyers/allotees/purchases have deliberately stopped the construction of the houses.
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- C 12. That it could be seen that the construction of the residential unit 'THE ESFERA' in which the buyers/allotees/purchasers flats were booked many months back, with a promise by the O.P. to deliver the same within 42 months were never completed for the reasons best known to the O.P., which clearly shows the ulterior motive of the O.P. to extract money from the innocent buyers fraudulently and also demonstrates the unfair trade practices and restrictive trade practices under the ambit of consumer protection act 1986.
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- E 16. That as per the clause 11.4 of the Buyer's Agreement, it was agreed by the O.P. that in case of any delay, the O.P. shall pay to the buyers/allotees/purchasers, a compensation at the rate of Rs.5/- per sq. ft. per month for the period of the delay. It could be seen here that the O.P has incorporated the Clause 11.4 in the one sided buyer's agreement and has offered to pay a meagre sum of Rs.5/- per square feet for every month of delay if we calculate the amount in terms of financial charges, it comes to approximate @ 1.4% per annum rate of interest. Even these charges are to be paid after 42 months of period that is taken by the O.P. to construct the houses as per the buyer's agreement. This shows that the O.P. has found a cheap source of funding the commercial projects from the hard earned savings and borrowed money of innocent residential apartments/house buyers like the present complainants. The O.P is raising funds at the interest rate of mere 1.4% per annum and that too with initial 42 months of interest free duration.
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- H 30. That the value of goods/services along with compensation claimed in the present complaint is above one crore rupees hence

the complainants are entitled to invoke the pecuniary jurisdiction of this Hon'ble Commission. The present complaint has been assessed for a sum of Rs.1,16,94,579/- and requisite fee i.e. Rs.5000/- by way of a demand draft payable to "THE REGISTRAR, NCDRC New Delhi" is being paid with this complaint.

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Value of goods and services	Rs.76,43,000/-
Compensation claimed	Rs.40,51,579/-

32. In view of the above, it is, therefore, most respectfully prayed that this Hon'ble Commission may kindly be pleased to:

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- a. Direct the O.P. to refund the entire amount collected from the complainants towards the consideration of the Flat along with interest @ 18% p.a. on the amount paid by them from the date of each deposit of the amount till it is actually returned to the complainants.
- b. Direct the O.P. to pay a sum of Rs.50,000/- (rupees fifty thousand only) to the complainants toward the cost of litigation.
- c. Any other order(s) as may be deemed fit and appropriate may also kindly be passed."

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The other nine Consumer Cases were also filed on the same day.

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7. On 17.11.2017, the Project was registered with Haryana Real Estate Regulatory Authority, Panchkula (hereinafter referred to as, "Haryana Authority"). The letter dated 17.11.2017 issued by Haryana Authority stated:-

"..... Your request for registration of Group Housing Colony being developed over an area of 60460 Sq. Mtrs. Situated in Sector-37-C, Village Gharoli Khurd and Basai, Gurugram, Haryana with regard to License No.64 of 2011 dated 16.07.2011 issued by the Director, town and Country Planning Department, Haryana, has been examined vis-à-vis the provisions of the Real Estate (Regulation and Development) Act, 2016 and HRERA Rules, 2017 and accordingly a registration certificate is herewith issued with following terms and conditions:-

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- A (i) The Promoter shall comply with the provisions of the Act and the rules and regulations made there under;
- (ii) The Promoter shall deposit seventy percent of the amount to be realized from the allottees by the Promoter in a separate account to be maintained in a schedule bank to meet exclusively the cost of land and construction purpose as per provision of Section 4 (2) (L) (D);
- B (iii) The registration shall be valid for a period commencing from 17.11.2017 to 31.12.2020;
- C (iv) The Promoter shall offer to execute and register a conveyance deed in favour of the allottees or the association of the allottees, as the case may be, of the apartment, plot or building as the case may be, or on the common areas as per provision of section 17 of the Act;
- D (v) The Promoter shall take all the pending approvals from various competent authorities on time;
- (vi) The Promoter shall pay all outstanding payment i.e. land cost, construction cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, bank and financial institutions which are related to the project until he transfers the physical possession of the real estate project to the allottees or the associations of allottees, as the case may be;
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- F (vii) The Promoter shall be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the Municipal Corporation, Gurugram or any other local authority Association of the Allottees, as the case may be;
- G (viii) The Promoter shall not accept a sum more than ten percent of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force;
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- (ix) The Promoter shall adhere all the terms and conditions of this registration and license, sanctioned plans and other permissions issued by Competent Authorities under the provision of any other law for the time being in force as applicable to the project. In case any deficiency in fee is found at later stage and the same shall be recoverable from the promoter/owner accordingly. A B
- (x) The promoter shall return the amount with interest in case, allottee wishes to withdraw from the project due to discontinuance of promoter's business or promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of Section-19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. The promoter shall adhere the provisions of The Real Estate (Regulation and Development) Act, 2016 and its Rules 2017 issued by the State Government. C D
- (xi) The promoter shall adopt the model agreement for sale (Annexure-A) of the Haryana Real Estate (Regulation and Development) Rules, 2017 at the time of booking from the prospective allottees. E
- (xii) The Promoter shall, upon receiving his Login Id and password under clause(a) of sub-section (1) or under sub-section 92) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, including the followings:- F
- a) Details of the registration granted by the authority; G
 - b) Quarterly up-to-date list of number and type of apartments for plots, as the case may be, booked;
 - c) Quarterly up-to-date the list of number of garages covered parking lot booked;

- A d) Quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate;
- e) quarterly up-to-date status of the project; and
- B f) such other information and documents as may be specified by the regulations made by the authority.
- (xiii) The Promoter shall be responsible to make available to the allottees, the following information at the time of the booking and issue of allotment letter:-
- C a) Sanctioned plans, layout, along with specifications, approved by the competent authority and other information as prescribed in Rule 14 of 2017 framed under the provision of the Real Estate (Regulation and Development) Act 2016 and the same shall be displayed at the site or such other place as may be specified by the regulations made by the Authority.”
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8. In its response dated 18.01.2018 to the aforesaid Consumer Case No.3011 of 2017, the Appellant challenged the jurisdiction of the Commission *inter alia*, on the ground that the apartment having been booked for commercial purposes, the Respondents would not come within the definition of “the consumer” under Section 2(d) of the CP Act. No reference was however made to the fact that the Project had been registered under the RERA Act. It was submitted:-

- F “8. That the contents and averments made in para 8 are wrong and denied. It is denied that the date of possession of the unit was 30th May, 2017. It is submitted that the respondents had clearly mentioned the schedule for possession of the said apartment/Unit was based upon its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years for the date of execution of this agreement unless there is delay or there shall be failure due to reasons beyond the control of the company including Force-Majeure events, delay due to compliance of new rules, regulations, orders or notifications made/issued by government or any other authorities with respect to construction at the project site.
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11. That the contents and averments made in Para 11 are wrong and denied. It is pertinent to mention here that the construction of the Tower in which the Unit of the Complainant was allotted is in full Swing and is nearing possession. The allegations levelled by the Complainant are concocted & baseless.

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9. In their replication, the Respondents submitted, *inter alia*,:-

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“..... the buyer’s agreement was a fixed set of papers, which was asked to be signed by the complainant and no modification was entertained by the O.P. On request to change the one sided clauses, it was told that the buyer’s agreement has to be signed as it is and in case it is not acceptable than the allotment will stand cancelled and earnest money will be forfeited.”

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10. Consumer Case No.3011 of 2017 was allowed by the Commission by its judgement and order dated 12.09.2018. It was observed:-

“10. It is pertinent to note that the Developer has not filed any evidence to support his contention that the delay occurred due to *force majeure* events. In fact demonetization, non-availability of contractual labour, delay in notifying approvals cannot be construed to be *force majeure* events from any angle.

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11. Learned Counsel for the Developer vehemently argued that the Complainants were offered alternative accommodation vide letter dated 03.04.2017 which was not accepted by them. The said letter is reproduced as hereunder:-

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“Be that as it may, in view of your allegations of delay which we deny, we hereby offer that till we complete construction of your subject matter flat we shall arrange alternative accommodation/flat for you in Group Housing Colony named “Takshila Heights” situated at Sector-37C, Gurgaon on lease/rent with immediate effect. We will bear the rent of alternative accommodation/flat at “Takshila Heights”. However, you shall have to pay the common area maintenance charges and other user based charges like electricity, etc., which you would have done for your flat in “Esfera” as well.” (Emphasis supplied).

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A 12. It is significant to mention that in the afore-noted letter there is an admission by the Developer that the construction is still not completed. Additionally, even the specific date of delivery of possession has not been mentioned anywhere either in the Written Version or in the Affidavit or even in the letter dated 03.04.2017 which the Counsel is relying upon.”

B Concluding that the Appellant was deficient in rendering service, the Commission granted relief to the Respondents in following terms:-

C “14. Keeping in view the admitted incomplete construction, the fact that some of the Complainants have also taken bank loans and are paying EMIs and considering the stipulation provided in Clause 11.4, this Complaint is partly allowed directing the Developer to refund the amounts deposited with simple interest @ 9% p.a. from the respective dates of deposits till the date of realization together with costs of Rs.50,000/- to be paid to each of the Complainants. The directions are to be complied withing fours weeks from the date of receipt of a copy of the order, failing which, the amount shall attract interest @ 12% p.a. for the said period.”

D 11. Similarly, all other complaints were allowed by the Commission granting relief of refund of the amounts deposited by each of the Complainants with simple interest @ 9% per annum from the respective dates of deposits alongwith Rs.50,000/- towards costs. It was also directed that the amounts be deposited within four weeks, failing which the amounts would carry interest @ 12% per annum.

E 12. The Appellant being aggrieved preferred the instant appeals on 14.03.2019. By way of Additional Documents, a copy of the letter dated 17.11.2017 was placed on record. An order passed by Haryana Authority, Gurugram on 17.01.2019 in a complaint preferred by one Himanshu Giri was also placed on record. The directions issued in said order were to the following effect:-

F “27. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:

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i. The respondent is directed to provide delay possession charges at the prescribed rate of 10.75% per annum for every month of delay w.e.f. 15.9.2016 as per the provisions of Section 18(1) of the Real Estate (Regulation and Development) Act, 2016. A

ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over the possession shall be paid before 10th of subsequent month.” B

13. The appeal memo also did not make any reference to the fact that the Project had been registered under the RERA Act. In the leading appeal, following assertions were made in the list of dates and events:- C

“2011-2017 The Appellant was unable to hand over the possession to the Respondents within the stipulate time as stipulated in Clause 10.1 due to reasons beyond control of the Appellant viz., due to severe shortage of contractual labourers and delay caused in obtaining statutory requisite permissions for carrying on the construction of said flats, failed to deliver possession of the subject flats to the Respondents within the prescribed time limit. D

One of the grounds raised in the appeal memo was as under:- E

“C. Because the Hon’ble Commission failed to appreciate that the Policy of Demonetization introduced by the Government of India constituted as an event of Force Majeure since as a consequence of the said event, numerous persons including the Appellant suffered shortage of cash which resulted in delay in delivering possession to the Respondent. It is humbly submitted that the shortage of cash ensuing as a result of the Demonitization policy resulted in the stopping of work since the process of construction requires many payments to be made in cash on a day to day basis, for example, wages paid to daily wage workers, payments made against delivery of construction materials, etc.” F G

14. After issuance of notice on 05.04.2019, it was submitted by the Respondents that the Appellant had partially refunded the amounts

A in terms of the directions of the Commission. Following details indicate that in four out of ten cases, partial refund was made.

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S.No.	Consumer Case Number	Amount Directed to be Refunded by Appellant to Complainant(s) (In Rupees)	Amount Refunded by Appellant (In Rupees)
1.	Consumer Case No.3011 of 2017	Rs.63,53,625/-	10,00,000/-
2.	Consumer Case No.3012 of 2017	Rs.55,35,223/-	8,00,000/-
3.	Consumer Case No.3013 of 2017	Rs.79,45,547/-	NIL
4.	Consumer Case No.3014 of 2017	Rs.75,85,280/-	NIL
5.	Consumer Case No.3015 of 2017	Rs.56,39,495/-	NIL
6.	Consumer Case No.3016 of 2017	Rs.65,26,929/-	NIL
7.	Consumer Case No.3017 of 2017	Rs.65,76,497/-	8,00,000/-
8.	Consumer Case No.3018 of 2017	Rs.56,76,600/-	8,00,000/-
9.	Consumer Case No.3019 of 2017	77,46,851/-	NIL
10.	Consumer Case No.3020 of 2017	Rs.1,02,66,866/-	NIL

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F Refund of Rs.10,00,000/- to the Respondents, was made on 27.03.2019 i.e. even after filing of the leading appeal.

15. Mr. Vikas Singh, learned Senior Advocate for the Appellant submitted *inter alia*:-

G a) The Appellant had completed Phase-I of the Project well-in-time and Phase-II of the Project concerning about 437 allottees was the matter in issue. Out of these 437 allottees, only in 59 cases complaints were filed under the CP Act, while Mr. Himanshu Giri had approached authorities under the RERA Act. A majority of the allottees had thus reposed faith in the Appellant.

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- b) The Appellant had offered alternative accommodation to all the allottees. But the offer was rejected by all the Complainants which was indicative that the apartments were booked for investment purposes. A
- c) The Complainants were not “Consumers” within the meaning of the CP Act as the apartments were booked merely for profit motive. B
- d) Once the RERA Act came into force, all questions concerning the Project including issues relating to construction and completion thereof, would be under the exclusive control and jurisdiction of the authorities under the RERA Act. The Commission, therefore, ought not to have entertained the Consumer Cases. C
- e) The Registration Certificate dated 17.11.2017 being valid upto 31.12.2020, the Appellant could not be said to have delayed the construction and consequently, there could be no finding that there was deficiency on part of the Appellant. D
- f) The order passed in the case of Himanshu Giri had directed payment of interest @ 10.75% per annum without issuing any direction for refund of money. The approach so adopted would be conducive to completion of construction and at the same time would balance the interest of the allottees. E
- g) Considering the provisions of the RERA Act and the fact that the registration being valid upto 31.12.2020, the orders passed by the Commission be set aside and instead the Complainants be granted interest @ 10.75% p.a. on the amounts deposited; whereby the Project would be completed without putting the Appellant under any financial strain and at the same time the relief in the nature of interest on investment would also be accruable to the allottees. F
G

A 16. Ms. Priyanjali Singh, learned Advocate for the Respondents
as well as for some of the other Complainants submitted:-

B a) All the Complainants had purchased only one
residential apartment each for self-use. They had
taken home loans, except the Complainant in
Consumer Case No.3020 of 2017 who after his
retirement as Group Captain from the Indian Air
Force had used all his retirement dues to book the
apartment. Therefore, the issue whether the
Complainants satisfied the requirements of being
“Consumers” under the provisions of the CP Act
was rightly decided in favour of the Complainants.

C b) The question whether the delay occurred due
to *force majeure* events was also rightly answered
in favour of the Complainants and no reasonable
explanation was available on record to dislodge that
finding.

D c) In the backdrop of these findings, the
Commission was justified in accepting the claim of
the Complainants. In fact, the award of interest @
9% per annum was at a lower level.

E d) At no stage, any plea was taken before the
Commission that the Project was registered under
the RERA Act or about the effect of the RERA
Act. No such plea was taken even in the appeal
memo. Consequently, it would not be open to the
Appellant to raise any submissions about the
applicability of the RERA Act.

F e) In any case, as construed by this Court
consistently, the remedy afforded by the CP Act
would be an additional remedy to a consumer and
said legal position remained unchanged even after
the enactment of the RERA Act.

G 17. Three Complainants viz. (a) Chandra Shekhar; (b) Rajat
Verma; and (c) Krishan Kumar appeared in person and advanced
submissions. It was submitted, *inter alia*, that the decision of the

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Commission did not call for any interference and that they be refunded the entire amount with 12% interest instead of 9% as awarded by the Commission. A

18. At the outset, we must deal with two factual issues. It was concluded by the Commission that; (i) all the Complainants were ‘Consumers’ within the meaning of the Act and that; (ii) there was delay on part of the Appellant in completing the construction within time. The stand taken by the Appellant at various stages, itself acknowledged that there was delay but the Appellant tried to rely on certain events as mentioned in ground (c) quoted hereinabove. In our view, the conclusions drawn by the National Commission in relation to these issues are absolutely correct and do not call for any interference. B C

19. Before we deal with the issues about the applicability and effect of the RERA Act as well as the effect of registration of the Project under the RERA Act, the relevant provisions of the CP Act and the RERA Act may be extracted:- D

A] The Consumer Protection Act, 1986

The CP Act was enacted, *inter alia*, “to provide for better protection of the interest of the consumer”; to promote and protect the rights of consumers such as “the rights to seek redressal against unfair trade practices or unscrupulous exploitation of consumers”. Sections 3, 12(4) and 24 were to the following effect: - E

“3. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

12. Manner in which complaint shall be made. F

(1)

(2)

(3)

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act: G

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or H

A any authority set up by or under any other law for the time being in force.

... ..

B **24. Finality of orders.** — Every order of a District Forum, the State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.”

B] The Real Estate (Regulation and Development) Act, 2016

C Sections 2(d), 2(zg), 2(zj) and 2(zk) define expressions “Allottee”, “Person”, “Project” and “Promoter” respectively. Sections 3, 4, 5, 18, 19, 22, 46, 71, 79, 88 and 89 of the RERA Act are as under:-

“3. Prior registration of real estate project with Real Estate Regulatory Authority

D (1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

E PROVIDED that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

F PROVIDED FURTHER that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

G (2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

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- (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act; A
B
- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act; C
- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately. D

4. Application for registration of real estate projects

- (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. E
- (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:— F
 - (a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter; F
 - (b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending; G

H

- A (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
- B (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- C (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- D (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- E (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any;
- F (i) the number and areas of garage for sale in the project;
- (j) the names and addresses of his real estate agents, if any, for the proposed project;
- G (k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—
- H

- (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person; A
- (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details; B
- (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be; C
- (D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose: Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project: Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project: Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for the project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project. Explanation.— For the purpose of this clause, the term “schedule bank” means a bank

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- A included in the Second Schduled to the Reserve Bank of India Act, 1934;
- (E) that he shall take all the pending approvals on time, from the competent authorities;
- B (F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and (m) such other information and documents as may be prescribed.

C (3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

5. Grant of registration

- (1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.
- D (a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or
- E (b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of this Act or the rules or regulations made thereunder:

F PROVIDED that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

G (2) If the Authority fails to grant the registration or reject the application, as the case may be, as provided under sub-section (1), the project shall be deemed to have been registered, and the Authority shall within a period of seven days of the expiry of the said period of thirty days specified under sub-section (1), provide a registration number and a Login Id and password to the promoter for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project.

H (3) The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (C) of clause

(1) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be. A

18. Return of amount and compensation

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or B

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, C

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: D

PROVIDED that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. E

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force. F

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act. G

19. Rights and duties of allottees

(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, H

- A approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.
- (2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.
- B
- (3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (I) of sub-section (2) of section 4.
- C
- (4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.
- D
- E
- (5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.
- F
- (6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.
- G
- (7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).
- H

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee. A

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same. B

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be. C

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

22. Qualifications of Chairperson and Members of Authority.- D

The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration: E F

Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government: G

Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless H

A such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

46. Qualifications for appointment of Chairperson and Members.-

B 1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,—

(a) in the case of Chairperson, is or has been a Judge of a High Court; and

C (b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and

D (c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

F (2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

G (3) The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.

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71. Power to adjudicate

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(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

B

PROVIDED that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

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D

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

E

PROVIDED that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

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(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

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A **79. Bar of jurisdiction**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

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88. Application of other laws not barred

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

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89. Act to have overriding effect

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

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20. The question whether the remedies available to the consumers under the provisions of the CP Act would be additional remedies, was considered by this Court in some cases, the notable cases being:-

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i) In *Secretary, Thirumurugan Cooperative Agricultural Credit Society vs. M. Lalitha (dead) through LRs. and others**, this Court observed:-

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“11. From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi-judicial forums are set up at the district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders.

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*(2004) 1 SCC 305

12. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation of any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other Acts unless there is a clear bar.”

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B

The issue in this case was whether in the face of Section 156 of the Tamil Nadu Cooperative Societies Act, 1983 the concerned persons could avail remedies under the CP Act. Interpreting Section 3 of the CP Act, it was held that the remedy provided under the CP Act would be in addition to the remedies provided under the other Acts.

C

ii) In *National Seeds Corporation Limited vs. M. Madhusudhan Reddy and another**, it was observed:-

D

“57. It can thus be said that in the context of farmers/growers and other consumers of seeds, the Seeds Act is a special legislation insofar as the provisions contained therein ensure that those engaged in agriculture and horticulture get quality seeds and any person who violates the provisions of the Act and/or the Rules is brought before the law and punished. However, there is no provision in that Act and the Rules framed thereunder for compensating the farmers, etc. who may suffer adversely due to loss of crop or deficient yield on account of defective seeds supplied by a person authorised to sell the seeds. That apart, there is nothing in the Seeds Act and the Rules which may give an indication that the provisions of the Consumer Protection Act are not available to the farmers who are otherwise covered by the wide definition of “consumer” under Section 2(1)(d) of the Consumer Protection Act. As a matter of fact, any attempt to exclude the farmers from the ambit of the Consumer Protection Act by implication will make that Act vulnerable to an attack of unconstitutionality on the

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*(2012) 2 SCC 506

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A ground of discrimination and there is no reason why the provisions of the Consumer Protection Act should be so interpreted.

... ..

B **62.** Since the farmers/growers purchased seeds by paying a price to the appellant, they would certainly fall within the ambit of Section 2(1)(d)(i) of the Consumer Protection Act and there is no reason to deny them the remedies which are available to other consumers of goods and services.”

C In this case the provisions of the CP Act and those under the Seeds Act, 1966 were considered.

iii) In *Virender Jain vs. Alaknanda Cooperative Group Housing Society Limited and others**, it was observed by this Court as under:-

D “**13.** The other question which needs to be considered is whether the District Forum should not have entertained the complaints filed by the appellants and directed them to avail the statutory remedies available under the Cooperative Societies Act. Shri Neeraj Jain vehemently argued that the forums constituted under the Act cannot grant relief to the appellants because the action taken by Respondent 1 was approved by the authorities constituted under the Cooperative Societies Act, who were not impleaded as parties in the complaints.

E **14.** In our view, there is no merit in the submission of the learned Senior Counsel. In the complaints filed by them, the appellants had primarily challenged the action of Respondent 1 to refund the amounts deposited by them and thereby extinguished their entitlement to get the flats. Therefore, the mere fact that the action taken by Respondent 1 was approved by the Assistant Registrar, Cooperative Societies and higher authorities, cannot deprive the appellants of their legitimate right to seek remedy under the Act, which is in addition to the other remedies available to them under the Cooperative Societies Act. Law on this issue must be treated as settled by the judgments of this Court in *Thirumurugan Coop. Agricultural Credit Society v. M.*

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*(2013) 9 SCC 383

*Lalitha*³, *Kishore Lal v. ESI Corpn.** and *National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy*². A

15. In the last mentioned judgment, *National Seeds Corpn. Case*⁴, this Court referred to the earlier judgments in *Fair Air Engineers (P) Ltd. v. N.K. Modi**, *Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha*³, *Skypak Couriers Ltd. v. Tata Chemicals Ltd.** and *Trans Mediterranean Airways v. Universal Exports** and held that the remedy available under the Act is in addition to the remedies available under other statutes and the availability of alternative remedies is not a bar to the entertaining of a complaint filed under the Act.” C

In this case the statutory remedies available under the Haryana Cooperative Societies Act, 1984 as against those under the CP Act was the matter in issue.

21. It has consistently been held by this Court that the remedies available under the provisions of the CP Act are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act. D

22. Before we consider whether the provisions of the RERA Act have made any change in the legal position stated in the preceding paragraph, we may note that an allottee placed in circumstances similar to that of the Complainants, could have initiated following proceedings before the RERA Act came into force. E

A) If he satisfied the requirements of being a “consumer” under the CP Act, he could have initiated proceedings under the CP Act in addition to normal civil remedies. F

B) However, if he did not fulfil the requirements of being a “consumer”, he could initiate and avail only normal civil remedies. G

C) If the agreement with the developer or the builder provided for arbitration:-

*(2007) 4 SCC 579

*(1996) 6 SCC 385

*(2000) 5 SCC 294

*(2011) 10 SCC 316

- A i) in cases covered under Clause ‘B’ hereinabove, he could initiate or could be called upon to invoke the remedies in arbitration.
- ii) in cases covered under Clause ‘A’ hereinabove, in accordance with law laid down in *Emaar MGF Ltd and anr. Vs. Aftab Singh**, he could still choose to proceed under the CP Act.
- B

23. In terms of Section 18 of the RERA Act, if a promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the Promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the Project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed. The proviso to Section 18(1) contemplates a situation where the allottee does not intend to withdraw from the Project. In that case he is entitled to and must be paid interest for every month of delay till the handing over of the possession. It is upto the allottee to proceed either under Section 18(1) or under proviso to Section 18(1). The case of Himanshu Giri came under the latter category. The RERA Act thus definitely provides a remedy to an allottee who wishes to withdraw from the Project or claim return on his investment.

C

D

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24. It is, therefore, required to be considered whether the remedy so provided under the RERA Act to an allottee is the only and exclusive modality to raise a grievance and whether the provisions of the RERA Act bar consideration of the grievance of an allottee by other fora.

F

25. Section 79 of the RERA Act bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the RERA Act to determine. Section 88 specifies that the provisions of the RERA Act would be in addition to and not in derogation of the provisions of any other law, while in terms of Section 89, the provisions of the RERA Act shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force.

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H * (2019) 12 SCC 751

26. On plain reading of Section 79 of the RERA Act, an allottee described in category (B) stated in paragraph 22 hereinabove, would stand barred from invoking the jurisdiction of a Civil Court. However, as regards the allottees who can be called “consumers” within the meaning of the CP Act, two questions would arise; a) whether the bar specified under Section 79 of the RERA Act would apply to proceedings initiated under the provisions of the CP Act; and b) whether there is anything inconsistent in the provisions of the CP Act with that of the RERA Act.

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27. In *Malay Kumar Ganguli vs. Dr. Sukumar Mukherjee**, it was held by this Court:-

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“The proceedings before the National Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the civil court but yet it cannot be called a civil court. (See *Bharat Bank Ltd. V. Employees** and *Nahar Industrial Enterprises Ltd. vs. Hong Kong & Shanghai Banking Corpn**.)

D

On the strength of the law so declared, Section 79 of the RERA Act does not in any way bar the Commission or Forum under the provisions of the CP Act to entertain any complaint.

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28. Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to the concerned complainant but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act. As against that the mandate in Section 12(4) of the CP Act to the contrary is quite significant.

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Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence

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*(2009) 9 SCC 221

*AIR 1950 SC 188 : 1950 SCR 459

*(2009) 6 SCC 635

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A of bar under Section 79 to the initiation of proceedings before a fora
which cannot be called a Civil Court and express saving under Section
88 of the RERA Act, make the position quite clear. Further, Section 18
itself specifies that the remedy under said Section is “without prejudice
to any other remedy available”. Thus, the parliamentary intent is clear
B that a choice or discretion is given to the allottee whether he wishes to
initiate appropriate proceedings under the CP Act or file an application
under the RERA Act.

29. It was, however, urged that going by the objective or the
purpose for which the RERA Act was enacted and considering the
special expertise and the qualifications of the Chairpersons and Members
C of the Authority (Section 22) and the Appellate Tribunal (Section 46),
such authorities alone must be held entitled to decide all issues concerning
the Project registered under the RERA Act. It was submitted that if the
allottees were to be permitted to initiate parallel proceedings before the
D fora under the CP Act, the financial drain on the promoter would render
completion of construction an impossibility and, therefore, the RERA
Act in general and Section 89 in particular be construed in such a way
that all the issues pertaining to the concerned project be decided only by
the authorities under the RERA Act. Even with acceptance of such
E interpretation, the allottees would still be entitled to approach the
authorities under Section 18 of the RERA Act.

30. It is true that some special authorities are created under the
RERA Act for the regulation and promotion of the real estate sector and
the issues concerning a registered project are specifically entrusted to
functionaries under the RERA Act. But for the present purposes, we
F must go by the purport of Section 18 of the RERA Act. Since it gives a
right “without prejudice to any other remedy available”, in effect, such
other remedy is acknowledged and saved subject always to the
applicability of Section 79.

31. At this stage, we may profitably refer to the decision in *Pioneer
G Urban Land and Infrastructure Limited and another vs. Union of
India and another**, where a bench of three Judges of this Court was
called upon to consider the provisions of Insolvency and Bankruptcy
Code, 2016, RERA Act and other legislations including the provisions of
the CP Act. One of the conclusions arrived at by this Court was:-

H *(2019) 8 SCC 416

“100. RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.”

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32. We, therefore, reject the submissions advanced by the Appellant and answer the questions raised in paragraph 26 hereinabove against the Appellant.

33. We may now consider the effect of the registration of the Project under the RERA Act. In the present case the apartments were booked by the Complainants in 2011-2012 and the Builder Buyer Agreements were entered into in November, 2013. As promised, the construction should have been completed in 42 months. The period had expired well before the Project was registered under the provisions of the RERA Act. Merely because the registration under the RERA Act is valid till 31.12.2020 does not mean that the entitlement of the concerned allottees to maintain an action stands deferred. It is relevant to note that even for the purposes of Section 18, the period has to be reckoned in terms of the agreement and not the registration. Condition no. (x) of the letter dated 17.11.2017 also entitles an allottee in same fashion. Therefore, the entitlement of the Complainants must be considered in the light of the terms of the Builder Buyer Agreements and was rightly dealt with by the Commission.

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34. Lastly, it may be noted that the Consumer Protection Act, 2019* (hereinafter referred as, “2019 Act”) was enacted by the Parliament “to provide for protection of the interests of consumers and for the said purpose, to establish authorities for timely and effectively administration and settlement of the consumers’ dispute and for matters connected therewith or incidental thereto”. Sections 2(7), 2(33), 2(37), and 2(42) define expressions “Consumer”, “Product”, “Product Seller” and “Service” respectively. Sections 85 and 86 deal with liability of “Product Service Provider” and “Product Seller”. Sections 100 and 107 of 2019 Act are to the following effect:-

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* Most of the provisions in Chapters I, II, IV, V, VI, VII and VIII including Sections 100 and 107 were brought into force w.e.f. 27.07.2020 vide Notification dated 15.07.2020

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A “100. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

107. (1) The Consumer Protection Act, 1986 is hereby repealed.

B (2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

C (3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.”

D Section 100 of 2019 Act is akin to Section 3 of the CP Act and Section 107 saves all actions taken or purported to have been taken under the CP Act. It is significant that Section 100 is enacted with an intent to secure the remedies under 2019 Act dealing with protection of the interests of Consumers, even after the RERA Act was brought into force.

E Thus, the proceedings initiated by the complainants in the present cases and the resultant actions including the orders passed by the Commission are fully saved.

F 35. Resultantly, we reject all the submissions advanced by the Appellant. These appeals are accordingly dismissed affirming the view taken by the Commission. We quantify the costs at Rs.50,000/- (Rupees Fifty Thousand only) to be paid by the Appellant in respect of each of the Consumer Cases, over and above the amounts directed to be made over to the Complainants and shall form part of the amount payable by the Appellant to the Complainants.

G 36. All the Complainants are entitled to execute the orders passed by the Commission in their favour, in accordance with law.