

Jurisdiction of Consumer Forums not barred by RERA but rather only power to grant Injunction taken away by express provision of Section 79 of RERA Act, 2016 NCDRC

written by Vaidya Gopikrishnan | May 28, 2019

After the introduction of the RERA (Real Estate Regulation and Development) Act, 2016 (hereinafter referred to as "RERA") adjudication of real estate matters whether registered or non-registered with the RERA were categorically held to fall within the scope of the Act as per the judgment in the case of *Simmi Sikka v. M/s Emmar MGF Land Limited*[1].

The order of HARERA (Haryana Real Estate Regulatory Authority) clarified that the projects registered previously with the Director of Town and Country Planning (hereinafter referred to as "DTCP")

before commencement of the Act can be adjudicated by RERA. In the present case the

developer M/s. Today Homes and Infrastructure Pvt. Ltd. (hereinafter referred to as "developer") registered the project titled as "Canary Greens"[2]

with the DTCP, Haryana. The Complainant Ajay Nagpal had purchased a flat in the

said project whereas delivery of possession was not handed over to the Complainant. The Complainant filed case before the NCDRC New Delhi for which preliminary issues were raised by the developer with respect to maintainability

of the complaint since the inception of RERA, disputes relating to real estate

matters were specifically brought within the purview of RERA Act, 2016. The Commission in the present case has distinguished the powers and jurisdiction of

RERA from that of the Consumer Forums instituted under Consumer Protection Act,

1986 (hereinafter referred to as the CPA, 1986) and whether filing a consumer complaint before the consumer forums by itself would be barred by specific provision of section 79 of the RERA Act, 2016.

FACTUAL

BACKGROUND

Mr. Ajay Nagpal in the

present case along with 48 others[3] filed a series of batch complaints (Buyers/Allottees) before the NCDRC New Delhi against the developer for

non-delivery of possession of flats as per the buyer – agreement despite payment of initial booking amount. After the initial payments made by the Complainants there was no development of the said plots for a period of seven years by the developer even though as per the agreement entered between the buyer and the developer the physical possession of the plots were to be delivered within a period of three years. The Complainants further stated the agreement was also a one sided and that non-payment of any amount overdue on the part of the buyers would be charged 18% interest by the developer whereas no steps were taken by the developer to deliver physical possession of the plots to the buyers. Upon claim of refund of the initial amount made by the Complainants, the Opposite party – developer raised preliminary objections

before the NCDRC stating that the civil courts and consumer forums were expressly barred as per section 79[4] of the RERA Act, 2016 and that the present batch of complaints needs to be dismissed as the same subject matter of dispute was pending before the Real Estate Regulatory Authority, Haryana. The developer further reiterated that the Complainants being signatories to the buyer – developer agreement are well aware of the arbitration clause inserted in the agreement and that as per amendment to section 8 of the Arbitration and Conciliation Act, 1996 only the Arbitrator has powers to adjudicate the dispute and therefore the same would specifically bar the jurisdiction of the Consumer Forums from hearing the present matter.

#### ISSUES

1. Whether the presence of an arbitration clause in an agreement would bar the Consumers from seeking remedy under the CPA, 1986?
2. Whether the enactment of RERA, Act 2016 expressly bars civil courts from exercising jurisdiction in real estate matters to the extent that the consumer forums also fall within the definition of “civil courts”?

#### OBSERVATION AND FINDINGS

The NCDRC upon hearing the submissions made by the developer with respect to applicability of RERA, Act 2016 over the CPA, 1986 primarily compared the statement of object and reasons of both the acts and observed that the RERA Act, 2016 was enacted to provide effective consumer protection in the real estate sector whereas the CPA, 1986 was enacted for better serving the interest of the consumers. The Commission in furtherance also noted the fact that section 3 of the CPA, 1986 clarified that the Act is in addition to and not in derogation of any other law for the time being in force hence the purpose of the Act is to provide for speedy and expeditious remedy to the consumers through setting up of district, state and national level forums as an additional/ jurisdiction in excess to the remedy provided under other Acts.[5] With respect to the first issue regarding the argument made by the builder/ developer’s counsel regarding the presence of an arbitration clause inserted in the buyer-developer agreement the NCDRC referred to the case adjudicated by the Hon’ble Supreme Court in the

case of *Fair Air Engineering Pvt. Ltd.*

and another vs. *N.K. Modi* – (1996) 6 SCC 385 wherein it was laid down that section 34[6] of the Arbitration and

Conciliation Act, 1996 does not confer any automatic rights over the exercise of authority towards relegating the matters to arbitration and that it is the discretion of the consumer forums to try the matter since the remedy provided under the CPA, 1986 is in addition to any other law for the time being in force.

The next issue framed before the NCDRC was with respect to whether the consumer

forums are civil courts and if whether they are barred from entertaining disputes concerning real estate matters as per section 79 of the RERA, Act 2016. The counsel for the builder – Opposite Party submitted that the powers conferred under RERA[7] clearly and expressly bars

the jurisdiction of the consumer forums and that the intent of the legislation

could not be to provide concurrent jurisdiction so as to provide execution of orders simultaneously granted under both the Acts[8] therefore would render the

objective of RERA baseless. The Commission upon hearing the judgements placed by the learned counsel for the complainant and the builder/ developer held that

the Consumer Forums are not civil courts[9] and that only the power to grant injunction was taken away by the express provision under section 79 of RERA, Act 2016. The Commission further reiterated that there was no provision in the CPA, 1986 which was inconsistent with RERA, 2016 and that both the legislations are supplemental to each other therefore did not notice any preliminary issue with respect to maintainability of the complaint filed under

CPA, 1968 by the Allottees/Buyers.

#### COMMENTS

The NCDRC in the present

ongoing case has resolved through its order dated 15.04.2019 that a consumer case cannot be barred on the grounds that a remedy is already available in law

to the complainant and has also stated that unless a similar matter is not filed

by the consumer before any other forum the same is not liable to be dismissed. Through

the present order the NCDRC has also clarified that a dual remedy cannot be pursued by the Complainant and that the obligations of promoters under section

14, 15, 18 and 19[10] of RERA are not in

derogation of the rights vested to an Allottee/ Buyer to approach the consumer

forum for additional remedies. Further it was held that the provision of section 71 of the RERA Act which allows for withdrawal of the complaint filed by the consumer before consumer forum and to file the said complaint before RERA is not an express bar of the jurisdiction of the consumer forum, as stated

earlier and that the forum based on the facts of the case may direct the

parties to be appear before the appropriate forum for adjudication.

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[1] Haryana Real Estate regulatory Authority, Gurugram order dated 21.08.2018

[2] Consumer Case No. 1764 of 2017 Ajay Nagpal and others v. M/s Today Homes & Infrastructure Pvt.

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[3] Section 79- No civil court shall have jurisdiction over matters empowered to be decided by RERA under the Act and no court shall grant injunction in pursuance of any power conferred by or under this Act.

[4] Thirumurugan Cooperative Agricultural Society; National seeds Corporation vs. M. Madhusudhan Reddy and another – (2012) 2 SCC 506

[5] Application for setting aside arbitral award by courts.

[6] Section 14 – Adherence of sanctioned plans and project specifications by the promoter, section 15 – Obligations of promoter in case of transfer of a real estate project to a third party, Section 18 – Return of amount and compensation by the promoter, Section 19 0 rights and duties of Allottees.

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