

**BEFORE THE UTTARAKHAND REAL ESTATE APPELLATE TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairperson

Hon'ble Mr. Rajeev Gupta

----- Member

Misc. Application No. 28 of 2021

GTM Builders & Promoters Pvt. Ltd., having corporate and registered office at D-21, Office No. 217, DMRC Building, Corporate Park, Sector-21, Dwarka, New Delhi -75, through its authorized signatory, Mr. Ravindra Nath Dubey, Address: GTM Builders & Promoters Pvt. Ltd., D-21, Office No. 217, DMRC Building, Corporate Park, Sector-21, Dwarka, New Delhi -75

.....Appellant

versus

Smt. Sheel Rani, w/o Sri Krishan Dutt, r/o 83, Lal Bagh, Gandhi Colony, Muzaffarnagar, Uttar Pradesh

.....Respondent

Present: Sri Vikrant Gambhir, Advocate, for the Appellant
Sri Shivam Nagaliya, Advocate, for the Respondent

JUDGEMENT

Dated: 24th March, 2022

Per: Justice U.C. Dhyani

Present appeal has been filed by the appellant-promoter being aggrieved against the order dated 17.03.2021 whereby the Real Estate Regulatory Authority (for short 'RERA') ruled that the complaint filed by the respondent-homebuyer, before it, against the appellant-promoter is maintainable.

2. There was 5 days' delay in filing the appeal from the date of issuance of certified copy of the order. Such delay has been condoned *vide* order dated 22.02.2022.

3. Appellant-Promoter had argued before RERA that the complaint filed by the respondent-homebuyer is not maintainable before such authority.

4. RERA did not agree to such submission of the appellant-promoter holding that it is a dispute between homebuyer and promoter, in which the promoter, despite having received total amount of the flat, has not given possession to the homebuyer. RERA has given the reasons as to why it is not inclined to agree with the submissions of the promoter regarding non-maintainability of the complaint before it. This Tribunal does not think it necessary to mention those reasons, for, the same are already part of record.

5. The complaint filed by the homebuyer against the promoter before RERA is about illegal and arbitrary action of respondent in neither delivering the possession of the constructed booked house of the complainant nor repaying the paid amount.

The Facts of Complaint, briefly put, are as follows:

- i. The complainant is senior citizen of India being aggrieved by illegal and arbitrary action of the respondent where the respondent neither delivered the possession of the constructed booked house of the complainant nor is he repaying the paid amount with interest and is causing harassment.
- ii. The Complainant had booked Flat no- 403/FH-19, Type dwelling Unit in the project of GTM Forest & Hills Dehradun, of the respondent on 30.11.2009. Complainant has paid an amount of Rs. 1,25,000/- for Booking and the allotment letter dated 04/05/2010 had also been issued by respondent to Complainant showing a tentative cost of Rs. 36.40 lakh.

- iii. Till 30.11.2009 even after a period of 10 years, respondent has not delivered the possession of the booked house.
- iv. The total tentative cost for the booked house was Rs. 36.40 Lakh and the complainant has paid all installments with the total amount of Rs. 36.40 Lakh (Thirty Six Lakh Forty Thousand Only) to the respondent.
- v. The complainant has taken the loan for the aforesaid booked house and paid interest on the same at the rate of 25% approx.

6. The complainant has prayed for the following relief(s) before RERA:

The respondent may kindly be directed to deliver the possession of the booked flat to the complainant, or alternatively: (a) The respondent may kindly be directed to pay the interest on the amount deposited by the complainant for the dwelling house Unit 403/FH-19 from the date of deposit at the rate of 20% per annum.

(b) The respondent may also kindly be directed to pay a compensation for delay in delivery of possession.

(c) The respondent may also kindly be directed to pay an amount of Rs. 10,00,000/- for the mental harassment and pecuniary loss of the complainant.

(d) Any other relief, which the authority may deem fit, in the interest of justice.

7. 'Maintainability' depends upon many factors *viz.* jurisdiction, limitation, *res judicata*, statutory bar etc. In the instant case, whereas the learned Counsel for the homebuyer stated that the subject matter of complaint is cognizable by RERA, learned Counsel for the promoter denied the facts of the complaint and asserted that the complaint should be thrown outright on the ground that the homebuyer has undertaken two other litigations in this regard. Sri Vikrant Gambhir, learned Counsel for the promoter submitted that

the homebuyer had filed one complaint before the District Consumer Forum and another before the Civil Court. Learned Counsel for the homebuyer replied that the homebuyer has moved amendment application before the Civil Court at Muzaffarnagar to remove the issue regarding the flat from other issues and homebuyer's complaint was not entertained by District Consumer Forum and appeal against the same was filed before State Consumer Commission. The homebuyer has withdrawn this appeal with the permission of the State Consumer Commission.

8. The complaint does not appear to be barred by the principle of *res judicata*, in the sense that the dispute between the parties regarding the same subject matter has not been decided finally by any Competent Authority/ forum having jurisdiction.

9. The complaint also does not appear to be barred by limitation. The same appears to have been filed within time.

10. There is no bar created under any statute, to say that such complaint filed by the homebuyer before RERA is not maintainable. At the most, it could be argued that the homebuyer is involved in 'forum shopping'.

11. The jurisdiction of Civil Courts in respect of matters on which RERA is empowered to adjudicate is barred under Section 79 of the RERA Act. Thus, the question, in the instant case is, whether parallel proceedings before the Consumer Forum/ Commission and RERA are permissible or not.

12. It will be useful to reproduce the relevant paragraphs from a decision rendered by Hon'ble Apex Court in Ireo Grace Realtech Private Limited vs. Abhishek Khanna and others, (2021) 3 SCC 241, as below:

Whether primacy to be given to RERA over the Consumer Protection Act

36. The Consumer Protection Act, 1986 was enacted to protect the interests of consumers, and provide a remedy for better protection of the interests of consumers, including the right to seek redressal against unfair trade practices or unscrupulous

exploitation. The Statement of Objects and Reasons of the Consumer Protection Bill, 1986 reads as :

“Statement of Objects and Reasons.- The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith.

2. It seeks, inter alia, to promote and protect the rights of consumers such as:—

(a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

(d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.

3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.”

36.1 Section 3 of the Consumer Act provides that the remedies under the Act are in addition to, and not in derogation of any other law applicable. Section 3 reads as :

“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.”

36.2 In *Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha (dead)*, (2004) 1 SCC 305, through LRs and others, this Court held that:

“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. 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 19 the Act in addition to other remedies provided under other Acts unless there is a clear bar.”

36.3 In *National Seeds Corporation Limited v. M. Madhusudhan Reddy*, (2012) 2 SCC 506, the jurisdiction of the District Consumer forum was challenged on the ground that there was an arbitration clause in the Agreement between the parties. It was contended that the provisions of the Seeds Act, 1966 would prevail over the Consumer Protection Act. Relevant extracts of the ruling are extracted hereinunder (SCC pp. 532 & 534-35, paras 57, 62, 64 & 66) :

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

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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.

64. According to the learned counsel for the appellant, if the growers had applied for arbitration then in terms of Section 8 of the Arbitration and Conciliation Act the dispute arising out of the arbitration clause had to be referred to an appropriate arbitrator and the District Consumer Forums were not entitled to entertain their complaint. This contention represents an extension of the main objection of the appellant that the only remedy available to the farmers and growers who claim to have suffered loss on account of use of defective seeds sold/supplied by the appellant was to file complaints with the Seed Inspectors concerned for taking action under Sections 19 and/or 21 of the Seeds Act.

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66. The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Protection Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Protection Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996. Moreover, the plain language of Section 3 of the Consumer Protection Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force.”

36.4 Subsequently, the judgments in *Thirumurugan Cooperative Agricultural Credit Society*, (2004) 1 SCC 305, and *National Seeds*, (2012) 2 SCC 506, were followed in *Virender Jain v. Alaknanda Cooperative Group Housing Society Limited and others*, (2013) 9 SCC 383.

36.5 Various judgments of this Court have upheld the applicability of provisions of Consumer Protection Act as an additional remedy, despite the existence of remedies under special statutes, including the Arbitration and Conciliation Act, 1996. In *Emaar MGF Land Ltd. v. Aftab Singh*, (2019) 12 SCC 751, this Court has held that the remedy under the Consumer Protection Act, 1986 is confined to the Complaint filed by a Consumer as defined by the Act, for defects and deficiency caused by the service provider. The existence of an arbitration clause was not a ground to restrain the Consumer Fora from proceeding with the consumer complaint.

37. We will now consider the provisions of the RERA Act, which was brought into force on 01.05.2016. The Statement of Objects and Reasons of the RERA Act, 2016 read as follows :

“Statement of Objects and Reasons.- The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. *Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector.* The lack of standardisation has been a constraint to the healthy and orderly growth of industry. *Therefore, the need for regulating the sector has been emphasised in various forums.*

In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and the transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.

37.1 Section 18 of the RERA Act, 2016 provides the remedy of refund with interest and compensation to allottees, when a Developer fails to complete the construction or give possession as per the Agreement of Sale. The remedies under Section 18 are “without prejudice to any other remedy available.”

37.2 Section 71 of the RERA Act empowers the RERA Authority to determine compensation payable under Sections 12, 14, 18 and 19 of the Act. The proviso to Section 71 provides that a consumer has the right to withdraw its complaint before the consumer fora in respect of matters covered under Sections 12, 14, 18 and 19 of the Act, and file the same before the RERA. Section 71 reads as :

“71. Power to adjudicate. – (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:

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 (68 of 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.”

37.3 Section 79 of the RERA Act bars the jurisdiction only of civil courts in respect of matters which an authority constituted under the RERA Act is empowered to adjudicate on. Section 79 reads as :

“**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.”

37.4 Section 88 of the RERA Act is akin to Section 3 of the Consumer Protection Act, and provides that the provisions of the RERA Act shall apply in addition to and not in derogation of other applicable laws. Section 88 reads as :

“**88. Application of other law 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.”

37.5 An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action.

38. The doctrine of election was discussed in *A.P. State Financial Corporation v. M/s GAR Re-rolling Mills*, (1994) 2 SCC 647, in the following words: (SCC pp. 660-61, paras 15-16)

“15. The Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially different. To hold otherwise may lead to injustice and inconsistent results. Since, the Corporation must be held entitled and given full protection by the Court to recover its dues it cannot be bound down to adopt only one of the two remedies provided under the Act. In our opinion the Corporation can initially take recourse to Section 31 of the Act but withdraw or

abandon it at any stage and take recourse to the provisions of Section 29 of the Act, which section deals with not only the rights but also provides a self-contained remedy to the Corporation for recovery of its dues. If the Corporation chooses to take recourse to the remedy available under Section 31 of the Act and pursues the same to the logical conclusion and obtains an order or decree, it may thereafter execute the order or decree, in the manner provided by Section 32(7) and (8) of the Act. The Corporation, however, may withdraw or abandon the proceedings at that stage and take recourse to the provisions of Section 29 of the Act. A “decree” under Section 31 of the Act not being a money decree or a decree for realisation of the dues of the Corporation, as held in *Gujarat State Financial Corpn. v. Natson Mfg. Co. P. Ltd.*, SCC at p. 198, AIR at p. 1768 recourse to it cannot debar the Corporation from taking recourse to the provisions of Section 29 of the Act by not pursuing the decree or order under Section 31 of the Act, in which event the order made under Section 31 of the Act would serve in aid of the relief available under Section 29 of the Act.

16. The doctrine of election, as commonly understood, would, thus, not be attracted under the Act in view of the express phraseology used in Section 31 of the Act, viz., ‘without prejudice to the provisions of Section 29 of this Act’. While the Corporation cannot simultaneously pursue the two remedies, it is under no disability to take recourse to the rights and remedy available to it under Section 29 of the Act even after an order under Section 31 has been obtained but without executing it and withdrawing from those proceedings at any stage. The use of the expression “without prejudice to the provisions of Section 29 of the Act” in Section 31 cannot be read to mean that the Corporation after obtaining a final order under Section 31 of the Act from a court of competent jurisdiction, is denuded of its rights under Section 29 of the Act. To hold so would render the above-quoted expression redundant in Section 31 of the Act and the courts do not lean in favour of rendering words used by the Legislature in the statutory provisions redundant. The Corporation which has the right to make the choice may make the choice initially whether to proceed under Section 29 of the Act or Section 31 of the Act, but its rights under Section 29 of the Act are not extinguished, if it decides to take recourse to the provisions of Section 31 of the Act. It can abandon the proceedings under Section 31 of the Act at any stage, including the stage of execution, if it finds it more practical, and may initiate proceedings under Section 29 of the Act.”

39. The doctrine of election is based on the rule of estoppel. In *P.R. Deshpande v. Maruti Balaram Haibatti*, (1998) 6 SCC 507, it was held that : (SCC p. 511, para 8)

“8. The doctrine of election is based on the rule of estoppel — the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is

his duty to speak, from asserting a right which he otherwise would have had. (vide *Black's Law Dictionary*, 5th Edn.)

40. In *National Insurance Co. Ltd. v. Mastan & Ors.*, (2006) 2 SCC 641 claims for compensation were filed both under the Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988. This Court held that the doctrine of election was incorporated in Section 167 of the Motor Vehicles Act. The relevant extract from the judgment reads as follows : (SCC pp. 648-51, paras 23, 27 & 33)

“23. The “doctrine of election” is a branch of “rule of estoppel”, in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case.

* * *

27. The first respondent having chosen the forum under the 1923 Act for the purpose of obtaining compensation against his employer cannot now fall back upon the provisions of the 1988 Act therefor, inasmuch as the procedure laid down under both the Acts are different save and except those which are covered by Section 143 thereof.

* * *

33. On the establishment of a Claims Tribunal in terms of Section 165 of the Motor Vehicles Act, 1988, the victim of a motor accident has a right to apply for compensation in terms of Section 166 of that Act before that Tribunal. On the establishment of the Claims Tribunal, the jurisdiction of the civil court to entertain a claim for compensation arising out of a motor accident, stands ousted by Section 175 of that Act. Until the establishment of the Tribunal, the claim had to be enforced through the civil court as a claim in tort. The exclusiveness of the jurisdiction of the Motor Accidents Claims Tribunal is taken away by Section 167 of the Motor Vehicles Act in one instance, when the claim could also fall under the Workmen's Compensation Act, 1923. That section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation Act, can be enforced through the authorities under that Act, the option in that behalf being with the victim or his representative. *But Section 167 makes it clear that a claim could not be maintained under both the Acts.* In other words, a claimant who becomes entitled to claim compensation under both the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, because of a

motor vehicle accident has the choice of proceeding under either of the Acts before the forum concerned. By confining the claim to the authority or the Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, he has to elect whether to make his claim under the Motor Vehicles Act, 1988 or under the Workmen's Compensation Act, 1923. The emphasis in the section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation. The principle *'where, either of the two alternative Tribunals are open to a litigant, each having jurisdiction over the matters in dispute, and he resorts for his remedy to one of such Tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter'* (see *R. v. Evans*²⁶) is fully incorporated in the scheme of Section 167 of the Motor Vehicles Act, precluding the claimant who has invoked the Workmen's Compensation Act from having resort to the provisions of the Motor Vehicles Act, except to the limited extent permitted therein. The claimant having resorted to the Workmen's Compensation Act, is controlled by the provisions of that Act subject only to the exception recognised in Section 167 of the Motor Vehicles Act."

41. In *Transcore v. Union of India*, (2008) 1 SCC 125, this Court considered the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("SARFAESI Act") and the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("RDDB Act"), wherein it was held that there are three elements of election viz. existence of two or more remedies, inconsistencies between such remedies, and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. The judgment in *Transcore* was subsequently followed in *Mathew Varghese v. M. Amritha Kumar*, (2014) 5 SCC 610, where it was held that :

"46. A reading of Section 37 discloses that the application of the SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws are not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force."

42. In a recent judgment delivered by this Court in *Imperia Structures Ltd. v. Anil Patni*, (2020) 10 SCC 783, it was held that remedies under the Consumer Protection Act were in addition to the remedies available under special statutes. The absence of a bar under Section 79 of the RERA Act to the initiation of proceedings before a fora which is not a civil court, read with Section 88 of the RERA Act makes the position clear. Section 18 of the RERA Act specifies that the remedies are “without prejudice to any other remedy available”. We place reliance on this judgment, wherein it has been held that :

“31. 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 complainant concerned 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.

32. 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 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 CP Act or file an application under the RERA Act.”

13. The answer to the abovementioned question, is that there is no bar on initiation of proceedings either under the CP Act or RERA Act but simultaneous proceedings before Consumer Forum/ Commission and RERA, are not permissible.

14. It is the submission of learned Counsel for the respondent-homebuyer that the respondent-homebuyer was not aware that he can file his complaint before RERA and therefore, he filed his complaint before Consumer Forum and when the matter travelled to State Consumer Commission, he withdrew his complaint.

15. In reply, learned Counsel for the appellant-promoter submitted that even if the complaint has been withdrawn by the

respondent-homebuyer, no permission of the State Consumer Commission has been sought to continue proceedings before RERA.

16. It may be noted here that the homebuyer had already filed complaint before RERA and when a question was raised before the learned Authority as to how two simultaneous proceedings can go on, the homebuyer withdrew his complaint before State Consumer Commission. At present there is only one complaint, which is before RERA.

17. So far as the permission to withdraw the complaint before Consumer Forum to file the same before RERA is concerned, that is mandated only for proceedings pending on the date of commencement of Real Estate (Regulation and Development) Act, 2016.

18. Permission, it appears, was necessary when the proceedings were already pending before the Consumer Forum when Act No. 16 of 2016 came and homebuyer wanted to file the same before RERA. In such eventuality, it was mandatory for the homebuyer to withdraw his complaint with the permission of the Consumer Forum/ Commission before filing the same before RERA according to Section 71 of RERA Act, which is being reproduced herein below, for convenience:

Power to adjudicate- (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: 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 (68 of 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.

(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: 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.

(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.

(emphasis supplied)

19. In the instant case, no substantial order on merit had been passed by the State Consumer Commission towards adjudication of the rights of parties and the homebuyer was not barred from election of RERA as forum for redressal of his grievance by withdrawing from the Consumer Commission and pursuing his already filed complaint with RERA. In any case, the right of the homebuyer to seek redressal of his grievance from RERA survives in the peculiar facts of the case. Therefore, we do not find any infirmity in the impugned order of RERA.

20. Learned Counsel for the appellant-promoter also submitted that wrong affidavit was filed by the homebuyer when he filed a complaint before RERA that no other proceedings are pending before any other forum. Learned Counsel for the appellant-promoter placed a decision rendered by Hon'ble Apex Court in Civil Appeal No. 6662 of 2004, Ramjas Foundation and another vs. Union of India and others, (2010) 14 SCC 38, to argue that the complaint should not be entertained.

21. It may be noted here that such plea was, probably, not emphatically raised before RERA and no adjudication has come from learned Authority below on the same. It will, therefore, not be appropriate for the Appellate Tribunal to decide this issue, which has come for the first time before it and which is not specifically adjudicated by the learned Authority below. If such issue is raised by the appellant-promoter, learned Authority below is requested to examine the same also, at the time of final hearing.

22. With the aforesaid observations, the appeal against RERA's order dated 17.03.2021 stands disposed of at the admission stage.

(RAJEEV GUPTA)
MEMBER

(JUSTICE U.C.DHYANI)
CHAIRPERSON

DATE: 24th March, 2022
DEHRADUN
RS