

# LEGAL REMEDIES for HOME BUYERS

**REAL ESTATE**

The authors discuss the various remedies available to home buyers under the Real Estate (Regulation and Development) Act, 2016 (RERA Act) and Consumer Protection Act, 2019 (Consumer Protection Act).

**R**eal estate sector is a catalyst in fulfilling the need and demand for housing and infrastructure in the country. However, this sector has been under stress for a significant period of time and it has been worst hit due to the knee-jerk impact of Covid-19 pandemic on economic and commercial activity. Many real estate projects have suddenly stopped, or have slowed down due to the lockdown. These delays have arisen from supply chain disruptions, workforce disruptions at every level starting from construction labourers to on-site architects and interiors designers, and shortage of funding. The Government of India has provided certain relief to developers by extending the deadline of completion of real estate projects to be completed on or after 25 March 2020 by up to six months. However, no statutory relief has been provided to homebuyers in the form of waiver

of interest on delayed payments or extension in the payment of instalments. This brings us to the discussion on the various remedies available to home buyers under the Real Estate (Regulation and Development) Act, 2016 (RERA Act) and Consumer Protection Act, 2019 (Consumer Protection Act).

## REMEDIES UNDER THE CONSUMER PROTECTION ACT

Before passing of the RERA Act, typically a buyer could approach a consumer forum for resolution of disputes and grievances. The erstwhile Consumer Protection Act, 1986 and the present Consumer Protection Act 2019 provide for various redressal forums at different levels – District Commission, State Commission and National Commission. Such Commissions had been set-up with jurisdictions



**Krrishan Singhania**  
Managing Partner & Founder  
K Singhania & Co.

being defined in terms of territorial limits where either the complainant or the opposite party resides or works or where the cause of action has arisen, and the monetary value of the goods or services. Under the Consumer Protection Act, a complaint could be made by the home buyer regarding delay in delivering possession of the property or deficiency in service arising out of using inferior quality of materials and sub-standard products. The home buyers could seek an order directing the developer to refund the money along with interest and compensation including damages caused to the home buyers due to the deficiency in service.

### REMEDIES UNDER THE RERA ACT

Though the buyer could avail remedies under the erstwhile Consumer Protection, 1986 (now Consumer Protection Act, 2019) the recourse was only curative and not adequate since the presiding officers did not have expertise to address specific concerns of buyers/allottees of real estate project. Hence, it became imperative to have a specialised law in form of the Real Estate (Regulation and Development) Act, 2016 for regulation to ensure sale of apartments, plot, real estate project, in an efficient and transparent manner, protect the interest of the consumers, and to establish speedy dispute resolution mechanism.

The RERA Act mandates compulsory registration of real estate project with the regulatory authority established under the aforesaid Act. Additionally the promoter/developer of real estate project shall provide stage wise time schedule of completion of the project. Moreover, the RERA Act entitles the home buyer to claim refund amount which has been paid for purchase of property, along with interest and compensation, in case the promoter/developers default in the delivery of possession, in accordance with the agreed terms. It may also happen that on failure to deliver possession of apartment to the buyer, the buyer does not intend to withdraw from the project in such case he shall be paid, by the promoter/developer, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

### CAN A BUYER APPROACH BOTH CONSUMER FORUM AS WELL AS AUTHORITY ESTABLISHED UNDER RERA?

The question whether the remedies available to the consumers under the provisions of the Consumer Protection Act would be additional remedies, was considered by the Supreme Court of India in Secretary Thirumurugan Cooperative



Agricultural Credit Society vs. M. Lalitha (dead) through LRs&Ors where the court referred to the Section 3 of the Consumer Protection Act, 1986, which explicitly states that “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”. Similarly, Section 18 of the RERA Act provides that if the promoter fails to complete or is unable to give possession of an apartment duly completed by the date specified in the agreement, the promoter/developer will be liable, on demand, to return the amount received by him in respect of that apartment if the allottee/buyer wishes to withdraw from the project. Such right of an allottee is specifically made “without prejudice to any other remedy available to him”. Section 79 of RERA Act bars jurisdiction of a Civil Court to entertain any suit or proceeding in respect of any matter which the authority or appellate tribunal is empowered under RERA to determine. Whether Consumer Forum falls within the definition of the ‘Civil Court’ has been considered by Apex Court in **Malay Kumar Ganguly vs. Dr. Sukumar Mukherjee** and it was held by the Court 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 Code of Civil Procedure. It may have all the trappings of the civil court but yet it cannot be called a civil court”. Hence the bar applicable under Section 79 of RERA Act will not apply to the Consumer Forums. It would also be useful to refer to judgment of Apex Court in case of **Pioneer Urban Land and Infrastructure Ltd. & Anr. vs. Union of India & Anr** where the court was called upon to consider the provisions of Insolvency and Bankruptcy Code, 2016, RERA Act and other legislation including the provisions of Consumer Protection Act, 1986. One of the conclusions arrived by the court was that “RERA is to be read harmoniously with the Insolvency and Bankruptcy Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA. Remedies



**Srishti Singhania**  
Senior Associate at  
K Singhania & Co.



that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail the remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code". In **M/s. Imperia Structures Ltd. vs. Anil Patni & Anr** the Supreme Court held that Section 79 of the RERA Act does not in any way bar the commission or forum under the provisions of the Consumer Protection Act, 1986, to entertain any complaint. Substantiating the reason the court further held that proviso to Section 71 (1) of RERA Act entitles a complainant who had initiated proceedings under the Consumer Protection Act, 1986, before the RERA Act came in force, to withdraw the proceedings under the Consumer Protection Act, 1986, with the permission of the forum or commission and file an appropriate application before the adjudicating officer under RERA Act. The proviso 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. Likewise, the court further held that where proceedings under the Consumer Protection Act, 1986, are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The court thus concluded that 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.

It is pertinent to note that even under the Consumer Protection Act, 2019, Section 100 provides that the provisions of aforesaid Act shall be in addition and not in derogation of

provisions of any other law for time being in force, and is akin to Section 3 of the Consumer Protection Act, 1986. Further, Section 107 of the Consumer Protection Act, 2019 Act provides for repeal of Consumer Protection Act, 1986 but provides a saving clause for acts done in so far it is not inconsistent with provisions of 2019 Act. It is significant that the aforesaid Section 100 is enacted with the 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. Thus, it can be safely concluded that the remedies available under the Consumer Protection Act 2019 are in addition to and not in derogation of the provisions of any other law for the time being in force.

## CONCLUSION

In view of catena of judgments cited above, the buyer can proceed for simultaneous remedies under the Consumer Protection Act and RERA Act. However, it is not recommended to proceed simultaneously in all cases. RERA Act is a special enactment which is applicable only to real estate protects whereas Consumer Protection Act deals with matter pertaining to defect in good or deficiency in services too. Under the RERA Act, investigations can be conducted by adjudicating authority on a complaint by a buyer or suo moto but consumer forum/commission has no power to conduct investigations. Under RERA Act, allottee can file complaint before the regulatory authority of the state where the property is situated whereas consumer complaints have to be filed based on pecuniary limits. There is no pecuniary limit for filing claims under the RERA Act. In situations where the flat or apartment has been delivered but has some deficiency or any sort of defect in the flat then one can approach forum/commission as the projects that have received completion certificate are outside the purview of the RERA Act. Thus, depending upon the dispute and the remedies to be sought, the allottee/home buyers can seek remedy under RERA Act or the Consumer Protection Act or both. Presently, due to Covid-19 pandemic, consumer forums and RERA authorities have adopted video conferencing for providing urgent relief. It is a welcome step that consumer forums and RERA authorities have come forward in pandemic times for protecting the interest of home-buyers.

<sup>1</sup>Section 5 of RERA Act.

<sup>2</sup>Section 11 (3) (b) of RERA Act.

<sup>3</sup>Section 18 (1) of RERA Act.

<sup>4</sup>(2004) 1 SCC 305

<sup>5</sup>(2009) 9 SCC 221

<sup>6</sup>(2019) 8 SCC 416

<sup>7</sup>Civil Appeal No. 3581-3590/2020

<sup>8</sup>Section 35 of RERA Act.



**Kush M Shah,**  
Trainee, at K Singhania & Co.  
Advocates & Legal Advisors

