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Consumer Court, RERA or NCLT: Can a home buyer approach all these forums simultaneously?

The Delhi High Court recently ruled that a home buyer is allowed to approach the NCDRC and RERA concurrently. Our legal experts throw light on the implications of this judgment

A division bench of the High Court of Delhi (High Court) by judgment dated September 4, 2019 in Messrs M3M India Private Limited & Anr v. Dr Dinesh Sharma & Anr (CM (M) 1244 of 2019 & CM APPL 38052-38053 of 2019) along with other connected matters, held that remedies to homebuyers under the Consumer Protection Act, 1986 (CPA) and the Real Estate (Regulation and Development) Act, 2016 (RERA) are concurrent. This judgment allows flat purchasers aggrieved by errant developers to choose between redressal authorities established under the CPA or the RERA.

62 petitions were filed by various developers challenging the order passed by the National Consumer Redressal Commissioner (National Commission in the Ajay Nagpal v. Today Homes and Infrastructure Private Limited case, wherein, the National Commission held that remedies provided under the CPA and RERA are concurrent and the jurisdiction of the forums/ commissions constituted under the CPA isn't ousted by RERA, particularly Section 79 of the RERA. While the aforesaid petitions were pending before the High Court, a three-judge bench of the Supreme Court headed by Justice Rohinton F Nariman delivered a judgment on August 9, 2019 in Pioneer Urban Land and Infrastructure Limited & Anr v. Union of India & Ors (Writ Petition (Civil) No 43 of 2019) where it was held that remedies given to allottees of flats are concurrent and they are in a position to avail remedies under the CPA, RERA as well the Insolvency and Bankruptcy Code, 2016 (IBC).

The High Court's view was that the judgment in the case of Pioneer (supra) constitutes the law declared by the Supreme Court, even with respect to the question raised in the petitions before the High Court in case of Messrs M3M (supra).

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Arguments of the petitioners before the High Court

The petitioners/developers advanced the following arguments in support of their petitions filed before the High Court:

- The issue raised in the case of Pioneer (supra) was the relationship between remedies provided under IBC and RERA and the inter-relationship between RERA and CPA was never argued. Therefore, any observations regarding the remedy under RERA and CPA being concurrent must be considered as obiter dicta and doesn't constitute the reason for the decision arrived at by the Supreme Court.
- The conclusion reached by the Supreme Court in the case of Pioneer (supra) would be applicable only to proceedings under the CPA, which had been filed prior to the enactment of the RERA in view of the discussion regarding Section 71 of the RERA.
- The Supreme Court hasn't adverted to Section 79 of the RERA, which inter alia provides that no civil court shall have jurisdiction over matters, which are to be decided under the RERA. Therefore, if at all, the judgment of the Supreme Court is regarded as holding that the CPA and RERA provide concurrent remedies, the finding to this effect overlooks Section 79 and the judgment to this extent is lacking in appreciation of relevant facts to that extent.

See also: Delhi HC rules that home buyers can register complaint with both, NCDRC and RERA (https://housing.com/news/rera-will-impact-real-estate-industry/)

- The Supreme Court in its judgment has observed that the parallel remedy of the CPA is recognised by Section 71 of the RERA, which provides that an allottee has the option to continue with an application already filed before the fora under the CPA or withdraw the complaint and file an application before the adjudicating officer under the RERA. In view of the aforesaid observation, the petitioners urged that the judgment of the Supreme Court regarding concurrent remedies is applicable to cases, where complaints under the CPA were instituted prior to RERA coming into force.

Findings of the High Court

The High Court, while holding that remedies available to homebuyers under the CPA and RERA are concurrent, made the following observations from the judgment of the Supreme Court in Pioneer (Supra):

- Although the petitioners' principle question before the Supreme Court was the remedies between the IBC and RERA, the issues arising out of the CPA were also pointed out to the Supreme Court.
- The Supreme Court in the case of Pioneer has arrived at its conclusion after considering the statement of objects and reasons of RERA, which refers to the remedies available under the CPA and after considering the provisions of Sections 79, 88 and 89 of the RERA.

- There is no warrant for limiting the Supreme Court's conclusion that concurrent remedies are applicable only to cases where complaints under the CPA were instituted prior to RERA coming into force by reference of Section 71 of the RERA. Section 71 was used as an example of a parallel remedy and doesn't intend to reach a conclusion for only pending CPA complaints and not for ones instituted in future.

Decision of the High Court

Based on the above discussion, the High Court arrived at an unequivocal finding that remedies available under the CPA and RERA (https://housing.com/news/file-complaint-rera/) to the home buyers are concurrent and there is no ground for interference with the view taken by the National Commission in the judgment impugned before the High Court. Thus, the High Court dismissed the petitions filed by the petitioners.

Conclusion

The High Court in its order didn't deal with the aspect on whether jurisdiction of civil courts which is barred under Section 79 of RERA applies to Consumer Forums. There are various special statutes which contain provisions akin to Section 79 of the RERA where under jurisdiction of civil courts are barred and exclusive jurisdiction is conferred on the authorities established under the enactment.

While considering one such provision under the Employees' State Insurance Act, 1948, the Supreme Court in the case of Kishore Lal versus Chairman, Employees State Insurance Corporation, has held that even though the claims fall within the purview of the Employees' Insurance Court, there is no express bar for the consumer forum to exercise jurisdiction and therefore the consumer forum has jurisdiction to adjudicate upon such claims. The Supreme Court has also in numerous cases held that the jurisdiction of a consumer forum has to be construed liberally so as to bring as many cases under it for speedy redressal.

From the recent judgments passed by the High Court, the Supreme Court and even the authorities under RERA, CPA and IBC, the judicial sentiment seems to favour the home buyer. From a conjoint reading of the judgment of the Supreme Court in the case of Pioneer (supra) or the Court in the case of Messrs M3M (supra), the judiciary has armed an aggrieved home buyer with a host of remedies to seek relief against a developer.

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