

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**CONSUMER CASE NO. 1764 OF 2017**

1. AJAY NAGPAL

S/O SHRI TRILOK NATH, R/O 4038/11B  
BRAHAMPURI KUTIA,, NEAR SHANTI  
NAGAR,

HISSAR

HARYANA

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR,  
REGD OFFICE:UPPER GROUND FLOOR,1  
TO 11, AMBADEEP BUILDING, K.G  
MARG,

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1357 OF 2018**

**WITH**

**IA/10952/2018(Interim Relief),IA/16482/2018(Maintainability of  
complaint),IA/16483/2018(Maintainability of complaint)**

1. NEELESH DANGE & ANR.

.....Complainant(s)

Versus

1. M/S. TODAY HOMES AND  
INFRASTRUCTURE PVT. LTD.

.....Opp.Party(s)

**CONSUMER CASE NO. 1358 OF 2018**

**WITH**

**IA/10953/2018(Interim Relief),IA/16484/2018(Maintainability of  
complaint),IA/16485/2018(Maintainability of complaint)**

1. SEERAT ARORA & ANR.

.....Complainant(s)

Versus

1. M/S. TODAY HOMES AND  
INFRASTRUCTURE PVT. LTD.

.....Opp.Party(s)

**CONSUMER CASE NO. 1765 OF 2017**

**WITH**

**IA/1921/2018(Condonation of Delay in Filing The Rejoinder),IA/9087/2017(Interim Relief),IA/12903/2017(Condonation of delay in filing reply),IA/18183/2017(Appointment of Local Commissioner),IA/19074/2018(Maintainability of complaint)**

1. SANJEEV PANDEY

S/O LATE (SHRI) NARBDESHWAR  
PANDEY, R/O 85-C, L-BLOCK, SAKET,  
NEW DELHI

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR,  
REGD. OFFICE: UPPER GROUND FLOOR,  
1 TO 11, AMBADEEP BUILDING, K.G.  
MARG,

NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1766 OF 2017**

**WITH**

**IA/1922/2018(Condonation of Delay in Filing The Rejoinder),IA/9088/2017(Interim Relief),IA/12904/2017(Condonation of delay in filing reply),IA/18184/2017(Appointment of Local Commissioner),IA/19075/2018(Maintainability of complaint)**

1. JATINDER PAL SINGH & ANR.

S/O SHRI SUKHDEV SINGH R/O F-  
327,2ND FLOOR SUSHANT LOK-2,  
SECTOR - 57,

GURGAON

HARYANA

2. SHRI SUKHDEV SINGH

THROUGH CONSTITUTED ATTORENY,  
S/O SHRI NARAIN SINGH R/O. H.NO. 332,  
AV AS VIKAS COLONY,

SHAHJAHANPUR,

U.P. - 242001

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR  
REGD. OFFICE: UPPER GROUND FLOOR,  
1 TO 11, AMBADEEP BUILDING K.G.  
MARG

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1767 OF 2017**

**WITH**

**IA/1923/2018(Condonation of Delay in Filing The  
Rejoinder),IA/9089/2017(Interim Relief),IA/12905/2017(Condonation of  
delay in filing reply),IA/18185/2017(Appointment of Local  
Commissioner),IA/19076/2018(Maintainability of complaint)**

1. ROHIT DEWAN & ANR.

S/O SHRI KRISHAN DEWAN HOUSE NO.  
906, SECTOR - 45, NEAR KANHAI  
CHURCH

GORGAON - 122003,  
HARYANA

2. SHRI MOHIT DEWAN

S/O SHRI KRISHAN DEWAN HOUSE NO.  
906, SECTOR - 45, NEAR KANHAI  
CHURCH

GURGAON - 122003  
HARYANA

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR  
REGD. OFFICE: UPPER GROUND FLOOR,  
1 TO 11, AMBADEEP BUILDING K.G.  
MARG,

NEW DELHI - 11001

.....Opp.Party(s)

**CONSUMER CASE NO. 1768 OF 2017**

**WITH**

**IA/1924/2018(Condonation of Delay in Filing The Rejoinder),IA/9090/2017(Interim Relief),IA/12906/2017(Condonation of delay in filing reply),IA/18186/2017(Appointment of Local Commissioner),IA/18454/2017(Exemption of file typed copies of documents),IA/19077/2018(Maintainability of complaint)**

1. PIYUSH KUMAR JAIN

S/O SHRI SAROJ KUMAR JAIN, R/O F-72, SPAZE PRIVY APARTMENTS, SECTOR-72, SOHNA ROAD, VILLAGE FAZILPUR, GURGAON - 122001

HARYANA

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE PVT. LTD.

THROUGH ITS MANAGING DIRECTOR, REGD OFFICE:UPPER GROUND FLOOR,1 TO 11, AMBADEEP BUILDING, K.G MARG,

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1769 OF 2017**

**WITH**

**IA/1925/2018(Condonation of Delay in Filing The Rejoinder),IA/9092/2017(Interim Relief),IA/12907/2017(Condonation of delay in filing reply),IA/18187/2017(Appointment of Local Commissioner),IA/19078/2018(Maintainability of complaint)**

1. SANTOSH DUA & ANR.

W/O SHRI RAVINDER KUMAR DUA, D-128 MANSAROVAR GARDEN, GROUND FLOOR,

NEW DELHI - 110015

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE PVT. LTD.

.....Opp.Party(s)

THROUGH ITS MANAGING DIRECTOR, REGD OFFICE:UPPER GROUND FLOOR,1 TO 11, AMBADEEP BUILDING, K.G MARG,

New Delhi-110001

**CONSUMER CASE NO. 1770 OF 2017**

**WITH**

**IA/1926/2018(Condonation of Delay in Filing The Rejoinder),IA/9093/2017(Interim Relief),IA/12908/2017(Condonation of delay in filing reply),IA/18188/2017(Appointment of Local Commissioner),IA/19079/2018(Maintainability of complaint)**

1. EKTA BHANUKA & ANR.

G-3041 DEVINDER VIHAR,SECTOR-56,

GURGAON

HARYANA

2. SHRI BASANT BHANUKA, S/O SHRI RAMESH DUTT BHANUKA

G-3041 DEVINDER VIHAR,SECTOR-56,

GURGAON

HARYANA

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE PVT. LTD.

THROUGH ITS MANAGING DIRECTOR,  
REGD OFFICE:UPPER GROUND FLOOR,1  
TO 11, AMBADEEP BUILDING, K.G  
MARG,

NEW DELHI -110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1771 OF 2017**

**WITH**

**IA/1927/2018(Condonation of Delay in Filing The Rejoinder),IA/9094/2017(Interim Relief),IA/12909/2017(Condonation of delay in filing reply),IA/18189/2017(Appointment of Local Commissioner),IA/19080/2018(Maintainability of complaint)**

1. JITENDER AHUJA & ANR.

.....Complainant(s)

S/O SHRI NIHAL CHAND,. F-474, VIKAS  
PURI,

NEW DELHI - 110018

2. SRIMATI SANGEETA AHUJA , W/O

SHRI JITENDER AHUJA,  
F-474, VIKAS PURI,  
NEW DELHI - 110018

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR,  
REGD OFFICE, UPPER GROUND  
FLOOR,,1 TO 11,AMBADEEP  
BUILDING,K.G MARG,  
NEW DELHI -110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1772 OF 2017**

**WITH**

**IA/1928/2018(Condonation of Delay in Filing The  
Rejoinder),IA/9097/2017(Interim Relief),IA/12910/2017(Condonation of  
delay in filing reply),IA/18190/2017(Appointment of Local  
Commissioner),IA/19081/2018(Maintainability of complaint)**

1. SAHINDER SINGH NARANG  
S/O.LATE (SHRI) HARBANS SINGH  
NARANG, R/O NARANG NIWAS,  
PALAMPUR-176061

DISTRICT : KANGRA  
HIMACHAL PRADESH

2. B)SHRI PRANAY NARANG, S/O SHRI  
SAHINDER SINGH NARANG,  
THRU CONSTITUTED ATTORNEY, R/O.  
C-103 BPTP FREEDOM PARK  
LIFE,SECTOR-57  
GURGAON - 122011

HARYANA

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

.....Opp.Party(s)

THROUGH ITS MANAGING DIRECTOR,  
REGD OFFICE:UPPER GROUND FLOOR,1  
TO 11, AMBADEEP BUILDING, K.G  
MARG,

NEW DELHI - 110001

**CONSUMER CASE NO. 1773 OF 2017****WITH**

**IA/1929/2018(Condonation of Delay in Filing The Rejoinder),IA/9098/2017(Interim Relief),IA/12911/2017(Condonation of delay in filing reply),IA/18191/2017(Appointment of Local Commissioner),IA/19082/2018(Maintainability of complaint)**

1. AMIT AWASTHI

S/O LATE (SHRI) KUSHAL AWASTHI, R/O  
POCKET-2, SECTOR D, HOUSE NO. 2615,  
VASANT KUNJ,

NEW DELHI-110070

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR,  
REGD. OFFICE: UPPER GROUND FLOOR,  
1 TO 11, AMBADEEP BUILDING, K.G.  
MARG,

NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1774 OF 2017****WITH**

**IA/1930/2018(Condonation of Delay in Filing The Rejoinder),IA/9099/2017(Interim Relief),IA/12912/2017(Condonation of delay in filing reply),IA/18192/2017(Appointment of Local Commissioner),IA/19083/2018(Maintainability of complaint)**

1. PRASHANT KUMAR SAXENA &amp; ANR. ....Complainant(s)

S/O SHRI SURENDRA NATH SAXENA J-  
1105, MAPLE CERSCENT, SUSHANT LOK  
- 1, C-BLOCK

GURGAON - 122002,HARYANA

2. SHRIMATI DEEPALI SAXENA

W/O SHRI PRASHANT KUMAR SAXENA  
S/O SHRI SURENDRA NATH SAXENA J-  
1105, MAPLE CERSCENT, SUSHANT LOK  
- 1, C-BLOCK

GURGAON - 122002

HARYANA

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR  
REGD. OFFICE UPPER GROUND FLOOR,  
1 TO 11, AMBADEEP BUILDING K.G.  
MARG,

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1775 OF 2017**

**WITH**

**IA/1931/2018(Condonation of Delay in Filing The  
Rejoinder),IA/9100/2017(Interim Relief),IA/12913/2017(Condonation of  
delay in filing reply),IA/18193/2017(Appointment of Local  
Commissioner),IA/19084/2018(Maintainability of complaint)**

1. MANJIT KAUR & ANR.

W/O S. HARDARSHAN SINGH MONGA,  
RESIDENT OF 8690, ROSHANARA ROAD  
DELHI - 110007

2. SHRI RUPINDER MONGA

S/O S.HARDARSHAN SINGH MONGA,  
RESIDENT OF 8690, ROSHANARA ROAD  
DELHI - 110007

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THOROUGH ITS MANAGING DIRECTOR  
REGD. OFFICE UPPER GROUND FLOOR,  
1 TO 11, AMBADEEP BUILDING K.G.  
MARG

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1776 OF 2017**

**WITH**

**IA/1932/2018(Condonation of Delay in Filing The  
Rejoinder),IA/9105/2017(Interim Relief),IA/12914/2017(Condonation of**



**delay in filing reply),IA/18194/2017(Appointment of Local Commissioner),IA/19085/2018(Maintainability of complaint)**

1. HITESH KUMAR GUPTA

S/O LATE (SHRI) VARINDER KUMAR GUPTA, R/O F6/17, HERMES HERITAGE, PHASE-II, SHASTRI NAGAR, NAGAR ROAD,

PUNE-411006

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE PVT. LTD.

THROUGH ITS MANAGING DIRECTOR, REGD. OFFICE: UPPER GROUND FLOOR, 1 TO 11, AMBADEEP BUILDING, K.G. MARG,

NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1777 OF 2017**

**WITH**

**IA/1933/2018(Condonation of Delay in Filing The Rejoinder),IA/9106/2017(Interim Relief),IA/12915/2017(Condonation of delay in filing reply),IA/18195/2017(Appointment of Local Commissioner),IA/19086/2018(Maintainability of complaint)**

1. M/S. RAJ KUMAR SEHGAL & SONS

THROUGH: CONSTITUTED ATTORNEY, MRS. ICHHA SEHGAL, W/O SHRI NAKUL SEHGAL, R/O E-32, EAST OF KAILASH,

NEW DELHI-110065

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE PVT. LTD.

THROUGH ITS MANAGING DIRECTOR, REGD. OFFICE: UPPER GROUND FLOOR, 1 TO 11, AMBADEEP BUILDING, K.G. MARG,

NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1778 OF 2017**

**WITH**

**IA/1934/2018(Condonation of Delay in Filing The Rejoinder),IA/9107/2017(Interim Relief),IA/12916/2017(Condonation of delay in filing reply),IA/18196/2017(Appointment of Local Commissioner),IA/19087/2018(Maintainability of complaint)**

1. MUKKUL GAUR & ANR.

VIPUL LAVANYA, TOWER-09, FLAT NO.  
303, SECTOR-81,

GURGAON

HARYANA

2. SRIMATI VATSALA SHARMA

W/O SHRI MUKKUL GOUR, VIPUL  
LAVANYA, TOWER-09, FLAT NO. 303,  
SECTOR-81,

GURGAON

HARYANA

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR,  
REGD. OFFICE: UPPER GROUND FLOOR,  
1 TO 11, AMBADEEP BUILDING, K.G.  
MARG,

NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 1779 OF 2017**

**WITH**

**IA/1935/2018(Condonation of Delay in Filing The Rejoinder),IA/9108/2017(Interim Relief),IA/12917/2017(Condonation of delay in filing reply),IA/18197/2017(Appointment of Local Commissioner),IA/19088/2018(Maintainability of complaint)**

1. AJMER SINGH REDHU

S/O LATE (SHRI) RAGHUBIR SINGH, C/O  
HOUSE NO. 246/18, OLD H. NO. 411/16),  
CIVIL LINES, TEHSIL,

GURGAON

HARYANA

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE .....Opp.Party(s)  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR,  
REGD. OFFICE: UPPER GORUND FLOOR,  
1 TO 11, AMBADEEP BUILDING, K.G.  
MARG,  
NEW DELHI-110001

**CONSUMER CASE NO. 1780 OF 2017**

**WITH**

**IA/1936/2018(Condonation of Delay in Filing The  
Rejoinder),IA/9111/2017(Interim Relief),IA/12918/2017(Condonation of  
delay in filing reply),IA/18198/2017(Appointment of Local  
Commissioner),IA/19089/2018(Maintainability of complaint)**

1. DEEPALI ADLAKHA & ANR.

W/O SHRI AJAY MALHOTRA 104,  
STOWER - 20 ORCHID PETALS, SOHNA  
ROAD

GURGAON - 1220018

HARYANA

2. SHRI AJAY MALHOTRA

S/O SHRI PRITAM DASS MALHOTRA  
104, STOWER - 20 ORCHID PETALS,  
SOHNA ROAD

GURGAON - 122018

HARYANA

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

THROUGH ITS MANAGING DIRECTOR,  
UPPER GROUND FLOOR, 1 TO 11,  
AMBADEEP BUILDING K.G. MARG

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 2046 OF 2017**

**WITH**

**IA/5436/2018(Condonation of delay),IA/19090/2018(Maintainability of  
complaint)**

1. VINEET BHAMBHU .....Complainant(s)  
S/O Shri A.P. Bhambhu R/O. House No.2,  
Pla, Sector-15  
Hissar- 125001  
Haryana

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.  
Through its Managing Director Regd Office-  
Upper Ground Floor, 1 to 11, Ambadeep  
Building, K.G. Marg  
New Delhi- 110001 .....Opp.Party(s)

**CONSUMER CASE NO. 3363 OF 2017**

**WITH**

**IA/4620/2018(Maintainability of complaint)**

1. SHALEEN GARG .....Complainant(s)  
R/O 2/8, JASMINE STREET, VATIKA CITY  
SONHA ROAD, GURGAON  
HARYANA

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD  
New Delhi-110001. ....Opp.Party(s)

**CONSUMER CASE NO. 3364 OF 2017**

**WITH**

**IA/4445/2018(Arbitration),IA/4621/2018(Maintainability of complaint)**

1. VIKRAM JAIN .....Complainant(s)  
S/O SHRI R.P. JAIN 404, EAST WEST  
APPTTS, PLOT NO. 99, SECTOR 54,  
GURGOAN

HARYANA

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERED OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBHA  
ROAD

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3365 OF 2017**

**WITH**

**IA/4446/2018(Arbitration),IA/4622/2018(Maintainability of complaint)**

1. PREM CHAND GUPTA & ANR.

S/O LATE RAM KISHAN GUPTA R/O  
FLAT NO. 503, MILLENIUM RESIDENCY  
PLOT NO. 4, SECTOR-47,

GURAGON

HARYANA

2. ANJANA GUPTA

W/O SHRI PREM CHAND GUPTA R/O  
FLAT NO. 503, MILLENIUM RESIDENCY  
PLOT NO. 4, SECTOR-47,

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERED OFFICE AT: STATESMAN  
HOUSE, 8th FLOOR, BARAKHAMBHA  
ROAD,

NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3366 OF 2017**

**WITH**

**IA/4447/2018(Arbitration),IA/4623/2018(Maintainability of complaint)**

1. ARUN TAYAL & ANR.

.....Complainant(s)

S/O SH. S.K. TAYAL E-4/11, SECTOR-16,  
ROHINI,  
DELHI-110089

2. PRITI TYAL

W/O SH. ARUN TAYAL E-4/11, SEC-16,  
ROHINI,  
DELHI-110089

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERED OFFICE AT: STATESMAN  
HOUSE, 8th FLOOR, BARAKHAMBA  
ROAD,

New Delhi-110001.

.....Opp.Party(s)

**CONSUMER CASE NO. 3367 OF 2017**

**WITH**

**IA/4448/2018(Arbitration),IA/4624/2018(Maintainability of complaint)**

1. ADAM MALHOTRA

S/O SHRI SUBHASH CHADRA  
MALHOTRA 004, RAMSES TOWER  
OMAXE NILE APPTTS, SECTOR - 49,  
SOHNA ROAD

GURGAON

HARYANA - 122018

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD

New Delhi-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3368 OF 2017**

**WITH**

**IA/4449/2018(Arbitration),IA/4625/2018(Maintainability of complaint)**

1. ABEER GHAI

S/O LATE SMT RACHANA AGRAWAL B-108, REGENCY PARK 1 DLF PH - IV,

GURGAON

HARYANA

.....Complainant(s)

Versus

1. M/S. TODAY HOME & INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED REPRESENTATIVES HAVING ITS REGISTERD OFFICE AT: STATESMAN HOUSE, 8TH FLOOR, BARAKHAMBA ROAD

New Delhi-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3369 OF 2017**

**WITH**

**IA/4450/2018(Arbitration),IA/4626/2018(Maintainability of complaint)**

1. AARTEE ROY

D/O LATE SHRI NARESJ BANDHU ROY C- 186, SUSHANT LOK 1,

GURGOAN

HARYANA

.....Complainant(s)

Versus

1. M/S. TODAY HOME & INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED REPRESENTATIVES HAVING ITS REGISTERD OFFICE AT: STATESMAN HOUSE, 8TH FLOOR, BARAKHAMBA ROAD

New Delhi-110001.

.....Opp.Party(s)

**CONSUMER CASE NO. 3370 OF 2017**

**WITH**

**IA/4451/2018(Arbitration),IA/4627/2018(Maintainability of complaint)**

1. DHEERAJ CHAWLA & ANR.  
SO SHRI S.C CHAWLA 110, VIKAS KUNJ  
VIKAS PURI  
NEW DELHI - 110018

2. KAMLESH CHAWLA  
W/O DHEERAJ CHAWLA 110, VIKAS  
KUNJ, VIKAS PURI  
NEW DELHI - 110018

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMB  
ROAD

New Delhi-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3371 OF 2017**

**WITH**

**IA/4452/2018(Arbitration),IA/4628/2018(Maintainability of complaint)**

1. SUNAINA VEERAPANENI  
W/O V. KISHORE B-121, PALLAV PURAM  
PHASE - I, MODIPURAM  
MEERUT

UP - 250110

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMB  
ROAD

New Delhi-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3372 OF 2017**



**WITH**

**IA/4453/2018(Arbitration),IA/4629/2018(Maintainability of complaint)**

1. SAJAL GUPTA & ANR.

S/O PREM CHAND GUPTA S/O LATE  
RAM KISHAN GUPTA FLAT NO. 503,  
MILLENIUM RESIDENCY PLOT NO.  
4,SECTOR -47,  
GURGAON  
HARYANA

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMB  
ROAD  
NEW DELHI 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3373 OF 2017**

**WITH**

**IA/4454/2018(Arbitration),IA/4630/2018(Maintainability of complaint)**

1. RATI GUPTA

W/O SH. ANSHUL MALIK 1328, FF,  
SECTOR-45,  
GURGAN  
HARYANA

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERED OFFICE AT: STATESMAN  
HOUSE, 8th FLOOR, BARAKHAMB  
ROAD,  
NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3374 OF 2017**

**WITH****IA/4455/2018(Arbitration),IA/4631/2018(Maintainability of complaint)**

1. RITU CHAUDHARY

D/O SH. SHREEPAL CHAUDHARY B-202,  
 BANCOURT SOCIETY, PLOT NO. GH-06,  
 SECTOR-43,  
 GURAGON  
 HARYANA 122009

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
 INFRASTRUCTURE PVT. LTD.  
 THROUGH ITS AUTHORIZED  
 REPRESENTATIVES HAVING ITS  
 REGISTERED OFFICE AT: STATESMAN  
 HOUSE, 8th FLOOR, BARAKHAMBA  
 ROAD,  
 NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3375 OF 2017****WITH****IA/4456/2018(Arbitration),IA/4632/2018(Maintainability of complaint)**

1. ANOOP PANDEY &amp; ANR.

S/O SHRI AKHILANAND PANDY B2-1603,  
 MAPSKO CASE- BELLA SECTOR - 82,  
 GURGAON  
 HARYANA - 122004

2. ANJULA PANDEY

W/O ANOOP PANDAY B2-1603, MAPSKO  
 CASE - BELA SECTOR - 82,  
 GURGAON  
 HARYANA

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
 INFRASTRUCTURE PVT. LTD.  
 THROUGH ITS AUTHORIZED  
 REPRESENTATIVES HAVING ITS

.....Opp.Party(s)

REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD

NEW DELHI - 110001

**CONSUMER CASE NO. 3376 OF 2017**

**WITH**

**IA/4457/2018(Arbitration),IA/4633/2018(Maintainability of complaint)**

1. VED PRAKASH GROVER & ANR.

S/O K.D. GROVER 415. BLICK SD, PITAM  
PURA

DELHI - 110088

2. MRIDUL GROVER

S/O VED PRAKASH GROVER 415,  
BLOCK SD, PITAMPURA

DELHI - 110088

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3377 OF 2017**

**WITH**

**IA/4458/2018(Arbitration),IA/4634/2018(Maintainability of complaint)**

1. MAHINDER KUMAR SETHI & ANR.

S/O LATE SHIR S.R SETHI 33/34 OLD  
RAJINER NAGR

NEW DELHI 110060

2. PUSHP LATE SETHI

D/O SHRI SH R.D. AHUJA 33/44 OLD  
RAJINDER NAGAR

NEW DELHI - 110060

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD  
NEW DELHI

.....Opp.Party(s)

**CONSUMER CASE NO. 3378 OF 2017**

**WITH**

**IA/4459/2018(Arbitration),IA/4635/2018(Maintainability of complaint)**

1. SAROT BISHNOI & ANR.  
W/O SUBHASH BISNOI R/O 9 NEMI  
SAGAR COLONY, QUEENS ROAD,  
JAIPUR-302021

2. SAMIT BISHNOI  
S/O SUBHASH BISHNOI R/O 9 NEMI  
SAGAR COLONY, QUEENS ROAD,  
JAIPUR-302021

3. MRIDUL GROVER  
S/O PAD PRAKASH GROVER 415, BLOCK  
SD PITAMPURA  
DELHI - 110088

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERED OFFICE AT: STATESMAN  
HOUSE, 8th FLOOR, BARAKHAMBA  
ROAD,  
NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3379 OF 2017**

**WITH**

**IA/4460/2018(Arbitration),IA/4636/2018(Maintainability of complaint)**

1. SUNEER DUA

S/O SHRI I.R DUA H-68, SF, RESIDENCY  
GREENS, GREEN WOOD CITY, SECOTR -  
46

GURGAON

HARYANA

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD

NEW DELHI 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3380 OF 2017**

**WITH**

**IA/4461/2018(Arbitration),IA/4637/2018(Maintainability of complaint)**

1. NIDHI MATHU

W/O PIYUSH RAJPUT 1501, T4, UNITECH  
HARMONY, SECTOR-50,

GURAGON

HARYANA

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERED OFFICE AT: STATESMAN  
HOUSE, 8th FLOOR, BARAKHAMBA  
ROAD,

NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3381 OF 2017**

**WITH**

**IA/4462/2018(Arbitration),IA/4638/2018(Maintainability of complaint)**

1. GAURAV JAIN .....Complainant(s)  
S/O. SHRI SUNDER LAL JAIN, 1011,  
SECTOR-1, ROHTAK  
HARYANA-124001

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES, HAVING ITS REGD.  
OFFICE AT: STATESMAN HOUSE, 8TH  
FLOOR, BARAKHAMBA ROAD, NEW  
DELHI-110001 .....Opp.Party(s)

**CONSUMER CASE NO. 3382 OF 2017**

**WITH**

**IA/4463/2018(Arbitration),IA/4639/2018(Maintainability of complaint)**

1. ANITA YADAV D/O. SHRI M.S. YADAV,  
A-9, METRO ENCLAVE, PUSHPA VIHAR,  
NEW DELHI-110017 .....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES, HAVING ITS REGD.  
OFFICE AT: STATESMAN HOUSE, 8TH  
FLOOR, BARAKHAMBA ROAD,  
NEW DELHI-110001 .....Opp.Party(s)

**CONSUMER CASE NO. 3383 OF 2017**

**WITH**

**IA/4464/2018(Arbitration),IA/4640/2018(Maintainability of complaint)**

1. ANITA YADAV  
A-9, METRO ENCLAVE, PUSHPA VIHAR,  
NEW DELHI-110017 .....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD. ....Opp.Party(s)

THROUGH ITS AUTHORIZED REPRESENTATIVES, HAVING ITS REGD. OFFICE AT: STATESMAN HOUSE, 8TH FLOOR, BARAKHAMBA ROAD, NEW DELHI-110001

**CONSUMER CASE NO. 3384 OF 2017**

**WITH**

**IA/4465/2018(Arbitration),IA/4641/2018(Maintainability of complaint)**

1. JAYA GUPTA

D/O. SHRI AUN GUPTA, LVOORY COURT, K-3, APT, 405, ESSEL TOWER, M.G. ROAD, GURGAON HARYANA

.....Complainant(s)

Versus

1. M/S. TODAY HOME & INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED REPRESENTATIVES, HAVING ITS REGD. OFFICE AT: STATESMAN HOUSE, 8TH FLOOR, BARAKHAMBA ROAD, NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3385 OF 2017**

**WITH**

**IA/4466/2018(Arbitration),IA/4642/2018(Maintainability of complaint)**

1. VAIBHAV GHAI

S/O. SHRI BRIJ MIHAN GHAI, EG-1, INDER PURI, NEW DELHI-110002

.....Complainant(s)

Versus

1. M/S. TODAY HOME & INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED REPRESENTATIVES, HAVING ITS REGD. OFFICE AT: STATESMAN HOUSE, 8TH FLOOR, BARAKHAMBA ROAD, NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3386 OF 2017**

**WITH**

**IA/4467/2018(Arbitration),IA/4643/2018(Maintainability of complaint)**

1. RAMINDER SINGH BEDI

S/O SH. AJIT SINGH BEDI AG-61,  
NIRVANA COUNTRY, SECTOR-50,  
GURGAON

HARYANA-122018

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERED OFFICE AT: STATESMAN  
HOUSE, 8th FLOOR, BARAKHAMBA  
ROAD,

NEW DELHI-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3387 OF 2017**

**WITH**

**IA/4468/2018(Arbitration),IA/4644/2018(Maintainability of complaint)**

1. KUNAL SOOD & ANR.

S/O RAHUL SOOD 2 RUHI KHANNA W/O  
KUNAL SOOD A-76, NIRMAN VIAHR

DELHI - 110092

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD

NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3388 OF 2017**



WITH

IA/4469/2018(Arbitration),IA/4645/2018(Maintainability of complaint)

1. GAURAV AGARWAL & ANR.  
S/O SHRI R.P AGRAWAL D-403, PARK  
VIEW CITY 2, SOHNA ROAD SECTOR -  
49,  
GURGAON  
HARYANA - 122018

2. NIDHI AGARWAL  
W/O GAURAV AGRAWAL D-403, PARK  
VIEW CITY 2, SOHNA ROAD SECTOR  
-49,  
GURGAON  
HARYANA - 122018

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD  
NEW DELHI - 110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3389 OF 2017**

WITH

IA/4470/2018(Arbitration),IA/4646/2018(Maintainability of complaint)

1. RAJESH KUMAR BATRA  
S/O SHRI B.R BATRA A-81, FF, THE  
PAKKADHIANS, SECTOR - 47,  
GURGAON  
HARYAN

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.  
THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS

.....Opp.Party(s)

REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD  
NEW DELHI

**CONSUMER CASE NO. 3390 OF 2017**

**WITH**

**IA/4471/2018(Arbitration),IA/4647/2018(Maintainability of complaint)**

1. BALRAJ ARORA

S/O SHRI R.L ARORA 9/8, FF, SOUTH  
PATEL NAGAR

NEW DELHI - 110008

.....Complainant(s)

Versus

1. M/S. TODAY HOME &  
INFRASTRUCTURE PVT. LTD.

THROUGH ITS AUTHORIZED  
REPRESENTATIVES HAVING ITS  
REGISTERD OFFICE AT: STATESMAN  
HOUSE, 8TH FLOOR, BARAKHAMBA  
ROAD

New Delhi-110001

.....Opp.Party(s)

**CONSUMER CASE NO. 3507 OF 2017**

**WITH**

**IA/19645/2018(Maintainability of complaint)**

1. VARUN GUPTA & ANR.

.....Complainant(s)

Versus

1. TODAY HOMES & INFRASTRUCTURE  
PVT. LTD.

Through its Directors, R/o At Upper Ground  
Floor, 1 to 11, Ambadeep Building, K.G.  
Marg,

New Delhi-110001

.....Opp.Party(s)

**BEFORE:**

**HON'BLE MR. JUSTICE R.K. AGRAWAL,PRESIDENT  
HON'BLE MRS. M. SHREESHA,MEMBER**

**For the Complainant :**

For the Complainants in : Mr. O.P. Kejriwal, Advocate  
C.C.No.1764 to 1780/2017  
& C.C.No.2046/2017

For the Complainants : Mr. Sushil Kaushik, Advocate  
in C.C No.3363 to 3390/17 Ms. Himanshi Singh,  
Advocate

For the Complainant in : Mr. Neil Hidresh, Ms. Hitakshi  
Mittal

C.C.No.3507/17 and Mr. Nipun Saxena, Advocate

For the Complainants : Mr. Rishi Kapoor, Advocate  
in CC No.1357 & 1358/18

For the Opposite Party : Mr. Joy Basu, Senior Advocate  
in C.C No.1764 to 1780/17, Ms. Kanak Bose, Mr. Sumesh  
Dhawan,

C.C.No.2046/17, Ms. Ankita Bajpai and Ms. Tanya,  
C.C No.3363 to 3390/17 Advocates with him.  
& C.C.No.3507/17

**For the Opp.Party :**

For the Opposite Party : Mr. Rajat Malhotra, Md.  
Nausheen Samar  
in C.C No.1357 to 1358/18 and Mr. Sunil Malhotra,  
Advocates

**Dated : 15 Apr 2019**

**ORDER**

**R.K. AGRAWAL, J. PRESIDENT**

1. All these individual Consumer Complaints, under Section 21(a)(i) read with Section 22 of the Consumer Protection Act, 1986 (for short “the Act”), have been filed by the Complainants, the allottees of Residential Flats/Apartments in a project, namely, “**Canary Greens**” (for short “the Project”), to be developed and constructed by the Opposite Party on a plot of land admeasuring 21.637 Acres, situated within the Revenue Estate of Village Behrampur, Sector 73, Gurgaon, Haryana, seeking injunctive relief and compensation for the losses suffered by them on account of unfair and restrictive trade practices adopted and the deficient services rendered by the

Opposite Party in not handing over the possession of the allotted Flats/Apartments within the stipulated time.

2. All the Complainants have entered into identical “Agreements to Sell”/”Flat Buyer Agreements” with the Opposite Party; the facts and question of law involved in their cases is similar, inasmuch as physical possession of the allotted Flats, has not been handed over within the committed period and almost similar reliefs have been prayed for by all the Complainants.

### FACTS OF THE CASE

3. For the sake of convenience, the material facts, enumerated hereinafter, are taken from the Consumer Complaint No. 1764 of 2017 titled as Ajay Nagpal Vs. Today Homes & Infrastructure Pvt. Ltd.

4. The Opposite Party, M/s. Today Homes and Infrastructure Private Ltd. (for short, the “Developer”), is a Company incorporated under the Companies Act, 1956 and is engaged in the business of Real Estate Development. In the year, 2010, the Developer, after obtaining license from the Director, Town and Country Planning, Haryana for setting up a Group Housing Colony, launched a Housing Scheme christened as “**Canary Greens**”, **Sector 73, Gurgaon, Haryana** on the land stated to be acquired by them from its lawful owners. Allured by the advertisements and the sky-high claims made by the Developer, the Complainant applied for allotment of a Unit in the said Project on 16.10.2010 and paid the booking amount of ₹17,59,884/-. On 16.07.2011, almost after 9 months of the booking of the Unit, an Agreement to Sell was executed between the parties and the Complainant was allotted a three bed room Flat No. 04 on 8<sup>th</sup> floor at Tower No.07 (i.e.T7/0804) admeasuring an area of 1640 Square Feet. The total Sale consideration of the Flat was ₹47,14,561 including the Service Tax. Out of the said consideration, an amount of ₹43,30,161/- (i.e. 91.85%), has already been paid by the Complainant to the Developer till today. As per Clause 21 of the Agreement to Sell, the physical possession of the Flat was to be delivered by the Developer to the Complainant within a period of 36 months from the date of execution of the said Agreement subject to the Complainant having complied with all his obligations under the terms and condition of Agreement. Besides, the Developer was also entitled to a grace period of six months after the expiry of said commitment period for unforeseen delays beyond their reasonable control including but not limited to delays in obtaining the Occupation/Completion Certificate etc. from the Competent Authorities. According to the Complainant, the physical possession of the Flat was to be delivered to him latest by 15.01.2015 even after calculating 42 months period of delivery from

the date of execution of the Agreement to Sell on 16.07.2011. Further, it was also agreed that in case the Developer is not in a position to hand over the possession of the Flat to the Complainant even after the expiry of the grace period of six months, they shall pay compensation @₹5/- per sq. ft. per month to him after the expiry of commitment and grace period, till the actual offer of possession. Since, neither the possession of the Flat was delivered within the stipulated time nor there was any progress in construction at the site, the Complainant sent a mail on 04.11.2015, to the Developer asking for the reasons for inordinate delay in delivery of possession as also about the compensation payable on delayed delivery of the possession in terms of clause 21 of the Agreement. On 05.11.2015, in response to the said mail, the Complainant was informed that the possession would be offered tentatively towards the end of next year and question of compensation would also be considered at the time of possession. On 08.10.2016, another mail was sent by the Complainant to the Developer seeking the status of possession and he was informed, vide reply dated 12.10.2016, that the possession would be given by April, 2017. It is averred that the Project was to be completed within three years from the date of issue of license; however, even after expiry of eight long years, the Developer has not delivered the physical possession of a single unit in the Project. The Complainant was made to sign already prepared documents and most of the clauses contained in the "Agreement to Sell" are totally unfair, unjust, unconscionable, oppressive and one sided. At the time of applying for Flat and making payment of booking amount, the Agreement to Sell was not shown to him. Further, clause 8 of the said Agreement stipulates that if any instalment is not paid as per payment plan, the Developer may charge interest @ 18% p.a. on the delayed payment for the period of delay. The other Complainants in these individual Complaints also have the same grievance against the Developer. It is stated that they have now lost all faith in the project of the Developer; the semi constructed building of the project in which the Flat/Apartment of the Complainants is being constructed, has been lying in an abandoned condition since last many years; the skeleton building has been exposed to extreme weather conditions and has lost its strength value and the Complainants do not wish to reside in such a building even if the possession is likely to be delivered to them in near future. Therefore, they have sought refund of the entire amount deposited with the Developer by them along with interest and compensation. For ready reference, the details of the total considerations of the Flat/Apartment and amount paid by the various Complainants, are as under:-

Sl. No.	Consumer Complaint No.	Complainant's Name	Total Consideration	Amount Paid

			(incl. of Service Tax)	(incl. of Service Tax)	
1.	Complaint 1764/17	No.	Ajay Nagpal	47,14,560	43,30,161
2.	Complaint 1765/17	No.	Sanjeev Pandey	57,94,077	50,03,598
3.	Complaint 1766/17	No.	Jatinder Pal Singh & Anr.	68,94,026	59,22,662
4.	Complaint 1767/17	No.	Rohit Dewan & Anr.	72,80,568	53,58,119
5.	Complaint 1768/17	No.	Piyush Kumar Jain	63,49,230	57,29,084
6.	Complaint 1769/17	No.	Santosh Dua & Anr.	57,28,686	49,32,625
7.	Complaint 1770/17	No.	EktaBhanuka & Anr.	72,80,568	52,80,028
8.	Complaint 1771/17	No.	Jitender Ahuja & Anr.	70,80,375	50,83,116
9.	Complaint 1772/17	No.	Sahinder Singh Narang	70,96,364	53,60,683
10.	Complaint 1773/17	No.	Amit Awasthi	56,50,898	46,46,490
11.	Complaint 1774/17	No.	Prashant Kumar Saxena & Anr.	57,94,077	50,69,317
12.	Complaint 1775/17	No.	Manjit Kaur & Anr.	88,54,582	63,16,409
13.	Complaint 1776/17	No.	Hitesh Kumar Gupta	57,28,685	49,71,882
14.	Complaint 1777/17	No.	Raj Kumar Sehgal	71,57,766	61,36,718
15.	Complaint 1778/17	No.	Mukkul Gaur & Anr.	57,94,077	50,03,598
16.	Complaint 1779/17	No.	Ajmer Singh Redhu	58,50,215	50,74,571
17.	Complaint 1780/17	No.	Deepali Adalkha & Anr.	71,80,480	64,88,307
18.	Complaint 2046/17	No.	Vineet Bhambhu	85,31,214	64,20,211
19.	Complaint 3363/17	No.	Shaleen Garg	79,13,462	74,47,932

20.	Complaint 3364/17	No.	Vikram Jain	72,00,300	59,59,261
21.	Complaint 3365/17	No.	Prem Chand Gupta & Anr.	69,10,430	50,83,044
22.	Complaint 3366/17	No.	Arun Tayal & Anr.	70,00,220	64,85,581
23.	Complaint 3367/17	No.	Agam Malhotra	70,00,220	62,05,421
24.	Complaint 3368/17	No.	Abeer Ghai	69,78,080	61,82,934
25.	Complaint 3369/17	No.	Aartee Roy	54,45,262	48,10,454
26.	Complaint 3370/17	No.	Dheeraj Chawla & Anr.	71,79,800	66,52,246
27.	Complaint 3371/17	No.	Sunaina Veerapaneni & Anr.	73,02,800	70,97,954
28.	Complaint 3372/17	No.	Sajal Gupta & Anr.	54,84,875	49,32,623
29.	Complaint 3373/17	No.	Rati Gupta	74,88,120	57,75,632
30.	Complaint 3374/17	No.	Ritu Chaudhary	71,59,300	54,25,390
31.	Complaint 3375/17	No.	Anoop Pandey & Anr.	72,61,800	55,67,881
32.	Complaint 3376/17	No.	Ved Prakash Grover & Anr.	81,47,300	59,39,176
33.	Complaint 3377/17	No.	Mahinder Kumar Sethi & Anr.	69,78,080	61,40,971
34.	Complaint 3378/17	No.	Saroj Bishnoi & Anr.	84,38,300	72,61,730
35.	Complaint 3379/17	No.	Suneer Dua	70,97,800	65,61,799
36.	Complaint 3380/17	No.	Nidhi Mathur	83,41,300	60,61,558
37.	Complaint 3381/17	No.	Gaurav Jain	70,60,080	64,53,911
38.	Complaint 3382/17	No.	Prem Chand Anand & Anr.	83,35,625	61,51,912
39.	Complaint 3383/17	No.	Anita Yadav	68,88,290	63,68,545

40.	Complaint 3384/17	No.	Jaya Gupta	69,78,080	61,41,152
41.	Complaint 3385/17	No.	Vaibhav Ghai	84,38,300	61,60,719
42.	Complaint 3386/17	No.	Raminder Singh Bedi	73,02,800	64,77,765
43.	Complaint 3387/17	No.	Kunal Sood & Anr.	83,67,490	61,32,649
44.	Complaint 3388/17	No.	Gaurav Agarwal & Anr.	70,97,800	65,61,799
45.	Complaint 3389/17	No.	Rajesh Kumar Batra	71,01,080	55,25,483
46.	Complaint 3390/17	No.	Balraj Arora	71,77,300	68,23,223
47.	Complaint 3507/17	No.	Varun Gupta & Anr.	78,50,798	78,28,924
48.	Complaint 1357/18	No.	Neelesh Dange & Anr.	70,97,800 (excluding tax)	56,78,749 (excluding tax)
49.	Complaint No.1358/18		Seerat Arora & Anr.	56,48,625 (excluding tax)	48,54,296 (excluding tax)

05. In view of the facts stated above, alleging deficiency in service and unfair trade practice on the part of the Developer in not handing over the physical possession of the Flats/Apartments in question to the Complainants within the committed period, which has caused immense pressure and financial burden upon them, these Complaints have been filed by the Complainants.

06. In Consumer Complaint Nos. 1764 to 1780 of 2017 and 2046/17 the Complainants have prayed as under:-

(a) *direct the Opposite Party to hand over the possession of flat to the Complainants immediately, in habitable condition, being complete in all respects and segregate the "ongoing construction area" from the remaining area to ensure proper living condition and security and*



*execute all the required documents for transferring/conveying the ownership rights in their favour;*

*(b) direct the Opposite Party to provide all infrastructural facilities (at no extra cost to the Complainants, except one time EDC/IDC) including (i) road, (ii) water, (iii) electricity, (iv) sewerage, complete with necessary governmental clearances, while handing over the physical possession of the flats/apartments;*

*(c) direct the Opposite Party to provide fully operational common amenities and facilities, including (i) dedicated car parking, (ii) club house, (iii) hi-tech health club with swimming pool, (iv) children's play ground area (v) landscape park, (vi) high speed elevators, while handing over the physical possession of the flats/apartments;*

*(d) direct the Opposite Party to provide third party audited report, regarding; a) measurement of the flats and common areas, to ascertain accurate super area for the Complainants' flats; b) expenditure incurred by the Opposite Party under the head of external/internal development and water and electricity installation; c) confirming that laying of PNG line is safe and economic;*

*(e) direct the Opposite Party to refund the excess amount collected from the Complainants towards their flats (based on the revised super area), along with interest at the rate of eighteen percent (18%) per annum compounded monthly (computed from the date of payment of the booking amount) until the payment of the aforesaid excess amount with interest;*

*(f) direct the Opposite Party to refund the amount collected from Complainants under the heads of "parking", "club membership", as also "transfer fee" and "administrative charges" recovered towards transfer of flat, along with interest at the rate of eighteen percent*

*(18%) per annum compounded monthly (computed from the date of payment of the said amount) until refund of the aforesaid amount with interest;*

*(g) direct the Opposite Party to pay interest at the rate of eighteen percent (18%) per annum compounded monthly, on the total amount paid by the Complainants to the Opposite Party towards their flats, from the expiry of thirty six (36) months (computed from the date of payment of the booking amount) until the actual physical possession of the respective flats in terms of aforesaid prayer (a), (b) and (c) and payment of amount with interest.*

*(h) direct the Opposite Party to demand the final payment from the Complainants only when the aforesaid prayers (a), (b), (c), (d), (e), (f) and (g) have been complied with;*

*(i) direct the Opposite Party to charge the maintenance fee (reasonable) from the date when possession of the flats are handed over and the aforesaid prayers (a), (b), (c) and (d) have been complied with;*

*(j) direct the Opposite Party to pay a sum of ₹5 lacs towards undue hardship and injury both physical and mental caused to the Allottees due to the acts of omission/commission on the part of the Opposite Party;*

*(k) direct the Opposite Party to pay at least a sum of ₹2 Lacs to the Complainants towards the cost of litigation;*

*(l) direct Opposite Party to refrain from giving effect to the unfair clauses unilaterally incorporated in the Agreement to Sell; and*

*(m) pass such other or further order as this Hon'ble Commission deems fit and proper in the facts and circumstances of the present case.*

07. In another set of Consumer Complaint Nos. 3363 to 3390 of 2017, the Complainants have sought relief in the following manner:-

*a) direct the Opposite Party to refund the entire amount collected from the Complainants towards the consideration of the flats 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 Opposite Party to pay a sum of ₹5 lakh towards mental agony, harassment and costs of litigation.*

08. In Consumer Complaint Nos. 3507/17, 1357/2018 and 1358/18 also, the Complainants have sought refund of the deposited amount with interest and compensation.

09. Upon notice, all the Complaints have been contested by the Opposite Party, Developer raising preliminary issues that (i) the Complainants are not "Consumers" as defined in Section 2(1) (d) of the Act, 1986 as the amount has been invested by them in the project for commercial purpose; (ii) some of the Complainants are not the original allottees of the flats and resale of flat does not come within the purview of the Act; (iii) this Hon'ble Commission lacks pecuniary jurisdiction to entertain the Complaints as the value of each flat is less than ₹1 crore; (iv) it is well settled law that for the purpose of determination of pecuniary jurisdiction, only the valuation of the subject matter of the Complaint is to be considered and further benefits claimed, such as compensation and interest are not to be taken into account; (v) the present Complaints are premature as the period of delivery of 36 months is not sacrosanct because the delay in any event is attributable to Force Majeure events as explained under Clause 21 and (iv) as per the provisions contained in the Real Estate (Regulation and Development) Act, 2016 (for short, the "RERA"), the present complaints are not maintainable before this Hon'ble

Commission. The said project is covered under the definition of an “Ongoing Project” for which the Developer had already filed its application for registration of its Project before Haryana Real Estate Regulatory Authority; (iv) the Developer has been made responsible for completing and giving possession of the Apartments in its ongoing Project “Canary Greens” in terms of its registration with RERA. On merits, it was, *inter-alia*,

pleaded that delay in handing over the possession of the flats has occurred due to default on the parts of the Complainants in timely making the payments;

as per Clause 8 of the Agreement to Sell, in case of non-payment of the instalment for more than sixty day, the allotment of unit shall automatically stand cancelled without any further intimation to the Allottee; the work at the site had been seriously hampered as dispute had arisen with the earlier contractor, namely M/s. Raj Buildcon Construction Ltd. who did not complete the work on time and as such there was a continuous delay which was beyond their control; closure of brick kilns due to the norms of procuring permission from Ministry of Environment and Forest, is another factor which has resulted in abnormal delay in completion of the project; as per Construction Linked Plan, the Complainants did not adhere to the payment schedule and despite giving several reminders/demand notices, continuously delayed the payment of instalments; as per amendment in Section 8 of the Arbitration and Conciliation Act, 1996, the dispute can be adjudicated by the Arbitrator only and at the time of payment of application money, all the terms and conditions of the allotment were explained to the Complainants.

10. During the pendency of the Complaints, the I.A. Nos. 4620 to 4647 of 2018 in Complaint Case Nos. 3363 to 3390 of 2017, I.A. Nos. 19073 to 19089 of 2018 in Complaint Nos. 1764 to 1780 of 2017, I.A. No. 19090 of 2018 in Complaint Case No. 2046 of 2017, I.A. No. 19645 of 2018 in Complaint Case No. 3507 of 2018, I.A. No. 16482 in Complaint Case No. 1357 of 2018 and I. A. 16484 of 2018 in Complaint Case No. 1358 of 2018 were filed by the Developer questioning the maintainability of the Complaints before this

Commission in view of the provisions contained in the RERA on the following grounds:-

(i) *the project is covered under the definition of an “Ongoing Project” for which the Developer/Applicant had already filed its application for registration of its project before the Haryana Real Estate Regulatory Authority and they are bound for completing the*

*project and giving possession of the apartments in its ongoing project “Canary Greens” in terms of its registration;*

*(ii) RERA is a self-contained code/comprehensive law which deals with the commercial relationship between a flat/property buyer on the one hand and builder on the other hand. It provides a mechanism to adjudicate complaints/grievances of the flat/property buyer against the Developer;*

*(iii) Section 79 of the RERA contemplates that no court shall have jurisdiction to entertain any suit or proceeding in respect of any manner which the Authority or the adjudicating officer is empowered by under this Act;*

*(iv) Section 71 of the RERA is framed in the larger interest of the Consumers for passing off the benefits of welfare legislation where the provisions are already made for appointment of adjudicators, constitution of tribunal etc.; and*

*(v) After coming into force of the RERA from 01.05.2017, this Hon’ble Commission is precluded from dealing with the grievances of the customers in relation to ongoing projects.*

11. Similar applications have also been filed in remaining complaints.

### **RIVAL SUBMISSIONS**

12. We have heard the Learned Counsel appearing for the parties on the above applications at some length and also perused the written submissions

field by them.

13. The Learned Senior Counsel and other learned Counsel for the Applicant (Opposite Party in the Complaint), in support of the Applications, have made the following submissions.

(a) The jurisdiction of the Consumer Fora despite the presence of Section 3 of the Act, stands weaned away qua the subjects covered by the Special legislation i.e. RERA as RERA has created a right which also provides for an adequate and satisfactory remedy and, therefore, a person or anybody who is seeking to enforce such right must necessarily take recourse to the remedy prescribed under the RERA. In support of the aforesaid submission, the Learned Senior Counsel has relied upon the following decision:-

(i) Chairman, Thiruvalluvar Vs. Consumer Protection Council - (1995) 2 SCC 479;

(ii) Allahabad Bank Vs. Canara Bank & Anr. – 2000 (4) SCC 406; and

(iii) Sanjay Kumar Mishra Vs. Public Information Office – I (2015) CPJ 335 (NC) – (Petition for Special Leave to Appeal (c) No. 23903/16 challenging the said order was dismissed by the Hon'ble Supreme Court on 29.08.2016. Review Petition (C) No. 25 of 2018 has also been dismissed by the Hon'ble Supreme Court on 13.03.2018).

(b) According to the learned Senior Counsel if the arbitration is specifically included as a mode of dispute resolution by a statutory enactment covering a particular nature of dispute, then jurisdiction of the Consumer Fora under the Act is ousted and the parties have to mandatorily be referred to arbitration.

(c) According to him, Section 3 of the Act does not have an overriding effect over other laws. It has only provided that Consumer Fora have traditionally been seen to be an additional remedy for

consumers and that remedy can be weaned away, either expressly by Stature or by necessary implications as interpreted from time to time. Reliance has been placed on the following decisions:-

- (i) General Manager, Telecom Vs. M. Krishnan & Anr. – (2009) 8 SCC 481;
- (ii) Chief Commercial Manager Vs. Sanjiv Sharma – IV (2015) CPJ 655 (NC);
- (iii) Union of India Vs. M. Adakalam – II (1993) CPJ 145 (NC); and
- (iv) Arun Kumar Gupta Vs. Employees State Insurance Corporation – III (1998) CPJ 11 (NC)

(d) The provisions of RERA, substantially fulfilled the parameters laid down in the various decisions so as to vest exclusive jurisdiction on the RERA Authorities to deal with the consumer grievance like the present dispute. Referring to the Introduction, Statement Of Objects and Reasons and Preamble of the RERA, the learned Senior Counsel submitted that it is incontrovertible that RERA was envisaged as the specialised umbrella legislation which serves a dual purpose of being consumer centric and industry specific. RERA was thus enacted in order to cure the deficiencies seen under the Act regime qua the real estate sector. According to him, the reading of various provisions of the RERA shows that the said specialised legislation caters to the concern ordinarily raised by flat buyers/consumers before the Consumer Fora as demarcated in Section 12, 14, 18 and 19 of RERA Act.

(e) Section 18 provides that where a Promoter is unable to hand over possession to the Allottee, the Allottee/Consumer would be entitled to withdraw from the Project and avail a full refund of any monies paid by him in respect of that apartment (along with interest thereon). Further, if the Allottee/Consumer chooses not to withdraw from the

Project, he shall be entitled to interest on every month of delay, till the date of handing over of the apartment. An additional burden is cast upon the Promoter, to discharge any and all obligations cast upon it under RERA, failing which, the Promoter would be liable to compensate the Allottees/Consumers, for its wrongdoings.

(f) Section 19 provides for the rights and duties of the Allottees/Consumers. The said provision provides the Allottee the statutory right to, inter alia:

(a) Obtain information relating to the sanctioned plans of the Project under Section 19(1);

(b) Obtain the stage-wise completion schedule (including provisions for water, sanitation, electricity, etc.) under section 19(2);

(c) Claim possession of apartment or common areas under section 19(3);

(d) Claim refund of amount paid (along with interest and compensation) for the Promoter's failure to comply, under Section 19(4);

The reliefs sought by the Complainants in present case (as also other cases relating to flat buyer disputes) squarely fall within the rights granted to Allottee/Consumers under Section 19 of RERA. Thus, RERA, now, specifically legislates and provides right to Consumers/Allottees, which were only recognized in equity and fairness by the Consumer Fora, as opposed to rights granted and specifically recognised by statute.

(g) Section 20 of RERA provides for the establishment of the Real Estate Regulatory Authority, before which any aggrieved person may file a complaint (u/s 31) for the contravention of provisions of the



RERA Act. It is noteworthy that the Explanation to Section 31 reinforces the idea of substitution of Consumer Fora by RERA Authorities, inasmuch as it provides that “a person shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force”, thereby envisaging a class action scenario which is also contemplated under the CPA, 1986. Referring to Section 34, he further submitted that in addition to its function to facilitate the growth and promotion of the real estate sector, the Regulatory Authority is also responsible for, *inter alia*, registering and regulating the real estate projects and ensuring compliance of obligations by promoters. Under Section 35, the Authority also possesses the power to call for information and conduct investigations/inquiries *sou-moto*, and has the same powers vested in a Civil Court. Sections 36 and 37 further provide the Regulatory Authority the power to issue interim orders and binding directions to a promoter, allottee or a real estate agent.

(h) Learned Senior Counsel further submitted that Section 43 establishes the Real Estate Appellate Tribunal, under at least one Judicial Member and one Administrative or Technical Member, to hear any grievance from any direction/order made by the Regulatory Authority. The Consumer Centric approach can be seen in Section 43(5) of RERA which stipulates a statutory deposit of at least 30% of the awarded penalty/compensation, if the appeal is preferred by a Promoter, before it will be entertained, to prevent vexatious litigation. Further, under Section 53, the Appellate Tribunal so established, has the same powers as are vested in a Civil Court to discharge its function. Moreover, the orders passed by the Appellate Tribunal are to be executable as a decree of a Civil Court u/s 57. An appeal also lies before the High Court of the State where the project is situated, against an order passed by the Appellate Tribunal.

(i) The powers to adjudicate under Section 79 of the RERA have been given to the Authority appointed by the appropriate Government. However, the proviso to Section 71, deals with the complaints already pending before the Consumer Fora on or before the commencement of the RERA which may be continue either before the Consumer Fora or may be withdrawn on the option of the Complainant. According to the learned Senior Counsel, it is well settled that, in interpreting a proviso to a section, the normal function of a proviso is to except something out of the enactment or to qualify the something enacted therein which, but for the proviso, would be within the purview of the enactment’. In

other words, a proviso is merely ‘a qualification of the preceding enactment which is expressed in terms too general to be quite accurate’ and is not to be interpreted as stating a general rule. Reliance has been placed on paragraph 15 in the decision of the Hon’ble Supreme Court in the case of Union of India Vs. Priyankan Sharan & Anr. – (2008) 9 SCC 15. Thus, Section 71 operates to confer the power of adjudicating compensation exclusively on a RERA Adjudicating Officer, the proviso thereto, at most, carves out an exception for pending consumer complaints which relate to dispute under Sections 12, 14, 18 and 19 of RERA and, therefore, as a natural corollary all fresh complaints relating to compensation under sections 12, 14, 18 and 19 of RERA must lie only before the RERA Authorities as no such exception is carved out for fresh Complaints.

(j) It is submitted that an alternate, more holistic interpretation of Section 71 must be preferred over the interpretation offered by the Complainants. An alternate interpretation would show that the proviso does not bestow upon consumers the choice between the consumer forum and RERA by establishing concurrent jurisdictions. Rather, the proviso only serves as a saving provision, which permits the consumer to withdraw its pending case before a Consumer Forum, and acts only as a saving provision to preserve the consumer’s right to have the his grievance heard by RERA Authorities. This makes it clear that, not only is the Complainant’s interpretation contrary to well settled principles, but that the proviso in facts supports the interpretation of the applicant that the jurisdiction of the Consumer Fora qua RERA matters stands ousted. Learned Senior Counsel also referred to Section 79 of the RERA and submitted that the bar/ouster applies to “Civil Court” alone, would frustrate if the entire legislative intent behind the Special Act, is taken into consideration. As per the language of the section and the above interpretation, it follows that the second part of Section 79 goes a step further than the first part, and prohibits any court or other authority (which includes Consumer Fora) from granting an injunction in relation to any action which is (or could have been) taken by RERA Authorities. Thus, due to the latter part of Section 79, Consumers would be faced with the anomaly wherein one is forced to approach the RERA Authorities for injunctive reliefs, and the Consumer Fora for only residuary reliefs, if concurrent jurisdiction for both Fora were permitted. Such anomaly and inconvenience to consumers could not have been the legislative intent behind section 79. The absurdity caused can only be cured if Section 79 is read harmoniously, such that the words “Civil Court”, would subsume within its meaning ‘courts and

other authorities'. If the argument of concurrent jurisdiction is sustained, then it would lead to a situation where the main complaint may be pending before the Consumer Fora while the Complainant would be forced to approach RERA Authorities for injunctive reliefs. Further, the Consumer Fora would be barred from passing any order of injunction, irrespective of the stage of the complaint, i.e. at ex-parte, interim, or final stage. This, in effect, would render Section 13(B) of the CPA, 1986, which gives power to consumer courts to pass interim orders (including powers to issue orders of injunction), infructuous. Such contradictory and incongruous conclusions would occur if concurrent jurisdiction of both Consumer Fora and RERA Authorities, is upheld. Thus, as can be seen from the above, the first part of Section 79 itself creates a bar on all courts and other authorities (including Consumer Fora) from entertaining any proceeding pertaining to matters where RERA Authorities have been empowered to act. Without prejudice, since the second part of Section 79 takes away injunctive powers of 'other authorities' an anomalous situation would be created if concurrent jurisdictions are permitted and, therefore, the reference to 'civil court' in the first part of Section 79, would necessarily have to be read as including 'other authorities' to avoid such anomaly/absurdity.

(k) Relying on Section 89 of RERA, the learned Senior Counsel submitted that RERA has an overriding effect over any other law for the time being in force. It is a comprehensive code in itself and therefore, the provisions of the Act cannot be taken recourse to by any Complainant. He has placed reliance on paragraphs 134 and 135 in the judgments of the Hon'ble Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. and Anr. Vs. Union of India & Ors. – (Writ Petition No. 2737 of 2017) – decided on 06.12.2017 reported in (2017) SCC Online Bom 9302 and Lavasa Corporation Ltd. Vs. Jitendra Jagdish Tulsiani and Ors. – (2018) 149 SCL 396 (Bom.)

(l) According to the learned Senior Counsel, while the legal position makes it evident that the jurisdiction of the Consumer Fora qua matters where the RERA Authorities are empowered, stands ousted, if the Consumer Fora and RERA Authorities, both, are found to possess jurisdiction to hear such matters, serious anomalies as elucidated below may be caused:-

(i) Since, the Consumer Fora are barred from issuing any injunction or directions pertaining to matters which the RERA Authorities are empowered to act, the consumer would be left

in an anomalous situation wherein it may, for instance, file a claim for compensation before the Consumer Fora, but would be forced to approach the RERA Authorities for any injunctive relief at an interim or final stage, if concurrent jurisdictions are inferred;

(ii) In the absence of injunctive powers qua RERA matters, any injunctive powers prescribed under the C.P Act to compel compliance with orders are rendered toothless, to the extent they pertain to powers that could have been exercised by RERA Authorities in this regard. Section 57 of RERA deals with execution of orders, thereby negating any powers of enforcement of a consumer award under section 27 of the C.P Act, rendering the same redundant;

(iii) The sanction to parallel or concurrent jurisdictions of the Consumer Fora and RERA Authorities, gives rise to the additional issue of maintaining comity between courts. The allowance of parallel proceedings would permit one dissatisfied consumer (A) to, for instance, move to the Consumer Fora for deficiency of service against a Promoter for one Project, while simultaneously permitting another consumer (B), to move to the RERA Authorities raising a grievance against the Promoter for the very same project. The availability of this option, aside from giving occasion for malpractices such as forum shopping, could result in very possible hypothetical absurdities such as :-

(I) RERA finding failure of the Promoter to meet statutory provisions regarding timely delivery of the Project, while the Consumer Fora simultaneously exculpates the Promoter, finding that reason for delay falls squarely within the ambit of a *force majeure* clause in the Agreement to Sell;

(II) RERA Authorities and the Consumer Fora providing different consumers, of the same Project, by the same Promoter, different quantum of compensation, despite similarity/identity of facts;

(III) RERA, in order to secure compliance by Promoters issuing interim orders on a promoter, (such as restraining continued operations, suspension or registration, etc.), while the Consumer For a direct the same promoter to hand over possession of the same project as per a specific timeline.

The logical corollary is that the legislature, being aware of such potential anomalies which may arise, has consciously vested the jurisdiction qua fresh real estate disputes with RERA, while ousting the jurisdiction of CP Act, subject to a single caveat, namely, the proviso to Section 71. The RERA is a subsequent special legislation of 2016, contra-distinct to the CP Act, which is anterior in point of time. The intent of enacting RERA as a substantive statute/Code relating to real estate matters, itself indicates the intent of the legislature to exclude the jurisdiction of the CP Act and vest the same solely and exclusively with RERA, to the exclusion of consumer Fora, and for that matter, any other authority. The same is also supported by a reading of Section 89 of RERA which operates to override other laws by RERA and makes it clear that RERA was enacted with the intent to override any other law in force.

14. On behalf of the Complainants, learned Counsel submitted that the Applications filed by the Applicants are liable to be dismissed on the following grounds: -

(i) As per the Statement of Objects and Reasons, the Consumer Protection Act, 1986 and the Real Estate Regulatory and Development Act, 2016 operate in two different fields. Section 2(1)(d) of the RERA defines an "Allottee", however, on the other hand, Section 2(1)(d) of the Consumer Protection Act defines a "Consumer". Since an "Allottee" may also be an investor whose relationship with the service provider is purely contractual in nature or commercial, he cannot be construed as "Consumer" in terms of the C.P. Act which debars the

transactions for “Commercial Purpose”. While an Allottee may bring a claim before RERA, the same Allottee has to necessarily pass the muster of falling within the definition of a “Consumer” before his grievances could be redressed by the Consumer Fora. Further, the expression an “Allottee” also includes a “Promotor”. As per Section 2(zk) of the RERA, the “Promotor” includes every Real Estate Developer, Developing Authority, Investor, Contractor or Colonizer or his Assignee who may purchase an Apartment/Entire Housing Project and they all squarely fall outside the ambit of the Consumer Protection Act, 1986. Similarly, a Complaint against the Service Provider can be filed under the Consumer Protection Act by a Consumer alleging defects in goods, deficiency in service and unfair trade practice, however, in RERA, the “Allottee” has to file a case on a different Cause of Action which has no correlation with the aspects that are exclusive to the C.P. Act.

(ii) Section 88 of the RERA is in *pari materia* with Section 3 of the Consumer Protection Act both of which clearly contemplate that the provisions of these Acts are in addition to and not in derogation of any other laws that continue to operate for the time being in force. These provisions are supplementary and additional remedies that have been recognised by the Apex Court in catena of judgments. Reliance has been placed on Jabalpur Tractors Vs. Sedmal Jainarain – 1995 Supp (4) SCC 107, State of Karnataka Vs. Vishwabharathi House Building Co-Op. Society - (2003) 2 SCC 412, Secretary, Thirumurgan Co-operative Agricultural Credit Society Vs. M. Lalitha (Dead) through LRs – (2004) 1 SCC 305 and Virender Jain Vs. Alaknanda Co-op. Group Housing Society Ltd. – (2013) 9 SCC 383.

(iii) Earlier, subsequent to the amendment in Section 8 of the Arbitration and Conciliation Act, 1996, a number of similar applications were filed before this Hon’ble Commission for dismissal of the complaints on maintainability. While dealing with the said applications, this Commission in Aftab Singh Vs. M/s. Emaar MGF Land Ltd. Anr. – III (2017) CPJ 270 (NC) has held that the amended Section 8 does not cast a mandate on Consumer Fora to refer to the disputes to arbitration and the provisions of Section 3 of the Consumer Protection Act, 1986 are supplementary and additional remedy. The said finding has attained finality as the Civil Appeal Nos. 23512-23513 of 2017 filed against the said order, have been dismissed by the Hon’ble Supreme Court vide order dated 13.02.2018.

(iv) In terms of the proviso to Section 71 of RERA, the “Allottee” and not the “Opposite Party” or “Builder”, has an exclusive prerogative to seek permission of the Consumer Fora where the Complaint is already pending, to withdraw the same with the leave to prefer it before RERA of the concerned State. This is recognition of the “Doctrine of Election” by the Parliament wherein the Parliament has conferred the right and the prerogative on the “Allottee” to choose his remedy and purpose the same. The RERA nowhere bars the jurisdiction of the Consumer Protection Act, 1986. The only understanding is that the aggrieved person(s) cannot enjoy both the remedies provided by law. The Complaint can be filed taking advantage under either of the Act.

(v) In view of the observations made by the Hon’ble Bombay High Court with respect to Section 71 of the RERA, in the matter of Neelkamal Realtors Suburban Pvt. Ltd. (Supra), to the effect that after coming into force of RERA, every Complaint pending before the Consumer Fora must necessarily to be sent to RERA for adjudication, it is submitted that the opinion expressed in paragraphs 135 and 136 of the same very decision, recognizes that there is an overarching choice given to the Allottee inasmuch as it was clearly held “that a pending complaint could be transferred before RERA”. As such, the ultimate choice is that of the Allottee either to keep pursuing his claim before the Consumer Fora or to seek withdrawal of the same to pursue it afresh before Adjudicator. Further, while referring to the said judgement of the Bombay High Court, the State Consumer Disputes Redressal Commission, UT Chandigarh in Veena Ghai and Anr. Vs. M/s. Manohar Infrastructure and Construction Pvt. Ltd. & Ors. – C. C. No. 659 of 2017 decided on 28.06.2018, has held that the decision passed by the Hon’ble Bombay High Court is not in variance with the law pertaining to availing of additional remedies prescribed under the Consumer Protection Act, 1986.

(vi) Section 79 of the RERA, 2016 bars the jurisdiction of Civil Courts only and not the Consumer Fora. Consumer Fora which are quasi-judicial authorities established under a special legislation, by their very nature, are distinct and separate since the procedure and practice is distinct from a Civil Court. Previously, buyers had options of filing either a consumer complaint or go in a Civil Court by filing a suit for recovery or for injunction or by specific performance. So only those remedies which were available by Civil Courts have been barred, the Consumer Fora being an alternative remedy is not barred by the enactment of the RERA.

(vii) Consumer Protection Act recognizes and endorses the concept of “Class Action Suits” or proceedings initiated under a “representative capacity” which has also found its approval in recent Full Bench decision of this Commission in Ambrish Kumar Shukla & Ors. Vs. Ferrous Infrastructure Pvt. Ltd. – I (2017) CPJ 1 (NC). On the contrary, there is no such equivalent provision envisaged in RERA and if the Complaints filed under Section 12 (1) (c) of the Consumer Protection Act, 1986 in “representative capacity” are held to be not maintainable, in view of RERA, then the very purpose behind enactment of provision under Section 12(1)(c) would be defeated.

(viii) As per Section 31(1) of the RERA, the Complaint with the Authority or the Adjudicating Officer for any violation or contravention of the Provisions of the Act, can be filed against any Promotor, Allottee or Real Estate Agent, as the case may be, by any aggrieved person which include the Association of Allottees or any Voluntary Consumer Association registered under any law for the time being in force. However, Section 12 (1) of the Consumer Protection Act, 1986 allows Associations to file the suit, class action suits and allows the Government to file the suit in its individual capacity or as a representative suit. The Consumer Protection Act provides a wider scope to the consumers. Complaint filed in representative capacity or a Complaint filed by a non-aggrieved party like the Government or a Voluntary Consumer Association is entertained under this Act.

(ix) Section 88 of the RERA provides 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. The RERA Authorities have been established only in few States of India so far. So, the options available to home buyers in such cases are also the Consumer Forums. The Consumer Protection Act, 1986, has a far stronger history of case laws and precedents, which can be used by a large variety of litigants, apart from a fairly successful history of litigation.

(ix) Similar application filed by the Opposite Party in C.C. NO.1292 of 2018 has been dismissed by this Hon’ble Commission observing that the RERA, 2016 does not bar the jurisdiction of the Commission to entertain the Complaint for the simple reason that in the Act itself, a provision has been made enabling the Complainants, if they so desire, to withdraw the Complaint and approach the RERA Authorities.

15. In reply, learned Senior Counsel, submitted that even if the RERA Authorities have been established only in the few States in our



Country, the option to the Consumer to file a Complaint with the Consumer Fora is not available as the Hon'ble Bombay High Court in the case of Neelkamal Realtors Suburban Pvt. Ltd. (Supra) has held that registration under RERA is irrelevant for the purpose of entertaining petitions pertaining to RERA and moreover, matters relating to the Project which is subject matter of the present Complaints i.e. "Canary Greens" are already being entertained and pending before the Haryana RERA.

16. In order to decide on the various pleas raised by the learned Counsel for the parties, we deem it appropriate to reproduce the various provisions of RERA and the Act as under:-

**A. REAL ESTATE (REGULATION AND DEVELOPMENT ACT, 2016)**

**(i) 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.

(ii) **PREAMBLE:**

“An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto.”

(iii) **SECTIONS**

**3. Prior registration of real estate project with Real Estate Regulatory Authority:-**(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:

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:

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.

**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.

(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

(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:

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

(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.

(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.

**12. Obligations of Promoter regarding veracity of advertisement or prospects:-** Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

**14. Adherence to sanctioned plans and project specifications by the promoter:-** (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

(2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee.

**Explanation.**—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

**Explanation.**—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or

booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

**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) 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,

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:

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.

(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.

(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.

**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, 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.

(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.

(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.

(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.

(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.

(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).

(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.

(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.

(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.

(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.

## **20. Establishment and incorporation of Real Estate Regulatory Authority: -**

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that, the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

**21. Composition of Authority** - The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

**31. Filing of complaints with the Authority or the adjudicating officer-(1)** Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

**Explanation.**—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations.

**32. Functions of Authority for promotion of real estate sector** - The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government of the competent authority, as the case may be, on,—

(a) protection of interest of the allottees, promoter and real estate agent;

(b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;

(c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;

(d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment;

- (e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardization and use of appropriate construction materials, fixtures, fittings and construction techniques;
- (f) measures to encourage grading of projects on various parameters of development including grading of promoters;
- (g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;
- (h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee;
- (i) to render advice to the appropriate Government in matters relating to the development of real estate sector;
- (j) any other issue that the Authority may think necessary for the promotion of the real estate sector.

**36. Power to issue interim orders:-** Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

**37. Powers of Authority to issue directions.** - The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

**38. Power of Authority.-** (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

(2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

(3) Where an issue is raised relating to agreement, action, omission, practice or procedure that—

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely,

then the Authority, may *suo motu*, make reference in respect of such issue to the Competition Commission of India.

**43 Establishment of Real Estate Appellate Tribunal-** (1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the — (name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative to Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal Functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.

**Explanation.**—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

**44. Application for settlement of disputes and appeals to Appellate Tribunal.** – (1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal:

Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

**57.Orders passed by Appellate Tribunal to be executable as a decree.-** (1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court.



**58. Appeal to High Court.-** (1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908:

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

**Explanation.**—The expression "High Court" means the High Court of a State or Union territory where the real estate project is situated.

(2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

**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.

(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 section.

**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.

**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.

**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.

## **B. CONSUMER PROTECTION ACT, 1986**

### **(i) INTRODUCTION**

The industrial revolution and the development in the international trade and commerce has led to the vast expansion of business and trade, as a result of which a variety of consumer goods have appeared in the market to cater to the needs of the consumers and a host of services have been made available to the consumers like insurance, transport, electricity, housing, entertainment, finance and banking. A well organized sector of manufacturers and traders with better knowledge of markets has come into existence, thereby affecting the relationship between the traders and the consumers making the principle of consumer sovereignty almost inapplicable. The advertisements of goods and services in television, newspapers and magazines influence the demand for the same by the consumers though there may be manufacturing defects or imperfections or short comings in the quality, quantity and the purity of the goods or there may be deficiency in the services rendered. In addition, the production of the same item by many firms has led the consumers, who have little time to make a selection, to think before they can purchase the best. For the welfare of the public, the glut of adulterated and sub-standard articles in the market have to be checked. In spite of various provisions providing protection to the consumer and providing for stringent action against adulterated and sub-standard articles in the different enactments like Code of Civil Procedure, 1908, the Indian Contract Act, 1872, the Sale of Goods Act, 1930, the Indian Penal Code, 1860, the Standards of Weights and Measures Act, 1976 and the Motor Vehicles Act, 1988, very little could be achieved in the field of Consumer Protection.

Though the Monopolies and Restrictive Trade Practices Act, 1969 and the Prevention of Food Adulteration Act, 1954 have provided relief to the consumers yet it became necessary to protect the consumers from the exploitation and to save them from adulterated and sub-standard goods and services and to safe guard the interests of the consumers. In order to provide for better protection of the interests of the consumer the Consumer Protection Bill, was introduced in the Parliament.

(ii) **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.

(iii) **PREAMBLE**

An Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

(iv) **SECTIONS**

**2 (d)** "consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 'hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes;

***Explanation.***— For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

**2 (o)** "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

**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.

**9. Establishment of Consumer Disputes Redressal Agencies.** - There shall be established for the purposes of this Act, the following agencies, namely:—

(a) a Consumer Disputes Redressal Forum to be known as the "District Forum" established by the State Government in each district of the State by notification:

Provided that the State Government may, if it deems fit, establish more than one District Forum in a District.

(b) a Consumer Disputes Redressal Commission to be known as the "State Commission" established by the State Government in the State by notification; and

(c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.

**12. Manner in which complaint shall be made.**—(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by –

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognized consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.



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

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

***Explanation.*** - For the purpose of this section “recognised consumer association” means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force”.

**13. (Procedure on admission of complaint. —** (1) The District Forum shall, on admission of a complaint, if it relates to any goods,—

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it

and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (/) and issue an appropriate order under section 14.

(2) The District Forum shall, if the complaint admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,—

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,—

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(ii) ex parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.

(3) No proceedings complying with the procedure laid down in sub-sections [1] and [2] shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(3A) Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness, and
- (vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

(7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

**14. Finding of the District Forum.** — (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

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- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
  - (b) to replace the goods with new goods of similar description which shall be free from any defect;
  - (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
  - (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

(e) to remove the defects in goods or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent. of the value of such defective goods sold or service provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.



**15. Appeal.** — Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the District Forum, shall be entertained by the State Commission unless the appellant has deposited in the prescribed manner fifty per cent. of that amount or twenty-five thousand rupees, whichever is less:

**18. Procedure applicable to State Commissions.**—The provisions of Sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

**19. Appeals.**—Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent. of the amount or rupees thirty-five thousand, whichever is less:

**19A. Hearing of Appeal** - An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission:

Provided that no adjournment shall be ordinarily granted by the State Commission or the National Commission, as the case may be, unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by such Commission:

Provided further that the State Commission or the National Commission, as the case may be, shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of an appeal being disposed of after the period so specified, the State Commission or, the National Commission, as the case may be, shall record in writing the reasons for the same at the time of disposing of the said appeal.

**20. Composition of the National Commission.**—(1) The National Commission shall consist of—

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President;

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;

(b) not less than four, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognised university; and

(iii) be persons of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be from amongst the persons having a judicial background.

***Explanation.*** — For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has in the opinion of the Central Government such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the Central Government :

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely:—

- (a) a person who is a Judge of the Supreme Court, - Chairman  
to be nominated by the Chief Justice of India

(b) the Secretary in the Department of Legal Affairs - Member;  
in the Government of India

(c) Secretary of the Department dealing with  
Consumer affairs in the Government of India - Member.;

(1A) (i) The jurisdiction, powers and authority of the National Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) if the Members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

(2) The salary or honorarium and other allowances payable to and the other terms and conditions of service of the members of the National Commission shall be such as may be prescribed by the Central Government

(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) :

Provided also that a member may resign his office in writing under his hand addressed to the Central Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002 shall continue to hold such office as President or member, as the case may be, till the completion of his term.

**21. Jurisdiction of the National Commission.** — Subject to the other provisions of this Act, the National Commission shall have jurisdiction

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(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

**22. Power and procedure applicable to the National Commission.**

— (1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.

(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.

**23. Appeal.** — Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order of the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.

**25. Enforcement of orders of the District Forum, the State Commission or the National Commission.** — (1) Where an interim order made under this Act, is not complied with the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto.

(3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the District Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission or the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called)



and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.

**27. Penalties.** — (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

**27A. Appeal against order passed under section 27 - (1)** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under section 27, both on facts and on law, shall lie from -

(a) the order made by the District Forum to the State Commission;

(b) the order made by the State Commission to the National Commission; and

(c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission :

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

17. From the afore mentioned provisions, it is seen that RERA has been enacted in the interests of effective consumer protection, uniformity and standardization of business practices and the transactions in the real estate sector. Section 3 requires prior registration of real estate project with Real Estate Regulatory Authority. Section 5 deals with grant of Registration. Section 12 provides for obligations of Promoters regarding veracity of the advertisement or prospectus whereas Section 14 enjoins on the Promoters to adhere to sanctioned plan and Project specifications. Section 18 deals with the return of amount and compensation whereas Section 19 provides for the rights and duties of Allottees. Section 20 provides for establishment and incorporation of Real Estate Regulatory Authority whereas Section 21

provides for its composition. Section 31 gives a right to an aggrieved person to file a Complaint with the Authority for any violation or contravention of the provisions of RERA, Rules and Regulations made thereunder against any Promoter, Allottee or Real Estate Agent. Section 32 deals with the functions of Authority for promotion of real estate sector, whereas Section 36 empowers the Authority to pass interim orders in certain circumstances of the case and Section 37 gives the power to issue directions. Section 38 defines the powers which the Authority can exercise. Sections 43 and 44 provides for establishment of Appellate Tribunal and settlement of disputes and Appeals to it, whereas Section 57 provides that the orders passed by the Appellate Authority is executable as a decree of Civil Court. Section 58 provides for a further Appeal to the High Court. Sub Section (1) of Section 71 provides for the power of the Authority to adjudicate compensation under Section 12, 14, 18 and 19. However, by the proviso to sub section (1) a discretion has been given to the person whose complaint is pending before the Consumer Fora on or before the commencement of RERA to withdraw the complaint with the permission of the Consumer Fora and file it before the adjudicating officer under RERA. Section 79 bars the jurisdiction of Civil Court from entertaining any suit or proceeding in respect of any matter which the Authority, Adjudicating Officer of the Appellate Tribunal is empowered by under RERA 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 RERA. However, Section 88 specifically mentions that the provisions of RERA is in addition to and not in derogation of the provisions of any other law for the time being in force whereas Section 89 provides that the provisions of RERA will have effect notwithstanding anything inconsistent contained in any other law in force.

18. The Consumer Protection Act has been enacted to provide for better protection of the interest of consumers, for settlement of consumer disputes and the matters connected therewith. Section 2(d) of the Act defines 'Consumer' who buys any goods including any user and for hires or avails any services including beneficiary but not for any commercial purpose except as mentioned in the Explanation. Section 2 (o) defines service. It includes housing construction also. Section 3 provides that this Act is in addition to and not in derogation of the provisions of any other law for the time being in force. Section 9 deals with the establishment of Consumer Disputes Redressal Agencies (District Forum, State Commission and National Consumer Disputes Redressal Commission). Section 12 provides for the manner in which complaint has to be made whereas Section 13 deals with the procedure on admission of the Complaint. Section 14 give the power to the District Forum in appropriate cases to pass orders mentioned therein. Section 15 provides for

an Appeal to the State Commission whereas Section 18 deals with the procedure which is application to State Commission. Section 19 provides for a further Appeal to the National Commission. Section 19A provides for hearing of the Appeals. Section 20 deals with the composition of the National Commission whereas Section 21 deals with the jurisdiction. However, Section 22 makes the provisions of Sections 12, 13 and 14 of the Act (applicable to District Forum) also applicable to the National Commission. Section 23 provides for an Appeal to the Hon'ble Supreme Court. Section 25 and 27 gives the power to the Consumer Fora to enforce the orders whereas Section 27A provides for Appeal against such orders.

19. The Consumer Protection Act, 1986 has been enacted 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. The Hon'ble Supreme Court had occasion to consider the object and purpose of the Act in Lucknow Development Act vs. M.K. Gupta - (1994) 1 SCC 243, and elaborately noticed the object and purpose of the Act in the following words:

*“To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, ‘to provide for the protection of the interest of consumers’. Use of the word ‘protection’ furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, ‘a network of rackets’ or a society in which, ‘producers have secured power’ to ‘rob the rest’ and the might of public bodies which are degenerating*

*into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot.”*

20. Section 3 of the Act provided 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. Noticing the object and purpose of the Act as well as Section 3, The Hon'ble Supreme Court in Secretary, Thirumurugan Cooperative Agricultural Credit Society (Supra), laid down following in paragraph 11 and 12:

*“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 quasijudicial 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.”*

21. The Hon'ble Supreme Court had occasion to consider the provisions of Section 34 of Arbitration Act, 1940 in reference to the Consumer Protection Act, 1986 in Fair Air Engineering Pvt. Ltd. and another vs. N.K. Modi - (1996) 6 SCC 385. The Apex Court in the said case held that consumer fora is a judicial authority. In the above case, the appellant had entered into a contract with the respondent to carry out installation of a centrally air-conditioned plant in the residential house of the respondent. The respondent filed a complaint before the State Commission under the Consumer Protection At, 1986 which proceedings were stayed by the State Commission and it relegated the parties to arbitration proceedings. The NCDRC held that the proceedings before the Consumer fora is not a legal proceedings and Commission is not a judicial authority, therefore, Section 34 of the Arbitration Act, 1940 is not available to stay the proceedings. The said order of NCDRC was challenged in the Supreme Court. The Apex Court reversed the order of the State Commission and remitted the matter to the State Commission to decide the matter on merits according to law. It was held that the Parliament was well aware of the Arbitration Act, 1940 when the Consumer Protection Act was enacted providing for additional remedy. In paragraphs 15 and 16 following has been laid down:

*“15. Accordingly, it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words “in derogation of the provisions of any other law for the time being in force” would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded.*

*Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.*

*16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the Code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under the Act are at liberty to proceed with the matters in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on the peculiar facts and circumstances of a particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act.”*

22. The Apex Court had occasion to consider the provisions of Consumer Protection Act as well as the Arbitration Act, 1996 in *Skypak Couriers Ltd. v. Tata Chemicals* - (2000) 5 SCC 294, and it laid down the following:

*“Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause*

*will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force.”*

23. In National Seeds Corporation Limited vs. M. Madhusudhan Reddy and another - (2012) 2 SCC 506, the Respondent filed a complaint in the District Consumer Redressal Forum that they had suffered loss due to failure of the crops/less yield because the seeds sold/supplied by the appellant were defective. The compensation was awarded against which appeal was dismissed. The appellant challenged the order of the Commission and main contention was that the District Forum has no jurisdiction to entertain the complaint, in view of the provisions of Seeds Act, 1966 it was contended that there was arbitration clause contained in the agreement and the only remedy available to the respondent is an appropriate arbitration and the District Forum has no jurisdiction to entertain the complaint. The Apex Court repelled the submission and dismissed the appeal. In paragraph 64 it had noticed the contention of the appellant which is to the following effect:

*“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.”*

The aforesaid contention was dealt with in paragraph 66 where following was laid down:

*“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.”*

24. Another judgment where the Hon'ble Supreme Court reiterated the position of law is *Rosedale Developers Private Limited Vs Aghore Bhattacharya And Others*, (2018) 11 SCC 337 (decided on 06.09.2013). In the above case, a complaint was filed by the respondent before NCDRC. An application was filed by the appellant praying for making reference to the arbitrator in view of the arbitration agreement. The issue has been noticed in paragraphs 1 and 2 which are to the following effect:

*“1. Delay condoned. This appeal filed against order dated 13-5-2013 (2013 SCC OnLine Ncdrc 486, DLF Ltd. v. Mridul Estate (P) Ltd.338b) passed by the National Consumer Disputes Redressal Commission (for short “the National Commission”) whereby the appellant’s prayer for making a reference to the arbitrator was rejected can appropriately be termed as a frivolous piece of litigation which merits nothing but dismissal at the threshold with exemplary costs.*

*2. The respondents filed complaint alleging deficiency in service on the appellant’s part and claimed compensation to the tune of Rs 17,41,09,000 with costs of Rs 1,00,000. On being noticed by the National Commission, the appellant filed a written statement to contest the complaint. It also filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (for short “the 1996 Act”) for making a reference to the arbitrator. A two-member Bench of the National Commission referred the matter to the larger Bench. After considering the relevant statutory provisions and advertent to several judgments including the judgments in *Fair Air Engineers (P) Ltd. v. N.K. Modi*; *Skypak Couriers Ltd. v. Tata**

*Chemicals Ltd. and National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy, the larger Bench of the National Commission held that the consumer forums constituted under the Consumer Protection Act, 1986 (for short “the 1986 Act”) are not bound to refer the dispute raised in the complaint to an Arbitral Tribunal in terms of the arbitration clause contained in the agreement entered into between the parties.”*

The Hon’ble Supreme Court held that there is no merit in the above submission of the counsel. It referred to its judgments in National Seeds Corporation Ltd. (supra) and Fair Air Engineers Pvt. Ltd. (supra) and laid down following in paragraph 6 and 7:

*“6. The judgments relied upon by Shri Ghose do not have any bearing on the issue raised in this appeal. In neither of those cases, has this Court interpreted the provisions of the 1996 Act in the light of the provisions contained in the 1986 Act. Therefore, the propositions laid down in those judgments that Section 8 of the 1996 Act is mandatory cannot lead to an inference that the consumer forum is bound to make a reference to the Arbitral Tribunal.*

*7. In view of the abovestated legal position, the National Commission did not commit any error by holding that the remedy of arbitration available to the complainant does not bar the jurisdiction of the consumer forums and the consumer forums are not under an obligation to refer the matter to the Arbitral Tribunal. With the above observation, the appeal is dismissed.”*

25. The Hon’ble Supreme Court in the series of judgments have considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration

agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above. Not only the proceedings of Consumer Protection Act, 1986 are special proceedings which were required to be continued under the Act despite an arbitration agreement, there are large number of other fields where an arbitration agreement can either stop or stultify the proceedings. The complaints filed under the Consumer Protection Act can also be proceeded with despite there being any arbitration agreement between the parties. In the event a person entitled to seek an additional special remedy provided under the statutes does not opt for the additional/special remedy and he is a party to an arbitration agreement, there is no inhibition in disputes being proceeded in arbitration. It is only the case where specific/special remedies are provided for and which are opted by an aggrieved person that judicial authority can refuse to relegate the parties to the arbitration.”

26. **JUDGEMENTS RELIED UPON BY THE OPPOSITE PARTY ALONG WITH RELEVANT PARAGRAPHS:-**

(I) Allahabad Bank Vs. Canara Bank & Anr. – 2000 (4) SCC 406;

*“25. Thus, the adjudication of liability and the recovery of the amount by execution of the certificate are respectively within the exclusive jurisdiction of the Tribunal and the Recovery Officer and no other court or authority much less the civil court or the Company Court can go into the said questions relating to the liability and the recovery except as provided in the Act. Point 1 is decided accordingly.*

31. We are of the view that the appellant’s case under the RDB Act — with an additional section like Section 34 — is on a stronger footing for holding that leave of the Company Court is not necessary under Section 537 or under Section 446 for the same reasons. If the jurisdiction of the Tribunal is exclusive, the

Company Court cannot also use its powers under Section 442 against the Tribunal/Recovery Officer. Thus, Sections 442, 446 and 537 cannot be applied against the Tribunal.”

(II) Sanjay Kumar Mishra Vs. Public Information Office – I (2015) CPJ 335 (NC)

*“23. Considering the legislative intent behind providing a special mechanism for enforcement of the rights conferred by RTI Act, we are of the view that the consumer fora are ‘courts’ for the purpose of Section 23 of the RTI Act. Any other interpretation will open two parallel machineries, for enforcement of the same rights created by a special statute, which could not have been the legislative intent, particularly when RTI Act is a special law vis-à-vis Consumer Protection Act. The ambit of RTI Act is confined to one service i.e. supply of information, whereas the Consumer Protection Act deals with deficiencies in a wide variety of services rendered for consideration.”*

(III) Chairman, Thiruvalluvar Transport Corpn. v. Consumer Protection Council - (1995) 2 SCC 479:-

*“6. The question which then arises for consideration is whether the National Commission had jurisdiction to entertain the claim application and award compensation in respect of an accident involving the death of Shri K. Kumar caused by the use of a motor vehicle. Clearly the Claims Tribunal constituted for the area in question, had jurisdiction to entertain any claim for compensation arising out of the fatal accident since such a claim application would clearly fall within the ambit of Section 165 of the 1988 Act. The 1988 Act can be said to be a special Act in relation to claims of compensation arising out of the use of a motor vehicle. The 1986 Act being a law dealing with the question of extending protection to consumers in general, could, therefore, be said to be a general law in relation to the specific provisions concerning accidents arising out of the use*

*of motor vehicles found in Chapter XII of the 1988 Act. Ordinarily the general law must yield to the special law. Besides, the complaint in question cannot be said to be in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided to the deceased. The expression 'service' as defined by the 1986 Act means service of any description which is made available to potential users and includes the provision of facilities inter alia in connection with transport. The accident that occurred had nothing to do with service provided to the deceased. This becomes obvious when one reads the provision along with the definition of complaint in Section 2(1)(c) and service in Section 2(1)(o) of the 1986 Act. Complaint according to Section 2(1)(c) means any application in writing in relation to an unfair trade practice or as a restrictive trade practice adopted by any trader or in relation to goods bought by him or agreed to be bought by him. Both these clauses have no application whatsoever. The third clause relates to the services hired or availed of or agreed to be hired or availed of by a consumer. Therefore, at best it can be said the complaint in question related to the service hired or availed of by the deceased. The complaint in the instant case cannot be said to be in relation to any service hired or availed of by the consumer because the injury sustained by the consumer had nothing to do with the service provided or availed of by him but the fatal injury was the direct result of the accident on account of which he was thrown out of his seat and dashed against an iron handle of the seat in front of him. We have, therefore, no manner of doubt that this case squarely fell within the ambit of Section 165 of the 1988 Act and the Claims Tribunal constituted thereunder for the area in question had jurisdiction to entertain the same. As pointed out earlier, the 1988 Act and, in particular, the provisions in Chapter XII thereof creates a forum before which the claim can be laid if it arises out of an accident caused by the use of a motor vehicle. That being a special law would prevail over the relevant general law such as the 1986 Act but in the instant case even that question does not arise for the simple reason that the dispute in question did not attract the jurisdiction of the National Commission, whatsoever and the National Commission has not shown how it had jurisdiction. The issue was pointedly raised and for reasons best known to the National Commission it failed to come to grip with it.*

*Surprisingly, there is no discussion whatsoever in the order of the National Commission in this behalf. We are, therefore, of the opinion that the National Commission did not have jurisdiction and, as counsel for the appellant put it, this was a case of unwarranted exercise of jurisdiction.”*

(IV) General Manager, Telecom Vs. M. Krishnan & Anr. – (2009) 8 SCC 481

“8. It is well settled that the special law overrides the general law. Hence, in our opinion the High Court was not correct in its approach. In Thiruvalluvar Transport Corpn. v. Consumer Protection Council it was held that the “National Commission has no jurisdiction to adjudicate upon claims for compensation arising out of motor vehicles accidents”. We agree with the view taken in the aforesaid judgment.”

(V) Chief Commercial Manager Vs. Sanjiv Sharma – IV (2015) CPJ 655 (NC)

*“4. In Union of India & Ors. vs. Sri Ramji Enterprises & Anr., First Appeal No. 411/1996, decided on 26.09.2001, the grievance of the complainant/respondent was that they had loaded 850 metric tonnes of charcoal at Koodal Nagar Railway Station, out of which 264 metric tonnes of charcoal was lost in transit, thereby causing a loss of 13.75 lakhs to them. Alleging deficiency of service on the part of the Indian Railways, the complainant approached the concerned State Commission, by way of a complaint. The State Commission having ruled in favour of the complainant, Union of India approached this Commission by way of an appeal. Allowing the appeal, it was held by this Commission that the State Commission had no jurisdiction in the matter. In taking this view, this Commission referred to Section 15 and 28 of the Railway Claims Tribunal Act, 1987, which reads as under:-*

*“15. **Bar of jurisdiction.** – On or from the appointed day, no court or other authority shall have, or be entitled to, exercise any jurisdiction, powers or authority in relation to the matters referred to in [sub-sections (1) and (1)A] of section 13.*

*28. **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 or in any instrument having effect by virtue of any law other than this Act.”*

*This Commission rejected the contention of the complainant in that case that the provisions of this Act being in addition and not in derogation of the provisions of any law for the time being in force, even where a particular enactment oust the jurisdiction of any Forum other than the Tribunal set up under the Special Act. Reliance was placed upon the decision of the Hon’ble Supreme Court in **Marine Container Services South Pvt. Ltd. Vs. Go Go Garments (1998) 3 SCC 247**, holding that Section 3 of the Contract Act cannot override other provisions of law.”*

(VI) Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India – 2017 SCC Online Bom 9302

*“134. The entire scheme of the RERA is required to be kept in mind. It is already submitted during the course of hearing that in many cases helpless allottees had approached consumer forum, High Courts, Apex Court in a given fact situation of the case. The courts have been passing orders by moulding reliefs by granting interest, compensation to the allottees, and issuing directions for timely completion of project, transit accommodation during completion of project, so on and so forth. Under RERA now this function is assigned to the authority, tribunal. An appeal lies to the High Court. Under one umbrella, under one regulation and one law all the issues are tried to be resolved. Provisions of Section 71 refers to power to adjudicate. A District Judge is conferred with the power to adjudicate compensation under Sections 12, 14, 18 and 19. A promoter could very well put up his case before the adjudicator who deals with the issues in the light of the fact situation of each case. Therefore, there should not be any apprehension that*

*mechanically compensation would be awarded against a promoter on failure to complete the development work. The proviso to Section 71(1) provides that any person whose complaint in respect of matters covered under Sections 12, 14, 18 and 19 if 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. Proviso to Section 71(1) reads as under:—*

**“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 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.*

135. *The proviso to Section 71(1), as quoted above, is clear indicator that even pending complaint before the Consumer Forum could be transferred to the adjudicator under RERA. A submission was advanced that allottee is free to approach whatever forum in respect of the defaults committed, if any, in compliance with the agreement of sale entered into between the*



*promoter and the allottee prior to registration of RERA. In view of the scheme of RERA, we find that this contention of the petitioners cannot be upheld. It will be unreasonable to expect the allottee to resort to proceeding in different forums prior to registration of project in respect of the agreement executed prior to registration under RERA and post registration. Under the scheme of RERA, the adjudicatory mechanism is prescribed under one umbrella. We do not notice any illegality in the same.”*

(VII) Union of India & Ors. Vs. M. Adaikalam – Manu/CF/0201/1993/NC

*“4. We find that there is merit in the contention of the revision petitioners-Railways. As held by the State Commission, the Consumer Forums have no jurisdiction to entertain complaints on account of deficiency in service arising from loss, destruction, damage, deterioration or non-delivery of the goods etc. entrusted to the Railway Administration for carriage. This jurisdiction is now exclusively vested in Railway Claims Tribunal established under the Railway Claims Tribunal Act, 1987. In addition, the Railways have no liability for delay in delivery in terms of the Coaching Tariff. In view of the above, there has been an error in exercise of jurisdiction by the State Commission. The revision petition is, therefore, allowed. The order of the State Commission is set aside. There is no order as to costs.”*

(VIII) Arun Kumar Gupta Vs. Employees State Insurance Corporation – III (1998) CPJ 11 (NC)

*“ This Commission had an occasion to consider the provisions of the Railway Claims Tribunal in the case of Union of India & Anr. v. M. Adaikalam, (R.P. No. 125 of ,1992) under the Railway Claims Tribunal Act, 1987 regarding of bar of jurisdiction to entertain complaints. This Commission held as under:*

*"We find that there is merit in the contention of the revision petitioners-Railways. As held by the State Commission, the Consumer Forums have no jurisdiction to entertain complaints on account of deficiency in service arising from loss, destruction, damage, deterioration or non- delivery of the goods etc.,*

*entrusted to the Railway Administration for carriage. This jurisdiction is now exclusively vested in Railway Claims Tribunal established under the Railway Claims Tribunal Act, 1987. In addition, the Railways have no liability for delay in delivery in terms of the Coaching Tariff".*

*Relying upon the judgment of the Apex Court as well as this Commission cited above we are of the view that the complaint could not be entertained by the FORA constituted under the provisions of the Consumer Protection Act. The ESI Act being a special Act the remedy available to the complainant was to approach the ESI Court for appropriate relief. It may also be noticed that the jurisdiction of the FORA constituted under the Consumer Protection Act, 1986 to entertain such type of complaint is barred under Section 75(3) of the ESI Act. As a result, we find no merit in this appeal and it is dismissed. However, we leave the parties to bear their own costs."*

(IX) Lavasa Corporation Ltd. Vs. Jitendra Jagdish Tulsiani & Ors. –  
Manu/MH/2362/2018

*"29. The lack of standardization was found to be a constraint to the healthy and orderly growth of real estate industry. In view of the above, it was found necessary to have a Central Legislation, namely, the RERA, in the interests of effective consumer protection, uniformity and standardization of business practices and transactions in the real estate sector.*

*30. The RERA is, therefore, enacted to provide for establishment of the 'Real Estate Regulation and Development 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. The object of the RERA is stated to be to protect the interests of consumers in the real estate sector, like the Respondents herein.*

*31. Thus, the RERA is brought on Statute Book to ensure greater accountability towards the consumers and significantly reduce frauds and delays, as also the current high transaction costs. It attempts to balance the interests of consumers and promoters, by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions and set minimum standards of accountability and a fast track dispute resolution mechanism. The RERA, as stated in its 'Objects and Reasons', was enacted for inducting professionalism and standardization in the sector, thus, paving the way for accelerated growth and investments in the long run.”*

(X) Union of India & Ors. Vs. Priyankan Sharan & Anr. – (2008) 9 SCC 15

*“15. “10. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Surrey (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha and Calcutta Tramways Co. Ltd. v. Corpn. of Calcutta) when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. ‘If the language of the enacting part of the statute does not contain the provisions*

*which are said to occur in it you cannot derive these provisions by implication from a proviso' said Lord Watson in West Derby Union v. Metropolitan Life Assurance Society. Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. [See A.N. Sehgal v. Raje Ram Sheoran<sup>5</sup>, Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Kerala State Housing Board v. Ramapriya Hotels (P) Ltd]*

11. 'This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition;

and sometime a covenant' (*Coke Upon Littleton*, 18th Edn., p. 146).

'If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails. ... But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole' (per Lord Wrenbury in *Forbes v. Git*).

12. A statutory proviso 'is something engrafted on a preceding enactment' (*R. v. Taunton, St. James*, ER p. 311).

13. 'The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances' (per Lord Esher in *Barker, Re*).

14. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso. (See *Jennings v. Kelly*)

15. The above position was noted in *Ali M.K. v. State of Kerala*.

16. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.

17. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. (See *Institute of Chartered Accountants of India v. Price Waterhouse*) The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, the courts, cannot aid the legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *State of Gujarat v. Dilipbhai Nathjibhai Patel*.) It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. [See *Stock v. Frank Jones (Tipton) Ltd.*] Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in *Vickers Sons and Maxim Ltd. v. Evans* quoted in *Jumma Masjid v. Kodimaniandra Deviah*)

18. The question is not what may be supposed and has been intended but what has been said. ‘Statutes should be construed, not as theorems of Euclid’, Judge Learned Hand said, ‘but words must be construed with some imagination of the purposes which lie behind them’. (See *Lenigh Valley Coal Co. v. Yensavage*) The view was reiterated in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* (SCC p. 284, para 16).

19. In *D.R. Venkatachalam v. Transport Commr.* it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

20. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST v. Popular Trading Co.*) The legislative casus omissus cannot be supplied by judicial interpretative process.

21. Two principles of construction—one relating to casus omissus and the other in regard to reading the statute as a whole—appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. ‘An intention to produce an unreasonable result’, said Danackwerts, L.J. in *Artemiou v. Procopiou* (All ER p. 544 I), ‘is

not to be imputed to a statute if there is some other construction available'. Where to apply words literally would 'defeat the obvious intention of the legislation and produce a wholly unreasonable result', we must 'do some violence to the words' and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* where at AC p. 577 he also observed (All ER p. 664 I): 'This is not a new problem, though our standard of drafting is such that it rarely emerges.']

22. It is then true that,

'when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is *casus omissus*, and that the law intended *quae frequentius accidunt*'.

'But' on the other hand, 'it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom' (see *Fenton v. Hampton*). A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt legislatores*, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute — *Casus omissus et oblivioni datus dispositioni communis juris relinquitur*; 'a *casus omissus*', observed Buller, J. in *Jones v. Smart* (ER p. 967), 'can in no case be supplied by a court of law, for that would be to make laws'.

23. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated:

‘The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further’ (see *Grey v. Pearson*).

The latter part of this ‘golden rule’ must, however, be applied with much caution. ‘If’, remarked Jervis, C.J.,

‘the precise words used are plain and unambiguous, in our judgment, we are bound to construe them in their ordinary sense, even though it do lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning’. (See *Abley v. Dale*, ER p. 525.)

24. At this juncture, it would be necessary to take note of a maxim ‘*ad ea quae frequentius accidunt jura adaptantur*’ (the laws are adapted to those cases which more frequently occur).”

The above position was highlighted in *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat* (SCC pp. 679-82, paras 10-24).”

27. Constitutionality of the provisions of the CP Act was examined by the Supreme Court in *State of Karnataka v. Vishwabharathi House Building Coop. Society*, (Supra). While repelling the challenge, the object and purpose of the CP Act, laid down in previous decisions, were noted. Pertinent observations from such decision, in this behalf, read as follows:



*"17. The provisions of the said Act clearly demonstrate that it was enacted keeping in view the long-felt necessity of protecting the common man from wrongs wherefore the ordinary law for all intent and purport had become illusory. In terms of the said Act, a consumer is entitled to participate in the proceedings directly as a result whereof his helplessness against a powerful business house may be taken care of.*

*18. This Court in a large number of decisions considered the purport and object of the said Act. By reason of the said statute, quasi-judicial authorities have been created at the district, State and Central levels so as to enable a consumer to ventilate his grievances before a forum where justice can be done without any procedural wrangles and hyper technicalities.*

*19. One of the objects of the said Act is to provide momentum to the consumer movement. The Central Consumer Protection Council is also to be constituted in terms of Section 4 of the Act to promote and protect the rights of the consumers as noticed hereinbefore."*

28. In Thirumurugan Coop. Agricultural Credit Society (Supra), the Supreme Court upon considering section 3 of the CP Act held as follows:

*"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."*

29. Not too long ago, the Supreme Court once again in the case of Virender Jain (Supra) reiterated that the remedy under the CP Act is in addition to the remedies available under other statutes and the availability of alternative remedies is not a bar to entertaining a complaint filed under the CP Act.

30. In the Black's Law Dictionary, it is said that 'Court' is an organ of the Government belonging to the judicial department whose function is the application of the laws to controversies brought before it and the public administration of justice. It further appears therefrom that courts may be classified and divided according to several methods. Of them, civil courts are established for the adjudication of controversies between individual parties, or the ascertainment, enforcement and redress of private rights.

31. It thus seems to be clear that an action brought to enforce, redress or protect private rights conferred by the civil law or by statute is a 'civil action'. Therefore, a civil action once brought before a 'Court' and received by it for decision is regarded as a 'civil proceeding'.

32. There can, thus, be no doubt that a proceeding brought before a forum created by the CP Act would be a civil proceeding but the all-important question is whether such forum is a 'Court' or not.

33. If the District Forum or the State Commission or the National Commission created by the CP Act are not 'courts', what then is their status? We have to take a few steps backward in point of time to find the answer. With the increase of population over the years, disputes increased manifold. The 'civil courts' that were available were insufficient to cater to the need of the litigants who approached it. With passage of time, realization having dawned on the Government of the day that proceedings brought before 'civil courts' in respect of civil actions take a long time to conclude, thereby benefiting a wrong doer and frustrating the party seeking justice, the idea of constituting special tribunals to deal with specified subjects developed. This resulted in creation of specialized tribunals ostensibly to accelerate delivery of justice to the justice seeker. Having regard to the special nature of dispute that is brought before a tribunal, the proceedings before it could well partake the character of civil proceedings which, in the absence of such tribunals, could have been received and tried by the civil courts. Since reducing the burden of the 'civil courts' was the paramount object, the competent legislature invariably engrafted a provision in the enactment providing for exclusion of the jurisdiction of the 'civil courts' in respect of any matter which under such statute is required to be received and tried by the specialized tribunal. The fora created by the CP Act, without doubt, are such special tribunals which were brought into existence to achieve its avowed objects. In Charan Singh Vs.

Healing Touch Hospital – (2000) 7 SCC 668, law has been laid down that the authorities under the CP Act exercise quasi-judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it should arrive at a conclusion based on reason.

34. In *Laxmi Engineering Works v. P.S.G. Industrial Institute* - (1995) 3 SCC 583, views have been expressed that the CP Act has created fora for decisions in respect of consumer disputes, which are not 'Courts' but quasi-judicial bodies or authorities or agencies invested with some of the powers of a 'civil court'.

35. There are, however, certain fundamental differences between a 'civil court' and a 'tribunal' of the nature created by the CP Act. A Constitution Bench of the Supreme Court in *Union of India v. Madras Bar Association* - (2010) 11 SCC 1, traced the differences between courts and tribunals and held as follows:

*"45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well-recognised differences between courts and tribunals. They are:*

*(i) Courts are established by the State and are entrusted with the State's inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.*

*(ii) Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an 'expert' in the field to which the tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions.*

*(iii) While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision-making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act."*

36. Paragraph 43 of the decision in Malay Kumar Ganguli Vs. Sukumar Mukherjee (Dr.) – (2009) 9 SCC 221 reads as follows:

"54. \*\*\*\*\* 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."

37. In Kishore Lal Vs. Chairman Employees' State Insurance Corporation – (2007) 4 SCC 579, a Bench of three learned Judges of the Supreme Court was considering whether the subject dispute could be resolved by the civil court despite a forum made available by the Employees' State Insurance Act, 1948 (hereafter the ESI Act). After noticing previous decisions, it had the occasion to observe as follows:

"17.\*\*\*\*\* The trend of decisions of this Court is that the jurisdiction of the consumer forum should not and would not be curtailed unless there is an express provision prohibiting the consumer forum to take up the matter which falls within the jurisdiction of Civil Court or any other forum established under some enactment. The Court had gone to the extent of saying that if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the consumer forum would not be barred and the power of the consumer forum to adjudicate upon the dispute could not be negated."

In paragraph 21 of the said decision, it was also held by the Court that the jurisdiction of the consumer forum is not ousted by virtue of sub-sections (1) or (2) or (3) of section 75 of the 1948 Act. Significantly, sub-section (3) of section 75 prohibits a 'civil court' to decide or deal with any question or dispute as in subsections (1) and (2) or to adjudicate any liability which by or under the 1948 Act is to be decided by a medical board, or by a medical appeal tribunal or by the Employees' Insurance Court.

38. In *M. Lalitha* (supra), the Supreme Court was considering the question as to whether the complaint lodged before the district forum was maintainable having regard to the provisions of Sections 90 and 156 of the Tamil Nadu Cooperative Societies Act, 1983. Upon consideration of the provisions of the CP Act, the Court proceeded to observe as follows:-

*"18. The decision in Dhulabhai case - AIR 1969 SC 78, also does not help the appellant. The present case is not one where the question to be considered is as to the exclusion of jurisdiction of the civil court in view of the provisions of Section 90 read with Section 156 of the Act. Provisions of the 1986 Act, as already made clear above, apply in addition to the other provisions available under other enactments. It follows that the remedies available under the 1986 Act for redressal of disputes are in addition to the available remedies under the Act. Under the 1986 Act we have to consider as regards the additional jurisdiction conferred on the forums and not their exclusion. In Dhulabhai case consideration was whether the jurisdiction of the civil court was excluded. Propositions (1) and (2) indicate that where the statute gives a finality to the orders of the Special Tribunals, the jurisdiction of civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Further, where there is an express bar on the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. The remedies that are available to an aggrieved party under the 1986 Act are wider. For instance, in addition to granting a specific relief the forums under the 1986 Act have jurisdiction to award compensation for the mental agony, suffering etc. which possibly could not be given under the Act in relation to dispute under Section 90 of the Act. Merely because the rights*

*and liabilities are created between the members and the management of the society under the Act and forums are provided, it cannot take away or exclude the jurisdiction conferred on the forums under the 1986 Act expressly and intentionally to serve a definite cause in terms of the objects and reasons of the Act, reference to which is already made above. When the decision of Dhulabhai case was rendered, the provisions similar to the 1986 Act providing additional remedies to parties were neither available nor considered. If the argument of the learned counsel for the appellant is accepted, it leads to taking away the additional remedies and forums expressly provided under the 1986 Act, which is not acceptable.*

*19. The question of conflict of decisions may not arise. If the parties approach both the forums created under the Act and the 1986 Act, as indicated in the case of Fair Air Engineers (P) Ltd. it is for the forum under the 1986 Act to leave the parties either to proceed or avail the remedies before the other forums, depending on the facts and circumstances of the case."*

39. In the case of Veena Ghai & Anr. (Supra) the State Consumer Disputes Redressal Commission, UT, Chandigarh has held as follow:-

“Further contention was raised by Counsel for the opposite parties that in the face of provisions of the RERA, under which the opposite parties have registered the project, in question, on 15.09.2017, it was not open to this Commission, to entertain and decide the present complaint. He further asserted that sufficient safeguard is provided under the provisions of RERA and if the complainants are feeling aggrieved of any action, on the part of the opposite parties, they may approach under the said Act (RERA) and not under the Act, 1986.

We are not inclined to accept this argument. At the time of arguments, it is very fairly admitted by Counsel for the contesting parties, that the provisions of RERA are prospective in nature. It was also so said by the High Court of Bombay in

the case of NeelKamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and ors. 2018 (1) R.C.R. (Civil) 298. It is on record that under the RERA, the opposite parties got themselves registered their project, only on 15.09.2017. It is also on record that some of the provisions of RERA came into operation on 01.05.2016 and even the remaining of it, in May 2017. In all, the grievance has been raised by the complainants qua wrongful act/mistake done leading to deficiency in providing service and adoption of unfair trade practice, in selling the project by the opposite parties without sanctions/approvals, before coming into existence of RERA. Reading of the provisions of Section 88 of RERA makes it very clear that the same are in addition and not in derogation of the provisions of any other law for the time being in force. Section 79 of the RERA further makes it very clear that jurisdiction of only the Civil Court to entertain a suit or proceedings qua action taken as per the provisions of the said Act, is barred.

It may be stated here that the Consumer Foras under the Act, 1986 despite having some trappings of a Civil Court are not the Civil Courts. As such, the jurisdiction of the Consumer Foras is not debarred, to entertain the complaints filed by consumers, alleging deficiency in providing service, negligence and adoption of unfair trade practice against the opposite parties. Intention of the framers of law has been made clear by the concerned Department i.e. Ministry of Housing and Urban Property Alleviation, Government of India in its website [www.mygov.in/group/ministry-housing-and-urban-poverty-alleviation](http://www.mygov.in/group/ministry-housing-and-urban-poverty-alleviation). Under Frequently Asked Questions (FAQ), at Sr.nos. 85 and 86, it was observed as under:-

***“85. Are the civil courts and consumer forums barred from entertaining disputes under the Act?***

*As per section 79 of the Act civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to determine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act. Section 71 proviso permits the complainant to withdraw his complaint as*

*regards matters under section 12, 14, 18 and section 19, from the consumer forum and file it with the adjudicating officer appointed under the Act.*

**86.** *Can a complainant approach both the Regulatory Authority / adjudicating officer and the consumer forums for the same disputes?*

*The laws of the country do not permit forum shopping, thus, an aggrieved can only approach one of the two for disputes over the same matter.”*

40. From the various decisions of the Hon'ble Supreme Court referred to above, the following principles emerge:-

(i) The Consumer Protection Act, 1986 is a supplement Act and not in derogation of any other Act;

(ii) Any Consumer who is aggrieved by any defect in goods purchased or deficiency in service as also regarding unfair trade practice, can approach the Consumer Fora by filing the complaint under the Act. Even a Class Action Complaint is permissible under the Act.

(iii) The Consumer Fora constituted under the Consumer Protection Act, 1986 are not Civil Courts.

(iv) The Consumer Fora can provide for the reliefs as contemplated under Section 14 of the Act.

(v) A Consumer cannot pursue two remedies for the same cause of action. However, if a Consumer has not approached for redressal of its grievance under the particular Statute, the Consumer can approach the Consumer Fora under the Consumer Protection Act. But, if the Consumer had already approached the Authority under the relevant Statute, he cannot simultaneously file any complaint under the Consumer Protection Act.



(vi) Mere availability of a right to redress the grievance in a particular Statute will not debar the Complainant/Consumer from approaching the Consumer Fora under the Act.

(vii) Even though under Sections 14, 15, 18 and 19 of RERA, various provisions have been made which are to be followed by the Developer/Promoters and the rights and duties and the return of amount as compensation as also rights and duties of Allottees, yet same cannot mean to limit the right of the Allottee only to approach the Authorities constituted under the RERA, he can still approach the Consumer Fora under the Consumer Protection Act.

(viii) Section 71 of RERA which gives the power to adjudicate, does not expressly or impliedly bar any person from invoking the provisions of the Consumer Protection Act. It has also given a liberty to the person whose Complaint is pending before the Consumer Fora to withdraw it and file before the RERA Authorities.

(ix) Section 79 of RERA only prohibits the jurisdiction of Civil Court from entertaining any suit or proceeding in respect of any matter which can be decided by the Authorities constituted under the RERA. As the Consumer Fora are not Civil Courts, the provisions of Section 79 which bar the jurisdiction of Civil Courts, will not be attracted. So far as to grant injunction is concerned, only that power has been taken away by Section 79. But, it does not, in any manner, effect the jurisdiction of the Consumer Fora in deciding the Complaints. Both, the Consumer Protection Act, 1986 and the Real Estate (Regulation and Development) Act, 2016 are supplemental to each other and there is no provision in the Consumer Protection Act which is inconsistent with the provisions of RERA.

41. Applying the aforesaid principles to the present case, we are of the considered opinion that this Commission has jurisdiction to proceed with the Complaint Cases filed by the Consumers and neither Section 71 nor Section 79 and nor Section 89 creates any embargo or prohibits the jurisdiction of the Consumer Fora. In view of the foregoing discussions, all the Applications are misconceived and liable to be rejected. Ordered accordingly.

42. So far as the question of pecuniary jurisdiction is concerned, in view of the Larger Bench's decision in the case of Ambrish Kumar Shukla v. Ferrous Infrastructure Pvt. Ltd. - I (2017) CPJ 1 (NC), the value of the flat/apartment along with amount of refund and compensation claimed has to be taken into consideration and when it is taken, the value exceeds ₹1 crore. In respect of the plea that there exists an Arbitration clause in the Agreement to Sell and, therefore, matters should be referred to Arbitration and this Commission has no jurisdiction to proceed with the matters, this issue has been settled by the Hon'ble Supreme Court in the case of Emaar MGF Land Ltd. vs. Aftab Singh – I (2019) CPJ 5 (SC) wherein the Hon'ble Supreme Court has held that remedy under the Consumer Protection Act, 1986 is confined to the Complaint filed by the Consumer as defined in the Act for defects and deficiency caused by the Service Provider. Under the Act, the cheap and speedy remedy has been provided to the Consumer which is the object and purpose of the Act and merely because Arbitration can be proceeded under the Arbitration and Conciliation Act, 1986 is not a ground to restrain the Consumer Fora from proceeding with the Complaints.

43. Complaints be listed for directions on 30.04.2019.

.....J  
**R.K. AGRAWAL**  
**PRESIDENT**

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**M. SHREESHA**  
**MEMBER**