

LAW & POLICY UPDATE

REAL ESTATE



RERA v. NCDRC: Which forum should you approach?

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The Parliament enacted the Real Estate (Regulation and Development) Act (**RERA**) in 2016, with the aim of protecting the rights and interests of consumers, along with the attainment of uniformity and standardization of business practices and transactions in the real estate sector. It, *inter alia*, endeavors to balance the interests of the consumers and promoters by imposing certain responsibilities on them. It seeks to establish a symmetry of information between the promoter on one hand and a purchaser on other, transparency of contractual conditions, setting up of minimum standards of accountability and a fast-track dispute resolution mechanism. The genesis of this creation has been of much interest and adulation in various sections of the society.

Whilst the said Act has been born, winding and unwinding through a convoluted path, the assumedly role and the magical wand it purported to wield, was to achieve its promises. However, the impact and effect of the legislation appeared to be ephemeral and twisted into mediocracy, sluggishness and ineffectiveness. Furthermore, non-compliances, deviations, and delays in the implementation were punched in the trampoline of the statute, which led to a sluggish rate of progress. The situation was further amplified by rampant delays by various states in setting up the relevant authorities under the Act, lackadaisical functioning of the institutional mechanism and creation of rules in deviation from the Act. It is an established principle of law that where rules are to be framed for 'carrying out the purpose of the Act', such rules cannot travel beyond the Act itself. However, the concerned authorities failed to demonstrate any semblance of uniformity in their adjudications, which was against the very spirit of the Act.

The question whether RERA regime was the solitary panacea to the anathema that had afflicted the real estate sector through exclusive jurisdiction of regulation and control has been considerably dwelt upon. Supreme Court ruled in *Pioneer Urban Land and Infrastructure Ltd & Anr v. Union of India*¹ that the remedies that are provided to allottees of flats are concurrent remedies, and such allottees of flats were in a position of availing the remedies under the Consumer Protection Act, 1986, (**CP Act**) along with the triggering the Insolvency and Bankruptcy Code, 2016.

Furthermore, RERA has also declared, that the provision of the Act are in addition to, and not in derogation of any other law for the time being in force. The provisions of the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other form. This heralded the era of RERA regime, which promised to provide succor to the home buyers in the midst of effecting a robust streamlining of the sector and their stake holders. The hits and misses have been an unceasing subject of deliberations, orations and debates, not being repeated herein for sake of brevity, but succinctly put, it has failed to deliver the expected and promised results.

¹ 2019 SCC Online SC 1005

Coming as a welcome delight to the real estate consumer, the Supreme Court in the matter of *Imperia Structures Ltd. v. Anil Patni & Anr*² held that Section 79 of the RERA Act does not in any way verboten the Commission or the Forum, as the case may be, under the provisions of the Consumer Protection Act to entertain any complaint. The Supreme Court further interpreted the provisions of the RERA Act, as reproduced hereinbelow:

'...28. Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to the concerned complainant but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act.'

Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a Civil Court and express saving under Section 88 of the RERA Act, make the position quite clear. Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act.'

Hence, from the afore-mentioned rulings, it can be inferred that those allottees that squarely fall within the ambit of the expression 'Consumer' can approach the Consumer Forum in order to avail remedy available therein, and whilst it provides with a relatively expeditious remedy as compared to RERA on account of greater appellate provisions, it reduces the efficacy of RERA. However, availing any remedy available under the Consumer Protection Act, 1986 cannot be said to be in violation of the statutory scheme prescribed under the Real Estate (Regulation and Development) Act, 2016.

The inference is manifest, that is, through the crystallized and conjoint interpretation of the statutory provisions and conspectus of judicial precedents that the legislature provided multiple fora for redressal of grievances of the stake holders going beyond the RERA Regime. In consequence and in fairness, the Consumer Disputes Redressal fora would have the propensity of drawing significant number of disputes for obvious reasons that it is commonly perceived that adjudication here would be more expeditious and further, propelled by the fact that the appellate layers are fewer.

Whilst, the efficacy of the RERA regime may appear to be challenged, it may largely be illusory. Existentially, there are concurrent jurisdiction as well as exclusive jurisdiction vesting in the RERA regime and the litigant has to make choice of the preferred forum depending upon the jurisdiction and cause of action. In overlapping of jurisdiction scenario, the litigant will have a choice within the four walls of the legislation and judicial precedents. The Litigant is essentially required to:

- Evaluate the respective legislations to ensure that they have invoked the correct jurisdiction lest their action may be nullified due to incorrect jurisdictions and issues of maintainability.
- In domains of concurrent jurisdiction, choose the forum of a proven track record.

If a view is taken from a symbiotic prism, the RERA regime continues to be a force to reckoned with and promises to deliver stellar services in the real estate space and in its domain and jurisdiction, in close coordination with other laws such as the Competition Act, 2002, the various state wise Apartment Ownership Acts and other plethora of legislations and provisions. Whether this is to happen, only history will vindicate and tell.

² 2020 SCC Online SC 894

