



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Empowering Homebuyers: A Comparative Study of Legal Safeguards and Redressal Mechanisms

Shreyas S. Kulkarni^a

^aSymbiosis Law School, Nagpur, India

Received 25 March 2024; *Accepted* 27 April 2024; *Published* 01 May 2024

People consider owning a home as a dream that brings both financial stability and personal satisfaction. In India, the real estate sector has experienced expansion providing numerous prospects for potential homebuyers. Along with this growth comes challenges, including project delays concerns, about quality and deceptive marketing practices that have affected the industry negatively. The Indian Parliament enacted the Real Estate (Regulation and Development) Act, 2016 in response to the challenges faced by the industry. Before this act came into effect, regulations for the real estate sector were governed by the Consumer Protection Act, 1958. Currently, these regulations are covered under the Consumer Protection Act, 2019. RERA provides mechanisms to resolve disputes, appeals, and severe penalties that contribute to increased transparency and compliance in the property sector. In parallel, The CPA provides a means for consumers to seek redress for property possession delays and service deficiencies. Its provisions shall be applicable to a wide range of assets and provide rapid decision-making through consumer commissions with an interconnected appellate structure. This research article examines the interlinked aspects of both acts in the context of India's property sector. The role of these legislative frameworks in protecting consumers' interests is carefully analyzed. It also analyzes the application of these laws with reference to recent judicial precedents to emphasise their shared objective of consumer protection. This study highlights the rights of allottees with regard to timely possession, along with recourse to a refund, interest and compensation in case of infringement.

Keywords: *consumer protection, homebuyer rights, dispute resolution, legal remedies.*

INTRODUCTION

The Real Estate (Regulation and Development) Act, 2016¹ (RERA) was enacted by the Parliament to regulate the real estate sector and protect the interests of homebuyers. It aims to establish transparency, accountability, and efficiency in the real estate industry. The Act mandates the registration of projects and real estate agents, provides guidelines for the sale and purchase of properties, and establishes the rights and obligations of homebuyers and developers. It also sets penalties for non-compliance and establishes Real Estate Regulatory Authorities at the state level. RERA applies to both residential and commercial real estate projects. It covers both ongoing and new projects, ensuring that all stakeholders are protected under the legislation.

In order to strengthen consumer protection in India, the Consumer Protection Act of 1986 was proposed. The Consumer Protection Act of 1986 was replaced in 2019 by the federal government's proposal of The Consumer Protection Act, 2019² (CPA). The Central Consumer Protection Authority was introduced by the CPA to address consumer grievances and to ensure fair trade practices. It also introduces provisions for mediation and alternate dispute resolution mechanisms to expedite the resolution of consumer disputes. The Scope and applicability of the Act apply to all goods and services, including real estate transactions. It covers both online and offline transactions and protects consumers against unfair trade practices and misleading advertisements.

Both RERA and the CPA aim to safeguard consumer interests and provide effective remedies for grievances. Sections 59-72 of RERA and Sections 82-93 of the CPA outline key provisions related to remedies and offenses. This research paper aims to compare the remedies provided under RERA and CPA, by conducting an in-depth analysis of their respective redressal mechanisms and efficiency. The study aims to shed light on the significance of these legislative

¹ Real Estate (Regulation and Development) Act 2016

² Consumer Protection Act 2019

frameworks in ensuring consumer protection and seeks to provide valuable insights into the effectiveness and limitations of each legislation.

REMEDIES UNDER THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT 2016

Allottees have the right to receive timely possession of the property, as per the terms of the agreement. If the promoter fails to deliver possession on time, the allottee can claim a refund of the amount paid, along with interest and compensation. The right of allottees to receive timely possession of the property and claim a refund in case of delay is provided in this Act. Section 18 requires the promoter to adhere to the approved plans and project specifications, and to complete the project within the agreed timeline.³ Section 19 requires the promoter to maintain a separate account for each project, and to use the funds collected from allottees only for that project.⁴ If the promoter fails to deliver possession on time, the allottee can claim a refund of the amount paid, along with interest and compensation, as per the provisions of the Act.

The provisions related to the right of promoters to seek relief from the Real Estate Regulatory Authority or the Appellate Tribunal in case of disputes with allottees or other parties, and to file an appeal against any orders passed by them, are also provided in this Act. Section 44(1) states that the appropriate government, competent authority, or any person aggrieved by any direction, order, or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.⁵ Section 44(5) states that an appeal filed according to the instructions in sub-section (1) will be handled promptly, and efforts will be exerted to resolve the appeal within sixty days from the date of receiving it. However, if an appeal cannot be resolved within these sixty days, the Appellate Tribunal must provide written reasons for the delay.⁶

The Real Estate Regulatory Authority has the power to impose penalties on promoters as well as allottees for non-compliance with the provisions of the Act. It can also order the refund of amounts paid by allottees, and take other measures to protect the interests of consumers. Sections 59 to 72 encapsulate a spectrum of penalties and provisions, each finely calibrated to

³ Real Estate (Regulation and Development) Act 2016, s 18

⁴ Real Estate (Regulation and Development) Act 2016, s 19

⁵ Real Estate (Regulation and Development) Act 2016, s 44(1)

⁶ Real Estate (Regulation and Development) Act 2016, s 44(5)

reinforce accountability within the real estate sector. From penalties for non-registration, contravention of provisions, and non-compliance with orders, to mechanisms governing refunds, appeals, and repercussions for companies, these sections establish a robust framework to ensure transparency, fairness, and fulfillment of obligations within the realm of real estate dealings.

REMEDIES UNDER THE CONSUMER PROTECTION ACT 2019

Before the enactment of the RERA, purchasers traditionally had the option to approach consumer forums to address disputes and grievances. The former Consumer Protection Act of 1986, along with the current Consumer Protection Act of 2019, established distinct avenues for seeking remedies at varying tiers – the District Commission, State Commission, and National Commission.⁷ These bodies were established with specific territorial parameters, linked to the residence or workplace of either the complainant or the opposing party, or the location of the cause of action. Jurisdiction was also influenced by the monetary value of the goods or services in question.

In the case of *Fortune Infrastructure and Anr v Trevor D'Lima, 2018*⁸ it was held that under the CPA, buyers have the prerogative to file complaints concerning delays in property possession or service deficiencies stemming from the use of subpar materials and substandard products. In such instances, homebuyers had the right to seek an order mandating the developer to reimburse the funds along with accrued interest and compensation. This compensation could encompass damages incurred by homebuyers due to inadequate service provision.

The establishment of the Central Consumer Protection Authority (CCPA) under Section 10(1)⁹ is a pivotal measure to ensure robust enforcement of consumer rights and the expeditious resolution of disputes, ultimately reinforcing consumer protection. CCPA's investigative capacity against unfair trade practices equips it to take prompt actions against wrongdoers, thus safeguarding consumers from deceptive and harmful practices. Much like RERA, the authority

⁷ 'Consumer Court India' (*Clear Tax*, 07 June 2021) <<https://cleartax.in/s/consumer-court>> accessed 11 March 2024

⁸ *Fortune Infrastructure and Anr v Trevor D'Lima* (2018) 5 SCC 442

⁹ Consumer Protection Act 2019, s 10(1)

granted to CCPA to conduct inquiries into violations and impose penalties, acts as a significant deterrent, fostering adherence to regulations aimed at consumer well-being. Consumers can lodge appeals against CCPA's decisions, facilitating a structured mechanism for dispute redressal and upholding the principles of equity. Complementing these aspects CCPA has the authority to issue recalls for unsafe goods and mandate the withdrawal of faulty services, thereby reinforcing consumer safety and ensuring the accountability of service providers.

Complaints can only be lodged by purchasers and allottees who are officially registered. The term 'Registered Agency' or 'Purchaser' pertains to any voluntary consumer association that has obtained registration according to the provisions of the Companies Act 1956¹⁰ or any other prevailing law.

According to Section 41,¹¹ a person who feels aggrieved by a decision issued by the District Commission can appeal this order to the State Commission. The appeal must be based on factual or legal grounds and should be submitted within forty-five days from the date of the initial order. This appeal should adhere to the specified format and procedure. Similarly, as per Section 51(1), anyone dissatisfied with a decision made by the State Commission under the authority of sub-clause (i) or (ii) of clause (a) of sub-section (1) of Section 47 can appeal this decision to the National Commission.¹² The time limit for filing such an appeal is thirty days from the date of the order. However, the National Commission may not consider appeals submitted after these thirty days unless there is substantial justification for the delay. This process indicates that final decisions are reached more swiftly within the Consumer Commissions.

ANALYSIS OF REMEDIES AND OFFENCES UNDER RERA AND CPA

RERA -

Grievance Redressal Mechanism: RERA establishes an online portal for filing grievances, enabling homebuyers to seek resolution within 60 days. This mechanism empowers buyers to report non-compliance by builders and seek appropriate remedies.

¹⁰ Companies Act 1956

¹¹ Consumer Protection Act 2019, s 41

¹² Consumer Protection Act 2019, s 51(1)

Expertise: RERA authorities have specialized knowledge of the real estate industry, allowing them to effectively handle disputes and violations within this sector.¹³ RERA is specifically designed to regulate the real estate sector and protect the interests of homebuyers. It addresses issues related to real estate projects, developers, and agents.

Refund and Compensation: If a builder fails to deliver possession on time, RERA provides remedies such as a refund of the amount paid by the buyer along with interest and compensation for any losses incurred.

Timely Possession and Quality Construction: RERA addresses homebuyers' grievances related to timely possession and quality construction. It provides a specialized forum for real estate disputes, potentially leading to quicker resolution as compared to general consumer commissions. It mandates builders to abide by project completion timelines and ensures adherence to construction standards.

Limitation Period: In the case of *Kanishk Kapoor v ATS Estates Private Limited*¹⁴ it was held that, according to RERA, there is no specific time frame provided for filing a complaint. The Act does not impose any limitation period for filing a complaint. However, it is important to note that the provisions of the Limitation Act, of 1963, need to be followed. This means that complainants must comply with the time periods prescribed in the Limitation Act. It is advisable to file a complaint as soon as possible to ensure timely resolution of the dispute.

Pecuniary Jurisdiction: Within the framework of the RERA Act, there exists no specific financial threshold for jurisdiction.¹⁵ This implies that even an individual homebuyer who has made a payment of ₹ 1 Lakh rupees or less to the builders is entitled to register a complaint. The RERA legislation mandates that property promoters must place 70% of their earnings into a separate bank account, held in a scheduled bank. The promoter can only withdraw these funds after certification by a qualified engineer, architect, and practicing chartered accountant. This

¹³ 'What is RERA Act?' (*Bajaj Finserv*, 25 May 2021) <<https://www.bajajfinserv.in/insights/know-all-about-rera-act>> accessed 11 March 2024

¹⁴ *Kanishk Kapoor v ATS Estates Private Limited* Complaint GC No 1828/2020

¹⁵ Vineet Nalawalla, 'RERA Tribunal or Consumer Forum' (*Chambers and Partners*, 07 September 2023) <<https://chambers.com/articles/rera-tribunal-or-consumer-forum>> accessed 11 March 2024

certification verifies that the withdrawal aligns with the project's completion percentage. This provision acts as a safeguard against the unauthorized diversion of funds.

Appeals Hierarchy: RERA establishes a hierarchical system for appeals, encompassing the Real Estate Regulatory Authority, the Real Estate Appellate Tribunal, the High Court, and ultimately, the Supreme Court. This legislation was enacted to effectively tackle prevalent concerns within the real estate domain, including fraudulent activities, lack of accountability, and project completion delays. Its primary objectives encompass enhancing transparency, facilitating efficient regulation, and safeguarding the interests of property buyers. In the case of *Praveen Chhabra v Real Estate Appellate Tribunal*,¹⁶ the Appellate Tribunal's intervention was observed, where non-compliant projects faced construction halts until adherence to registration prerequisites was verified.

Complaint Filing Flexibility and Eligibility: There is a specified format for filing a complaint before RERA. Every state's RERA official website will have its complaint section and the buyer has to fill in the requisite details in the form prescribed. Aggrieved persons can file complaints under Section 31 (1) of The RERA Act.

Homebuyer Relief: RERA empowers distressed allottees to reclaim the amount paid for a plot, apartment, etc., accompanied by interest as outlined by the respective States or Union Territories. This applies when builders or developers fail to deliver possession as per the terms of the sale agreement or due to business discontinuation, registration suspension/revocation. Remedies under The RERA Act as well as the Consumer Protection Act are concurrent. Nevertheless, there exist two remedies exclusive to RERA, falling outside the jurisdiction of consumer forums. These comprise:

- I. Authority to collaborate with the State Government for project finalization through the appointment of an appropriate agency.
- II. Capability to designate a Builder/Developer as a defaulter and/or to forbid them from commencing new projects.

¹⁶ *Praveen Chhabra v Real Estate Appellate Tribunal* (2022) SCC OnLine Del 1568

Offenses under RERA:

I. Non-Registration of Projects: Under RERA, it is an offense for a builder to advertise, market, or sell a project without obtaining the necessary registration from the regulatory authority. Non-compliance may result in penalties and imprisonment.

II. Misappropriation of Project Funds: Builders are required to maintain a separate account for project funds under RERA. Misappropriation of funds is considered an offense and can lead to penalties and imprisonment.

CPA (Consumer Disputes Redressal Commissions) -

Broad Applicability: Consumer Commissions address disputes across various industries, not limited to real estate. This is advantageous when dealing with disputes involving goods and services outside the real estate sector.

Diverse Expertise: Consumer Commissions often have a broader understanding of consumer rights and various industries, making them suitable for a wide range of cases.

Homebuyer Relief: In *Pioneer Urban Land & Infrastructure Ltd. v Geetu Gidwani Verma & ANR*¹⁷ it was held that if a buyer faces issues with the purchased property, the CPA empowers consumer forums to order the builder to return the amount paid by the buyer. In terms of the relief granted to aggrieved homebuyers, the relevant Commission has the authority to issue an Order instructing the builder or developer to reimburse the money along with interest and compensation for any losses or damages caused due to the deficiency in their services. Additionally, the Commissions possess the power to enforce their orders, which ensures a swift execution process compared to regular lawsuits or the execution of orders from other Courts or Quasi-Judicial Forums. This expeditious nature of executing orders adds to the overall efficiency of the redressal process for homebuyers.

¹⁷ *Pioneer Urban Land & Infrastructure Ltd. v Geetu Gidwani Verma & Anr* Civ App No 12238/2018

Comprehensive Consumer Protection: Consumer Commissions offer protection for consumers across different sectors, which is particularly beneficial for cases involving defective products, service deficiencies, or unfair trade practices.¹⁸

Limitation Period: The limitation period to file a complaint in the Consumer Commission is generally two years from the date of accrual of the cause of action. However, the court may entertain a complaint even after two years, if the complainant can provide sufficient cause for the delay. It is important to note that the specific time frame may vary depending on the jurisdiction and the nature of the complaint, so it is advisable to consult a legal expert for accurate information regarding your specific case.

Supreme Court Perspective on Limitation in Consumer Protection Cases: The verdict of the Supreme Court in the *National Insurance Co Ltd. v Hindustan Safety Glass Works Limited*¹⁹ case underscores that the strict application of the CPA's limitation clause should not be used to disadvantage consumers. The court stressed the importance of adopting a practical approach that favours consumers, urging consumer forums to assess complaints based on their merits, even if they surpass the standard two-year limitation period. As outlined in Section 24A of CPA, the forum is empowered to consider a complaint lodged after two years if the complainant can establish valid reasons for the delay. The Supreme Court has affirmed that the forum is obliged to dismiss complaints that fall outside the two-year window unless sufficient justification for the delay is demonstrated.

Complaint Filing Flexibility and Eligibility: As the requirement for a particular format to file a complaint is absent, an application is deemed sufficient, simplifying the complaint registration process.²⁰ However, it's important to note that only individuals falling within the definition of a consumer as per the CPA are eligible to complain (Only registered purchasers and allottees can file complaints).

¹⁸ Brij Mohan Dutta, 'People's Perception for Consumer Protection Act in India: A Quantitative Investigation' (2019) 6(1) JOURNAL OF CRITICAL REVIEWS 269, 275-276

<<https://www.jcreview.com/admin/Uploads/Files/643579565162b0.99140166.pdf>> accessed 11 March 2024

¹⁹ *National Insurance Co Ltd. v Hindustan Safety Glass Works Limited* (2017) 5 SCC 776

²⁰ Department of Consumer Affairs, 'National Consumer Helpline (NCH)' (*Consumer Helpline*)

<<https://consumerhelpline.gov.in/>> accessed 11 March 2024

Appeals Hierarchy: Under the CPA, the appellate structure consists of the District Consumer Disputes Redressal Commission, the State Consumer Disputes Redressal Commission, the National Consumer Disputes Redressal Commission, and the Supreme Court. These forums provide a hierarchical approach to address consumer grievances and ensure justice. In exceptional circumstances, a writ petition can be filed under Articles 226²¹ and 227²² of the Constitution of India to challenge the decisions of these forums. This appellate structure aims to uphold consumer rights and provide an avenue for redressal in case of disputes and grievances.

Pecuniary Jurisdiction: Homebuyers who are affected by the unethical practices of builders have the option to initiate a complaint under the CPA, 2019 within jurisdictional limits, using the following approach:

I. District Consumer Disputes Redressal Commission (DCDRC): For claims valued at up to ₹ 50 lakh.

II. State Consumer Disputes Redressal Commission (SCDRC): For claims exceeding ₹ 50 lakh but not surpassing ₹ 2 crore.

III. National Consumer Disputes Redressal Commission (NCDRC): For claims that exceed ₹ 2 crore.²³

Offenses under the Consumer Protection Act:

I. Deficiency in Services: The CPA considers any deficiency in services provided by builders or real estate agents as an offense. Homebuyers can seek remedies against such deficiencies through consumer forums.

II. Unfair Trade Practices: Builders engaging in unfair trade practices, such as misleading advertisements or false promises, can be held accountable under the CPA. Penalties and compensation may be imposed.

²¹ Constitution of India 1950, art 226

²² Constitution of India 1950, art 227

²³ Ministry of Consumer Affairs, Centre notifies rules for Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021 (PIB)

CONCLUSION

From 2016 onward, there have been notable advancements in India's real estate industry. Recent rulings from the High Court, Supreme Court, and regulatory bodies like RERA and CPA have consistently favoured the interests of homebuyers. This has equipped affected buyers with an array of avenues to pursue redress against builder misconduct.

In the case of *Experion Developers Pvt Ltd*,²⁴ Justice U.U. Lalit clarified that the CPA and RERA should be read harmoniously to serve their common purpose. In the case *M/s. Imperia Structures v Anil Patni*²⁵ it was held that the National Consumer Dispute Redressal Commission has the jurisdiction to rule in cases involving homebuyers, even if the project is registered under the RERA Act. Recent legal precedents underscore the coexistence of remedies available to homebuyers under both the Consumer Protection Act and the Real Estate (Regulation and Development) Act – the ruling in the *M/s. Imperia Structures*²⁶ case reinforces the principle that jurisdictional lines need not be rigid; rather, the laws should be interpreted harmoniously to ensure comprehensive protection for consumers in the real estate sector.

Factors to Consider When Deciding Between RERA and Consumer Commission Proceedings:

Nature of Dispute: Choose based on whether the dispute is specific to real estate (RERA) or involves a broader range of goods and services (Consumer Commission). In the case of *Emaar MGF Land Ltd. v Aftab Singh*,²⁷ the Supreme Court of India held that the RERA has exclusive jurisdiction over matters related to real estate projects. The court stated that any dispute arising from a contract entered into between a promoter and a buyer in a real estate project falls within the ambit of RERA and must be adjudicated by the appropriate authority under RERA.

Expertise Required: If the conflict involves intricacies demanding expertise, like matters related to construction, RERA could prove more appropriate. The provisions within RERA establish a

²⁴ *Experion Developers Private Ltd. v Sushma Ashok Shiroor* Civ App No 6044/2019

²⁵ *M/s. Imperia Structures v Anil Patni* (2020) 10 SCC 783

²⁶ *Ibid*

²⁷ *Emaar MGF Land Ltd. v Aftab Singh* Review P (C) Nos 2629-2630/2018

favourable environment for addressing disputes concerning the calibre of materials employed in construction projects.

Timeliness: If a quick resolution is crucial, RERA might be faster due to its specialization in real estate. Nonetheless, it's crucial to consider that the feasible timeframe for resolving complaints under RERA is comparatively briefer around 6 months to 1 year in contrast to Consumer Disputes Redressal Commissions, where the process may extend to 4 to 5 years.

Cross-Industry Cases: If the dispute involves goods or services from various industries, Consumer Commissions provide a comprehensive solution. In the case of *Ambrish Kumar Shukla v Ferrous Infrastructure Pvt Ltd.*,²⁸ the National Consumer Disputes Redressal Commission (NCDRC) held that Consumer Commissions have the jurisdiction to entertain complaints against builders and developers for deficiency in services, even if the dispute also involves matters related to the real estate sector. The court stated that the Consumer Protection Act provides a comprehensive remedy for consumer grievances across industries, including the real estate sector.

Consumer Awareness: Consider which forum consumers are more aware of and comfortable using. Both RERA and the Consumer Protection Act emphasise compliance through penalties and enforcement authorities. While RERA's focus is on regulating the real estate sector, the Consumer Protection Act applies across industries. CCPA's power to order recalls adds an extra layer of consumer protection not present in RERA.

In conclusion, while deciding between remedies under RERA or the CPA, it is crucial to carefully assess various factors. As a prospective homebuyer navigating the complexities of real estate disputes, making an informed decision that aligns with specific circumstances and goals is of utmost importance.

If the grievance primarily revolves around issues inherent to real estate projects, such as possession delays or project specifications, RERA offers a streamlined pathway for resolution with its specialized focus on the real estate sector. It ensures swift adjudication and tailored

²⁸ *Ambrish Kumar Shukla v Ferrous Infrastructure Pvt. Ltd* Consumer Case No 97/2016

remedies specific to the intricacies of this industry. On the other hand, if concerns extend beyond the purview of RERA and encompass broader consumer protection issues, the CPA provides a comprehensive alternative. This legislation addresses a wide range of consumer grievances and offers a robust framework for seeking redress. Understanding the nature of the complaint and the jurisdictional implications is vital. Evaluating objectives will empower the buyer to choose the right path and increase the chances of a favourable outcome. In the dynamic world of real estate disputes, making a well-informed decision is the foundation for effective navigation and finding resolution.