IN THE WEST BENGAL REAL ESTATE APPELLATE TRIBUNAL
KOLKATA - 700 075

Present: 1. Justice Rabindranath Samanta
Hon'ble Chairperson

2. Dr. Subrat Mukherjee
Hon'ble Administrative Member

WBREAT/APPEAL NO. – 003/2025

Mrs. Mita Roy ..... Appellant

W/o Late Kishor Kumar Roy,
9, Niranjan Sen Pally, P.O. Agarpara,
Dist. North 24 Parganas, P.S. Khardah,
PIN – 700 109.

Versus

1. **Debdutta Chatterjee**
S/o Late Tapas Kumar Chatterjee

2. **Siddharta Chatterjee**
S/o Late Tapas Kumar Chatterjee
both residing at Hari Mohan Chatterjee Road,
Near Ananda Moyee Ashram, Agarpara, Panihati,
P.O. Kamarhati, P.S. Khardah, Dist. North 24 Pgs.,
PIN – 700 058.

3. **M/s. M.S. Enterprise**
B.T. Road, near Telephone Exchange, Panihati,
P.O. Panihati, P.S. Khardah, Dist. North 24 Parganas,
PIN – 700 114.

4. **Parbind Pandit**
S/o Late R.D. Pandit,
11/1 Nandalal Mitra Lane,
P.O. Howrah, P.S. Golabari,
Howrah – 711 106.

5. **Panihati Municipality** .....Respondents

Mr. Subhro Kanti Roy Chowdhury, Advocate **For the Appellant**
Mr. Nirmal Sharma, Advocate

Mr. Aditya Chakraborty, Advocate **For the Respondent Nos. 1 & 2**
Mr. Himangshu Ghosh, Advocate

Mr. Avijit Gope, Advocate **For the Respondent Nos. 3 & 4**

None **For the Respondent No. 5**

Heard on	**:**	**07.05.2025**
Judgment on	**:**	**23.05.2025**

Rabindranath Samanta, J:-

This appeal arises against the Order dated 07/01/2025 passed by the learned West Bengal Real Estate Regulatory Authority (hereinafter referred to as the 'Regulatory Authority') in Complaint No. WBRERA/COM000741.

By the impugned Order the learned Regulatory Authority, rejecting the application made by the Appellant challenging the maintainability of the complaint, has *inter alia*, directed as under:

> "a) The Respondent, M/s. M.S. Enterprise shall deliver to the Complainant the 3 flats of the allocation of the Complainant, as per the Development Agreement dated 14/10/2015 and Development Power of Attorney dated 15/02/2017, within 15 days from the date of receipt of this Order of the Authority through e-mail; and
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> b) The Respondent shall submit hard copy of this Notarised Affidavit (in original) to the Authority, serving a copy of the same to the Complainant, within 7 days from the date of receipt of this Authority through e-mail.
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> c) The Complainant is directed to submit a Rejoinder on Notarised Affidavit giving point-wise concise Reply to the Written Response of the Respondent, both in hard and scan copies, within 15 days from the date of receipt of the hard copy of the Affidavit of the Respondent".

The Appellant assails the impugned Order on the grounds that the complaint filed by the complainants with the learned Regulatory Authority is not sustainable since the reliefs sought for by the Respondent Nos. 1 and 2 / Complainants in the complaint have already been sought for by them before the District Consumer Disputes Redressal Commission, North 24 Parganas at Barasat. Besides, the impugned Order is vitiated with illegalities since the learned Regulatory Authority passed the Order granting the main reliefs of the Complainants without hearing the Appellant. As such, the Appellant prays for setting aside the impugned Order.

In this appeal, the seminal points which fall for our consideration are as follows:

1) Is the impugned Order summarily rejecting the application of the Appellant challenging the maintainability of the complaint is sustainable?

2) Is the impugned Order giving interim direction to the Appellant/Promoter to handover three flats to the complainants is justified?

Background facts which are necessary for adjudication may be adumbrated as under:

The Respondent No. 3, M/s. M.S. Enterprise is a partnership firm which carries on business of development and construction works. Respondent No. 4 Parbind Pandit and the Appellant Mrs. Mita Roy are the partners of the partnership firm. Previously, Kishor Kumar Roy, the husband of Mrs. Mita Roy was a partner of the firm and after his death the Appellant Mrs. Mita Roy has been inducted in the firm as a partner in place of her husband together with Parbind Pandit.

The aforesaid partnership firm / promoter approached the Respondent Nos. 1 and 2 and their mother Kanchan Chatterjee to develop their land admeasuring 1 cottah 1 chittack 27 sq. ft. under C.S. and R.S. Plot No. 316 appertaining to C.S. and R.S. Khatian No. 845, Ward No. 6, Holding No. 26 under Panihati Municipality. They accepted the proposal of the Developer and agreed to have their land developed. For the purpose of development of the land, a Development Agreement dated 14/10/2015 was entered into between the Complainants and the Promoter. As agreed between them, the Promoter was to raise construction of (G+4) Building and in that regard it obtained sanctioned plan from the Respondent No. 5, Panihati Municipality. Subsequently, a Development Power of Attorney dated 15/02/2017 was executed. On the same date i.e. on 15/02/2017 a Supplementary Development Agreement was also executed between them.

After the death of Kishor Kumar Roy, the husband of the Appellant Mita Roy, on 04.03.2019, the aforesaid partnership firm was reconstituted. After its reconstitution, a Supplementary Development Agreement dated 16.09.2020 was entered into between the Complainants and the Promoter. The Complainants executed a Supplementary Power of Attorney in favour of the Promoter also on 16.09.2020. As agreed between them, the Promoter was to deliver possession of 3 flats measuring 2100 sq. ft. in total to the Complainants within 24 months from 16.09.2020.

Though the sanctioned plan was in respect of construction of (G+4), but the Promoter, by resorting to unfair, malicious and illegal means started raising the construction of (G+5) building instead of (G+4) building.

The Promoter, in breach of its obligation to handover possession of the flats within 24 months, failed to deliver the same to the Complainants in time. Repeated requests and demands made on behalf of the Complainants to deliver possession of the flats yielded no result. Even approaching the Court of the learned Executive Magistrate, Barrackpore by initiating a proceeding under Section 144, Cr. P.C., failed to give any relief to them. Getting no other alternative the Respondent nos. 1 & 2 / Complainants by filing a complaint case being no. 99 of 2023 U/s 35(1)(2) of the Consumer Protection Act in the learned District Consumer Disputes Redressal Commission, North 24 Parganas at Barasat sought remedies as stated in the complaint. The case brought by them in the Consumer Commission is still pending and they are yet to get reliefs as sought for. Hence, they filed the complaint with the learned Regulatory Authority seeking the reliefs / remedies as prayed for in the complaint.

As it appears from the case record in connection with the complaint before the learned Regulatory Authority, the learned Regulatory Authority by Order dated 23.04.2024 admitted the complaint and by an interim order restrained the promoter from selling / transferring / alienating any flat from their allocation to any third party till disposal of the matter or until further order whichever was earlier. Thereafter, by Order dated 10.12.2024 the learned Regulatory Authority posted the matter on 07.01.2025 for further hearing. On 07.01.2025 the Appellant / Promoter appeared before the learned Regulatory Authority and by filing an application challenged the maintainability of the complaint. But, the learned Regulatory Authority, summarily rejected the application and passed the directions as noted above.

It is the contention of the Appellant that she as a partner of the partnership firm filed an application dated 07.01.2025 challenging the maintainability of the complaint on the grounds that the cause of action upon which the Complainants sought for remedies in the complaint case before the learned District Consumer Disputes Redressal Commission and the cause of action upon which they have sought for reliefs

in the complaint before the learned Regulatory Authority are identical. Both two complaints cannot run simultaneously. The complainants are to elect either the complaint before the District Consumer Disputes Redressal Commission or the complaint with the learned Regulatory Authority. It is the further contention of the Appellant that in the column 7 of the complaint before the learned Regulatory Authority the Complainants have made declaration that no case in respect of the same cause of action is pending in any Court or Authority or Tribunal. The Appellant complains that the Complainants made such declaration suppressing the facts before the learned Regulatory Authority. By the impugned Order the learned Regulatory Authority has granted interim relief to the Complainants which they did not seek in their prayer of interim relief.

However, the Respondent Nos. 1 & 2 / Complainants in their Affidavit in Opposition, state that in the body of the complaint before the learned Regulatory Authority they have disclosed that they have brought a complaint case before the learned District Consumer Disputes Redressal Commission and the same is pending. But, they submit that due to bonafide mistake and inadvertence column 7 of the complaint has been spelt that no case is pending in any Court or Authority or Tribunal. They submit that the learned Regulatory Authority is legally empowered to pass the interim Order as made in the impugned Order.

On the other hand, the Respondent Nos. 3 & 4, in their Affidavit in Opposition adopt the case as made out by the Appellant in the Memorandum of Appeal.

Mr. Subhro Kanti Roy Chowdhury, learned Advocate for the Appellant submits that if the cause of action and the remedies as averred in the complaint before the learned Consumer Commission and the cause of action and the remedies as averred in the complaint before the learned Regulatory Authority are compared, it will show that the cause of action and remedies of both the two proceedings are identical. According to Mr. Roy Chowdhury both the two proceedings bearing the same set of facts and the same reliefs cannot proceed simultaneously. The Complainants will have to elect either of the two. In support of his submission Mr. Roy Chowdhury has cited a decision dated 11/01/2021 of the Hon'ble Apex Court in the case of IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & others and a

decision dated 05/08/2024 of the Maharastra Real Estate Appellate Tribunal in Appeal No. AT 006000000053394 of 2021.

Mr. Avijit Gope, learned Advocate for the Respondent Nos. 3 & 4, adopting the submission of Mr. Roy Chowdhury, submits that the complaint made by the complainants with the learned Regulatory Authority seeking remedies on the cause of action which is identical with the cause of action in the complaint case pending in the District Consumer Disputes Redressal Commission at Barasat is not sustainable in law and the complaint is liable to be dismissed. To buttress his submission Mr. Gope has cited a decision dated 14/06/2023 of the National Consumer Disputes Redressal Commission in Consumer Case No. 864 of 2020 and an another decision dated 20/09/2023 also of the National Consumer Disputes Redressal Commission in Consumer Case No. 182 of 2022.

Per contra, Mr. Aditya Chakraborty, learned Advocate appearing for the Respondent Nos. 1 & 2 / Complainants argues that the appeal preferred by the Appellant is not entertainable by this Tribunal since the Appellant has not deposited the amount or penalty amount in respect of three flats which the learned Regulatory Authority directed to deliver it to the Complainants. Referring to Sections 88, 89 and 18 of the Real Estate (Regulation and Development) Act, 2016 Mr. Chakraborty argues that if the cause of action of both the two proceedings is minutely read, it will be found that there is difference in the cause of action of the proceedings and the remedies / reliefs as sought for are not identical. Mr. Chakraborty emphasises that no provision in the RERA Act prohibits any allottee to bring simultaneous proceeding seeking the same reliefs before the learned Consumer Commission. According to Mr. Chakraborty, the proceeding initiated by his clients before the learned Consumer Commission and the proceeding brought before the learned Regulatory Authority can proceed simultaneously. Mr. Chakraborty, underscoring the provision U/s 88 of the RERA Act, submits that the provisions of the RERA Act are in addition to and not in derogation of the provisions under the Consumer Protection Act. To espouse his argument Mr. Chakaborty has cited a decision dated 15/12/2023 of the Hon'ble High Court at Calcutta in W.P.A. No. 27117 of 2023 with W.P.A. No. 27120 of 2023 (Janapriyo Real Estate Pvt. Ltd. & Another Vs. The State of West Bengal and Others), the decision in the case of Pioneer Urban EU Land and Infrastructure Limited & Another Vs. Union of India & Others reported in (2019)

8 SCC 416 and the decision in the case of Imperia Structures Ltd. Vs. Anil Patni & Another reported in (2020) 10 SCC 783.

Perusal of the impugned Order shows that the learned Regulatory Authority directed the Promoter to deliver 3 (three) flats to the complainants as per Development Agreement dated 14/10/2015 and the Development Power of Attorney dated 15/02/2017.

As per proviso to Section 43(5) of the Real Estate (Regulation and Development) Act, 2016, an Appeal shall not be entertained by the Appellate Tribunal without the Promoter first having deposited with the Appellate Tribunal at least 30% 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. As it expressly manifests, the direction in the impugned Order does not speak of any penalty imposed upon the Promoter or any amount of money required to be deposited by the Promoter. Therefore, the submission as advanced on behalf of the Respondent Nos. 1 & 2 that sans the deposit of the amount equivalent to the purchase amount of the 3 (three) flats by the Promoter with this Tribunal the appeal is not entertainable, is not acceptable. So the decision in Janapriyo Real Estate Pvt. Ltd. (supra) is not applicable to this appeal.

As per the Statutory Form – 'M' appended to the West Bengal Real Estate (Regulation and Development) Rules, 2021, amongst others, column 7 requires the complainant to declare whether any complaint with regard to the matter made in the complaint with the learned Regulatory Authority is pending before any Court of Law or any other Authority or any other Tribunal. As the complaint shows, the Complainants have declared in column no.7 that no such complaint is pending in any Court or any other Authority or Tribunal. However, after going through the contents of the complaint, it is found that the Complainants though declared otherwise in column no.7, have averred in the body of complaint that a Complaint Case being No. 99 of 2023 brought by them U/s 35(1)(2) of the Consumer Protection Act is still pending in the learned District Consumer Disputes Redressal Commission, North 24 Parganas at Barasat. That being so, we may infer without any cavil of doubt that the complainants filled in column no.7 of the complaint inadvertently. This, according to us, should not impact the complaint brought before the learned Regulatory Authority.

After wading through the case record in connection with the complaint, it appears that as regards development of the land of the complainants, initially a Development Agreement dated 14/10/2015 was entered into between the Complainants and their mother and the promoter and thereafter the Complainants executed a Development Power of Attorney on 15/02/2017. On the same date i.e., on 15/02/2017 a Supplementary Development Agreement was also entered into between them. Admittedly and as we find from the records, after the demise of the husband of the Appellant Mita Roy, a Supplementary Development Agreement was entered into on 16/09/2020 and on the same date i.e. on 16/09/2020 the Complainants executed a Development Power of Attorney in favour of the promoter. It is complained by the Respondent Nos. 1 & 2 / Complainants that the promoter instead of raising construction of (G+4) raised construction of (G+5) and the promoter failed to deliver possession of 3(three) flats allocated to them within the stipulated time as per the Development Agreement.

Be that as it may, this Tribunal is invited to decide whether the complaint made by the complainants is sustainable in law. Before we turn to the next it will be apposite to mention what ‘cause of action’ denotes.

It is trite to say that ‘cause of action’ is the legal basis or reason for which a legal action can be brought. It is a set of facts that gives rise to a legal claim and entitle a person to seek relief.

A careful perusal of the pleadings of the parties laid before this Tribunal shows that the cause of action in the complaint before the learned District Consumer Disputes Redressal Commission and the cause of action in the complaint before the learned Regulatory Authority are substantially the same and identical.

Now, to deal with the points as formulated above, it will be apposite to extract the remedies / reliefs sought for by the Complainants / Respondent Nos. 1 & 2 in the complaint before the learned Consumer Disputes Redressal Commission and in the complaint before the learned Regulatory Authority.

Remedies sought for in complaint case No. 99 of 2023 in the District Consumer Disputes Redressal Commission	**Remedies sought for in Complaint No. WBRERA/COM000741 before the learned Regulatory Authority**
"a) To admit the complainants and issue notice to the opposite party.	"a) To probe into the issue involved squarely in accordance with the statutory provisions.
b) To pass an order against the opposite party to finish the construction of the unfinished flat and give peaceful possession of owners' allocation.	b) To admit the instant complaint and issue notice to the opposite parties as this Hon'ble Forum may deem fit and proper.
c) To pass order against the opposite party to completion certificate and possession letter, sanction plan, floor plan,	c) To pass an appropriate order against the opposite party to finish the construction of the unfinished flats of your complainants and give peaceful possession of those flats to your complainants in respect of allocation of your complainants.
d) To pass an order against the opposite party either demolish the illegal construction of the 6th floor or give the complainants 50% of the total construction area of the 6th floor.	d) To pass order against the opposite party to provide completion certificate and possession letter, sanction plan, floor plan to the complainants.
e) To pass an order against the opposite party to pay a compensation of Rs. 5,00,000/- for causing harassment and mental agony and litigation cost Rs. 1,00,000/-	e) To pass the necessary order to re-determine the allocation and share of the complainants in respect of G+5 pattern, if such pattern is in accordance with law.
f) And to pass such further order or orders as Your Honor may deem fit and proper.	f) To take appropriate steps against the developer / opposite parties in accordance with law in the event of any illegality or irregularity from any corner whatsoever.
g) Any other equitable relief or relieves of which the complainants are entitled to get as per Law and equity."	g) To pass necessary orders directing the Respondents to adequately compensate the Complainants for the delay in delivery of possession.
	h) To pass an order against the opposite party to pay a compensation of Rs. 5,00,000/- for causing harassment and mental agony and litigation cost Rs. 1,00,000/-."

On comparison of the two sets of remedies as quoted above it is found that the remedies as sought for by the Complainants in the aforesaid two proceedings are substantially the same.

Now the question is whether both the two proceedings before the aforesaid forums will proceed simultaneously or the Complainants should elect any one of the two.

As submitted at the Bar, it will be profitable to quote the provisions U/s(s) 88 and 89 of the Real Estate (Regulation and Development) Act, 2016. Section 88 enjoins 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.

Section 89 provides that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

In such context, it will be important to speak of Section 18 of the Act which, *inter alia*, says that on failure on the part of the promoter to complete the project and give possession of an apartment, plot or building, 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 statutory interest.

The Hon'ble Apex Court in the case of Pioneer Urban Land and Infrastructure Limited and Another Vs. Union of India and Others, reported in (2019) 8 SCC 416, while dealing with the legal implications of Insolvency and Bankruptcy Code, 2016 after amendment of Section 5(8)(f) and the Real Estate (Regulation and Development) Act, 2016 has held at Paragraph 25 as under :

> "It is significant to note that there is no provision similar to that of Section 88 of RERA in the Code, which is meant to be a complete and exhaustive statement of the law insofar as its subject-matter is concerned. Also, the non obstante clause of RERA came into force on 01/05/2016, as opposed to the non obstante clause of the Code which came into force on 01/12/2016. Further, the amendment with which we are concerned has come into force only on 06/06/2018. Given this circumstances, it is a little difficult to accede to arguments made on behalf of the learned Senior Counsel for the petitioners, that RERA is a special enactment which deals with Real Estate Development projects and must, therefore, be given precedence over the Code, which is only a general enactment dealing with insolvency generally. From the introduction of the Explanation to Section 5(8)(f) of the Code, it is clear that Parliament was aware of RERA, and applied some of its definition provisions so that they could apply when the Code is to be interpreted. The fact that RERA is *in addition to and not in*

derogation of the provisions of any other law for the time being in force, also makes it clear that the remedies under RERA to allottees were intended to be additional and not exclusive remedies."

The Hon'ble Apex Court in a subsequent decision in the case of Imperia Structures Limited Vs Anil Patni and Another reported in (2020) 10 SCC has held at Paragraph 32 as under:

"32. Again, insofar as cases where such proceedings under the C.P. 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. Further, Section 18 itself specifies that the remedy under the said section is "without prejudice to any other remedy available". 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 C.P. Act or file an application under the RERA Act."

In such context, another decision dated 11th January, 2021 of the Hon'ble Apex Court in the case of IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Others dealing with the doctrine of election may be referred. The Hon'ble Apex Court in this decision, *inter alia*, has held as under :

"20.9 An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action.

20.10 The doctrine of election was discussed in A.P. State Financial Corporation V. M/s. GAR Re-rolling Corporation, in the following words :

"15. The Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially different. To hold otherwise may lead to injustice and inconsistent results..... Since, the Corporation must be held entitled and given full protection by the Court to recover its dues it can't be bound down to adopt only one of the two remedies provided under the Act. In our opinion the Corporation can initially take recourse to Section 31 of the Act but withdraw or abandon it at any stage and take recourse to the provisions of Section 29 of the Act, which section deals with not only the rights but also provides a self-contained remedy to the Corporation for recovery of its dues. If the Corporation chooses to take recourse to the remedy available under Section 31 of the Act and

pursues the same to the logical conclusion and obtains an order or decree, it may thereafter execute the order or decree in the manner provided by Section 32(7) and (8) of the Act. The Corporation, however, may withdraw or abandon the proceedings at that stage and take recourse to the provisions of Section 29 of the Act. A 'decree' under Section 31 of the Act not being a money decree or a decree for realisation of the dues of the Corporation, as held in Gujarat State Financial Corpn. V. Naatson Mfg. Co. P. Ltd. [(1979)1 SCC 193, 198: AIR 1978 SC 1765, 1768] recourse to it cannot debar the Corporation from taking recourse to the provisions of Section 29 of the Act by not pursuing the decree or order under Section 31 of the Act, in which event the order made under Section 31 of the Act would serve in aid of the relief available under Section 29 of the Act.

16. The doctrine of election, as commonly understood, would, thus, not be attracted under the Act in view of the express phraseology used in Section 31 of the Act, viz., "without prejudice to the provisions of Section 29 of this Act". While the Corporation cannot simultaneously pursue the two remedies, it is under no disability to take recourse to the rights and remedy available to it under Section 29 of this Act". While the Corporation cannot simultaneously pursue the two remedies, it is under no disability to take recourse to the rights and remedy available to it under Section 29 of the Act even after an order under Section 31 has been obtained but without executing it and withdrawing from those proceedings at any stage. The use of the expression "without prejudice to the provisions of Section 29 of the Act" in Section 31 cannot be read to mean that the Corporation after obtaining a final order under Section 31 of the Act from a court of competent jurisdiction, is denuded of its rights under Section 29 of the Act. To hold so would render the above-quoted expression redundant in Section 31 of the Act and the courts do not lean in favour of rendering words used by the Legislature in the statutory provisions redundant. The Corporation which has the right to make the choice may make the choice initially whether to proceed under Section 29 of the Act or Section 31 of the Act, but its rights under Section 29 of the Act are not extinguished, if it decides to take recourse to the provisions of Section 31 of the Act. It can abandon the proceedings under Section 31 of the Act at any stage, including the stage of execution, if it finds it more practical, and may initiate proceedings under Section 29 of the Act."

The doctrine of election is based on the rule of estoppel. In P.R. Deshpande V. Maruti Balaram Haibatti, reported in (1998)6 SCC 507, it was held that :

"8. The doctrine of election is based on the rule of estoppel – the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak,

from ascertain a right which he otherwise would have had. (vide Black's Law Dictionary, 5th Edn.)".

Based on the doctrine of election and referring to the decision in M/s. Imperia Structures Limited Vs. Anil Patni and Another, the Hon'ble Apex Court in the decision of IREO Grace Realtech Pvt. Ltd. has held at paragraph 20.11 as follows :

> "20.11 In a recent judgment delivered by this Court in M/s. Imperia Structures Ltd. V. Anil Patni and Anr., it was held that remedies under the Consumer Protection Act were in addition to the remedies available under special statues. The absence of a bar under Section 79 of the RERA Act to the initiation of proceedings before a fora which is not a civil court, read with Section 88 of the RERA Act makes the position clear. Section 18 of the RERA Act specifies that the remedies are "without prejudice to any other remedy available". We place reliance on this judgment, wherein it has been held that:
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> "31. Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the C.P. Act before the RERA Act came into force, to withdraw the proceedings under the C.P. 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 complainant concerned 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. As against that the mandate in Section 12(4) of the C.P. Act to the contrary is quite significant.
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> 32. Again, insofar as cases where such proceedings under the C.P. 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. Further, Section 18 itself specifies that the remedy under the said section is "without prejudice to any other remedy available". 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 C.P. Act or file an application under the RERA Act."

As stated above, the cause of action and the remedies based on such cause of action in the aforesaid two proceedings before the two forums are substantially identical. But, as asserted by the Complainants, they intend to proceed with both the two proceedings simultaneously without electing any one of them. In such backdrop, the Appellant by filing an application in the learned Regulatory Authority challenged the maintainability of the complaint. But, surprisingly, the learned Regulatory Authority without delving deep into the

legal aspects in this regard, in cryptic manner and without assigning sufficient reason summarily rejected the application.

In the application challenging the maintainability of the complaint, the Appellant setting out the grounds in detail has sought for dismissal of the complaint. As we find, the Respondent Nos. 1 & 2 / Complainants, in their Affidavit in Opposition have dealt with the grounds of contention as stated in the application. To avoid unnecessary delay and to meet the interest of justice we feel that the application may be disposed of by this Tribunal.

The Hon'ble Apex Court, while dealing with the applicability of the provisions of the Code of Civil Procedure to an Arbitral Tribunal like this Tribunal not bound by the Code of Civil Procedure, has held in the decision in the case of SREI Infrastructure Finance Limited Vs Tuff Drilling Private Limited, reported in (2018)11 SCC 470, that the words "Arbitral Tribunal shall not be bound" are the words of amplitude and not of restriction. These words do not prohibit the Arbitral Tribunal from drawing sustenance from the fundamental principles underlying the Civil Procedure Code or the Evidence Act but the Tribunal is not bound to observe the provisions of Code with all of its rigour. These legal principles neatly apply to this Tribunal also.

The fundamental principles drawn from Order 41 Rule 33 of the Code of Civil Procedure, suggest that an Appellate Forum shall have the power to pass such order which ought to have been passed by the Authority below.

In the light of the legal principles enunciated by the Hon'ble Apex Court in the decision in the case of M/s. Imperia Structures Limited and in the case of IREO Grace Realtech Pvt. Ltd.(supra), given the factual matrix of the matter, the Respondent Nos. 1 & 2 / Complainants shall have to elect either the complaint before the learned District Consumer Disputes Redressal Commission or the complaint before the learned Regulatory Authority.

The assertion of the Complainants indicates that they intend to proceed with both the two proceedings which are not permissible in law.

The provision under Section 71 of the RERA Act, *inter alia*, says that a Complainant may withdraw a proceeding pending in the Consumer Disputes Redressal Forum or Commission seeking compensation and file the same before the Adjudicating Officer under the RERA Act.

Therefore, viewed from all aspects, the Respondent Nos. 1 & 2 / Complainants are not legally allowed to continue both the two proceedings simultaneously. Since the proceeding i.e., the complaint before the learned Regulatory Authority has been filed later on, this complaint is liable to be dismissed.

The Complainants, in their complaint, before the learned Regulatory Authority has sought for interim relief to this extent that the Developer be restrained from selling the flats or allocating the flats to third party. The learned Regulatory Authority, on the date of admission, without hearing the Appellant / Promoter, granted such relief to the Complainants.

But, interestingly, the learned Regulatory Authority without giving any opportunity of hearing to the Appellant / Promoter, by an interim order directed the Promoter to handover 3 (three) flats of the allocation of the Complainants to them within a specified time. By passing such order granting main relief without adequate reasons, the learned Regulatory Authority, in our view, has grossly violated all known cannons of judicial and quasi-judicial procedure.

As observed by the National Consumer Disputes Redressal Commission in the decision dated 20/09/2023 in Consumer Case No. 182 of 2022 (A. Infrastructure Limited Vs. Macrotech Developers Ltd.) (supra), we are of the same view that in order to avoid multiplicity of proceedings and contradictory Judgments on same issue between the same parties, estoppel by election of remedy has to be applied. Similarly, we concur with the observation of the National Consumer Disputes Redressal Commission in the decision dated 14/06/2023 (Lalit Kumar and Ors. Vs. M/s. E-Homes Infrastructure Pvt. Ltd. and 2 Ors.) (supra), that where two or more concurrent remedies are available to a party it has a right to choose a remedy suitable to him / her and once such a choice is made, the party is not permitted to thereafter go for the other available remedy.

In view of the above, we are unable to accept the submission of Mr. Chakraborty.

It is pertinent to mention that since no issue was raised before the learned Regulatory Authority or no issue was seriously raised before us what will be the legal effect of the Development Agreement or Supplementary Development Agreement or Development Power of Attorney or the Supplementary Development Power of Attorney on the demise of

Kanchan Chatterjee, the mother of the Complainants Debdutta Chatterjee and Siddharta Chatterjee, we refrain from making any observation in this regard.

Therefore, in view of the above, the points as raised are answered in the negative.

In the result, the impugned Order dated 07/01/2025 and a subsequent order dated 19/03/2025 are liable to be set aside and the appeal should be allowed.

Accordingly, the appeal is allowed on contest against the Respondent Nos. 1 to 4 and ex parte against the Respondent No. 5, but without cost. The impugned Order dated 07/01/2025 and the subsequent Order dated 19/03/2025 passed by the learned Regulatory Authority are hereby set aside. The application challenging the maintainability of the complaint is allowed and consequently the complaint registered as Complaint No. WBRERA/COM000741 is dismissed.

The Order of Stay stands vacated.

However, this Order will not prevent the Respondent Nos. 1 and 2 / Complainants from withdrawing the complaint pending in the learned District Consumer Disputes Redressal Commission and filing the same with the learned Regulatory Authority and/or with the learned Adjudicating Officer in accordance with law, if they are so advised.

Thus the appeal is disposed of.

Send down the case record along with a copy of this Judgment to the learned Regulatory Authority for information.

Communicate this Judgment to all concerned by e-mail immediately.

Urgent Photostat / Certified copies of this Judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

JUSTICE RABINDRANATH SAMANTA
Chairperson
West Bengal Real Estate Appellate Tribunal

Dr. SUBRAT MUKHERJEE
Technical/Administrative Member
West Bengal Real Estate Appellate Tribunal