

**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. – 018/2025

1. M/s. Sreeram Enterprise

2. Ashok Dutta

57, P.K. Guha Lane, P.S. Dumdum,
Kolkata – 700 028

..... Appellants

- Vs -

1. Champak Bhattacharjee

2. Ashok Bhattacharjee

3. Kamal Bhattacharjee

4. Manju Mukherjee (Bhattacharjee)

5. Anju Mondal (Bhattacharjee)

10, Italgacha Road, P.S. Dumdum,
North 24 Parganas, Kolkata – 700 028.

..... Respondents

Mr. Sudipta Manna, Advocate

For the Appellants

Mr. Avijit Gope, Advocate

For the Respondents

Heard on : 27.08.2025

Judgment on : 11.09.2025

Rabindranath Samanta, J:-

This appeal has been preferred challenging the Order dated 14/05/2025 passed by the learned West Bengal Real Estate Regulatory Authority (hereinafter referred to as the 'Regulatory Authority') in Complaint No. WBRERA/COM(Physical)000150.

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

"A) As an injunction order has already been issued by the Additional District Judge (3rd), the Authority is of the opinion that no separate injunction order is necessary against the said property. The Complainant may approach before the appropriate court of law for violation of the injunction order, if any, as alleged.

B) Respondent shall submit a notarised Affidavit mentioning the details of the allocated flats of the Complainant within 15 (fifteen) days with a copy to the Complainant and after receiving the Affidavit of the Respondent, Complainant will inspect the position of the flat physically and take possession, if the said flats are ready as per terms and condition of the development agreement. The Respondent shall extend all necessary cooperation for physical examination of the flat by the Complainant."

The Appellants assail 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 Respondents / Complainants in the complaint have already been sought for by them before the State Consumer Disputes Redressal Commission, West Bengal. Since the complaint was filed by the Respondents / Complainants with the learned Regulatory Authority after the complaint filed by them before the Consumer Commission, the Appellants by filing a separate application sought for dismissal of the complaint challenging its maintainability. But, the learned Regulatory Authority dismissed their application summarily without assigning reasons and proceeded further on the complaint. So, the complaint is liable to be dismissed and as such the Appellants pray for setting aside the impugned Order.

The only point which falls for our consideration is as follows: -

Is the impugned Order summarily rejecting the application of the Appellants challenging the maintainability of the complaint sustainable?

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

The Appellant No. 1 M/s. Sreeram Enterprise is a proprietorship firm represented by its proprietor, the Appellant No.2 Ashok Dutta. The Appellants carry on business of development and construction works.

The Respondents/Complainants and one Chandrasekhar Bhattacharjee are the joint owners of a land measuring 19 Cottahs 33 Sq.ft. (more or less) situated at holding No. 10, Italgacha Road, P.S. Dumdum, North 24 Parganas, Kolkata – 700 028.

The Appellants entered into a Development Agreement dated 17/08/2015 with the joint owners of the land. Though the owners of the land were well aware of the recitals of the Development Agreement, they failed to execute supplementary agreement determining the

owners' allocation. In terms of the Development Agreement the owners of the land are under obligation to settle their allocation amongst themselves within one month from the date of sanction of the building plan. Owing to disputes and differences among themselves, the co-owners of the land failed to approve and execute the supplementary agreement. On the contrary, some of them started creating obstruction to the smooth running of the development works.

In spite of all adverse circumstances, the Appellants completed the construction of three buildings identified as Block-A, Block-B and Block-C on the aforesaid land some years back. The Appellants, on several occasions, requested the Respondents/Complainants to take physical possession of the respective flats of the building, but to no effect. However, the Appellants handed over the owner's allocation to Chandrasekhar Bhattacharjee, one of the co-owners and he acknowledged the same. Because of inter se differences amongst the Respondents/Co-owners, Owners' allocation could not be handed over. The Respondents/Complainants approached the State Consumer Disputes Redressal Commission, West Bengal by filing a Consumer Case No.145 OF 2023 seeking reliefs as stated in the Memorandum of Appeal. While this consumer Case was pending before the Consumer Commission, the Respondents on the similar cause of action, approached the learned Regulatory Authority seeking the same reliefs as sought for before the Consumer Commission.

Under the aforesaid circumstances, the Appellants by filing a separate application with the learned Regulatory Authority sought for dismissal of the complaint on the grounds that the identical remedies as sought for by them cannot proceed with.

The Respondents in their Affidavit-in-Opposition contend the averments as made in the Memorandum of Appeal and seek for necessary Order so that they can seek relief from the learned Regulatory Authority.

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 that 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 State 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 formulated above, it will be apposite to extract the remedies / reliefs sought for by the Complainants in the complaint before the learned State Consumer Disputes Redressal Commission and in the complaint before the learned Regulatory Authority.

Remedies sought for in consumer case No. 145 of 2023 in the State Consumer Disputes Redressal Commission	Remedies sought for in Complaint No. WBRERA/COM000150 before the learned Regulatory Authority
“a) That the opposite party no.1 and 2 directed to handover the possession of the owner’s allocation as per offer letter dated 15/08/2015 totally in habitable condition.	“a) That the opposite party no.1 and 2 directed to handover the possession of the owner’s allocation as per offer letter dated 15/08/2015 totally in habitable condition.
b) To appoint one Engineer Commissioner who will assist the complainants so that they can get the appropriate measurement of their allocation as per agreed term. And/or If it is followed that there are shortfall of measurement in connection with owners allocated portion your Honour may directed the O.P. No. 1 and 2 to pay the demurrage amount as per present market value.	b) To appoint one Engineer Commissioner who will assist the complainants so that they can get the appropriate measurement of their allocation as per agreed term. If it is followed that there are shortfall of measurement in connection with owners allocated portion your Honour may directed the O.P. No. 1 and 2 to pay the demurrage amount as per present market value.
c) That the opposite party no. 1 & 2 be directed to act as per offer letter dated 15/08/2015.	c) That the opposite party no. 1 & 2 be directed to act as per offer letter dated 15/08/2015.
d) The opposite party be directed to pay the dues Rent amount to the tune of Rs.39,00,000/- on and from July 2016 till date.	d) The opposite party be directed to pay the dues Rent amount on and from July 2016 till date.
e) The O.P. no. 4 be directed to pay an exemplary cost as by your Lordship.	e) Interim order, if prayed for.”
f) Injunction.	
g) The O.P. No. 1 and 2 jointly directed to pay the following amount in the following heads: i) Mental agony, pain and unnecessary harassment:- Rs.35,00,000/- ii) Litigation cost Rs.70,000/- iii) Interest to be assessed by your Lordship.”	

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 statutes. 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:

“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.

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 Appellants setting out the grounds in detail have sought for dismissal of the complaint. As we find, the Respondents / 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 Respondents / 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 Respondents / 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.

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.

Therefore, In view of the above, the point is answered in the negative.

In the result, the impugned Order dated 14/05/2025 passed by the learned Regulatory Authority is liable to be set aside and the appeal should be allowed.

Accordingly, the appeal is allowed on contest against the Respondents, but without cost.

The impugned Order dated 14/05/2025 passed by the learned Regulatory Authority in Complaint No. WBRERA/COM(Physical)000150 is set aside. The application challenging the maintainability of the complaint is allowed and consequently the complaint registered as Complaint No. WBRERA/COM(Physical)000150 is dismissed.

The Order of Stay stands vacated.

However, this Order will not prevent the Respondents/Complainants from withdrawing the complaint pending in the learned State 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.

Sd/-
JUSTICE RABINDRANATH SAMANTA
Chairperson
West Bengal Real Estate Appellate Tribunal

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