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# Paradox of Concurrent Jurisdiction in Consumer Cases

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## ABSTRACT

*On April 7, 2022, a three-Judge Bench of the Honorable Supreme Court of India in Experion Developers Pvt. Ltd Vs. Sushma Ashok Shiroor held that Consumer courts are empowered to order refunds and compensation to aggrieved consumers in case of delayed possession as per the agreement. The judgement focuses on the contentious issue of concurrent jurisdiction in consumer cases. The Consumer Protection Act (CPA) is designed to uphold consumers' rights and covers various goods and services. Section 100 of CPA, 2019 provides, "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" It is in the backdrop of the said provision that the issue of concurrent jurisdiction arises. Many times, there are more than one alternative available to an aggrieved consumer to redress grievances. This article examines the issue of concurrent jurisdiction in consumer cases.*

**Keywords:** Consumer Protection, Concurrent Jurisdiction, Consumer Forums, Supreme Court of India.

## I. INTRODUCTION

CPA, 1986 is one of the most noteworthy socioeconomic legislation that seeks to protect the interest of the consuming class covering a variety of goods and services. Modern markets offer a wide range of goods and services. In response to the changing market dynamics, the Consumer Protection Act 2019 came up. Section 2(42) of the CPA 2019 defines service as: "Service means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service" The definition provided in the act is very comprehensive as it includes-banking, finance, transport, processing telecom, boarding lodging, housing construction, and many others a well. In fact, the definition is an evolving one, and the list has been explicitly broadened by a variety

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of judgements of the apex court.

Interestingly, Section 100 of CPA, 2019 provides, “*The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force*”

The Act is a consumer-centric law and provides remedies for aggrieved consumers. In addition, at times, there are special remedies provided under other laws as well. For example, in the case of housing construction- *Real Estate Regulation Act (RERA) 2016*, in case of Telegraph- *Indian Telegraph Act, 1885*, for seeds- *Seeds Act, 1966*. Also there are separate Ombudsman’s established as well established under the relevant acts- Banking Ombudsman, Insurance Ombudsman, Electricity Ombudsman etc. Thus there are various alternative platforms for grievance redressal available to consumers. This article studies CPA *vis a vis* RERA (Real Estate Regulation Act), Seeds Act, Arbitration and Conciliation Act and Indian Telegraph Act.

## II. CONSUMER PROTECTION ACT VIS A VIS REAL ESTATE REGULATION ACT

In a recent judgment of *Ireo Grace Realtech Pvt Ltd v/s Abhishek Khanna & Ors*<sup>3</sup> the apex court of India had the opportunity of deciding the applicability of the CPA on the matters falling within the purview of RERA Act, 2016. The Supreme Court considered various provisions of the RERA Act, 2016 such as section 18, 71, 79 and 88. The Court opined that though the real estate sector has grown enormously over the years, it has been left largely unregulated. It also pointed out that though the CPA forum is available to home buyers to seek relief, the same is only curative and isn’t comprehensive enough. The Court also considered the preamble of the act which, inter alia, states that “*it becomes necessary to have a Central Legislation, namely, the Real Estate (Regulation and Development) Bill 2013 in the interest of effective consumer protection, uniformity and standardisation of business practises and the transactions in the real estate sector*”

Commenting upon section 18 of RERA, 2016 the court observed that in case the developer fails to confirm to the time frame of construction or giving possession, the remedy of interest as well as compensation is available to the allottees. Under the proviso to Section 71 the consumer can also exercise his right to withdraw a complaint pending before a consumer fora.

The court also refereed Section 79 of the act as to *bar of jurisdiction of civil courts* and Section 88 as to *Application of other laws not barred*. It also drew a comparison between Section 88 of RERA and Section 3 of the CPA, 1986 (section 100 in the CPA, 2019) as to issue of concurrent jurisdiction.

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<sup>3</sup> Ireo Grace Realtech Pvt Ltd v/s Abhishek Khanna & Ors, AIR 2021 SC 437

The Supreme Court finally referred and relied upon the judgment in the case of *M/s Imperia Structures Ltd. v. Anil Patni and Anr*<sup>4</sup> wherein the following ratio was laid:

“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. Further, Section 18 itself specifies that the remedy under the said section is —without prejudice to any other remedy available”

It can thus be well concluded that the choice is available to the concerned allottee to opt for RERA or CPA for redressal of grievance.

### III. CONSUMER PROTECTION ACT VIS A VIS ARBITRATION AND CONCILIATION ACT

In *Emaar MGF Land Ltd v/s Aftab Singh*<sup>5</sup> (RP 2629-2630/2018 an order of the NCDRC (3 members bench) holding the consumer disputes as non-arbitral was contested at the apex Court. The basis of contention was the amendment made to section 8 of the *Arbitration and Conciliation Act, 1996* through which the words “notwithstanding any judgment, decree or order of the Supreme Court or any court” were added by the parliament.

The apex court while referring to the said amendment held that the purpose of the said amendment was to limit the scope of the judicial intervention while deciding an application seeking a reference to arbitration and the only ground of refusal could be the non-existence of any arbitration agreement. The legislative intent was confined only to the aforesaid aspects. The extension of the same to all spheres of disputes is too far-fetched. The court while relying upon the ratio laid down in the case of *Booz Allen and Hamilton v/s SBI Home Finance Ltd*<sup>6</sup> concluded that consumer disputes cannot be decided by way of arbitration.

### IV. CONSUMER PROTECTION ACT VIS A VIS SEEDS ACT

The apex court also had the occasion to deal with the purview of CPA, 1986 vis-à-vis the provisions of Seeds Act, 1966 in the case of *National Seeds Corporation Limited v/s Madhusudan Reddy & Anr*<sup>7</sup>. A complaint was lodged before the concerned District Forum claiming loss because of the defective seeds provided by the supplier. The complaint was opposed on the ground that any complaint concerning quality of seeds can only be filed under

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<sup>4</sup>M/s Imperia Structures Ltd. v. Anil Patni and Anr (2020) 10 SCC 783

<sup>5</sup> Emaar MGF Land Ltd v/s Aftab Singh, (2019)12 SCC 751

<sup>6</sup> Booz Allen and Hamilton v/s SBI Home Finance Ltd, (2011) 5 SCC 532

<sup>7</sup> National Seeds Corporation Limited v/s Madhusudan Reddy & Anr, (2012)2SCC506

the *Seeds Act, 1966* and CPA is not the appropriate forum. The Court after referring provisions of CPA, 1986 and *Seeds Act, 1966* held that “*though, the Seeds Act is a special legislation enacted for ensuring that there is no compromise with the quality of seeds sold to the farmers and others and provisions have been made for imposition of substantive punishment on a person found guilty of violating the provisions relating the quality of the seeds, the legislature has not put in place any adjudicatory mechanism for compensating the farmers/growers of seeds and other similarly situated persons who may suffer loss of crop or who may get insufficient yield due to use of defective seeds sold/supplied by the appellant or any other authorised person.*”

Thus, there is no express indication that provisions of CPA are not available to the farmers and the definition of ‘consumer’ is wide enough to cover the instant case as well. “

### **The Inconsistencies:**

There have also been cases where inconsistencies have cropped up in judgements on the issue of concurrent jurisdiction. In the case of *General Manager, Telecom vs M. Krishnan*<sup>8</sup> (2009), the apex Court concluded that special law supersedes the existing general law. In this case, the court held that Indian Telegraph Act, 1885 is applicable and CPA is barred implicitly. The Apex court laid emphasis on the case of *Chairman, Thiruvalluvar Transport Corporation vs. Consumer Protection Council*<sup>9</sup> (1995) which held that in Motor Vehicle accident cases, National Commission has no jurisdiction to adjudicate. In cases of goods lost in railways, the issue again comes up where Railway Claims Tribunal is also functioning at the place concerned. The Preamble to the *Railway Claims Tribunal Act, 1987* provides “*an Act to provide for establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents [or untoward incidents] and for matters connected therewith or incidental thereto*” Thus, the prerogative of CPA is barred. But there have been many cases where the railways has been made liable to pay compensation in case of deficient services.

It is also important to note that in the case *Special Machines Ltd vs. Punjab National Bank* (1989) the National Commission has held that in cases where the case involves determination of complex issues for which elaborate evidence is required, the court can decline to exercise jurisdiction. The Consumer Forums as a matter of fact are not supposed to follow strict rules of

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<sup>8</sup> *General Manager, Telecom vs M. Krishnan*, (2009)8 SCC 481

<sup>9</sup> *Chairman, Thiruvalluvar Transport Corporation vs. Consumer Protection Council*, AIR1995 SC 1384

evidence under the act.

## V. CONSUMER PROTECTION ACT VIS-A-VIS INDIAN TELEGRAPH ACT

The Supreme Court in the case of *Vodafone Idea Cellular Ltd. Vs. Ajay Kumar Agarwal*<sup>10</sup> decided the issue of maintainability of jurisdiction of consumer forums in case remedy is also available under a special statute. In this case the consumer had the grievance against the telecom service provider and the issue for determination was whether Section 7B of the Indian Telegraph Act, 1885 overrides the applicability of the consumer court.

The Ajay Kumar Agarwal, the respondent claimed deficient service provided by the appellant telecom service provider at the District Forum under the CPA. The telecom company raised the preliminary objection as to maintainability of complaint before the consumer forum. They alleged that Section 7B of the *Indian Telegraphic Act 1885* clearly lays down statutory remedy of arbitration and resultantly, the existence of a special statute overrides the one provided under a general law- Consumer Protection Act.

The Supreme Court clearly laid down “*It has consistently been held by this Court that the remedies available under the provisions of the CP Act are additional remedies over and above the other remedies including those made available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the CP Act*”

Hon’ble Justice Indu Malhotra in the case of *IREO Grace Realtech (P) Ltd. v. Abhishek Khanna* relied on the doctrine of Election. The doctrine provides that in case a party has at its disposal two alternate remedies, it can elect either of those two available. The mere existence of remedy by way of arbitration cannot be construed to bar the authority of the consumer forums. The choice is thus available to the consumer to have recourse to either the arbitral remedy or the remedy under consumer protection act.

The court also concluded that “telecom-services” not being expressly mentioned in the definition of Service under earlier legislation and mentioned expressly in the recent legislation cannot be construed as excluded. The definition of service is only indicative and not exhaustive under the earlier legislation as well.

## VI. CONCLUDING REMARKS

The Doctrine of Election empowers a consumer to make a selection when there are multiple forums of grievance redressal available. Thus, an aggrieved person has a right to invoke the jurisdiction of any of the two or more fora having concurrent jurisdiction but there cannot be

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<sup>10</sup> Vodafone Idea Cellular Ltd. Vs. Ajay Kumar Agarwal, II(2022)CPJ1(SC)

simultaneous invocation of the other on same cause of action. The Supreme Court has finally settled the position in case of *Vodafone Idea Cellular Ltd. vs. Ajay Kumar Agarwal*. The choice of forum left to the aggrieved consumer is a good step going forward instead of a legislative blanket ban imposition.

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