

Nothing can stop disgruntled homebuyers from approaching consumer forum

Arbitration clause in builder-buyer agreement cannot force homebuyers to opt for pro-buyer arbitrator, rules NCDRC

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The huge pendency of cases in courts of India has underlined the need for alternative dispute resolution methods. Such methods were introduced to enable cost-effective and quick resolutions to disputes. Arbitration is one of the most popular alternative dispute resolution methods. Arbitration is a process by which a disagreement/dispute is submitted, by agreement of parties involved, to one or more arbitrators who make a binding decision on the disagreement/dispute. By choosing arbitration, the parties opt for private dispute resolution instead of going to court. It is generally used for resolution of disputes relating to commercial matters.

An arbitration clause is an

integral part of almost all builder-buyer agreements wherein the parties agree to submit all existing or future disputes to arbitration, without necessarily knowing, specifically, what disputes will ever occur. Most of the buyers who book/buy an immovable property sold by a builder/developer sign the already printed builder-buyer agreement containing an arbitration clause where the builder/developer reserves the right to appoint the sole arbitrator. In case of a dispute between a builder/developer and a buyer, the possibility of an impartial and fair award is always in question.

In this respect, an interesting case came up before the National Consumer Disputes Redressal Commission (NCDRC) that involved Satish Kumar Pandey and others versus Unitech Limited. The argument by Unitech was that since the builder-buyer agreement contained an arbitration clause, the appropriate remedy available to the complainant was to seek arbitration and not complain

to NCDRC. NCDRC's opinion was that the provisions of the Consumer Protection Act, 1986, were in addition to other remedies available to the consumer. Therefore, the availability of the arbitration as a remedy did not debar a consumer/complainant from approaching a consumer forum in a case of deficiency of services or adoption of unfair trade practices by the service provider.

NCDRC also referred to various Supreme Court (SC) cases where after considering the provisions of the Arbitration and Conciliation Act, 1996 and Consumer Act, the apex court held that the plain language of the Consumer Act made it clear that the remedy available therein was in addition to and not in derogation of the provisions of any other law in force at that time.

In its observation, NCDRC said that SC had said that a complaint filed by the consumer before the consumer forum would be maintainable despite there being an arbitration clause in the agreement between a



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builder and a buyer. Therefore, in view of the authoritative pronouncement of SC, which was later followed by the NCDRC in another matter, the Commission found no merit in the contention that if the builder-buyer agreement contained an arbitration clause, the appropriate remedy available to the complainant was to seek arbitration and not a complaint before NCDRC and rejected the same.

To sum up, it may be said that the remedy of arbitration is not the only remedy but an optional remedy available to a consumers/complainants. If they opt for the remedy of arbitration, then they should not subsequently file a complaint under the Consumer Act. However, if they (consumers/complainants) chose to file a complaint in the first instance before the competent consumer forum, then

they cannot be denied relief by invoking the provisions of the Arbitration Act.

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