

Consumer Protection Act, 1986

RERA

Insolvency and Bankruptcy Code,
2016

Criminal laws

Civil Laws



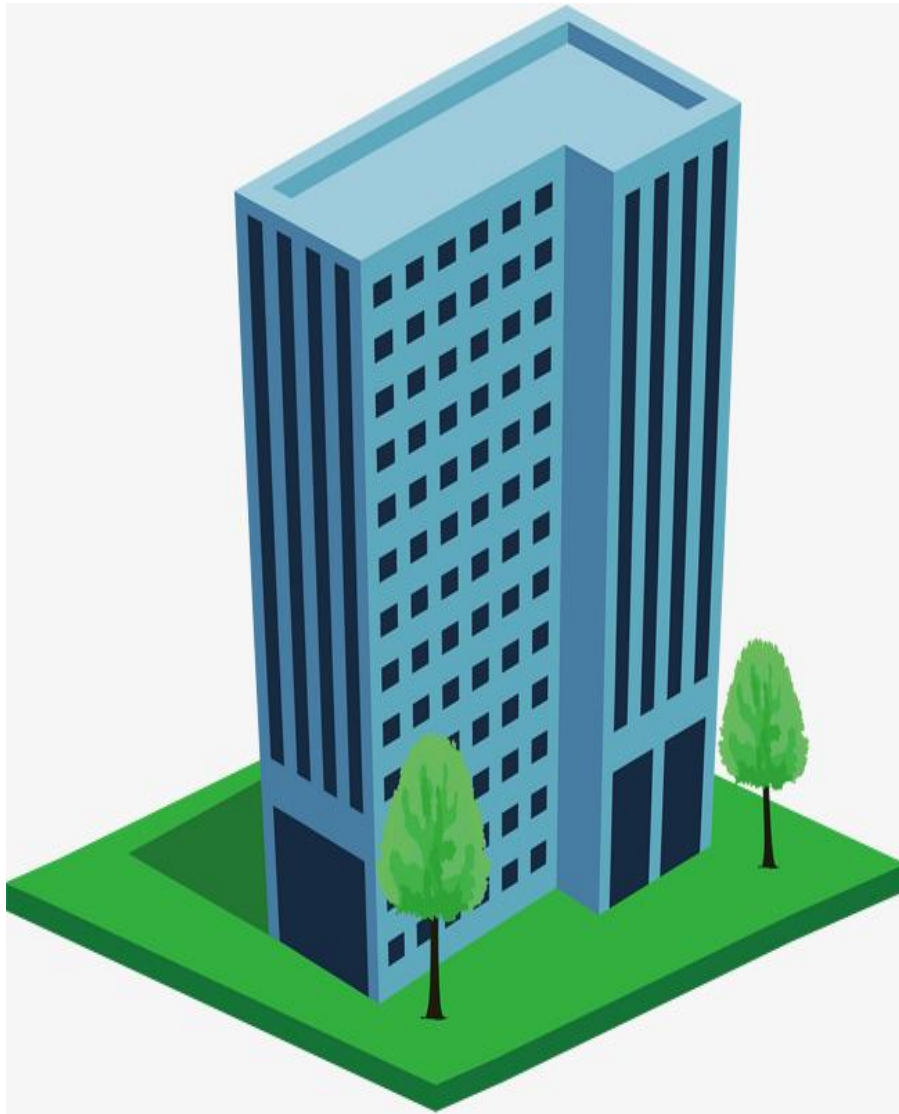
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**DEFICIENCY
IN SERVICES
BY BUILDER
UNDER
CONSUMER
PROTECTION
ACT, 1986**

Consumer

- **Two kinds of consumer under the Act**
 - **Consumer of goods**
 - buys or agrees to buy goods
 - any user of such goods
 - **Consumer of services**
 - hires or avails any services
 - any beneficiary of such service

Basic Rights under Consumer Protection Act, 1986

1. The Right to be protected against marketing of goods and services which are hazardous to life and property
2. The right to be informed about the quality, quantity, potency, purity, standard and price of goods, or services so as to protect the consumer against unfair trade practices.
3. The right to be assured, wherever possible, access to variety of goods and services at competitive prices
4. The right to be heard and be assured that consumers' interests will receive due consideration at appropriate forums
5. The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers
6. The right to consumer education

FORUM & JURISDICTION

- **Consumer Disputes Redressal Forums (District Forum)**
 - Claims less than or equal Rs.20 lacs.
- **Consumer Disputes Redressal Commissions (State Commission)**
 - Claim more than Rs.20 lacs & less than Rs.1 crore & appeals.
- **National Consumer Disputes Redressal Commission (National Commission)**
 - Claim equal to Rs.1 crore & appeals

BENEFITS & RELIEFS

- **Benefit**

- Disposal within 90 days
- No adjournment shall ordinarily be granted - Speedy trial

- **Relief**

- Removal of defects in goods or deficiency in services.
- Replacement of defective goods.
- Refund against defective goods or deficient services.
- Compensation.
- Prohibition on sale of hazardous goods.

Definitions.

"**consumer**" in respect of services u/s 2 (d) (ii) means any person who—

[hires or avails of] any services for a consideration which has been **paid or promised or partly paid and partly promised, or under any system of deferred payment** and **includes any beneficiary** of such services other than the person who ¹² [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person ¹³ [but does not include a person who avails of such services for any commercial purpose].

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θ "service" u/s 2 (o) means service of any description which is made available to potential users and includes, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy board 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;

Continued...

- **Kaushal Rana v. DLF Commercial Complexes Consumer Complaint No. 88 of 2012 NCDRC**
- **Facts:** Kaushal Rana, the Complainant, applied for allotment of a commercial office to DLF Commercial Complexes Ltd. on 11.03.2008.
- The Builder raised demand for various sums, which were paid by the Complainant. However, when construction did not begin on the proposed site by 2009, the Complainant sought a refund of his money, which though initially accepted by the Builder was later rejected and his allotment was cancelled.

Continued...

- **Held:** The Commission found that **no construction had begun** and the refund of money along with interest had been refused by the Builder without any reason.
- **Compensation Paid:** The Commission directed the Builder to refund the entire deposited amount with interest @ 18% p.a., from 20.02.2008, till realization. It also imposed costs of Rupees Two Lakh towards harassment, mental agony and litigation charges. This was payable within 90 days from the date the Order, failing which interest would be charged on it at 18% p.a., till realization.

Continued...

- **DLF Southern Towers v. Dipu Seminal Revision Petition No. 1973 of 2014 NCDRC**
- **Facts**: Dipu Seminal (hereinafter referred to as the '**Complainant**') applied for allotment of a flat with DLF Southern Towers (hereinafter referred to as the '**Builder**') on 30.9.2008, by means of an application form along with cheque of Rs. 4,00,000. The Builder had promised to handover possession of the flat within a period of 36 months, but the construction was delayed and so the Complainant refused to pay the subsequent installments, which were due under the contract. When the Builder resumed construction, the Complainant offered to pay the remaining installments, but the Builder demanded an additional amount of Rs. 1,70,000. Alleging deficiency on part of the Builder, the Complainant filed a consumer complaint.
- The Builder argued that due to the failure of the Complainant to pay the outstanding installments, the Builder was entitled to forfeit Rs. 4,00,000 paid by the Complainant towards earnest money.

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- **Holding:** The National Consumer Disputes Redressal Commission (NCDRC) found that the Complainant had failed to sign the Apartment Buyers' Agreement, and pay any of the installments, which were due under the Agreement. Therefore, the Builder had every right to forfeit the earnest money. The NCDRC further distinguished the case from that of *Kushal K. Rana v. DLF Commercial Complexes Ltd.*, Consumer Complaint No. 88 of 2012 dated 9th September, 2014, wherein the complainant was allowed a refund on entire deposited amount along with interest on the ground that in Kushal Rana's case, the builder had unilaterally changed position of flat and area and delayed construction by a year whereas in this case the Complainant had applied for relief before expiry of the 36 month deadline.
- **Compensation:** None

Continued...

- **Indrajit Dutta v. Samriddhi Developer First Appeal No. 1219 of 2014**
- ***NCDRC***
- **Facts**: Indrajit Dutta (hereinafter referred to as the '**Complainant**') purchased two flats from Samriddhi Developers (hereinafter referred to as the '**Builder**'). Possession of the flats was to be handed over by 7.02.2010. However, construction was not completed and **possession not granted to the Complainant on the said agreed date** and therefore this complaint was filed before the National Consumer Disputes Redressal Commission ("**NCDRC**").
- The Builder argued that the complaint was not maintainable as the purchase of two flats amounted to "**commercial purpose**" and therefore the Complainant was not a "consumer" under the Consumer Protection Act, 1986.

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- **Holding**: The NCDRC held that when a person purchases two flats, it cannot be said that both are for his residential purpose and such purchase **amounts to an investment for commercial purpose**. Therefore, the Complainant does not fall within the purview of a “consumer” in terms of the Consumer Protection Act, 1986. Accordingly, the NCDRC rejected to grant any compensation to the Complainant.
- **Compensation**: None

Continued...

- ***Pankaj Agrawal v. DLF Gurgaon Home Developers Private Limited Case No. 13 of 2010 CCI***
- **Facts:-** Informants filed information against DLF Gurgaon Home Developers Private Limited under separate cases alleging, inter alia, contravention of the provisions of Section 4 of the Act. It was alleged that the Opposite Party had imposed unfair and onerous terms and conditions in the Buyers Agreement like allotment of back to back parking on compulsory payment of additional Rs. 1.5 lakhs, non-transparent calculation of advance payment rebate, additional payments towards External Development Charges (EDC)/Infrastructure Development Charges (IDC) on the increased area, no refund and forfeiture of money. Further, they had raised floors without giving any information to the informants. The Informants prayed before the CCI to initiate an inquiry into the alleged conduct of the Opposite Party for abuse of dominant position in contravention of section 4(2)(a)(i) of the Competition Act.

Continued...

- **Held:-** The CCI stated that the activity of constructing apartments intended for sale to the potential consumers after developing the land came within the ambit of a 'service' for the purpose of the Competition Act. The CCI opined the relevant market to be the market for the 'provision of services for development/sale of residential apartments in Gurgaon'. It was also stated that the terms and conditions imposed through the Agreement were abusive being unfair within the meaning of Section 4(2)(a)(i) of the Competition Act.
- **Compensation:-** The CCI also observed that since a penalty of INR 6.3 billion had already been imposed on the Opposite Party in the Beldaire's Case for the same time period to which contravention in the present cases belong, no financial penalty under section 27 of the Competition Act was required to be imposed.

Particulars	Consumer Protection Act, 1986	RERA, 2016
Jurisdiction	<ul style="list-style-type: none"> • Pecuniary: NCDRC Only above INR 1 crore. • Any matter of consumer interest • Association of buyers with total claim more than INR 1 crore may file a joint complaint. • Covers all the projects. 	<ul style="list-style-type: none"> • No pecuniary limit. • Only real estate projects • Complaint is filed to the Authority of the State where property is located • Covers only upcoming and ongoing projects.
How complaint is filed	On a plain paper with requisite fee	On a prescribed form given in the State Legislations with requisite fee
Who can complain	Only allottees or association of allottees	Promoters, real estate agents, allottees or their association
How cognizance is taken	<ul style="list-style-type: none"> • Only on a complaint. • No suo motu proceedings. • Can not conduct an enquiry. 	<ul style="list-style-type: none"> • Can act on a complaint or take suo-motu notice. • Can conduct an enquiry.

Ease of filing a case	<ul style="list-style-type: none"> • Application on plain paper, with documentary evidence • Can be filed at district, state or national level, based on the claim amount, but as real estate is expensive, it may lead to overloading at the national level • Only registered associations of purchasers and allottees can file complaints 	<ul style="list-style-type: none"> • Specifies forms, apart from documentary evidence • Can be filed at the regional or state level • Individual claimants can file complaints
The success of litigation	<ul style="list-style-type: none"> • Cannot imprison a developer but can award a fine. • Good past record of litigation 	<ul style="list-style-type: none"> • Can imprison an errant developer up to three years, or prescribe a fine, or both • No past precedence, as yet
Appellate System	<ul style="list-style-type: none"> • Supreme Court in case of order of NCDRC • NCDRC in case of order of State Commission • State Commission in case of District Consumer forum 	<ul style="list-style-type: none"> • Real Estate Regulatory Tribunal, for grievances against the order of the Authority • High Court in case of order of the Tribunal

RERA VS CONSUMER PROTECTION

PROVISO TO SECTION 71 OF RERA

Any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

SECTION 79 OF RERA

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Is Rera Retrospective?

- The first proviso to Section 3(1), Sections 18, 38, 59, 60, 61, 63 and 64 are retrospective/retroactive and are penal in nature. First proviso to Section 6, Section 7(4)(a) and Section 8 are penal in nature. They are violative of Articles 19(1)(g) and 20(1) of the Constitution of India.

- Neelkamal Realtors suburban P Ltd Vs UOI*

Is Rera Retrospective?

Held that

Sections 3, 4, 5, 7 and 8 are required to be construed harmoniously. These provisions cannot be said to be violative of Articles 14, 19(1)(g), 20(1) and 300-A of the Constitution of India. These provisions cannot be construed as penal in nature. They impose reasonable restrictions on the promoter in larger public interest. The intention of RERA is to bring the complaints of allottees before one Authority and simplify the process. If the interpretation, that the provision is applicable only after coming into force RERA is accepted, this would result in allottees having to approach different fora for interest prior to RERA and subsequent to RERA. In fact Section 71 of RERA provides that the cases pending before the Consumer Court can be transferred to Authority. Reference to pending cases is obviously a reference to claims for interest and / or compensation pending when the RERA came into force.

SECTION 89 OF RERA

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

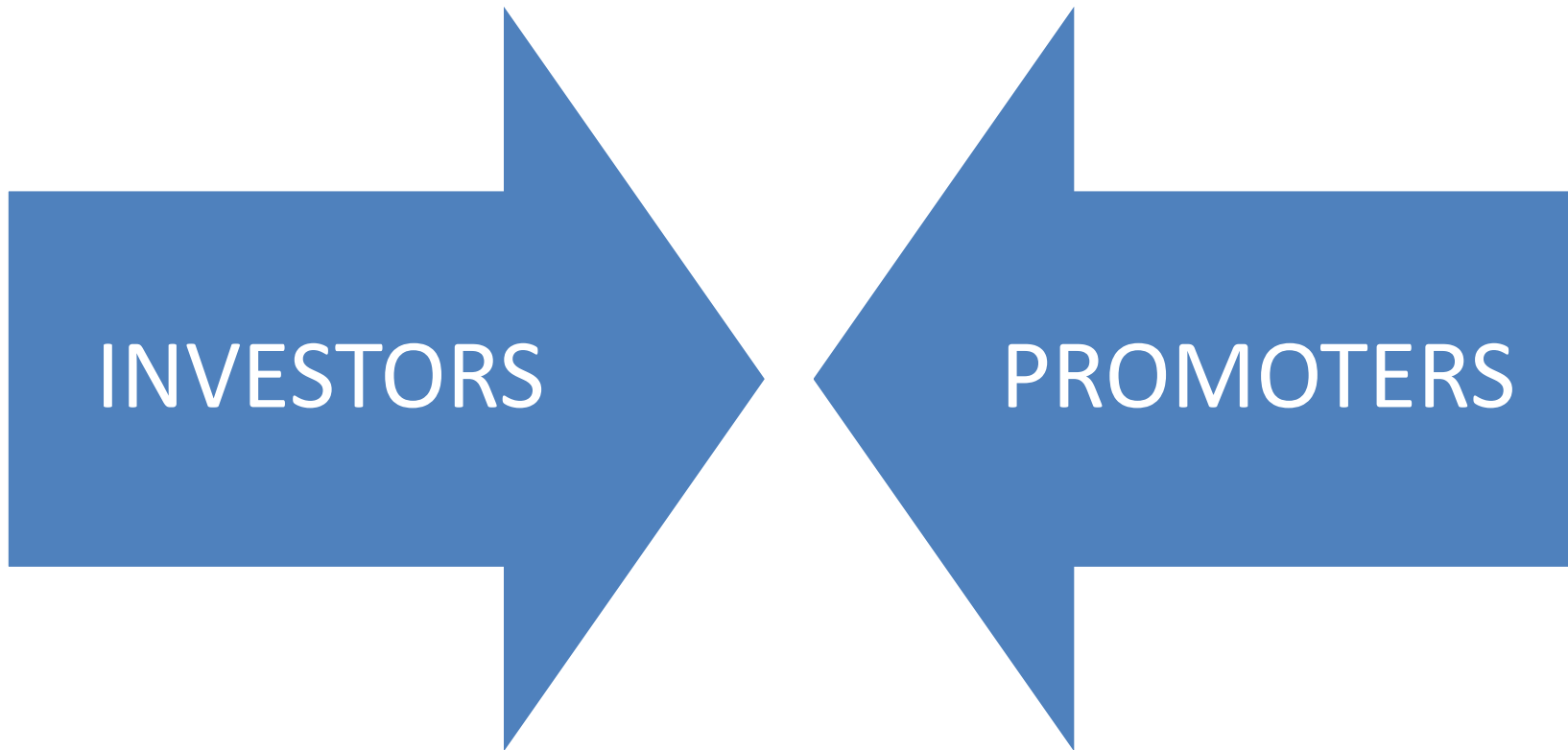
SECTION 3 OF THE CONSUMER PROTECTION ACT, 1986

Act not in derogation of any other law.—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 88 OF THE RERA

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.

Mahesh Pariani V/s Monarch Solitaire LLP



Mr. Ganesh Lonkar V/s D.S. Kulkarni Developers (26.12.2017)



RERA

Arbitration
Agreement