PROCEEDINGS OF THE DAY	
Day and Date	Thursday and 28.10.2021
Complaint No.	CR/528/2019 Case titled Anjali Bhatnagar Pradeep Bhatnagar VS Spaze Towers Private Limited
Complainant	Anjali Bhatnagar Pradeep Bhatnagar
Represented through	Counsel for complainant
Respondent	Spaze Towers Private Limited
Respondent Represented through	Mr JK Dang, Advocate
Last date of hearing	
Proceeding Recorded by	S.L. Chanana

Proceedings

This is an application filed by the respondent seeking dismissal of complaint in hands. Learned counsel for complainant is ready for arguments, without filing any reply. Heard.

It is submitted by learned counsel for applicant/respondent that aCivil Writ Petition titled as **Rajeev Chandwani & Ors** Vs **Union of India & Ors** has been filed before Hon'ble High Court of Delhi, by some persons including present complainant, where the petitioners have sought issuing of writ, in the nature of *Mandamus or Certiorari* or any other writ, directing respondent No.3 (Spaze Tower Pvt. Ltd) to refund the amount, paid by the petitioners towards sale consideration of units, alongwith reasonable interest. The petitioners have

levelled disparaging remarks about the functioning of Haryana Real Estate Regulatory Authority, Gurugram(HARERA) including this forum, stating that

due to ineffectiveness of redressal authorities, and also the failure of regulatory/supervisory authorities to perform their functions, has purportedly coerced the complainant to knock the doors of this Hon'ble High Court. According to learned counsel, this behaviour is nothing but audacity and temerity on the part of complainant, to condemn functioning of Authority. In doing so, the complainant has categorically shown lack of his faith in the legal process, invoked by himself(complainant).

Again, apart from filing above mentioned Civil Writ Petition, the complainant alongwith some other litigants has instituted a complaint before The National Company Law Tribunal(NCLT) New Delhi titled as **Vivek Khanna & Ors** Vs **Space Towers Pvt Ltd.** with prayer for initiation of Corporate Insolvency Resolution Process, against respondent purportedly under Section 7 of The Insolvency and Bankruptcy Code, 2016.

Contending that the complainant has indulged in rampant and brazen forum hunting process by filing multifarious litigations against his client i.e. respondent, to mount unwarranted and undue pressure on the same, with an object that respondent will succumb to his blackmailing tactics, learned counsel requests to dismiss this complaint, alleging it is misuse of process of law, to file similar petitions before different authorities/courts. Learned counsel referred a case **M/s Imperia Structures Ltd.** Vs **Anil Patni & others**, Civil Appeal No.3581-3590 of 2020 where Apex Court mandated as that **The parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act(Consumer Protection Act) or file an application under the RERA Act.**

The fact that aforementioned writ petition as well as complaint have been filed by some persons, in association with present complainant is not denied rather admitted by learned counsel for the latter. It is submitted by him that there was no restriction in approaching the High Court by filing writ petition as mentioned above or the NCLT seeking initiation of Corporate Insolvency Resolution Process. His client was at liberty to approach different forums/courts, when law permits him to do so. To have 'alternate' remedy was no legal bar to exercise legal right. Learned counsel took me through a case **Pioneer Urban Land & Infrastructure Ltd & Another** Vs **Union of India & Others** 2019 SCC online SC 1005. One of conclusions/findings given by apex court was that **The RERA is to be read harmoniously with the**

Code, as amended by the amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code

Learned counsel again relied upon case title as M/s Magadh Sugar & Energy Ltd Vs The State of Bihar & Ors Civil Appeal No.5728 of 2021 where following was observed by the Hon'ble Apex Court-

While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution of India, if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies.

The complainant gave an undertaking by fling an affidavit affirming that he will not press for his relief of refund in writ petition before Hon'ble High Court.

Guiding principle on legal issue, raised through this application can be found in Section10 of The Code of Civil Procedure-1908, which is reproduced as under:

S.10.Stay of suit: No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in(India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of (India) established or continued by the (Central Government) and having like jurisdiction, or before (the Supreme Court)

The Apex Court in case National Institute of MH&NS vs C Parameshwara, AIR 2005 SC 242 held that the object underlying section 10 CPC is to avoid parallel trials on the same issue by two courts and to avoid

recording of conflicting findings on issues which are directly and substantially in issue in a previously instituted suit.

The Rajasthan High Court also observed in case title as **Munnilal Vs Sarvajeet, AIR 1984 Raj 22,** that basic object of Section 10 to protect a person, from multiplicity of proceedings between the same parties.

Polemic question to be answered here is, "even if complainant has filed aforesaid writ petition and also initiated proceeding before NCLT u/a 7 of The Insolvency and Bankruptcy Code, 2016, can same proceed with this complaint or not."

In M/s Imperia Structures Case (Supra) the question was whether a complainant could avail remedy under The Consumer's Protection Act and RERA Act, simultaneously. Both of these forums were competent to grant same relief, as sought by complainant. Problem before this forum is not same. Complainant of this case has filed another complaint before NCLT. Apparently, he has not prayed for refund of amount from respondent (as in this case). Although one of reliefs sought from Hon'ble High Court is same i.e. refund of amount but firstly, it is not a civil suit but a writ petition. Section 10, bars institution **of suit,** on same cause of action. Claim in a writ petition is generally not a civil right of petitioner, it depends upon discretion of the High Court or the Supreme Court, to allow writ or not. Similarly, Section 79 of RERA Act, bars 'Civil Court' from entertaining suit or proceedings in respect of matter, which Authority or Adjudicating Officer or Appellate Tribunal is empowered determine, and not the High Court. Thirdly, said writ petition was filed later on, when complaint in hands was still pending. It is for Hon'ble High Court to decide if said petition is maintainable there or not. Moreover, the complainant has given undertaking that he will not stress for said prayer, rather will withdraw prayer of refund, in said writ petition.

Simply, to say that present complainant has alleged before the High Court of Delhi in writ petition mentioned above that due to ineffectiveness of redressal authorities and also the failure of regulatory/supervisory authorities to perform their functions, had coerced him (complainant) to knock doors of Hon'ble High Court, does not amount to disparaging remarks about functioning of authority or this forum. Apparently, the complaint in hands is pending for a long time. According to learned counsel for complainant, 21 dates of hearing have already been given in this matter. If all this is true and complainant point out all this to the High Court, the same does

not amount that complainant had no faith in legal process. To approach the High Court was also a legal process. In this way, I am not in consonance with learned counsel for applicant/respondent blaming the complainant for audacity, in condemning the functioning of the authority or this forum.

Considering facts as discussed, I find no reason to dismiss the complaint in hands as prayed by the applicant/respondent.

Application in this regard is thus dismissed.

To come on 10.11.2021 for arguments.

(Rajender Kumar)
Adjudicating Officer
28.10.2021