



## INDIA – THE DAWN OF A NEW ERA IN REMEDIES FOR THE CONSUMER

### **Introduction**

Consumers in the real estate sector, particularly the residential real estate sector, often find themselves locking horns with builders or developers from whom they have purchased apartments in residential buildings. Grievances of consumers have commonly been for delayed possession of the housing space purchased, poor quality of construction, failure to meet assured standards, etc. Remedying these grievances has required either approaching the ordinary civil courts or alternate forums established under the Consumer Protection Act, 1986 (the “**Act**”).

Since its enactment in 1986, although the Act has been used by scores of consumers to seek remedies for deficiency in the quality of the goods sold or services rendered, it has not yielded the desired results from many. In the real estate sector, this is mainly because powerful builders with deep pockets have exploited the technical and procedural aspects of the Act to nullify the legitimate claims of consumers. The Indian judiciary, including India’s Supreme Court (the “**SC**”), has begun to clarify and limit the operation of the technical and procedural provisions of the Act through some important cases highlighted below.

### **The Amrapali Case**

On February 21, 2017, in *Amrapali Sapphire Developer Pvt. Ltd. v. Amrapali Sapphire Flat Buyers Welfare Association*, the SC dismissed appeals challenging a ruling of the National Consumer Disputes Redressal Commission (the “**NCDRC**”) under the Act, which upheld the right of a group of consumers to collectively file, through a recognized consumer association, a complaint in the NCDRC, although each individual consumer’s claim was under INR10,000,000, (i.e., below the pecuniary jurisdiction of the NCDRC). The SC affirmed the concept of a group or class under the Act and the ability of a class to take action.

The NCDRC’s ruling was pronounced in the backdrop of certain interim applications that comprised a part of a larger complaint against Amrapali Sapphire Developers Pvt. Ltd. (“**Amrapali**”), a real estate developer based in Delhi, who had agreed to sell apartments to various purchasers. As per media reports, a complaint was filed by the Amrapali Sapphire Flat Buyers Welfare Association (the “**Flat Buyers Association**”), *inter alia*, for failure of Amrapali to deliver possession of the apartment spaces that were purchased by the members of the Flat Buyers Association. In the interim applications, Amrapali alleged that the Flat Buyers Association could not bring a valid complaint on behalf of all the persons who had purchased apartments as the value of each apartment was under INR10,000,000, i.e., below the pecuniary jurisdiction of the NCDRC.

The NCDRC, however, categorically negated Amrapali’s contentions and held that the Flat Buyers Association was a recognized consumer association within the meaning of the Act, and was competent to institute a complaint on behalf of its members.

It further held that the value of the apartments, for the purposes of determining the jurisdiction of the NCDRC, need not individually cross the INR10,000,000 limit; it was sufficient if the value of all the



apartments collectively exceeded the INR10,000,000 mark. The next hearing of the complaint is scheduled for March 27, 2017.

In a subsequent case, *Ambrish Kumar Shukla and Ors. v. Ferrous Infrastructure Pvt. Ltd.*, the NCDRC reiterated the point of pecuniary jurisdiction and drew conclusions similar to those in the *Amrapali* case.

### **The Unitech Case**

In another order delivered in the last week of February 2017 in the case of *Unitech Residential Resorts Ltd. v. Atul Gupta & Anr.*, the SC ordered a refund of the amount paid by the purchasers of apartments in buildings that were to be constructed by Unitech Ltd. (“**Unitech**”), a leading realtor in India, along with interest at the rate of 14% per annum.

This case too found its way to the SC from a decision of the NCDRC, who had ordered Unitech to: (i) pay interest and compensation for failure to deliver timely possession of the apartments it had sold to various purchasers; and (ii) deliver the apartments to the purchasers as per a revised schedule. However, Unitech did not take any steps to ensure delivery of the apartments as per the revised schedule, and instead, challenged the NCDRC’s order before the SC.

In the SC, the purchasers highlighted that Unitech had failed to deliver the apartments as per the revised schedule and urged the SC to direct Unitech to refund the money it had received as consideration from the purchasers. Accordingly, the SC acceded to their request and ordered Unitech to refund the consideration money along with interest at the rate of 14% per annum from January 1, 2010. It is pertinent to note that while acceding to the purchasers’ request, the SC actually enhanced the interest payment to 14% per annum. On the question of compensation and other issues emanating from the NCDRC’s decision, the SC has directed that the matter be heard on April 24, 2017.

### **Our Comments**

The SC’s approach in both the cases is highly commendable and heralds the dawn of a new era in consumer protection and remedies available to them under the Act.

One, the validity of a group or class of consumers has been upheld by the SC, and the SC has categorically stated that technicalities and frivolities will not lend any aid to someone who seeks to evade his responsibility as a service provider. Many consumers will now form a class and take action against errant suppliers or manufacturers in the higher forums (like the NCDRC), where speedier justice is available, and the ability of the errant supplier or manufacturer to thwart the consumer’s claim on the procedural grounds is limited. Consumer goods manufacturers, automobile companies and the like will have to tread carefully in respect of product or service deficiency claims.

Two, the fact that the SC has actually awarded a high rate of interest from a prior point of time in the *Unitech* case shows that Indian courts may actually be moving into a higher pecuniary remedies zone with a view to deterring blatant and egregious behavior. This can only be good for consumers, who have not only had to struggle with long legal waits, but have also had to be happy with peanuts doled out as damages at the end.