$~1 to 3 & 10 to 53 & 55 to 62

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 4th September, 2019

1

\+ **CM(M) 1244/2019 & CM APPL. 38052-38053/2019**

M/S M3M INDIA PVT LTD & ANR ..... Petitioners

versus

DR DINESH SHARMA & ANR ..... Respondents

2

\+ **CM(M) 1248/2019 & CM APPL. 38089-38090/2019**

M/S M3M INDIA PVT LTD & ANR ..... Petitioners

versus

M/S JUNEJA HOTELS PVT LTD ..... Respondent

Through:

3

\+ **CM(M) 1249/2019 & CM APPL. 38097-38098/2019**

M/S M3M INDIA PVT LTD & ANR ..... Petitioners

versus

RAJ SHEKHAR JUNEJA ..... Respondent

10

\+ **CM(M) 514/2019 with CM APPL. 15039/2019 & 26394/2019**

JAI KRISHNA ARTECT JV ..... Petitioner

versus

VIJAY KUMAR GOEL & ORS ..... Respondents

11

\+ **CM(M) 516/2019 & CM APPL. 15058/2019**

AVALON PROJECTS ..... Petitioner

versus

GAUTAM ROY & ORS ..... Respondents

12

\+ **CM(M) 610/2019 & CM APPL. 18214/2019**

MIST DIRECT SALES PVT LTD ..... Petitioner

versus

JAYANT NAGAR ..... Respondent

13

\+ **CM(M) 611/2019 & CM APPL. 18218/2019**

MIST DIRECT SALES PVT LTD ..... Petitioner

versus

KUMUD BORDE & ANR ..... Respondents

14

\+ **CM(M) 621/2019 & CM APPL. 18726/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

AJAY NAGPAL & ORS ..... Respondents

15

\+ **CM(M) 691/2019 & CM APPL. 21107/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD .... Petitioner

versus

KAMAL SINGH & ORS ..... Respondents

16

\+ **CM(M) 697/2019 & CM APPL. 21408/2019**

THE BOMBAY DYEING & MANUFACTURING CO LTD ..... Petitioner

versus

MOHIT CHHEDA & ANR ..... Respondents

17

\+ **CM(M) 698/2019 & CM APPL. 21415/2019**

THE BOMBAY DYEING & MANUFACTURING CO LTD ..... Petitioner

versus

SHARDDHA GORADIA & ANR ..... Respondents

18

\+ **CM(M) 700/2019 & CM APPL. 21454/2019**

THE BOMBAY DYEING & MANUFACTURING CO LTD ..... Petitioner

versus

RAJESH PREMJI SHAH & ANR ..... Respondents

19

\+ **CM(M) 703/2019 & CM APPL. 21508/2019**

THE BOMBAY DYEING & MANUFCTURING CO LTD ..... Petitioner

versus

NARENDRA JAIN & ANR ..... Respondents

20

\+ **CM(M) 716/2019 & CM APPL. 21749/2019**

SPAZE TOWERS PVT LTD ..... Petitioner

versus

VINAY KUMAR ..... Respondent

21

\+ **CM(M) 721/2019 & CM APPL. 21897-21898/2019**

SPAZE TOWERS PVT LTD ..... Petitioner

versus

VAIBHAV GOEL ..... Respondent

22

\+ **CM(M) 802/2019 & CM APPL. 24537/2019**

RAMPRASTHA PROMOTERS & DEVELOPERS PVT LTD ..... Petitioner

versus

SAURABH KASTURIA & ANR ..... Respondents

23

\+ **CM(M) 803/2019 & CM APPL. 24555/2019**

RAMPRASTHA PROMOTERS & DEVELOPERS PVT LTD ..... Petitioner

versus

MANISH MITTAL & ANR ..... Respondents

24

\+ **CM(M) 804/2019 & CM APPL. 24559/2019**

RAMPRASTHA PROMOTERS & DEVLOPERS PVT LTD ..... Petitioner

versus

RAVEESH GOEL & ANR ..... Respondents

25

\+ **CM(M) 805/2019 & CM APPL. 24562/2019**

RAMPRASTHA PROMOTERS & DEVELOPERS PVT LTD ..... Petitioner

versus

AMIT NAG & ANR ..... Respondents

26

\+ **CM(M) 832/2019 & CM APPL. 25275/2019**

RAMPRASTHA PROMOTERS & DEVELOPERS PVT LTD ..... Petitioner

versus

KAROOM SEM ..... Respondent

27

\+ **CM(M) 850/2019 & CM APPL. 25783/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

PRAVEEN RAJPAL & ANR ..... Respondents

28

\+ **CM(M) 856/2019 & CM APPL. 25868/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

GAURAV AHUJA ..... Respondent

29

\+ **CM(M) 858/2019 & CM APPL. 25886/2019**

TODAY HOMES & INFRASTRUCUTRE PVT LTD..... Petitioner

versus

HARVEER SINGH & ANR ..... Respondents

30

\+ **CM(M) 859/2019 & CM APPL. 25894/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

ANIL KUMAR SHARMA & ORS ..... Respondents

31

\+ **CM(M) 860/2019 & CM APPL. 25949/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

VIVEK MEHRA ..... Respondent

32

\+ **CM(M) 861/2019 & CM APPL. 25952/2019**

TODAY HOMES &
INFRASTRUCTURE PVT LTD .... Petitioner

versus

PREM HANDA ..... Respondent

33

\+ **CM(M) 862/2019 & CM APPL. 25969/2019**

TODAY HOMES & INFRASTRUCURE PVT LTD ..... Petitioner

versus

DEVENDER KUMAR & ANR ..... Respondents

34

\+ **CM(M) 863/2019 & CM APPL. 25979/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

JAI CHAND & ORS ..... Respondents

35

\+ **CM(M) 864/2019 & CM APPL. 26025/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

DEEPAK KUMAR KHAIRWAL ..... Respondent

36

\+ **CM(M) 865/2019 & CM APPL. 26104/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

PRADEEP SINGH ..... Respondent

37

\+ **CM(M) 901/2019 & CM APPL. 27093/2019**

SPAZE TOWERS PRIVATE LIMITED ..... Petitioner

versus

SHISHIR JAIN & ORS ..... Respondents

38

\+ **CM(M) 909/2019 & CM APPL. 27251/2019**

SPAZE TOWERS PRIVATE LIMITED ..... Petitioner

versus

PANKAJ CHADHA & ANR ..... Respondents

39

\+ **CM(M) 938/2019 & CM APPL. 27994/2019**

SPAZE TOWERS PVT LTD ..... Petitioner

versus

RAJIV BHATIA ..... Respondent

40

\+ **CM(M) 939/2019 & CM APPL. 28055/2019**

SPAZE TOWERS PVT LTD ..... Petitioner

versus

VISHAL KAPOOR & ANR ..... Respondents

41

\+ **CM(M) 967/2019 & CM APPL. 29046-29047/2019**

MIST DIRECT SALES PVT LTD ..... Petitioner

versus

PURAN MAL SHARMA & ANR ..... Respondents

42

\+ **CM(M) 974/2019 & CM APPL. 29162-29163/2019**

RAMPRASTHA PROMOTERS &
DEVELPOERS PVT LTD ..... Petitioner

versus

ARADHANA GAUR & ANR ..... Respondents

43

\+ **CM(M) 975/2019 & CM APPL. 29219-29220/2019**

RAMPRASTHA PROMOTERS &
DEVELPOERS PVT LTD ..... Petitioner

versus

BIVASH BANERJEE & ANR ..... Respondents

44

\+ **CM(M) 977/2019 & CM APPL. 29223-29224/2019**

RAMPRASTHA PROMOTERS &
DEVELOPERS PVT LTD ..... Petitioner

versus

ADNAN AHSAN ..... Respondent

45

\+ **CM(M) 978/2019 & CM APPL. 29225-29226/2019**

RAMPRASTHA PROMOTERS &
DEVELOPERS PVT LTD ..... Petitioner

versus

MUKESH KUMAR GUPTA ANR ..... Respondent

46

\+ **CM(M) 979/2019 & CM APPL. 29232-29233/2019**

RAMPRASTHA PROMOTERS &
DEVELOPERS PVT LTD ..... Petitioner

versus

AMIT KUMAR NANCHAHAL & ANR ..... Respondents

47

\+ **CM(M) 980/2019 with CM APPL. 29234/2019 & 29238/2019**

RAMPRASTHA PROMOTERS &
DEVELOPERS PVT LTD ..... Petitioner

versus

ASHISH MATHUR ..... Respondent

48

\+ **CM(M) 982/2019 & CM APPL. 29255-29256/2019**

RAMPRASTHA PROMOTERS &
DEVELOPERS PVT LTD ..... Petitioner

versus

BRIJ KRISHEN DHAR & ANR ..... Respondents

49

\+ **CM(M) 983/2019 & CM APPL. 29258-29259/2019**

RAMPRASTHA PROMOTERS &
DEVELOPERS PVT LTD ..... Petitioner

versus

AVINASH ARORA & ANR ..... Respondents

50

\+ **CM(M) 985/2019 & CM APPL. 29291-29292/2019**

RAMPRASTHA PROMOTERS &
DEVELOPERS PVT LTD ..... Petitioner

versus

MANISH JAIN & ORS ..... Respondents

51

\+ **CM(M) 999/2019 & CM APPL. 29739-29740/2019**

THREE C SHELTERS PVT LTD ..... Petitioner

versus

RUTHALA VENKATESWARA RAO & ANR ..... Respondents

52

\+ **CM(M) 1023/2019 & CM APPL. 30595-30596/2019**

M/S M3M INDIA PVT LTD & ANR ..... Petitioners

versus

SUBHASH MANGLA & ANR ..... Respondents

53

\+ **CM(M) 1074/2019 & CM APPL. 32109/2019**

THE BOMBAY DYEING & MANUFACTURING CO LTD ..... Petitioner

versus

DEEPAK BABURAO BIREWAR & ANR ..... Respondents

55

\+ **CM(M) 1146/2019 & CM APPL. 34793-34794/2019**

M/S KASHISH DEVLOPERS LTD ..... Petitioner

versus

INTIME VANIJYA PVT LTD ..... Respondent

56

\+ **CM(M) 1180/2019 & CM APPL. 35634-35636/2019**

TODAY HOMES AND INFRASTRUCTURE PRIVATE LIMITED ..... Petitioner

versus

ANKIT GUPTA & ORS ..... Respondents

57

\+ **CM(M) 1183/2019 & CM APPL. 35680-35682/2019**

ANSAL CROWN INFRABUILD (P) LTD ..... Petitioner

versus

OMWATI ..... Respondent

58

\+ **CM(M) 1187/2019 & CM APPL. 35831-35833/2019**

TODAY HOMES & INFRASTRUCTURE PVT LTD..... Petitioner

versus

SAMIR SHAH ..... Respondent

59

\+ **CM(M) 1189/2019 & CM APPL. 35852-35853/2019**

M/S M3M INDIA PVT LTD ..... Petitioner

versus

PANSHIL DEVELOPERS PVT LTD ..... Respondent

60

\+ **CM(M) 1191/2019 & CM APPL. 35864-35866/2019**

TODAY HOMES AND
INFRASTRUCTURE PRIVATE LIMITED ..... Petitioner

versus

GAGANDEEP SINGH ANAND & ORS ..... Respondents

61

\+ **CM(M) 1192/2019 & CM APPL. 35964-35965/2019**

M/S M3M INDIA PVT LTD & ANR ..... Petitioners

versus

ANURAG RAJPAL & ANR ..... Respondents

62

\+ **CM(M) 1195/2019 & CM APPL. 36250-36251/2019**

M/S UMANG REALTECH PVT LTD ..... Petitioner

versus

COL RAJESH SHARMA ..... Respondent

Present: **For the Petitioners**

Mr.A.R.Takkar, Mr.Amarjeet Kumar, Ms.Shriya Takkar & Mr.Arun Wighmal, Advocates in Item Nos.1, 2, 3, 52, 59 & 61.

Mr.Vivek Kohli, Ms.Prerna Kohli, Mr.Mudhit Gupta, Ms.Ayushi Verma, Ms.Yeshi Rinchhen & Mr.Gaurav Hooda, Advocates in Item Nos.1 & 11.

Mr.Lokesh Bhola, Mr.Sandeep Mandar & Mr.Karan Grover, Advocates in Item Nos.12, 13, 20, 21, 37, 38, 39, 40 & 41.

Mr.Vivek Sibal, Ms.Kanika Agnihotri, Mr.Sumesh Dhawan & Mr.Jitender Ratta, Advocates in Item Nos. 14, 15, 27 to 36 & 60.

Mr.Vishesh Issar, Mr.Rahul Dhawan & Mr.Varun Sharma, Advocates in Item Nos.16 to 19 & 53.

Mr.Deepank Yadav, Advocate in Item No.19.

Mr.Sougat Sinha, Mr.Manoj Kumar, Mr.R.Gayathri manasa, Advocates in Item Nos. 22, 23, 24, 25, 26, 42, 43. 44. 45. 46. 47. 48. 49.

Mr.Uday Arora, Mr.Rajat Malhotra & Mr.Sunil Malhotra, Advocates in Item Nos.27, 28, 30, 31, 34 & 35.

Mr.Mayank Wadhwa, Advocate in Item No.55.

Ms.Jasvin Dhama, Advocate in Item Nos.15, 56, 58 & 60.
Ms.Vishakha Gupta, Advocate in Item No.57.
Ms.Kanishka Prasad, Advocate in Item No.62.

For the Respondents

Mr.Arvind Bhatt, Mr.Kuber Giri & Mr.Abhishek Rautji, Advocates in Item No.15.
Mr.Sushil Kaushik & Mr.Manoj Yadav, Advocates in Item Nos.8, 11, 22, 23, 24, 25.
Ms.Prerna Arora, Ms.Sharika Vijh & Ms.Sangya Gupta, Advocates in Item Nos.12 & 13.
Mr.Manish K.Bishnoi, Advocate in Item No.14.
Mr.Ashish Virmani & Mr.Gollamund Sri Harsha Datta, Advocates in Item Nos.20 & 21.
Mr.Rishi Kapoor & Mr.Rachit, Advocates in Item No.29 & 32.
Mr.Pankaj Kumar Singh, Advocate in Item Nos.17, 18 & 19.
Mr.Aditya Parolia, Mr.Piyush Singh, Mr.Nithin Chandran & Mr.Harikrishnan, Advocates in Item No.26.
Mr.Sanjiv Kakra, Advocate in Item No.27.
Mr.Rishi Kapoor & Mr.Rachit, Advocates for R-2 & 3 in Item No.14.
Mr.Rajani Chauhan, Advocate in Item No.31.
Mr.Rashmi Jain, Advocate in Item No.37.
Mr.Deepak Bashta, Advocate in Item No.38.
Mr.Shailesh K.Kapoor & Mr.Ajay Kumar, Advocates in Item Nos.39.
Mr.Koonal Tanwar, Advocate in Item No.40.
Mr.C.S.Gupta & Mr.Anand Shukla, Advocates in Item Nos.42 to 50.
Ms.Divya Jyoti Singh & Mr.Parmanand Yadav, Advocates in Item No.52.
Mr.Vinod Chauhan, Advocate in Item No.57.
Mr.Sudhir Mahajan, Advocates in Item No.58.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

1. These petitions under Article 227 of the Constitution involve a common question, viz. whether proceedings under the Consumer Protection Act, 1986 [hereinafter referred to as "CPA"] can be commenced by home buyers (or allottees of properties in proposed real estate development projects) against developers, after the commencement of the Real Estate (Development and Regulation) Act, 2016 [hereinafter referred to as "RERA"].

2. Although there are a few cases in this batch in which notice has not been issued, and some in which service remains incomplete, in view of the order I propose to pass, it is unnecessary to await the appearance of the respondents.

3. The question referred to above has been decided against the petitioners by the National Consumer Disputes Redressal Commission [hereinafter referred to as "the National Commission"], by an order dated 15.04.2019 in Consumer Case No. 1764/2017 (*Ajay Nagpal* vs. *Today Homes & Infrastructure Pvt. Ltd*). The petition arising out of that complaint [CM(M) 621/2019] was treated as the lead matter in this batch. The order of the National Commission dated 15.04.2019 has been followed in several other orders, which have been challenged in other petitions mentioned above. Briefly stated, the National Commission has held that the remedies provided under CPA and RERA are concurrent, and the jurisdiction of the forums/commissions

constituted under CPA is not ousted by RERA, particularly Section 79 thereof.

4. In several of the petitions, interim orders were passed at the initial stage, by which further proceedings before the National Commission were stayed. By an order dated 11.07.2019, the interim order was modified to the extent that proceedings before the National Commission could continue, but the National Commission was requested not to pass final orders in the complaints before it. This order has been followed in the cases subsequently filed, and this is the interim order which subsists today in all the petitions. (I am informed that interim orders in some of the cases have been challenged before the Supreme Court by the respondents, but I have not been informed of any matter where the proceedings in this Court have been stayed.)

5. On 08.08.2019, hearing in these cases commenced, first on the point of maintainability of the petitions under Article 227 of the Constitution, in view of the appellate remedy provided under Section 23 of CPA. While the matters remained part-heard however, the Supreme Court delivered a judgment dated 09.08.2019 in W.P.(C)43/2019 and connected matters (*Pioneer Urban Land and Infrastructure Ltd. & Anr.* vs. *Union of India & Ors.* 2019 SCC OnLine SC 1005), in which it has been concluded *inter alia* that remedies given to allottees of flat/apartments are concurrent, and such allottees are in a position to avail of remedies under CPA, RERA, as well as trigger the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC").

6. Learned counsel for the respondents urged that the issue raised in these petitions thus stands decided against the petitioners.

7. Mr. Jayant Bhushan, learned Senior Advocate for the petitioner (appearing in CM(M)621/2019), contested this position. However, it was subsequently submitted that the petitioner in that case (M/s Today Homes and Infrastructure Private Limited) had filed an application before the Supreme Court for clarification of the judgment in *Pioneer* (supra). Mr. Vivek Sibal, learned counsel today submits that the application for clarification before the Supreme Court was ultimately withdrawn with liberty to seek impleadment in the Special Leave Petition filed against the interim orders of this Court.

8. I have therefore heard learned counsel for the parties regarding the effect of the judgment of the Supreme Court in *Pioneer* (supra). In addition to the arguments addressed by Mr. Bhushan on an earlier occasion, submissions were advanced by Mr. Vivek Sibal and Mr.Vivek Kohli, learned counsel on behalf of the petitioners (developers), and by Mr. Manish Bishnoi, learned counsel on behalf of the respondents (home buyers/allottees). Counsel appearing for the other parties did not advance arguments separately, and adopted the arguments of these parties.

9. Counsel for the petitioners argued that the issue involved in *Pioneer* (supra) was of the relationship between the remedies provided under IBC and RERA, and the question of the inter-relationship between RERA and CPA was neither raised nor argued. They therefore submitted that any observations regarding the remedy under RERA and CPA being concurrent must be considered as *obiter dicta* and do not constitute the *ratio decidendi* of the judgment, which alone has precedential value. They contended that the question not having been raised in *Pioneer*, it would be unfair to hold the petitioners bound

by the passing observations of the Supreme Court. It was also argued that the conclusion reached by the Court would be applicable only to proceedings under CPA which had been filed prior to the enactment of RERA, in view of the discussion regarding Section 71 of RERA in paragraph 29 of the judgment. It was further urged that Section 79 of RERA, upon which the petitioners principally base their contentions, has not been adverted to in the reasoning of the Supreme Court. Counsel therefore submitted that if at all the judgment is regarded as holding that CPA and RERA provide concurrent remedies, the finding to this effect overlooks Section 79 of RERA, and the judgment to this extent is *per incuriam*. It was also argued in the alternative (relying upon two High Court judgments discussed below) that the conclusion recorded in *Pioneer,* regarding the concurrent nature of remedies under CPA and RERA, forms neither the *ratio decidendi* nor *obiter dicta* and is, therefore, not binding.

10. On behalf of the respondents, my attention was drawn particularly to paragraphs 14, 21, 29 and 86 of the judgment to urge that the relationship between proceedings under CPA and RERA had also been considered by the Supreme Court. Counsel cited various authorities of the Supreme Court, which are discussed below, in support of the contention that the High Court is bound by the observations of the Supreme Court, including *obiter dicta*, and also that the High Court cannot declare that a judgment of the Supreme Court was decided *per incuriam*.

11. Having considered the submissions of the parties, I am unable to agree with the submissions of the petitioners, and for the reasons

given below, hold that the judgment in *Pioneer* (supra) is binding on this Court with regard to the issue in question.

12. Although the petitioners appear to be right in submitting that the litigation before the Supreme Court principally raised the question of remedies under IBC and RERA, it is clear that issues arising out of CPA proceedings were also brought to the attention of the Court. It is evident that the judgments rendered under CPA were placed in detail before the Court. The Supreme Court was also evidently apprised of the issue raised in the present petitions, and indeed apparently to the orders passed in these petitions. Paragraph 14 of the judgment in *Pioneer* (supra) records as follows:

> *"14. A number of counsel then appeared for allottees in individual cases. These counsel argued, by referring copiously to NCLT and NCLAT orders, consumer forum judgments and High Court judgments, that the consumer fora, and the authorities under RERA are not meaningful remedies for allottees at all. According to them, loopholes made in the rules by various States still allow one-sided agreements by real estate developers to continue to govern the relationship between allottee and real estate developer long after RERA has come into force. This has been done, for example, by defining 'Completion Certificate' to include partial completion certificates of projects (or parts of projects), so that such partial certificates given to the real estate developer before coming into force of RERA would make the provisions of RERA inapplicable. Also, it has been pointed out that real estate developers have been successful in arguing that RERA has now shut out the consumer fora so far as allottees are concerned, and referred to stay orders by which consumer fora for a long period of time were unable to proceed with cases filed by*

allottees before them, until the National Consumer Disputes Redressal Commission finally decided that the Consumer Protection Act, 1986 was an additional remedy and continued to be an additional remedy to the remedies provided under RERA.They also pointed out that the authorities themselves under RERA jostled the allottees about, as when an allottee went to the Real Estate Regulatory Authority and obtained orders against developers, such orders were nullified by some Appellate Tribunal orders, stating that they should be sent to the adjudicating officer who alone could decide disputes between allottees and real estate developers. Separately, in answer to the argument that the admission of a Section 7 application would be fatal to the management of the corporate debtor, and that one single allottee could destabilise the management of the corporate debtor and not just the project undertaken by the corporate debtor, they pointed out that there were 5 stages at which it would be open for the real estate developer to compromise with the allottee in question, before the sledgehammer under the Code comes down on the erstwhile management. They pointed out that settlements have taken place at: (i) the stage of the Section 7 notice itself before replies were filed by the real estate developer; (ii) after the NCLT issues notice on a Section 7 application and before admission; (iii) after the hearing and before the order admitting the matter; (iv) post-admission, and before appointment of the Committee of Creditors where both the NCLT and NCLAT use their inherent power to permit settlements; and (v) even post setting-up of the Committee of Creditors, whereby settlements can be arrived at under Section 12A of the Code with the concurrence of 90% of the creditors. On this basis, they pointed out that long before the chopper comes down on the management of the corporate debtor, all these opportunities are given to the management of the corporate debtor to settle with the individual allottee, showing thereby

that there is no real infraction of Article 14, 19(1)(g) or 300- A of the Constitution. They also argued that the provisions of Section 7(4) of the Code giving the NCLT 14 days within which to ascertain the existence of a default is directory as has been held in ***Surendra Trading Company v. Juggilal Kamlapat Jute Mills Company Limited and Ors.*** *2017 (16) SCC 143. They made an impassioned plea, relying upon the background to RERA, to argue that if these beneficial amendments were to be struck down, they would be back in the same position as they were before enactment of other measures, which have not really worked to afford them relief."*

(Emphasis supplied)

13. The Supreme Court has referred to the Statement of Objects and Reasons of RERA in paragraph 20 of its judgment, wherein the remedy under CPA is also noted. While setting out the relevant provisions of RERA, the Court has noticed Sections 79, 88 and 89 of RERA thereof. It is in this context that the following conclusions rendered by the Court in paragraph 86 of the judgment must be read:

"86. We, therefore, hold that allottees/home buyers were included in the main provision, i.e. Section 5(8)(f) with effect from the inception of the Code, the explanation being added in 2018 merely to clarify doubts that had arisen.

Conclusion

i. The Amendment Act to the Code does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.

ii. 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.*
>
> *iii. Section 5(8)(f) as it originally appeared in the Code being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only clarificatory of this position in law."*
>
> (Emphasis supplied)

14. Counsel for the petitioners submitted that the conclusion regarding CPA recorded in paragraph 86(ii) must be read in the context of the reasoning in paragraph 29 of the judgment, which refers to Section 71(1) of RERA. Read in this context, it was argued that the finding regarding concurrent remedies is applicable to cases where complaints under CPA were instituted prior to RERA coming into force, in which case, RERA gives the allottee an express option to withdraw pending proceedings under CPA, and proceed under RERA instead. Paragraph 29 is reproduced below:

> *"29. As a matter of fact, the Code and RERA operate in completely different spheres. The Code deals with a proceeding in rem in which the focus is the rehabilitation of the corporate debtor. This is to take place by replacing the management of the corporate debtor by means of a resolution plan which must be accepted by 66% of the Committee of Creditors, which is now put at the helm of affairs, in deciding the fate of the corporate debtor. Such resolution plan then puts the same or another management in the saddle, subject to the provisions of the Code, so that the corporate debtor may be pulled out of the woods and may continue as a going concern, thus benefitting all stakeholders involved. It is only as a*

last resort that winding up of the corporate debtor is resorted to, so that its assets may be liquidated and paid out in the manner provided by Section 53 of the Code. On the other hand, RERA protects the interests of the individual investor in real estate projects by requiring the promoter to strictly adhere to its provisions. The object of RERA is to see that real estate projects come to fruition within the stated period and to see that allottees of such projects are not left in the lurch and are finally able to realise their dream of a home, or be paid compensation if such dream is shattered, or at least get back monies that they had advanced towards the project with interest. At the same time, recalcitrant allottees are not to be tolerated, as they must also perform their part of the bargain, namely, to pay instalments as and when they become due and payable. Given the different spheres within which these two enactments operate, different parallel remedies are given to allottees – under RERA to see that their flat/apartment is constructed and delivered to them in time, barring which compensation for the same and/or refund of amounts paid together with interest at the very least comes their way. If, however, the allottee wants that the corporate debtor's management itself be removed and replaced, so that the corporate debtor can be rehabilitated, he may prefer a Section 7 application under the Code. That another parallel remedy is available is recognised by RERA itself in the proviso to Section 71(1), by which an allottee may continue with an application already filed before the Consumer Protection fora, he being given the choice to withdraw such complaint and file an application before the adjudicating officer under RERA read with Section 88. In similar circumstances, this Court in ***Swaraj Infrastructure Private Limited v. Kotak Mahindra Bank Limited*** *(2019) 3 SCC 620 has held that Debt Recovery Tribunal proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993*

> *and winding up proceedings under the Companies Act, 1956 can carry on in parallel streams (see paragraphs 21 and 22 therein).”*
>
> (Emphasis supplied)

15. In my view, there is no warrant for limiting the conclusion of the Court in paragraph 86, by the reference to Section 71(1) of RERA in paragraph 29 of the judgment. While examining the operation of remedies under RERA and IBC, the Supreme Court has drawn on Section 71(1) as another illustration that the remedies under RERA were not intended to be exclusive, but to run parallel with other remedies. The use of Section 71(1) as an example of a parallel remedy, in this context, does not lead to the conclusion that the Court intended to reach a conclusion only with regard to pending CPA complaints, and not ones instituted in the future. If anything, paragraph 29 of the judgment demonstrates that the Court was very much alive to the effect of RERA provisions on proceedings under CPA.

16. The petitioners' characterisation of paragraph 86(ii), to the extent that it refers to CPA, as *obiter dicta* is also unfounded. At the outset, it is settled law that *obiter dicta* of the Supreme Court are also binding upon all other Courts, including the High Court. In *Municipal Committee, Amritsar* vs. *Hazara Singh* (1975) 1 SCC 794 (paragraph 4), the Supreme Court approved the following observation of the Kerala High Court in *State of Kerala* vs. *Vasudevan Nair* 1975 Cri LJ 97: -

> *“…Judicial propriety, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted*

> *as binding. Declaration of law by that Court even if it be only by the way has to be respected. But all that does not mean that every statement contained in a judgment of that Court would be attracted by Article 141. Statements on matters other than law have no binding force…."*

In *Oriental Insurance Co. Ltd.* vs. *Meena Variyal & Ors.* (2007) 5 SCC 428 (paragraph 26), the Supreme Court has observed that although an *obiter dictum* of the Supreme Court may be binding only on the High Courts, it has clear persuasive value even before the Supreme Court itself. The binding effect of *obiter dicta* of the Supreme Court has been reiterated in the recent decision in *Peerless General Finance and Investment Co. Ltd.* vs. *Commissioner of Income Tax* 2019 SCC Online 851 (Civil Appeal No. 1265 of 2007, decided on 19.07.2019), wherein the Court has held as follows:

> *"13. ...It is, therefore, incorrect to state, as has been stated by the High Court, that the decision in Peerless General Finance and Investment Co. Limited vs. Reserve Bank of India [(1992) 2 SCC 343] must be read as not having laid down any absolute proposition of law that all receipts of subscription at the hands of the assessee for these years must be treated as capital receipts. We reiterate that though the Court's focus was not directly on this, yet, a pronouncement by this Court, even if it cannot be strictly called the ratio decidendi of the judgment, would certainly be binding on the High Court…."*

17. Quite apart from the position that the High Court is therefore not the appropriate forum for this argument, the question of the relationship between CPA and RERA does appear to have been placed before the Supreme Court, as recorded in paragraph 14 of the judgment, extracted above. The relevant finding of the Court has been included in a paragraph headed "*Conclusion*", wherein the Supreme

Court has distilled three short conclusions. It is not possible for this Court to find that any of those conclusions are *obiter dicta* or made as passing observations, and not intended to be followed.

18. Having come to this conclusion, I am also not persuaded that the judgment of the Supreme Court can be disregarded as being *per incuriam*. The High Court cannot choose whether or not to follow a decision of the Supreme Court based on its perception regarding the arguments considered in the Supreme Court's judgment. The Supreme Court in *Suganthi Suresh Kumar* vs. *Jagdeeshan* AIR 2002 SC 681 held as follows: -

> *"9. It is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It was pointed out by this Court in Anil Kumar Neotia v. Union of India [(1988) 2 SCC 587 : AIR 1988 SC 1353] that the High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court."*

In *Sundeep Kumar Bafna* vs. *State of Maharashtra & Anr.* (2014) 16 SCC 623 (paragraph 20), while discussing the doctrine of precedent, the Supreme Court gave a "salutary clarion caution to all courts, including the High Courts, to be extremely careful and circumspect in concluding a judgment of the Supreme Court to be *per incuriam*". Similarly, in *South Central Railway Employees Cooperative Credit Society Employees Union* vs. *B. Yashodabai & Ors.* (2015) 2 SCC

727, the Supreme Court set aside a judgment of the Andhra Pradesh High Court with the following observations:

> *"14. We are of the view that it was not open to the High Court to hold that the judgment delivered by this Court in South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] was per incuriam.*
>
> *15. If the view taken by the High Court is accepted, in our opinion, there would be total chaos in this country because in that case there would be no finality to any order passed by this Court. When a higher court has rendered a particular decision, the said decision must be followed by a subordinate or lower court unless it is distinguished or overruled or set aside. The High Court had considered several provisions which, in its opinion, had not been considered or argued before this Court when CA No. 4343 of 1988 was decided [South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies, (1998) 2 SCC 580 : 1998 SCC (L&S) 703] . If the litigants or lawyers are permitted to argue that something what was correct, but was not argued earlier before the higher court and on that ground if the courts below are permitted to take a different view in a matter, possibly the entire law in relation to the precedents and ratio decidendi will have to be rewritten and, in our opinion, that cannot be done. Moreover, by not following the law laid down by this Court, the High Court or the subordinate courts would also be violating the provisions of Article 141 of the Constitution of India."*

19. In the light of these authorities, it is not necessary to deal with the arguments of the petitioners based on the doctrine of *per incuriam*.

20. The alternative submission on behalf of the petitioners was that the conclusion of the Supreme Court in paragraph 86(ii) of *Pioneer* (supra), with regard to the concurrence of remedies under CPA, RERA and IBC, forms neither the *ratio decidendi* nor an *obiter dictum*. Counsel relied upon the Division Bench judgment of the Bombay High Court in *Mohandas Issardas & Ors*. vs. *A. N. Sattanathan & Ors*. AIR 1955 Bom 113 and the Single Bench judgment of the Rajasthan High Court in *Maghraj Patodia* vs. *R.K. Birla* AIR 1969 Raj 245. In paragraph 5 and 6 of the Bombay judgment, the Division Bench accepted that *obiter dicta* of the Supreme Court are binding, but held that the point in question must have arisen in the case. The Division Bench concluded on this point as follows: -

> "*10. Therefore, it would be incorrect to say that every opinion of the Supreme Court would be binding upon the High Courts in India. The only opinion which would be binding would be an opinion expressed on a question that arose for the determination of the Supreme Court, and even though ultimately it might be found that the particular question was not necessary for the decision of the case, even so, if an opinion was expressed by the Supreme Court on that question, then the opinion would be binding upon us….*"

The Rajasthan decision followed the aforesaid authority of the Bombay High Court. The Court held (in paragraph 7) that the expression *obiter dicta* cannot include "any and every expression of opinion, even though it may be casual and unconnected with the point arising in the case". The following tests were laid down to determine whether the observation in question is binding or not: -

> *"7. …(i) Whether the expression of opinion was casual or considered.*

> *(ii) Whether it was connected with any point arising in the case. Of course, a decision on the point arising in the case need not be necessary for the disposal of the case.*
> *(iv) Whether it lays down any rule of law…."*

21. Without going into the question of whether these two judgments are good law in the light of the decisions of the Supreme Court cited above, suffice it to say that they are not applicable to the present case. As stated hereinabove, the issue was evidently raised before the Supreme Court, the Supreme Court noticed the relevant statutory provisions and rendered a clear and definite finding. It cannot be said that the Supreme Court has expressed a "casual" opinion or that the issue was completely unconnected with the point arising in the case. This alternative submission, therefore, takes the petitioners' case no further.

22. On the basis of the above discussion, I am of the view that the judgment in *Pioneer* (supra) constitutes the law declared by the Supreme Court under Article 141 of the Constitution, even in respect of the question raised in these petitions. Following the said judgment, therefore, it is held that the remedies available to the respondents herein under CPA and RERA are concurrent, and there is no ground for interference with the view taken by the National Commission in these matters.

23. In view of the fact that the judgment in *Pioneer* (supra) was pronounced by the Supreme Court during the course of hearing in these petitions, I have not considered it necessary to conclude the hearing or render a decision on the question of maintainability of petitions under Article 227 of the Constitution, in view of Section 23

of CPA. That question is left open for a decision in an appropriate case. It is also made clear that I have not considered any other point raised by the parties on the maintainability or merits of the complaints before the National Commission.

24. For the reasons aforesaid, the petitions are dismissed, and the interim orders are consequently vacated.

Dasti

PRATEEK JALAN, J.

SEPTEMBER 04, 2019
'hkaur/j'/s