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Can arbitration clauses prevent consumers from pursuing consumer disputes?



The National Consumer Dispute Redressal Commission (NCRDC), the top consumer dispute forum in India, was recently called on to reconsider this question in view of the recent amendment of the Indian Arbitration and Conciliation Act, 1996 (Arbitration Act).

The case decided by the NCDRC (*Aftab Singh v. Emaar MFG Land Ltd.*) involved several purchasers who had filed numerous consumer disputes against a real estate developer for the developer's failure to complete and handover their villas, flats and plots on time. The purchasers had all also signed buyers' agreements with the developer, which stated that all disputes between the parties would be referred to arbitration. On this basis of these arbitration clauses, the developer sought to have the consumer matters dismissed (and instead referred to arbitration).

The developer argued

The developer's case was based on a 2016 amendment to the Arbitration Act. Among other things, the amendment altered a provision in the Arbitration Act which stated that a judicial authority hearing a dispute between parties who had agreed that their disputes would be decided by arbitration should, on the timely application of any of the parties, refer the matter to arbitration. This clause was amended to state that it would operate "notwithstanding any judgment, decree or order of... any Court".

A long line of courts in India had held that arbitration agreements could not override the jurisdiction of consumer forums under the Consumer Protection Act, 1986 (Consumer Act). The developer's argument was that this alteration was made in order to ensure that consumer disputes filed under the Consumer Act between parties who had entered into arbitration agreements would have to be referred to arbitration, and would then no longer fall within the jurisdiction of consumer forums.

The purchasers responded

The purchasers who had filed consumer complaints against the developer naturally disagreed. The purchasers argued that the amendment of the Arbitration Act provision did not change the position of law that arbitration agreements could not override consumer court jurisdiction; the legislative intention behind the amendment was *not* to overrule court judgments about the jurisdiction of forums under the Consumer Act to hear and decide such matters.

The NCDRC decided

The NCDRC decided this issue conclusively on 13 July 2017. The commission came in squarely on the side of the purchasers. **The commission held that consumer forums are *not* required to refer consumer disputes to arbitration on the basis of an arbitration agreement between the consumer and the supplier or service provider.**

The NCDRC held that the Consumer Act is a socially beneficial legislation, intended to level the playing field between consumers and large corporations. Therefore, courts must choose an interpretation of law that protects this legislation. There are several types of disputes, including

Long story short

Can arbitration clauses in agreements prevent consumers from pursuing consumer disputes?

No. Consumer forums offer socially beneficial remedies that are in addition to and different from the remedies offered by civil courts or arbitration. Consumers can always choose to file and pursue consumer disputes instead of seeking reliefs in arbitration.

testamentary disputes, disputes relating to trusts, insolvency disputes *and consumer disputes* which cannot be decided in arbitration because of the public interest element involved in the disputes. Disputes within the jurisdiction of the Real Estate Regulatory Authority set up under the Real Estate (Regulation and Development) Act, 2016 (RERA) also fall in this category. The jurisdiction of special courts or forums deciding such matters cannot be superseded by arbitration clauses or agreements. It cannot have been the intention of the legislature to reverse this position by their amendment of the Arbitration Act (as also indicated in the Law Commission Report on the basis of which the amendment was made).

The NCDRC's decision is a welcome one for consumers. The decision protects the right of consumers to approach consumer forums and to pursue matters in consumer courts even if they have signed agreements with suppliers or service providers containing arbitration clauses.

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