

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.6936/2023

M/S. KABRA AND ASSOCIATES & ORS.

Appellant(s)

VERSUS

REKHA RAJKUMAR HEMDEV & ORS.

Respondent(s)

O R D E R

The maintainability of Consumer Complaint No.122/2022 on the file of the National Consumer Disputes Redressal Commission (for short, 'the NCDRC'), New Delhi, is in issue. By order dated 23.08.2023, the NCDRC held that the said complaint was maintainable and rejected the preliminary objection raised by M/s Kabra and Associates and some other respondents in the said complaint case. Aggrieved thereby, M/s Kabra and Associates and its partners are before this Court by way of this appeal.

The admitted fact is that the complainants in the aforestated complaint

case, viz., Rekha and Raj Kumar Hemadev, respondent Nos.1 and 2 in this appeal, approached the Maharashtra Real Estate Regulatory Authority (for short, 'the Authority') in the first instance, voicing their complaint against the developer, M/s Kabra and Associates. Their initial complaint, being Source Complaint Case No. SC10001434, was that M/s Kabra and Associates had failed to register the building erected by it, wherein they had purchased flats, as an ongoing project under the provisions of Section 3 of the Real Estate (Regulation and Development) Act, 2016 (for short, 'the Act of 2016').

Thereafter, they filed another complaint in CC No.006000000057380 before the Authority under Section 18 of the Act of 2016 seeking refund of the amounts paid by them to M/s Kabra and Associates for their flats, viz., Flat Nos. 2101 and 2102.

Their earlier Source Complaint Case

No. SC10001434 was disposed of by the Authority, vide order dated 14.05.2019, holding that it was not mandatorily required for M/s Kabra and Associates to register the project under Section 3 of the Act of 2016. Irrespective of whether the aforesaid order was correct in the eye of law, the irrefutable fact remains that it attained finality and is, therefore, binding between the parties.

The subsequent complaint case was, however, sought to be withdrawn by the complainants, viz., respondent Nos. 1 and 2 herein. They filed letter dated 15.02.2019 before the Authority stating to the effect that they had mentioned, by error, a different project. They specifically stated as follows, *".....Sir, I will file again in RERA not registered project as "Vihang" and where actually the property was purchased and we have been cheated"*. Acting upon the aforesaid withdrawal letter, the Authority

passed an order on 15.05.2019 as follows:

- "1. The complainants had filed this complaint under Section 18 of the Real Estate (Regulation and Development) Act 2016 (herein after referred to as RERA) seeking refund of the amounts paid by them to the respondent 6 her flat Nos.2101 & 2102 in the respondent's project known as 'KABRA AURUM'.*
- 2. The complaint was heard in presence of the concerned parties. During the hearing, the complainant submitted that he had already given an application to file a fresh complaint with MahaRERA since the project in question was not unregistered and that the complainant could not seek any reliefs under the Act.*
- 3. The respondent brought to the notice of MahaRERA that the complainant had already filed a source complaint for unregistered project with MahaRERA and the same was disposed of stating that the project need not be registered. Hence, he requested the complaint to be disposed off in view of the said order.*
- 4. In view of the fact stated above, it can rightly be said that since the complainant has already given an application to withdraw the complaint and file it afresh, there is no remedy that is available to be granted to the complainant in this particular complaint. The complainant, may, therefore, approach an appropriate forum to get the relief is sought by him during this complaint.*
- 5. The complaint consequently stands disposed of."*

We may note that in paragraph 2 of the

order extracted above, the authority recorded that the complainant had submitted during the hearing that he had already given an application to file a fresh complaint with the authority since the project in question was unregistered and that the complainant could not seek any reliefs under the Act.

This reference was obviously to the earlier complaint case that had been disposed of by the order dated 14.05.2019, holding to the effect that registration of the project was not mandatorily required. However, as the complainants had wrongly mentioned the project as 'KABRA AURAM' instead of 'KABRA VIHANG', the Authority noted that there is 'no remedy available to be granted to the complaint in this particular complaint'.

Having taken this stand before the Authority and having withdrawn their complaint with liberty to file afresh, the

complainants did nothing till the year 2022. They then deemed it appropriate to file Consumer Complaint No.122/2022 before the NCDRC.

Given the aforestated sequence of events, when it was open to the complainants to elect/opt for one or the other remedy that was available to them at that time and they made that choice by approaching the Authority under the provisions of the Act of 2016 in the first instance and then decided to withdraw their complaint, reserving liberty to once again file a fresh complaint before the Authority, they could not have retracted therefrom.

In this regard, the decision of a 3-Judge Bench of this Court in Ireo Grace Realtech Private Limited vs. Abhishek Khanna and Other [(2021) 3 SCC 241] is relevant. It was observed therein that an election of a remedy arises when two concurrent remedies are available and the aggrieved party

chooses to exercise one and, in that event, he loses the right to simultaneously exercise the other for the same cause of action. Though, the above observation posits that the aggrieved party choose one remedy or the other and not invoke both simultaneously, we may note that in this case the complainants chose to invoke the remedy available to them under the Act of 2016 and having done so, they withdrew the complaint filed by them before the Authority with liberty to file a fresh complaint before said Authority. Having committed themselves in that regard, it was not open to them at that stage to opt for the other remedy available under the Consumer Protection Act, 2019.

The apprehension voiced by the learned counsel for the complainants, viz., respondent Nos.1 and 2 herein, is that as the project in question is unregistered, the complainants may not be able to seek relief

from the Authority. We find this apprehension to be without merit as the order dated 14.03.2019 passed by the Authority, be it legally correct or erroneous, has attained finality and binds both the parties thereto. In consequence, the lack of registration of the project loses its significance in the context of the Authority's jurisdiction and power to entertain the case of the complainants and deal with it under the provisions of the Act of 2016 and in accordance with law. Therefore, it would not be open to M/s Kabra and Associates to contend before the Authority that the lack of registration of the project would be a ground to deny relief to the complainants under the Act of 2016 at this stage. We, however, make no comment on the delay on the part of the complainants from the year 2019 till the year 2022.

Making this position clear, the appeal is allowed, setting aside the order dated

23.08.2023 passed by the NCDRC holding
Consumer Complaint No. 122/2022 to be
maintainable.

Pending application(s), if any, shall
also stand disposed of.

., J
[SANJAY KUMAR]

., J
[K. VINOD CHANDRAN]

NEW DELHI;
FEBRUARY 04, 2026

ITEM NO.11

COURT NO.12

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.6936/2023

M/S. KABRA AND ASSOCIATES & ORS.

Appellant(s)

VERSUS

REKHA RAJKUMAR HEMDEV & ORS.

Respondent(s)

[IA No. 222098/2023 - EX-PARTE STAY
IA No. 44166/2025 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 5217/2024 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES]

Date : 04-02-2026 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Appellant(s) : Mr. Shyam Divan, Sr. Adv.
Mr. Vinay Navare, Adv.
Mr. Sanjeev Singh, Adv.
Mr. Arpit Rai, Adv.
Mr. Prabhsharan Singh Mohi, Adv.
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Mr. Aviral Kashyap, AOR

For Respondent(s) : Mr. Chetan Kavdia, Adv.
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Ms. Ramya Vidyadharan, Adv.
Ms. Mansi Naik, Adv.
Mr. Pavitra Dixit, Adv.
Mr. Archit Sharma, Adv.

Mr. Shri Venkatesh, Adv.
Mr. Shryeshth Ramesh Sharma, Adv.
Ms. Kanika Chugh, Adv.
Mr. Akash Lamba, Adv.
Mr. Suhael Buttan, Adv.
Mr. Kunal Veer Chopra, Adv.
Mr. Nitin Saluja, AOR

UPON hearing the counsel, the Court made the following

O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(KRITIKA TIWARI)
SENIOR PERSONAL ASSISTANT

(MANOJ KUMAR)
COURT MASTER (NSH)

