

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 701 OF 2015

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. AFTAB SINGH

S/o. Harcharan Singh, Through GPA Holder Shri Harcharan
Singh S/o. Late Sardar Inder Singh, R/o. House No. 239, Sector
35-A,
Chandigarh.

.....Complainant(s)

Versus

1. EMAAR MGF LAND LIMITED & ANR.

Through Its Managing Director, Registered Office at MGF
House, 17-B Asaf Ali Road,
New Delhi - 110 002.

2. Emaar MGF Land Limited,

Through Its Chief Executive Officer, Sales Office, SCO 120-
122, 1st Floor, Sector 17-C,

Chandigarh

.....Opp.Party(s)

CONSUMER CASE NO. 1373 OF 2015

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ANITA CHOUDHARY & ANR.

FLAT NO. 8C, ADHIRAJ COMPLEX, PLOT 8, KHARGHAR,
NAVI MUMBAI-410210

2. Chunnilal Choudhary

Son of Sh. Hari Ram, Flat No. 8, C, Adhiraj Complex, Plot 8,
Sector 8, Kharghar, Navi

Mumbai - 410210

Maharashtra.

.....Complainant(s)

Versus

1. EMAAR MGF LAND LIMITED & 2 ORS.

(THROUGH ITS MD/DIRECTOR/ AUTHORISED
SIGNATORY) 1. ECE HOUSE, 28 KASTURBA GANDHI
MARG,

NEW DELHI-110001.

2. MOHIT KAURA, HEAD CUSTOMER SERVICE,EMAAR
MGF LAND LIMITED,

SCO 120-122, FIRST FLOOR, SECTOR 17-C,
CHANDIGARH.

3. NEHA SHARMA, MANAGER CUSTOMER
SERVICE,EMAAR MGF LAND LIMITED,

SCO 120-122, FIRST FLOOR, SECTOR 17-C,
CHANDIGARH.

.....Opp.Party(s)

CONSUMER CASE NO. 1423 OF 2015

WITH
IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. TANU BATRA
509, SECTOR 8-B,
CHANDIGARH

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LIMITED & ANR.
(THROUGH ITS MD) ECE HOUSE, 28 KASTURBA
GANDHI MARG,
NEW DELHI-110001.

2. M/S. EMAAR MGF LIMITED
(THROUGH ITS BRANCH HEAD SH. VIKAS GUPTA) SCO
NO. 120-122, 1ST FLOOR, SECTOR 17-C,
CHANDIGARH

.....Opp.Party(s)

CONSUMER CASE NO. 159 OF 2016

WITH
IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. INDERMEET KAUR KOCHHAR
14-2, TILAK MARG, DELHI ADMINISTRATION FLATS,
NEW DELHI

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LIMITED & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.

2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON

.....Opp.Party(s)

CONSUMER CASE NO. 423 OF 2016

WITH
IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ALTAF AHMED LAL & ANR.
24, JEELANABAD, PERRDAGH,
SRINAGAR, J&K.

2. Renu Bansl Lal,
R/o. 24 Jeeianabad Peerdagh Sri Nagar,
Jammu & Kashmir

3. .

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.

2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON,HARYANA

.....Opp.Party(s)

CONSUMER CASE NO. 424 OF 2016

WITH
IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. AASHISH MEHRA & ANR.
126, NILGIRI APTS.,
ALAKNANDA,NEW DELHI

.....Complainant(s)

Versus

1. M/S. EMAAR LGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON, HARYANA.

.....Opp.Party(s)

CONSUMER CASE NO. 425 OF 2016

WITH
IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ALKA SHARMA & ANR.
B-5&6/4517, VASANT KUNJ,
NEW DELHI-110070

2. Ajay Sharma
S/o. R.K. Sharma, R/o. B-586/4517 Vasant Kunj,
New Delhi - 110 070

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR45,
GURGAON

.....Opp.Party(s)

CONSUMER CASE NO. 426 OF 2016

WITH
IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. BHAVARAJU BHINA SANKARAN
H-202, PARK VIEW CITY-I,, SECTOR-48, SOHNA ROAD,
GURGAON

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45, GURGAON.

.....Opp.Party(s)

CONSUMER CASE NO. 427 OF 2016

WITH
IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. KANIKA KHULLAR & ANR.

.....Complainant(s)

67, NARMADA APARTMENTS, ALAKNANDA,
NEW DELHI
2. Manish Khullar
S/o. Shri A.K. Khullar, R/o. 67, Narmada Apartments
Alaknanda
New Delhi - 110 001.

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SEC-47,
GURGAON,HARYANA.

.....Opp.Party(s)

CONSUMER CASE NO. 428 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. PREM SARUP NARULA & ANR.
220, GULMOHAR ENCLAVE,
NEW DELHI-110049
2. Meera Narula
Wife of Prem Sarup Narula, Resident of 220, Gulmohar
Enclave,
New Delhi - 110 049.

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45, GURGAON.

.....Opp.Party(s)

CONSUMER CASE NO. 429 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ROHIT TAANK
L214 DLF PH-II,
GURGAON.

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON.

.....Opp.Party(s)

CONSUMER CASE NO. 430 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ROHIT ARORAComplainant(s)
D1201, CELEBRITY HOMES, PALAM VIHAR,
GURGAON

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG, NEW
DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON

.....Opp.Party(s)

CONSUMER CASE NO. 431 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. SANJAY SACHDEVA
I-15, FOREST MANOR, 588 JINGENG ROAD,
SHANGHAI
2. Kashika Sachdeva
Wife of Sanjay Sachdeva, Resident of 1-15, Forest Manov, 588,
Jinseng Road,
Shanghai,
India

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON.

.....Opp.Party(s)

CONSUMER CASE NO. 432 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. SANJAY KUMAR SHARMA
502, TOWER 4, VATIKA CITY, SECTOR-49,
GURGAON-122001

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON.

.....Opp.Party(s)

CONSUMER CASE NO. 433 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. UMA BANSAL & ANR.

.....Complainant(s)

B2/15A, MODEL TOWN,
NEW DELHI-9

2. Manjushree Bansal

W/o. Shri Amit Bansal, R/o. B4-202, Parsvnath Exotica Seater
53, Gaj Course Road,
Gurgaon -122 001.

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.

ECE HOUSE, 28 KASTURBA GANDHI MARG,
NEW DELHI-110001.

2. M/S. BRIJBASI PROJECTS PVT. LTD.

(THROUGH ITS MD) 1557, SECTOR-45, GURGAON.Opp.Party(s)

CONSUMER CASE NO. 521 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. AJAY KAPOOR

D-101, LA LAGUNE, GOLF ROAD,

GURGAON

HARYANA.Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.

(THROUGH ITS MD) ECE HOUSE, 28 KASTURBA
GANDHI MARG,
NEW DELHI-110001.

2. M/S BRIJBASI PROJECTS PVT. LTD.

(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON, HARYANA

.....Opp.Party(s)

CONSUMER CASE NO. 522 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. AJAY KAPOOR

D-101, LA LAGUNE, GOLF ROAD,

GUGAON,

HARYANA.Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.

(THROUGH ITS MD) ECE HOUSE, 28 KASTURBA
GANDHI MARG,
NEW DELHI-110001.

2. M/S. BRIJBASI PROJECTS PVT. LTD.

(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON.

.....Opp.Party(s)

CONSUMER CASE NO. 523 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. PIYUSH MAHESHWARIComplainant(s)
B4-202, PARASVANATH EXOTICA, SECTOR-53, GOLF
COURSE ROAD,
GURGAON
HARYANA.

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
(THROUGH ITS MD),ECE HOUSE, 28 KASTURBA
GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR 45,
GURGAON,HARYANA.

.....Opp.Party(s)

CONSUMER CASE NO. 524 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. PIYUSH MAHESHWARI
B4-202, PARASVANATH EXOTICA SECTOR 53, GOLF
COURSE ROAD,
GURGAON
HARYANA.

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
(THROUGH ITS MD), ECE HOUSE, 28 KASTURBA
GANDHI MARG,
NEW DELHI-110001.
2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45,
GURGAON, HARYANA

.....Opp.Party(s)

CONSUMER CASE NO. 553 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ARCHANA FERNANDEZ PRABHU
622B, HAMILTON COURT, DLF CITY PHASE-IV,
GURGAON, HARYANA

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD.
(THROUGH ITS MD),ECE HOUSE, 28 KASTURBA
GANDHI MARG,
NEW DELHI-110001.

.....Opp.Party(s)

CONSUMER CASE NO. 554 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. VIJAY KOHLI & ANR.
H-36, FF, RESIDENCY GREENS, SECTOR-46,
GURGAON, HARYANA

.....Complainant(s)

2. Mrs. Neelam Kohli
Wife of Vijay Kohli, Son of Shri Harbans Lal Kohli, Resident
Of H-36, FF, Residency Greens, Sector -46,
Gurgaon
Haryana.

Versus

1. M/S. EMAAR MGF LAND LTD.
(THROUGH ITS MD),ECE HOUSE, 28 KASTURBA
GANDHI MARG,
NEW DELHI-110001.

.....Opp.Party(s)

CONSUMER CASE NO. 555 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. RIPAN DHAWAN & ANR.
85, ANUPAM APARTMENTS, MB RAOD,
NEW DELHI.

2. Mrs. Vandana Ripan Dhawan
W/o. Mr. Ripan Dhawan, R/o. 85, Anupam Apartments MD
Road,
New Delhi

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD.
(THROUGH ITS MD),ECE HOUSE, 28 KASTURBA
GANDHI MARG,
NEW DELHI-110001.

.....Opp.Party(s)

CONSUMER CASE NO. 627 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. IPSITA BISWAS
HOUSE NO. 765, SECTOR 29-A,
CHANDIGARH

.....Complainant(s)

Versus

1. THE VILLAS/MOHALI HILLS & 3 ORS.
2. M/S. EMAAR MGF LAND PRIVATE LIMITED
(THROUGH ITS MD/PRINCIPAL OFFICER) MGF HOUSE,
17-B, ASAF ALI ROAD,
NEW DELHI-110002.

3. M/S. EMAAR MGF LAND PRIVATE LIMITED
(THROUGH ITS BRANCH HEAD/MANAGER),SCO NO.
120-122, 1ST FLOOR, SECTOR 17-C,
CHANDIGARH.

4. M/S. EMAAR MGF LAND PRIVATE LIMITED
(THROUGH ITS OFFICE INCHARGE) ECE HOUSE, 28, KG
MARG,
NEW DELHI-110001

.....Opp.Party(s)

CONSUMER CASE NO. 665 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ANJALI RAJGARHIA
C 589, SUSHANT LOK 1,
GURGAON,HARYANA

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
(THROUGH ITS MD),ECE HOUSE, KASTURBA GANDHI
MARG,
NEW DELHI-110001.

2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45, GURGAON.

.....Opp.Party(s)

CONSUMER CASE NO. 666 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ANITA RAJGARHIA
C-589, SUSHANT LOK 1,
GURGAON,HARYANA-122002

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD. & ANR.
(THROUGH ITS MD) ECE HOUSE, KASTURBA GANDHI
MARG,
NEW DELHI-110001

2. M/S. BRIJBASI PROJECTS PVT. LTD.
(THROUGH ITS MD) 1557, SECTOR-45, GURGAON.

.....Opp.Party(s)

CONSUMER CASE NO. 673 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. GAURAV SHARMA & ANR.
D 72, THE ICON, DLF CITY PHASE 5,
GURGAON-122009

2. Ruchika Sharma W/o. Mr. Gaurave Sharma,
R/o. D-72, The ICON DLF-City Phase-V,
Gurgaon
Haryana.

.....Complainant(s)

Versus

1. EMAAR MGF LAND PVT. LTD.
(THROUGH ITS MD) EMAAR MGF BUSINESS PARK, MG
ROAD, SIKANDERPUR CHOWK, SECTOR-28,
GURGAON-122002

.....Opp.Party(s)

CONSUMER CASE NO. 728 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. SATISH KUMAR BHAGAT & 2 ORS.
HOUSE NO. 682, TDI CITY PHASE-I, SECTOR-117, SAS
NAGAR,

.....Complainant(s)

MOHALI, PUNJAB.

2. Suman Bhagat,

W/o. Sh. Satish Kumar Bhagat, House No. 682, TDI City Phase
- I, Sector 117, S.A.S. Nagar, Mohali,

Punjab

3. Sachin Bhagat,

S/o. Sh. Satish Kumar Bhagat, House No. 682, TDI City Phase
- I, Sector 117, S.A.S. Nagar, Mohali,

Punjab

Versus

1. EMAAR MGF LAND LIMITED

ECE HOUSE, 1ST FLOOR, 28, K.G. MARG,

NEW DELHI-110001

2. EMAAR MGF LAND LIMITED

S.C.O. NO. 120-122, 1ST FLOOR, SECTOR-17C,

CHANDIGARH-160017

.....Opp.Party(s)

CONSUMER CASE NO. 782 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. ARUN MONGA

E-13, G.K. ENCLAVE PAT-1,

NEW DELHI-110048

.....Complainant(s)

Versus

1. EMAAR MGF LAND LIMITED & ANR.

28, ECE HOUSE, KASTURBA GANDHI MARG,

NEW DELHI-110001

.....Opp.Party(s)

CONSUMER CASE NO. 900 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. NITESH CHANDOK

T-39, GOVIND PURI, MODINAGAR,

GHAZIABAD, UTTAR PRADESH

.....Complainant(s)

Versus

1. TODAY HOMES & INDRASTRUCTURE PVT. LTD.

STATESMAN HOUSE, 8TH FLOOR, BARAKHAMBA
ROAD,

NEW DELHI-110001

.....Opp.Party(s)

CONSUMER CASE NO. 99 OF 2016

WITH

IA/247/2016,IA/505/2017,IA/7294/2015,IA/9570/2015,IA/11813/2016

1. SEEMA MONGA & ANR.

Through Sh. Ashok Monga Attorney, Both C/o. 101, A-12/13,
Ansal Building, Dr. Mukherjee Nagar,

Delhi - 110 009.

.....Complainant(s)

Versus

1. M/S. EMAAR MGF LAND LTD.

.....Opp.Party(s)

First Floor, ECE House, 28 Kasturba Gandhi Marg,
New Delhi - 110 001.

2. Shri. Ashok Monga,
Son of Late Sh. Charan Dass Monga., Both C/o. 101, A-12/13,
Ansal Building, Dr Mukherjee Nagar,
Delhi - 110 009.

BEFORE:

HON'BLE MR. JUSTICE D.K. JAIN, PRESIDENT
HON'BLE MR. JUSTICE AJIT BHARIHOKE, MEMBER
HON'BLE MR. JUSTICE V.K. JAIN, MEMBER

For the Complainant : For the Complainants : Mr. Ankur Talwar,
Ms. Sonam Sharma and
Ms. Srishty Kaul, Advocates
(CC No.701/15)
Mr. Sangram S. Saron, Advocate
(CC No. 1423/2015)
Mr. Rahul Rathore and
Ms. Kudrat Sandhu, Advocates
Along with Mr. Arun Monga, Complainant in person
(CC No. 782/16)
Mr. Sushil Kaushik and
Ms. Himanshi Singh, Advocates
(CC Nos.159, 423-433, 521-524, 665 & 666/16)
Mr. Rajeev Kumar Jha and
Mr. Rajiv Kumar Sharma, Advocates
(CC No. 99/2016)
Mr. C.P. Sharma, Advocate
(CC No. 673/2016)
Mr. Iggu Chitiappa, Advocate
(CC No.728/2016)

For the Opp.Party : For the Opposite Parties : Mr. Amarjit Singh Chandhioke,
Senior Advocate with Mr. Aditya Narain,
Mr. Arnav Narain, Ms. Anushree Narain, Mr. Arjun Jain, Mr. Mishra Raj
Shekhar, Mr. Gaurav Sharma, Ms. Sweta Kakkad, Ms. Arveena Sharma,
and Mr. Anupam, Advocates

Dated : 13 Jul 2017

ORDER

1. These applications and the consequential reference to a larger Bench are triggered by the amendment to Sub-Section (1) of Section 8 of the Arbitration and Conciliation Act, 1996 (for short the "Arbitration Act") by Act 3 of 2016, with retrospective effect from 23.10.2015. The question for consideration before this Bench is profound, having seminal ramifications for the entire adjudicatory mechanism envisaged for settlement of consumer disputes, falling within the ambit of the Consumer Protection Act, 1986 (for short the "Consumer Act").
2. In order to bring into focus the issue involved in these hotly contested Applications, we deem it appropriate and expedient to reiterate the history and essence of the referral order dated 31.08.2016,

passed by the Learned Single Member, especially since both sides have pressed into service certain observations from the said order, dated 31.08.2016, in support of their respective stands.

3. The Opposite Party in the Original Complaints (for short, “the Builder”) filed this set of captioned applications under Section 8 of the Arbitration Act praying therein that the parties be referred to Arbitration as per the Buyers’ Agreements executed between them. The complainants in these matters had booked residential villas/flats/plots in Projects of the Builder to be developed in Gurgaon/Mohali and accordingly executed Buyers’ Agreements. The aggrieved Complainants allege that the Builder has failed to deliver possession of these villas/flats/plots by the date committed in the Buyers Agreement and hence, are seeking directions to the Builder for delivery and possession of the villas, etc. and/or, in the alternative, refund of the amounts deposited by them, along with compensation.
4. The Arbitration Clauses in the different Buyers’ Agreements seem to follow a standard template and construction. The Arbitration Clause contained in one such set of Buyers Agreements, reads as under:

“This or any dispute arising out of or touching upon or in relation to the terms of this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendment, modifications or re-enactment thereof for the time being in force and shall be held at New Delhi. The High Court of Punjab & Haryana at Chandigarh and the Courts subordinate thereto having territorial jurisdiction over the Built up villa shall be to the specific exclusion of all other courts, alone have the exclusive jurisdiction in all matters arising out of / touching and / or concerning this Agreement”.

The Arbitration Clause in another set of Buyers’ Agreements is to the following effect:

“37. All or any dispute arising out of or touching upon or in relation to the terms of this Buyer’s / provisional allotment letter or its termination, including the interpretation and validity thereof and the respective rights and obligations of, the parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendments, modifications or re-enactment thereof for the time being in force. A Sole Arbitrator, who shall be nominated by the Developer, shall hold the arbitration proceedings at the registered office of the Developer in New Delhi. The Allottee(s) hereby confirms that he shall have no objection to such appointment even if the person so appointed, as the Arbitrator, is an employee or advocate of the Developer or is otherwise connected with the Developer and the Allottee (s) confirms that notwithstanding such relationship / connection, the Allottee (s) shall have no doubts as the independence or impartiality of the said Arbitrator and shall not challenge the same”.

1. The Builder relied upon Section 8 (1) of the Arbitration Act, as amended by the Arbitration & Conciliation (Amendment) Act, 2015 with effect from 23.10.2015, to make their claim for a reference to Arbitration. Section 8 (1) of the Arbitration Act [as amended] reads as under:

“8. Power to refer parties to arbitration where there is an arbitration agreement.

(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.”

The aforesaid Sub-Section before amendment read as under:

“(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first

statement on the substance of the dispute, refer the parties to arbitration”.

1. This batch of Applications was listed before the Learned Single Member, who noted the Arbitration Clauses; the erstwhile and amended form of Section 8 (1) of the Arbitration Act; case law surrounding the quondam Section 8 (1) of the Arbitration Act, and the contentions around the interpretation of the untrodden amendment to Section 8 (1) of the Act. At the outset, on a *prima facie* construction of the Sections, before and after the amendment, the Learned Single Member drew the following important inferences. First, it is evident that in the pre-amendment era, only a party to the Arbitration Agreement could seek reference to Arbitration; however, as a result of the amendment, even persons claiming through such parties may seek reference to Arbitration. Second, it is apparent that judicial authorities can examine the *prima facie* validity of the Arbitration Agreement, before deciding on the question of reference to Arbitration. Third, the amendment mandates that judicial authorities, before which, an action is brought, *shall refer the parties thereto to Arbitration, “notwithstanding any judgment, decree or order of the Supreme Court...unless it finds that prima facie no valid arbitration agreement exists.”*
2. The crux of this reference revolves around these last few words of amended Section 8(1) of the Arbitration Act. The complainants argue that the said words leave the ability of Consumer Forums to hear such cases, such as the captioned ones that triggered this reference, unaffected, notwithstanding any Arbitration Clauses in the Agreements, while the Builder believes that the said amendment was enacted primarily to oust the jurisdiction of the Courts and Tribunals, and limit the resolution of these cases solely through Arbitration. As a result, there is a need to understand the legal position on Applications under Section 8 of the Arbitration Act for referral to Arbitrations in light of the amendment, and resolve whether *status quo ante* persists, or if a new regime has been ushered that ousts the jurisdiction of Tribunals/Commissions etc. completely in case of valid Arbitration Clauses. In light of the same, the Learned Single Member has made the following reference:

“14. The Arbitration Clauses are generally contained in the Buyers Agreement between the builders and the purchasers of the plot and flats. They also find incorporation in the insurance policies and several other agreements which later on become the subject matter of the consumer disputes. Therefore, the decision of this Commission on these applications is likely to impact a large number of consumer disputes. Considering the vital importance and the far reaching consequence of the legal issue involved in these applications, it would only be appropriate that these applications are considered and decided by a Larger Bench, consisting of atleast Three-Members. The Hon’ble President is therefore, requested to constitute a Larger Bench to hear and decide these applications. Subject to the order of the Hon’ble President, list these applications before the Larger Bench, at an early date, for hearing.”

1. Therefore, the short yet significant question before this Bench is the following: whether the newly inserted Sub-Section (1) of Section 8 of the Arbitration Act mandates Consumer Forums, constituted under the Consumer Act, to refer parties to Arbitration in terms of valid Arbitration Agreement, notwithstanding other provisions of the Arbitration Act and the provisions of the Consumer Act?
2. We have heard Mr. Ankur Talwar, Ms. Sonam Sharma, Mr. Sangram S. Saron, Mr. Rahul Rathore, Mr. Sushil Kaushik, Ms. Himanshi Singh, Mr. Rajeev Kumar Jha, Mr. C.P. Sharma and Mr. Iggu Chittiappa, Advocates for the Complainants and Mr. Amarjit Singh Chandhiok, Learned Senior Counsel assisted by Mr. Aditya Narain, Advocate on behalf of the Builder.

SUBMISSIONS ON BEHALF OF THE COMPLAINANTS:

1. The complainants argue that the amendment to Section 8 of the Arbitration Act does not have the effect of nullifying the ratio of a catena of decisions of the Hon’ble Supreme Court, particularly in National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506. They contend that it has been authoritatively held in these decisions that remedies provided under the Consumer Act are in addition to and not in derogation of other laws in force; consequently, Consumer Fora would not be bound to refer parties to Arbitration even if the contract between the parties contained an Arbitration Agreement. The said pronouncements are primarily based on Section 3 of

the Consumer Act, which admittedly has not been amended or overridden by any provision in the amended Arbitration Act. On the contrary, the intention of the Legislature to leave the ratio of the said decisions undisturbed is evident from the conspicuous absence of the words *'notwithstanding anything to the contrary in any other law for the time being in force'* in the amended Section 8 of the Arbitration Act. Thus, they assert, that Section 3 of the Consumer Act still occupies the field.

2. The Complainants point to the legislative history and intent of the amendment in question, gathered from the Statement of Objects and Reasons of the Amendment Act, as well as the 246th Report of the Law Commission of India on which, the said Amendment Act was substantially based, to argue that altering the legal position settled by the aforementioned judgments of the Hon'ble Supreme Court (including the National Seeds Corporation Case) was not even a matter in contemplation or consideration. In their view, the intention behind amending Section 8 (1) of the Arbitration Act, along with a similar amendment to Section 11 of the said Act [by the insertion of Sub-Section (6A)] is to neutralize a totally different line of judgments, starting with SBP & Co. Vs. Patel Engineering Ltd - (2005) 8 SCC 618 [later followed and explained in National Insurance Co. Ltd. Vs. Boghara Polyfab Pvt. Ltd. - (2009) 1 SCC 267 and Shin Etsu Chemicals Co. Ltd. Vs. Aksh Optifibre & Anr.- (2005) 7 SCC 234], which enlarged the scope of enquiry to be undertaken at the stage of appointment of Arbitrators under Section 11 of the Arbitration Act, as also while referring parties to Arbitration under Section 8 of the Arbitration Act. They submit that the purpose of the amendment in question is to overcome these judgments, and to curtail the nature and scope of enquiry to be undertaken in terms of Sections 8 and 11 of the Arbitration Act to the existence of an Arbitration Agreement *only*. Thus, in their reading of the amendment, there is no intention to alter the interplay between the provisions of the Arbitration Act and the Consumer Act as settled by the Hon'ble Supreme Court of India in the National Seeds Corporation case (Supra).
3. They further contend that a bare reading of the amended Section 8(1) shows that the operative words of the provision [*"shall ... refer the parties to arbitration"*] have not been amended or altered, except for the addition of the words *"unless it finds that prima facie no valid arbitration agreement exists"*. These added words make no material difference to the issue at hand as Section 3 of the Consumer Act remains completely un-amended and unaffected. Thus, the interplay between Section 8 (1) of the Arbitration Act and Section 3 of the Consumer Act, as interpreted by the Hon'ble Supreme Court in earlier judgments remains unaffected by the amendment in question. They further submit that without amending (or overriding) Section 3 of the Consumer Act, and removing the basis, as it were, of the judgments of the Hon'ble Supreme Court, it would be wholly impermissible for Parliament to simply overrule the said judgments – an extremely well settled jurisprudential principle under our Constitution [See: State of Kerala Vs. PUCL - (2009) 8 SCC 46].
4. The complainants also submit that to interpret the amendment to Section 8 of the Arbitration Act as having altered the law declared by the Hon'ble Supreme Court, without in any manner altering the statutory basis for the judgments of the Hon'ble Supreme Court would render the Amendment unconstitutional and beyond the competence of Parliament in as much as, it would tantamount to the law declared by the Hon'ble Supreme Court, being simply overruled by Parliament. Thus, their argument is that while such an interpretation of the amended Section 8 is wholly unsustainable even going by its plain language, in any event, even if such an interpretation were possible, it would be eschewed by the Fora concerned in view of the settled legal principle that where two interpretations of a statutory provision are possible, the one that has the effect of making the provision unconstitutional has to be avoided, and the interpretation, which renders the provision constitutionally valid ought to be accepted.
5. The lynchpin of this approach is that the Consumer Act is a beneficial legislation, enacted to protect the interests of Consumers. It is evident from the Preamble that its provisions must be interpreted purposively, so as to advance these objects. Accepting the contentions of the Builder would not only do grave injustice to the Complainants but would also defeat the very purpose for the enactment of this salutary legislation. Moreover, they stressed that the Forums constituted under the Consumer Act, though vested with some powers of a Civil Court, yet they exercise quasi-judicial powers conferred upon them under the said Statute, and hence, may not fall within the purview of Sections 5 and 8 of the Arbitration Act, divesting them of their Statutory jurisdiction as in both these provisions reference is only to a "Judicial Authority".

SUBMISSIONS ON BEHALF OF THE BUILDER

1. Learned Senior Counsel appearing for the Builder argued that in Fair Air Engineers Pvt. Ltd. & Anr. Vs. N.K. Modi (1996) 6 SCC 385 and SBP & Co. (Supra), while dealing with the Arbitration Act, the Supreme Court has held that the National Commission is a “Judicial Authority” within the meaning of Sections 5 and 8 of the said Act and, therefore, had jurisdiction to decide an application under Section 8 of the Arbitration Act, including the *prima-facie* determination of validity of an Arbitration Agreement. They submitted that this is not by virtue of any provisions of the Consumer Act but by virtue of the provisions of the Arbitration Act. Thus, on filing of an application under Section 8 of the Arbitration Act, the District Forum, the State and the National Commission become a “Judicial Authority” within the meaning of Part I of the Arbitration Act and the said application is required to be decided in terms of the amended Section 8 of the Arbitration Act.
2. The expression used by the Legislature – “*notwithstanding anything contained in any other law for the time being in force*” – not only includes other Acts/Laws including the Consumer Act but also includes law as laid down by the Hon’ble Supreme Court; under Article 141 of the Constitution of India, its judgment is the law. Thus, the prohibition under Section 5 of the Arbitration Act is express, viz. that the “judicial authority” shall not only exclude reference to on any other law for the time being in force, it shall also not rely on any judgment of the Hon’ble Supreme Court or any other Court. There was, therefore, no need to further amend Section 5 of the Arbitration Act.
3. That the two enactments viz, the Arbitration Act and the Consumer Act, are two distinct enactments. Once a Complaint is preferred invoking the Consumer Act, the Opposite Party has an option to either continue to defend the proceedings under the Consumer Act or to exercise an equally important option, i.e. to invoke the provisions of Part I of the Arbitration Act by moving an Application under Section 8 of the said Act before the Consumer Fora itself. Once such an application is filed, the effect thereof would be that the Consumer Forum, constituted under the Consumer Act, by virtue of the provisions in the said Act becomes the “judicial authority”, exercising the jurisdiction as a “judicial authority” under section 8 of the Arbitration Act. Therefore, there is no interplay at all between Section 8 of the Arbitration Act and the Consumer Act.
4. In National Seeds Corporation (Supra), the Supreme Court has not dealt with the option available to the Opposite Party, if there is a valid and subsisting Arbitration Agreement between the parties. If the Complainant has two forums to opt for, so does the Opposite Party. He may continue if served with the Complaint and submit to the jurisdiction of the Consumer Forum or may invoke the statutory right and file an application under Section 8 of the Arbitration Act. The moment a party agrees to Arbitration as a forum to adjudicate its disputes, then the effect of Section 5 read with Section 8 of the Arbitration Act comes into play and ousts jurisdiction of any other forum under any statute, including the Consumer Act. The Builder argues that the legislature, through amendment to Section 8 of the Arbitration Act, has now prohibited the “judicial authority” to refer to or rely upon any judgment rendered even by the Hon’ble Supreme Court, which is inconsistent with the intent of the legislature under the Arbitration Act. Thus, the judgment in National Seeds Corporation Ltd. (Supra) ceases to be a precedent or has any relevance.
5. According to Mr. A. S. Chandhiok, Learned Senior Counsel appearing for the Builder, unfortunately, attention of the Hon’ble Supreme Court was not drawn to Section 5 of the Arbitration Act and, therefore, the effect of the legislative intent of Section 5 read with Section 8 was not even considered; none of the judgments relied upon by the Complainants even look at or refer to Section 5 of the Arbitration Act; Section 5 all along had mandated that a “judicial authority” shall not act except as provided under Part I of the Arbitration Act; and since the judgments were not based on the legislative intent as aforesaid, the Legislature in its wisdom amended Section 8 to clarify that all judgments pronounced by the Supreme Court or any other Court shall have no relevance and/or precedence, while considering an application under Section 8 of the Arbitration Act. It was strenuously urged that the law has been altered by the amendment for it puts an additional bar on the “judicial authority” that it shall not rely upon or refer to any decision interpreting Section 8 of the Act prior to the date of the amendment coming into force.

6. The pre-amended Section 8 read with Section 5 of the Arbitration Act creates a mandate for the “judicial authority” to refer parties to Arbitration. By virtue of the amended Section 8, the right to adjudicate upon the *prima facie* validity of the Arbitration Agreement has been conferred on the “judicial authority”, which was not there earlier. The Amendment mandates the judicial authority to relegate the parties to the Arbitration, unless *prima facie* it finds the Arbitration Agreement to be invalid, *dehors* all judgments.
7. The Parliament has the legislative competence to pass a law to take away the effect of any order or judgment, including that of the Hon’ble Supreme Court, and consequently, the above amendment has rendered all the judgments, orders and decrees, prior to the said amendment irrelevant, and/or ceased to be precedent(s) for the interpretation of Section 8 of the Arbitration Act. Thus, it is evident that by virtue of the twin bars expressly contained in Section 5 and Section 8 of the Arbitration Act, the “judicial authority” (Consumer Fora) exercising the jurisdiction under Section 8 of the Arbitration Act as “judicial authority”, cannot refer to or rely upon any other provisions of law for the time being in force (including the Consumer Act) or any judgment or order prior to 20.10.2015, when the said amendment was incorporated in the statute.
8. There was no need for the Legislature to again add ‘*notwithstanding anything contained in any other law*’, in Section 8 of the Arbitration Act, because of the *non-obstante* clause already contained in Section 5 of the Arbitration Act.
9. The intent of the Legislature, in adding Sub-Section (6A) to Section 11, and adding the same words to Section 8 is identical; while the former seeks to neutralize the judgments of SBP & Co. (supra) and the latter seeks to efface the effect of all judgments including National Seeds Corporation (Supra). What applies to Section 11 equally applies to Section 8 of the Arbitration Act and there cannot be a piecemeal distribution of the intent of the Legislature with the words used therein.
10. The question before the Hon’ble Supreme Court in A Ayyasamy Vs. A Paramasivam & Ors. - (2016) 10 SCC 386, was whether allegation of fraud simpliciter was a ground to nullify the effect of Arbitration Agreement between the parties. The Hon’ble Supreme Court while dealing with the said question has observed that in so far as the Arbitration Act is concerned, it does not make any specific provision excluding any category of disputes terming them to be non-arbitrable. While dealing with Section 34(2)(b) and Section 48(2), the Hon’ble Supreme Court has observed thus:-

“34. Section 34 (2) (b) and Section 48(2) provide as one of the grounds for challenge to or in respect of the enforceability of an award that “the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force”. Clearly, therefore, the Act contemplates and acknowledges that before it can be held that a particular subject-matter is not capable of settlement by arbitration, such a consequence must arise under the law for the time being in force.”

However, according to the Builder, in the present case, firstly, there is no exclusion of such disputes in the Arbitration Act and secondly, there is nothing to show that the subject matter of the present dispute is not capable of settlement by Arbitration under the law for the time being in force.

DISCUSSION

1. It is clear that prior to the amendment, the Hon’ble Supreme Court had resolved and settled that the Consumer Forums were not bound to refer disputes to Arbitration under Section 8 of the Arbitration Act. In other words, an Arbitration Clause in a contract could not circumscribe the jurisdiction of the Courts and the Tribunals, especially those which are constituted to achieve a particular purpose and objective. Therefore, it is imperative for us to determine whether an Arbitral Clause, even if empowered through a new statutory amendment, can undermine other statutory protections for some types of disputes, without engaging with their foundations. Certainly, the scope of this amendment cannot be to oust all kinds of jurisdictions of Courts and Tribunals be it criminal, testamentary, matrimonial, insolvency, tenancy and surrender them to private alternate dispute resolution mechanisms. The Hon’ble Supreme Court has already defined bright line tests to determine what is arbitrable and what is not. Thus, we have to determine if this line has changed for consumer disputes

(and other disputes, if any) by virtue of the amendment to Section 8 of the Arbitration Act. And if not, what is the purpose of the new amended Section 8 of the Arbitration Act, since an amendment executed through a parliamentary process must not be rendered nugatory through judicial interpretation?

ARBITRABILITY OF DISPUTES

1. Russel on Arbitration (22nd Edition pp. 28 Para 2.007) famously stated, “*not all matters are capable of being referred to arbitration.*” He observed that as a matter of law, certain matters are reserved for Courts alone and if a Tribunal purports to deal with them the resulting award will be unenforceable. These include matters, where the type of remedy required is not one, which an Arbitral Tribunal is empowered to give. Mustill and Boyd in the Law and Practice of Commercial Arbitration in England (2nd Edition, 1989) stated the following: “*In practice therefore, the question has not been whether a particular dispute is capable of settlement by arbitration, but whether it ought to be referred to arbitration or whether it has given rise to an enforceable award. No doubt for this reason, English law has never arrived at a general theory for distinguishing those disputes which may be settled by arbitration from those which may not. ... Second, the types of remedies which the arbitrator can award are limited by considerations of public policy and by the fact that he is appointed by the parties and not by the State. For example, he cannot impose a fine or a term of imprisonment, commit a person for contempt or issue a writ of subpoena; nor can he make an award which is binding on third parties or affects the public at large, such as a judgment in rem against a ship, an assessment of the rateable value of land, a divorce decree, a winding-up order....*”
2. The *locus classicus* on the subject is Booz Allen and Hamilton Inc. v. SBI Home Finance Limited & Ors. (2011) 5 SCC 532, which delineates the conceptual framework behind making only some kinds of disputes arbitrable in the following manner:

“35. The Arbitral Tribunals are private fora chosen voluntarily by the parties to the dispute, to adjudicate their disputes in place of courts and tribunals which are public fora constituted under the laws of the country. Every civil or commercial dispute, either contractual or non-contractual, which can be decided by a court, is in principle capable of being adjudicated and resolved by arbitration unless the jurisdiction of the Arbitral Tribunals is excluded either expressly or by necessary implication. Adjudication of certain categories of proceedings are reserved by the legislature exclusively for public fora as a matter of public policy. Certain other categories of cases, though not expressly reserved for adjudication by public fora (courts and tribunals), may by necessary implication stand excluded from the purview of private fora. Consequently, where the cause/dispute is inarbitrable, the court where a suit is pending, will refuse to refer the parties to arbitration, under Section 8 of the Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.

36. The well-recognised examples of non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding-up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes”.
(Emphasis Supplied)

1. The principles highlighted above form the bedrock for the determination of the arbitrability of disputes. The Hon’ble Supreme Court has often been asked to examine the contents of a special legislation and accordingly determine if the participants under the said legislation may outsource dispute resolution to Arbitration, away from public Courts, Tribunals and Forums. In the context of

the Trusts Act, 1882, the Hon'ble Supreme Court made the following observations in Vimal Kishor Shah & Ors. v. Jayesh Dinesh Shah (2016) 8 SCC 788:

“50. When we examine the scheme of the Trusts Act, 1882 in the light of the principle laid down in Condition 2, we find no difficulty in concluding that though the Trusts Act, 1882 does not provide any express bar in relation to applicability of other Acts for deciding the disputes arising under the Trusts Act, 1882 yet, in our considered view, there exists an implied exclusion of applicability of the Arbitration Act for deciding the disputes relating to trust, trustees and beneficiaries through private arbitration. In other words, when the Trusts Act, 1882 exhaustively deals with the trust, trustees and beneficiaries and provides for adequate and sufficient remedies to all aggrieved persons by giving them a right to approach the Principal Civil Court of Original Jurisdiction for redressal of their disputes arising out of trust deed and the Trusts Act, 1882 then, in our opinion, any such dispute pertaining to affairs of the trust including the dispute inter se trustee and beneficiary in relation to their right, duties, obligations, removal, etc. cannot be decided by the arbitrator by taking recourse to the provisions of the Act. Such disputes have to be decided by the civil court as specified under the Trusts Act, 1882.”

*51. The principle of interpretation that where a specific remedy is given, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar, and which runs through the law, was adopted by this Court in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke [Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke, (1976) 1 SCC 496 : 1976 SCC (L&S) 70 : AIR 1975 SC 2238] while examining the question of bar in filing civil suit in the context of remedies provided under the Industrial Disputes Act (see G.P. Singh, Principles of Statutory Interpretation, 12th Edn., pp. 763-64). We apply this principle here because, as held above, the Trusts Act, 1882 creates an obligation and further specifies the rights and duties of the settlor, trustees and the beneficiaries apart from several conditions specified in the trust deed and further provides a specific remedy for its enforcement by filing applications in civil court. It is for this reason, we are of the view that since sufficient and adequate remedy is provided under the Trusts Act, 1882 for deciding the disputes in relation to trust deed, trustees and beneficiaries, the remedy provided under the Arbitration Act for deciding such disputes is barred by implication.” **[Emphasis supplied]***

1. In the context of the Bombay Rent Act, the Hon'ble Supreme Court in Natraj Studios (P) Ltd. v. Navrang Studios (1981) 1 SCC 523 had made the following important observations:

“17. The Bombay Rent Act is a welfare legislation aimed at the definite social objective of protection of tenants against harassment by landlords in various ways. It is a matter of public policy. The scheme of the Act shows that the conferment of exclusive jurisdiction on certain courts is pursuant to the social objective at which the legislation aims public policy requires that contracts to the contrary which nullify the rights conferred on tenants by the Act cannot be permitted. Therefore, public policy requires that parties cannot also be permitted to contract out of the legislative mandate which requires certain kind of disputes to be settled by Special Courts constituted by the Act. It follows that arbitration agreements between parties whose rights are regulated by the Bombay Rents Act cannot be recognised by a court of law.”

[Emphasis supplied]

1. Therefore, disputes are not characterized as arbitrable and non-arbitrable at the whim and fancy of the Legislature. The classification is based on the crucial distinction, repeatedly explained by the Hon'ble Supreme Court. This division has been taken into account and entrenched into different legislations with a clear and distinct public policy objective. The Legislature and Judiciary have built this jurisprudence with consensus and harmony.

2. Our legal framework is a complex and intricate network—working with it often involves simultaneous engagement of different laws. Since laws cannot be enacted in strict silos, they often affect each other in unanticipated ways. The Supreme Court and High Courts waded through this framework to harmonise these seemingly differing aspects to sustain a cohesive and coherent legal framework. No legal amendment intends to reduce a harmonized and established legal framework to a “useless lumber” or a “dead letter”. The Legislators are cognizant of the edifice on which laws are built and envisage amendments, often specific and with a narrow purport, keeping in mind the larger legal ecosystem. The corollary of the argument that through the route of Section 8 (1) of the Arbitration Act, the Parliament intended to undo jurisprudence under the Consumer Act, is much larger than envisaged by Learned Counsel for the Builder. If the said amendment can undo existing jurisprudence under the Consumer Act, it should, with the same force, also unfasten jurisprudence related to tenancy, trusts and related fields, as enunciated in Natraj Studio; Booz Allen; Vimal Kishor and Ayyaswamy (Supra). In effect, the argument of Ld. Senior Counsel for the Builder is that with a single stroke of Section 8 (1) of the Arbitration Act, the legislature has undone the entire framework of not just Consumer jurisprudence, but also jurisprudence related to trusts, tenancy and other such welfare laws. This, in our view, is untenable.
3. The ripples of the amendment to Section 8 (1) cannot be so large as to inundate domains of other legislations and jurisprudence, painstakingly built by the Legislators and Courts, especially without any engagement, debate and critique with the foundations of these related laws.

JURISPRUDENCE ON ARBITRABILITY OF CONSUMER DISPUTES

4. As recently as 2016, after the 2015 amendment to Section 8 of the Arbitration Act, in A. Ayyaswamy (Supra), while answering the question: as to whether a mere allegation of fraud simpliciter is a ground to nullify the effect of Arbitration Agreement between the parties, in the negative, the Hon’ble Supreme Court touched upon the issue of arbitrability of a dispute, in the context of Section 8 of the Arbitration Act. Drawing support from the crucial observations in Booz Allen (Supra) [para 35-36], to the effect that though not exclusively reserved for adjudication by Courts and Tribunals, but by necessary implication, certain category of disputes which are assigned by Legislature to public Fora as a matter of public policy, stand excluded from the purview of private Fora, in his concurring opinion, Dr. D.Y. Chandrachud J. referring to the decisions of the Hon’ble Supreme Court in Skypack Couriers Ltd., National Seeds Corporation (Supra) and Rosedale Developers Pvt. Ltd. Vs. Aghore Bhattacharya [(2015) 1 WBLR 385 (SC)], wherein it had been authoritatively opined that the existence of an arbitration clause will not be a bar to the entertainment of a Complaint by a Forum under the Consumer Act, has observed as under:-

“ Hence, in addition to various classes of disputes which are generally considered by the courts as appropriate for decision by public fora, there are classes of disputes which fall within the exclusive domain of special fora under legislation which confers exclusive jurisdiction to the exclusion of an ordinary civil court. That such disputes are not arbitrable dovetails with the general principle that a dispute which is capable of adjudication by an ordinary civil court is also capable of being resolved by arbitration. However, if the jurisdiction of an ordinary civil court is excluded by the conferment of exclusive jurisdiction on a specified court or tribunal as a matter of public policy such a dispute would not then be capable of resolution by arbitration.“ (Emphasis Supplied)

1. Thus, in the context of Consumer Jurisprudence, the Hon’ble Supreme Court has not disturbed its earlier opinion regarding the arbitrability of Consumer disputes rendered in the pre-amendment era. Rather, it has affirmed the protection granted to the Consumers from private resolution.
2. This Commission also took a similar view in Lt. Col. Anil Raj & Anr. Vs. M/s. Unitech Ltd., Consumer Complaint No. 346 of 2013, decided on 02.5.2016, relying upon the decisions of the Hon’ble Supreme Court in Secretary, Thirumugugan Cooperative Agricultural Credit Society Vs. M. Lalitha (through LRs) & Ors. (2004) 1 SCC 305 Skypak Couriers Ltd. (supra) and National Seeds

Corporation (supra), to hold that the existence of an Arbitration Clause will not be a bar for the entertainment of the Complaint by a Consumer Fora.

3. The above observations are based on entrenched ideals surrounding consumer jurisprudence, honed and built by the Apex Court. Therefore, it is imperative to dwell on the foundation of the

Consumer Act to understand the kind of rights it seeks to protect, the statutory provisions that it lays out for the same, and accordingly, if by virtue of the amendment to Section 8 (1) of the Act, the erstwhile scheme has been set at naught.

4. In Skypak Couriers Ltd. Vs. Tata Chemicals Ltd. (supra), the Hon'ble Supreme Court inter-alia observed as under:

"2... Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain efficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force". **(Emphasis supplied).**

5. In M. Lalitha (Supra) the Hon'ble Supreme Court inter-alia observed and held as under:

"10. The preamble of the Act declares that it is an Act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and matters connected therewith. In Section 3 of the Act in clear and unambiguous terms it is stated that the provisions of the 1986 Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

11. From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi-judicial forums are set up at the district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders". **(Emphasis supplied).**

6. In Fair Air Engineers Pvt. Ltd. & Anr. Vs. N.K. Modi (Supra), the Supreme Court, while holding that the Consumer Fora were judicial authorities, inter-alia observed:

"15... It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e. to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy.

16. It would, therefore, be clear that the legislature intended to provide a remedy in addition to the consentient arbitration which could be enforced under the Arbitration Act or the civil action in a suit under the provisions of the code of Civil Procedure. Thereby, as seen, Section 34 of the Act does not confer an automatic right nor create an automatic embargo on the exercise of the power by the judicial authority under the Act. It is a matter of discretion. Considered from this perspective, we hold that though the District Forum, State Commission and National Commission are judicial authorities, for the purpose of Section 34 of the Arbitration Act, in view of the object of the Act and by operation of Section 3 thereof, we are of the considered view that it would be appropriate that these forums created under provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to a contract entered into between the parties. The reason is that the Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil action unless the forums on their own and on conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act”.

(Emphasis supplied).

7. In National Seeds Corporation Limited Vs. M. Madhusudhan Reddy & Anr.(supra) the Hon'ble Supreme Court, despite the existence of an Arbitration Agreement between the parties, upheld the jurisdiction of the Consumer Forum to proceed with a Consumer Complaint. The following was the view taken by the Apex Court in this regard:

“The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Protection Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Protection Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996. Moreover, the plain language of Section 3 of the Consumer Protection Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force”.

(Emphasis supplied)

8. It is thus, absolutely clear that the Consumer Act was envisaged as a special social legislation to protect consumer rights. Unlike other legislations that create dispute resolution mechanisms between level players, this legislation establishes a level-playing field between unequal players i.e. Consumers and large Corporations. The following observations of the Hon'ble Supreme Court in Lucknow Development Authority v. M. K. Gupta (1994) 1 SCC 243, clearly and finally delineate the objective behind the enactment of the Consumer Act:

“But before doing so and examining the question of jurisdiction of the District Forum or State or National Commission to entertain a complaint under the Act, it appears appropriate to ascertain the purpose of the Act, the objective it seeks to achieve and the nature of social purpose it seeks to promote as it shall facilitate in comprehending the issue involved and assist in construing various provisions of the Act effectively. To begin with the preamble of the Act, which can afford useful assistance to ascertain the legislative intention, it was enacted, ‘to provide for the protection of the interest of consumers’. Use of the word ‘protection’ furnishes key to the minds of makers of the Act. Various definitions and provisions which elaborately attempt to achieve this objective have to be construed in this light without departing from the settled view that a preamble cannot control otherwise plain meaning of a provision. In fact the law meets long felt necessity of protecting the common man from such wrongs for which the remedy under ordinary law for various reasons has become illusory. Various legislations and regulations permitting the State to intervene and protect interest of the consumers have become a haven for unscrupulous ones as the enforcement machinery either does not move or it moves ineffectively, inefficiently and for

reasons which are not necessary to be stated. The importance of the Act lies in promoting welfare of the society by enabling the consumer to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as, 'a network of rackets' or a society in which, 'producers have secured power' to 'rob the rest' and the might of public bodies which are degenerating into storehouses of inaction where papers do not move from one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society instead of bothering, complaining and fighting against it, is accepting it as part of life. The enactment in these unbelievable yet harsh realities appears to be a silver lining, which may in course of time succeed in checking the rot. A scrutiny of various definitions such as 'consumer', 'service', 'trader', 'unfair trade practice' indicates that legislature has attempted to widen the reach of the Act. Each of these definitions are in two parts, one, explanatory and the other expandatory. The explanatory or the main part itself uses expressions of wide amplitude indicating clearly its wide sweep, then its ambit is widened to such things which otherwise would have been beyond its natural import. Manner of construing an inclusive clause and its widening effect has been explained in Dilworth v. Commissioner of Stamps [1899 AC 99 : 15 TLR 61] as under:

“‘include’ is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural, import, but also those things which the definition clause declares that they shall include.”

It has been approved by this Court in Regional Director, Employees' State Insurance Corpn. v. High Land Coffee Works of P.F.X. Saldanha and Sons [(1991) 3 SCC 617] ; CIT v. Taj Mahal Hotel, Secunderabad [(1971) 3 SCC 550] and State of Bombay v. Hospital Mazdoor Sabha [AIR 1960 SC 610 : (1960) 2 SCR 866 : (1960) 1 LLJ 251] . The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to the attempted objective of the enactment.

(Emphasis supplied).

1. A similar approach has been recommended by the Hon'ble Supreme Court in a recent decision in National Insurance Co. Ltd. Vs. Hindustan Safety Glass Works Ltd.- (2017) 5 SCC 776, wherein, it has been observed as follows:-

“..... in a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods. It is to overcome this disadvantage that a beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament.”

2015 AMENDMENT TO THE ARBITRATION ACT

1. Hence, in our reading of the Hon'ble Supreme Court's afore-noted analysis, the categories discussed above – trusts, tenancy, matrimonial, criminal, insolvency, guardianship, testamentary, mortgage, etc. continue to be within the exclusive domain of the Courts, Tribunals and Forums. However, the question that remains for consideration is whether by the amendment in question, the intention of the legislature is to relegate the consumer disputes only to private resolution, notwithstanding the fact that the Consumer Act continues to be a social welfare legislation, designed to protect the interests of Consumers?

2. To buttress their respective arguments on the nature of the 2015 Amendment, Learned Counsel for both sides placed heavy reliance on the Reports of the Law Commission of India. Learned Senior Counsel for the Builder argued that it was the specific purpose of the amendment to undo the earlier legislative scheme, explained by the Hon'ble Supreme Court, and hence, any order or judgment of the Court ought to be completely disregarded for the purpose. For the sake of ready reference, the relevant portions of the said report are extracted below:

“SCOPE AND NATURE OF PRE-ARBITRAL JUDICIAL INTERVENTION

28. The Act recognizes situations where the intervention of the Court is envisaged at the pre-arbitral stage, i.e. prior to the constitution of the arbitral tribunal, which includes sections 8, 9, 11 in the case of Part I arbitrations and section 45 in the case of Part II arbitrations. sections 8, 45 and also section 11 relating to “reference to arbitration” and “appointment of the tribunal”, directly affect the constitution of the tribunal and functioning of the arbitral proceedings. Therefore, their operation has a direct and significant impact on the “conduct” of arbitrations. Section 9, being solely for the purpose of securing interim relief, although having the potential to affect the rights of parties, does not affect the “conduct” of the arbitration in the same way as these other provisions. It is in this context the Commission has examined and deliberated the working of these provisions and proposed certain amendments.

29. The Supreme Court has had occasion to deliberate upon the scope and nature of permissible pre-arbitral judicial intervention, especially in the context of section 11 of the Act. Unfortunately, however, the question before the Supreme Court was framed in terms of whether such a power is a “judicial” or an “administrative” power – which obfuscates the real issue underlying such nomenclature/description as to the.

- scope of such powers – i.e. the scope of arguments which a Court (Chief Justice) will consider while deciding whether to appoint an arbitrator or not – i.e. whether the arbitration agreement exists, whether it is null and void, whether it is voidable etc; and which of these it should leave for decision of the arbitral tribunal.

- the nature of such intervention – i.e. would the Court (Chief Justice) consider the issues upon a detailed trial and whether the same would be decided finally or be left for determination of the arbitral tribunal

30. After a series of cases culminating in the decision in SBP v Patel Engineering, (2005) 8 SCC 618, the Supreme Court held that the power to appoint an arbitrator under section 11 is a “judicial” power. The underlying issues in this judgment, relating to the scope of intervention, were subsequently clarified by RAVEENDRAN J in National Insurance Co. Ltd. v Boghara Polyfab Pvt. Ltd., (2009) 1 SCC 267, where the Supreme Court laid down as follows –

“1. The issues (first category) which Chief Justice/his designate will have to decide are:

(a) Whether the party making the application has approached the appropriate High Court?

(b) Whether there is an arbitration agreement and whether the party who has applied under section 11 of the Act, is a party to such an agreement?

2. The issues (second category) which the Chief Justice/his designate may choose to decide are:

(a) Whether the claim is a dead (long barred) claim or a live claim?

(b) Whether the parties have concluded the contract/transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection?

3. The issues (third category) which the Chief Justice/his designate should leave exclusively to the arbitral tribunal are:

(a) Whether a claim falls within the arbitration clause (as for example, a matter which is reserved for final decision of a departmental authority and excepted or excluded from arbitration)?

(b) Merits of any claim involved in the arbitration.”

31. The Commission is of the view that, in this context, the same test regarding scope and nature of judicial intervention, as applicable in the context of section 11, should also apply to sections 8 and 45 of the Act – since the scope and nature of judicial intervention should not change upon whether a party (intending to defeat the arbitration agreement) refuses to appoint an arbitrator in terms of the arbitration agreement, or moves a proceeding before a judicial authority in the face of such an arbitration agreement.

32. In relation to the nature of intervention, the exposition of the law is to be found in the decision of the Supreme Court in *Shin Etsu Chemicals Co. Ltd. v Aksh Optifibre*, (2005) 7 SCC 234, (in the context of section 45 of the Act), where the Supreme Court has ruled in favour of looking at the issues/controversy only *prima facie*.

33. It is in this context, the Commission has recommended amendments to sections 8 and 11 of the Arbitration and Conciliation Act, 1996. The scope of the judicial intervention is only restricted to situations where the Court/Judicial Authority finds that the arbitration agreement does not exist or is null and void. In so far as the *nature* of intervention is concerned, it is recommended that in the event the Court/Judicial Authority is *prima facie* satisfied against the argument challenging the arbitration agreement, it shall appoint the arbitrator and/or refer the parties to arbitration, as the case may be. The amendment envisages that the judicial authority shall not refer the parties to arbitration only if it finds that there does not exist an arbitration agreement or that it is null and void. If the judicial authority is of the opinion that *prima facie* the arbitration agreement exists, then it shall refer the dispute to arbitration, and leave the existence of the arbitration agreement to be finally determined by the arbitral tribunal. However, if the judicial authority concludes that the agreement does not exist, then the conclusion will be final and not *prima facie*. The amendment also envisages that there shall be a conclusive determination as to whether the arbitration agreement is null and void. In the event that the judicial authority refers the dispute to arbitration and/or appoints an arbitrator, under sections 8 and 11 respectively, such a decision will be final and non-appealable. An appeal can be maintained under section 37 only in the event of refusal to refer parties to arbitration, or refusal to appoint an arbitrator.” **(underlined for ready reference)**

1. In our conviction, the purpose of the Law Commission’s Report, is self-evident. It was dedicated to the “*scope and nature of permissible pre- arbitral judicial intervention, especially in the context of Section 11 of the Act*” and the extension of the Apex Court’s view [“*after a series of cases culminating in the decision in SBP & Co. (Supra), in which, the Supreme Court had held that “the power to appoint an arbitrator under Section 11 is a “judicial power”*”] to Sections 8 and 45 of the Act- “*since the scope and nature of judicial intervention should not change upon whether a party (intending to defeat the arbitration agreement) refuses to appoint an arbitrator in terms of the arbitration agreement, or moves a proceeding before a judicial authority in the face of such an arbitration agreement.*”

2. It is manifest that the Report did not even refer to the law evolved by the Hon’ble Supreme Court regarding the non- arbitrability of consumer disputes, or for that matter, any other kind of dispute including tenancy, matrimonial, criminal, guardianship etc. Therefore, in our view, the import of the

Law Commission's Report is very clear and limited- it deals with the fallout of the judgment in *SBP & Co. v. Patel Engineering* (supra) regarding the scope of judicial intervention in the context of the appointment of an Arbitrator, and nothing more.

3. Moreover, the widely touted argument on behalf of the Builder, surrounding Section 5 of the Act has a simple answer within the Arbitration Act itself, in Section 2 (3). Section 5 of the Act reads:

“5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”

Learned Counsel for the Builder suggested that judicial intervention is allowed only within the contours of Part I of the Act. In other words, he argued that the complete repository of all possible opportunities of judicial intervention with regard to disputes covered by an Arbitration Agreement is by way of Arbitration under the Arbitration Clause. We are unable to persuade ourselves to agree with this blanket proposition, the dangers of which, have already been highlighted above. The non-arbitrability of some categories of disputes is *not* covered in Part I of the Arbitration Act, is no longer *res-integra*. An offender cannot seek an exit from the criminal justice system by virtue of a duly executed Arbitration Agreement. Pertinently, this safeguard for devices and mechanisms envisaged through other legislations is found in Section 2(3) of the Arbitration Act itself, which reads as follows:

“(2) Definitions.

.....

“(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.”

1. The mandate of the provision is that the statutory regime concerning Arbitration will not be applicable where public law regime operates. Unlike many general savings Sections, this is a Section that specifically saves the application of the Arbitration Act to certain disputes (*which*) may not be submitted to arbitration. It means that there are certain disputes that are to be adjudicated and governed by statutory enactments, established for specific public purpose and to sub-serve a particular public policy. Such disputes are not arbitrable. In other words, the Arbitration Act itself excludes from its purview the disputes with respect to which statutory remedy is put in place to sub-serve a public policy. A catena of such disputes, highlighted above, including the Consumer disputes, are protected by the umbrella of Section 2(3) of the Arbitration Act, that were not intended to be snatched vide the subject amendment to Section 8 of the Arbitration Act. In our view, therefore, the Legislature clearly intended to preserve the larger legal framework by virtue of which it bestowed the responsibility of the resolution of some disputes—including Consumer disputes, solely to public Courts, Tribunals and Forums. We are convinced that neither the amendment to Section 8 of the Arbitration Act, nor Section 5 of the Arbitration Act affects *status quo ante*.

2. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short “the Real Estate Act”). Section 79 of the said Act reads as follows:-

“79. Bar of jurisdiction – No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-Section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-Section (1) of Section 71 or the Real

Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

3. At this juncture, we may also deal with the second argument revolving around Section 5 of the Arbitration Act. Learned Senior Counsel for the Builder suggested that “unfortunately, the Hon'ble Supreme Court's attention was not drawn to Section 5 of the Arbitration Act.” He indicated that if the same had been done, the Supreme Court would not have taken its position on the non-arbitrability of Consumer disputes. As detailed above, Section 5 does not affect the Hon'ble Supreme Court's view and Section 2(3) of the Arbitration Act would have only consolidated this position.
4. Moreover, this submission is squarely in the teeth of Articles 141 and 144 of the Constitution of India; a number of judgments of the Hon'ble Supreme Court and the fundamental doctrine of *stare decisis*. In South Central Railway Employees Coop. Credit Society Employees Union Vs. B. Yashodabai & Ors. (2015) 2 SCC 727 it was held:

“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. 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 decided 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. **(Emphasis supplied)**.”

5. In an earlier judgment in Suganthi Suresh Kumar Vs. Jagdeeshan (2002) 2 SCC 420, the Hon'ble Supreme Court had observed thus:-

“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 Vs. Union of India (1988) 2 SCC 587 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.”

(Emphasis supplied)

1. Particularly, on the aspect of lack of consideration of some aspects by a higher Court, in Director of Settlements, A.P. & Ors. Vs. M.R. Apparao & Anr. (2002) 4 SCC 638 the Hon'ble Supreme Court made the following emphatic observations:-

“The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see Ballabhadras Mathurdas Lakhani v. Municipal Committee, Malkapur (1970) 2 SCC 267 and AIR 1973 SC 794). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. **(Emphasis supplied)**”

2. Finally, acceptance of the arguments canvassed on behalf of the Builder would lead to another undesirable outcome – setting at naught the entire purpose and object of the Consumer Act, as detailed above, viz. to ensure speedy, just and expeditious resolution and disposal of consumer disputes. Exposure of such disputes to the Arbitration Act may invite application of portions of the Arbitration Act that are enforceable only through Civil Courts, which would be repugnant to the manifest purpose underlying the enactment of the Consumer Act. Undoubtedly, that could not have been the intention of the Legislature while substituting sub section (1) of Section 8 of the Arbitration Act. As an illustration, a brief reference to Section 29-A of the Arbitration Act would suffice. It provides that if the award is not made within the time specified in Sub-Section (1) or the extended period, specified under Sub-section (3) [on consent by the parties], the mandate of the Arbitrator(s), terminate unless the Civil Court of Competent jurisdiction, extends the period for making the award, only on being satisfied that a sufficient cause for such extension is made out.
3. In view of the afore-going discussion, we arrive at the following conclusions: (i) the disputes which are to be adjudicated and governed by statutory enactments, established for specific public purpose to sub-serve a particular public policy are not arbitrable; (ii) there are vast domains of the legal universe that are non-arbitrable and kept at a distance from private dispute resolution; (iii) the subject amendment was meant for a completely different purpose, leaving *status quo ante* unaltered and subsequently reaffirmed and restated by the Hon'ble Supreme Court; (iv) Section 2(3) of the Arbitration Act recognizes schemes under other legislations that make disputes non-arbitrable and (iv) in light of the overall architecture of the Consumer Act and Court-evolved jurisprudence, amended sub-section (1) of Section 8 cannot be construed as a mandate to the Consumer Forums, constituted under the Act, to refer the parties to Arbitration in terms of the Arbitration Agreement.
4. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act.
5. The reference is answered accordingly.
6. All the Complaints shall now be listed on 28.08.2017 before the Appropriate Bench(s), for adjudication on merits.

.....J

D.K. JAIN
PRESIDENT

.....J

AJIT BHARIHOKE
MEMBER

.....J

V.K. JAIN
MEMBER