Chapter – V

HOUSING LAWS AND JUDICIARY – AN APPRAISAL
5.1 The High Courts and The Supreme Court in Housing Disputes.

In previous Chapters, it has been discussed that differences between members and the Board of Directors of a Co-operative Society occur frequently. Unless these are settled amicably within the periphery of the society, matters are referred to third forum. In some States, Co-operative Courts have been established to adjudicate such disputes. In some other states, the disputes are settled in the office of the Registrar of Co-operative Societies. In case of Co-operative Housing Society in a District, the disputes are agitated in the office of the concerned District's Assistant or Deputy Registrar of Co-operative Societies. The Registrar or the Assistant/Deputy Registrar, as the case may be, appoints an Arbitrator from his subordinate officers. The Arbitrator decides the dispute cases in the form of an Award. The Award, if not complied with by a party, may be executed through Civil Court or a Certificate Officer when the Award involves recovery of money. In some States, Co-operative Courts are established to decide such disputes. Here expression, Award under Co-operative Act should not be confused with the expression Award under the Arbitration Act. When a Co-operative Court Passes an Award, it is enforced or executed by that Court, as ample power is vested with this Court like a Civil Court. But when an Award is passed by an Arbitrator appointed by the Registrar, its enforcement requires intervention of Civil
Court, as the Arbitrator functions quasi-judicially and is not vested with power of a Civil Court, so far as execution of an Award is concerned.

When a party to a dispute is aggrieved with the Award, in some States, he files appeal to Co-operative Tribunal. From Co-operative Tribunal, such cases go to the High Court of the concerned State under Article 227, the Constitution of India. Ultimately any aggrieved party goes upto the Apex Court of India.

In a case: Maharashtra Co-operative Courts Bar Association, Bombay Vs State of Maharashtra 1991 CTJ 526, it has been decided that the Tribunal should basically be a Court performing judicial function of rendering definite judgement having finality and authoritiveness to bind the parties in exercise of sovereign Judicial Powers transferred to it by the State. Disputes under Co-operatives Act are not triable in Civil Courts. In the case of Dulabhai Vs State of Madhya Pradesh AIR 1969 Sc. 78; 1969 Mh IJI (Sc), the Supreme Court observed that if the statute gives finality to the order of the special Tribunals, the Civil Court's jurisdiction must be held to be excluded. When there is an express bar of jurisdiction or if the scheme of the Act which makes the result of an inquiry decisive and if the statute creates a special right or liability and provides forum for determination of such right or liability and lays down that all relevant liability shall be determined by the Court alone, then exclusion of jurisdiction of the Civil Court can be inferred. Thus, in Co-operative Sector
separate adjudicating agency functions. Nonetheless, matters under some disputes go up to the Supreme Court.

On the other hand, adjudication of disputes pertaining to promoters of Buildings and Apartment Owners is ordinarily done by Authorised Officers of the State Government in most of the States. Even, Civil Courts have been barred to decide any question relating to matters arising under any provision of the relevant Act or Rules made thereunder. Decisions of the Authorised Officer may be revised by the State Government. In spite of that, matters go to the High Court and even to the Supreme Court of India.

In both the Co-operative Sector and the Private Sector, there are landmark decisions and judgement of some High Courts and the Supreme Court apart from decisions and orders of State Commissions and the National Commission and the Supreme Court under Consumer Protection Act, 1986. Some of those landmark decisions of the High Courts and the Supreme Court in the sphere of housing matters are appended in the following paragraphs.

5.2 Some important decisions of the Supreme Court and various High Courts:

In Kapurchand Jeevraj Jain – vs- Shri Dutta Co-operative Housing Society\(^1\), a matter came up whether a member of a proposed Co-operative Housing Society can file a dispute case under Maharashtra Co-operative
Societies Act, 1960. One Kapur Chand Jeevraj Jain was a person to be inducted as a member of Shri Dutta Co-operative Housing Society. The proposed Society had purchased land for the purpose of dividing it into plots for distribution amongst its members. But Shri Jain, the plaintiff was excluded from the membership of the proposed society and so he was not given any plot. The Plaintiff filed a Suit in the Civil Court for declaration in his favour as a member of the society and that he should be given a share of the land by effecting partition; he did not file in the Co-operative Court under Section 91 of the said Act. The Civil Court while rejecting the plaint directed to file it under Section 91 to the Co-operative Court, as the matter related to, as the Court observed, a Co-operative Society. The plaintiff appealed before the High Court at Bombay. The High Court observed that when the dispute arose, the plaintiff was not a member of the society within the meaning of section 2 (27) of the said Act. Section 2 (27) states as "society means a Co-operative Society registered or deemed to be registered under this Act." Hence the society was merely a proposed society; so, any dispute touching the constitution appearing in Section 91 (1) of the said Act relates to a society which has come into existence. So, the judgement and decree of the lower court that the dispute was to be filed in Co-operative Court were set aside and the case was remanded back to the Trial Court as the Civil Court has, in such case, jurisdiction to decide all civil cases unless their jurisdiction is specifically or by necessary
implication excluded. The Civil Court was directed by the High Court to
dispose of the matter within the prescribed time limit.

A matter was referred to Registrar of Co-operative Societies, West
Bengal in the form of a dispute filed by one Asis Kumar Hazra against
Ruby Park Co-operative Housing Society Ltd. in Kolkata. The fact of this
case was that there was a non-monetary dispute between Shri Asis Kumar
Hazra and the said society. The dispute was to be filed according to the
provisions of the relevant law within two months from the date when cause
of action arose. The relevant law was Section 95 (2) of the West Bengal
Co-operative Societies Act, 1983. But Shri Hazra filed the dispute much
after two months from the date when cause of action arose. The Registrar
of Co-operative Societies took up the case and could not appoint Arbitrator
due to submission of the dispute after the delimited period. He rather
served a notice for condonation of delay in making claim to the Registrar.
But the plaintiff instead filed a Civil Suit in the form of a Writ Petition
after 11 months to the High Court, Calcutta. The High Court refused to
pass any order. He appealed by special leave before the Supreme Court, the
case being Asis Kumar Hazra -vs- Ruby Park Co-operative Housing
Society Ltd. The supreme Court held that the period during which the
petitioner was wrongly prosecuting the Civil Suit may be excluded in view
of section 14, Limitation Act. But non-explanation of delay between the
period of notice of Arbitration and filing of Civil Suit (11 months) would
entail rejection of the claim. The Supreme Court further held that valuable right created in favour of the Ruby Park Co-operative Housing Society Ltd. can not be defeated unless delay is properly explained.

According to Section 95 (2) of the West Bengal Co-operative Societies Act, 1983, any dispute other than a dispute relating to recovery of money shall be referred to the Registrar within two months from the date on which the cause of action arises.

Section 95 (3) of the said Act gives power to the Registrar to condone the delay. By this provision, the Registrar may admit any dispute after the expiry of the period of limitation of two months if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period of limitation.

In this case, Section 14, Limitation Act, 1963 has been considered. It has been provided in this Section that in computing the period of limitation for any suit the time during which the Plaintiff has been prosecuting with due diligence another Civil proceedings, whether in a Court of first instance of appeal or revision, against the defendant shall be excluded, where the proceedings relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature is unable to entertain it.
A case of cancellation of allotment arose in Saraladevi, widow of Kundanlal -vs- Shailesh\(^3\), Kundanlal deposited money to a Co-operative Society which afterwards turned to defunct stage, Kundanlal died before allotment of any plot of land to be made by the Housing Society. His widow, Saraladevi claimed an allotment but the society tried to dispossess the widow on the ground that no allotment was made to her husband. She instituted a case in the High Court, Bombay for declaration that she could not be evicted from the plot without following due process of law and also prayed for a permanent injunction. She pleaded that she filed several complaints with the Police that her possession was being disturbed by some unauthorised persons of the defendant society. She also urged that a barbed fencing around the plot was given by her. The defendant society argued that her husband was a provisional allottee. It was held by the High Court that evidence and circumstances proved that her husband was a provisional allottee and that barbed wire fencing existed prior to the allottee's coming into the scene, though a temporary structure was raised by them on the plot. There was ample proof of attempt to dispossess the widow. Her uninterrupted possession was never been challenged by any one including the society, Injunction was granted, as possession was proved.

Again, the main point came up in West Bengal Housing Board -vs- Brijendra Prasad Gupta\(^4\) whether the land requisitioned by the State of
West Bengal for the purpose of giving it to the Housing Board to construct dwelling houses in collaboration with the Peerless Finance Co. to provide dwelling of L.I.G. and M.I.G. Group, satisfied the public purpose or not.

The West Bengal State Legislature proposed to amend the State Housing Board Act (32 of 1972) through West Bengal Housing Board (Amendment) Bill 1992 for incorporation of a joint sector Company with the Bengal Peerless Housing Development Co. Ltd. to tide over the financial scarcity for execution of Housing Projects to provide 50,000 dwellings to L.I.G. and M.I.G. Group on land acquired by Government for public purpose under the Act. The conditions of such joint venture will be approved by the State Govt. and the Housing Board will act as a regulatory body. The State Govt. oversees the project. It also supervises in execution of the schemes, fixation of price of flats. One Brijendra Prasad Gupta challenged the amendment made by the Govt. of West Bengal in Housing Department on the ground that the joint venture would derive profit from dwelling units for weaker section of people and thereby the amendment should be declared colourable and void. So, the powers executed by the State authorities are in public interest and the joint venture serves public purpose and the power exercised can not be said to be arbitrary or irrational or abuse of power.. The legal compulsions of the State and the Housing Board to complete the projects will thus be carried out. The requisition of land under Section 4 and service of notice on the owners recorded in the
records of Register under Section 50 of the Act was proper and satisfied the requirements of laws and made for a public purpose under the Act and hence the exercise of power under the Act was not a colourable exercise of power. A private entrepreneur will certainly look for profit, but the Housing Board exercises necessary control to ensure no exploitation. In fact, the profits earned on sale of HIG flats have been pumped into to subsidise the price of LIG flats. Hence, public purpose in such cases are validly served.

In the case of Narendra Kumar Kachera -vs- Sind Maharashtra Co-operative Housing Society Ltd., the fact was that Narendra was a tenant of a member of the Respondent Society. He was possessing the suit flat allowed by the member at a certain monthly rent. No prior permission of the Co-operative Society was obtained by the member nor the occupant petitioner, Narendra Kumar Kochar was enrolled as a nominal member as required by the society’s bye-laws. The society wanted to eject him and so filed a dispute to the Co-operative Court.

The principal issue is whether a tenant being inducted in a flat by a member of a Co-operative Housing Society in violation of the bye-laws of the society, can claim protection under Section 15 (2) read with Section 14 (1) of the Bombay Rents, Hotel and Lodging House Rates control Act, 1947 and whether a claim filed by the society for ejectment of such member along with the tenant is a dispute touching the business of the
society within the meaning of Section 91 (1) of the Maharashtra Co-operative Societies Act, 1960. The Bombay High Court observed that one of the important features of a Co-partnership Society is dual ownership, management and authority to enforce obligation being vested in the society, while the right to occupation subject to bye-laws being vested in the member. It was held that societies hold land and building both, and allot the same or parts thereof to its members though the members are termed loosely as tenant but they are not tenants under the Bombay Rent Act, 1947 and have no right to create sub-tenancy. They can transfer their rights in premises subject to bye-laws of the society and unless that is done, protection of Bombay Act, 1947 cannot be claimed by the transferee. Where there is a dispute between society and owner member of the society, it is very much a business of the society and the Co-operative Court has jurisdiction to decide it under Section 91 (1) of the Maharashtra Act, 1960. So, a claim by the society for ejectment of the member who has permitted a stranger to occupy his flat in violation of the bye-laws, is a dispute falling within the purview of section 91 (1) of the Maharashtra Act, 1960. The position would not be different merely because the stranger is joined as a co-Respondent and order of ejectment is also sought against him. So, the tenant inducted by the member in violation of bye-laws cannot claim protection under Section 15(2) of the Bombay Rent Act, 1947.
One Bibhuti Bhusan Chakraborty, a member of Urbashi Co-operative Housing Society Ltd. in Kolkata sold his flat due to requirement of money towards medical expenses to a person residing at Cuttack. But he before obtaining statutory permission from the Co-operative Housing Society for such transfer accepted the consideration money of the flat from the proposed transferee. He also made over possession of the flat to the transferee who started using it as a Guest House. The society objected to this unauthorised use of the flat. Some residents also objected to this. According to West Bengal Co-operative societies Act, 1983, a building in a Co-operative Housing society is used solely as residence.

The transferee applied for membership of the society. But the application was rejected. Thereafter, the transferee without taking recourse of preferring appeal under Section 70(4) of the said Act accepted the verdict of the Co-operative Society. But afterwards he preferred an appeal to the Deputy Registrar who rejected it. The matter went to the High Court, Calcutta where the case did not stand. On further Appeal, the Division Bench of the High Court observed that Under Rule 135 (3) of the West Bengal Co-operative societies Rules, 1987 the society can withhold consent to transfer. It was held on appeal, the title of the case being Bibhuti Bhusan Chakraborty -vs- Deputy Registrar of Co-operative societies (Housing), C.M.A.H. that under section 85 (2) of the said Act, membership to any person who is eligible for membership should not be
denied if flats are available for allotment. On the very day of application by
the transferor, there was no flat available. Moreover, under Section 85 (9)
of the Act and Rule 135 (3) and Rule 142 (3), a transferor-member has to
make an application for transfer. If such application is allowed by the
society in that event the transferee can apply for transfer of flat. The
society itself shall also give consent after satisfying itself under section
85(9) of the Act and Rule 135 (3) thereof. Here the transferor's right to
transfer was accepted and the society had not withhold the consent to
transfer arbitrarily, capriciously, willfully and with malafide intention, as
the transferee failed to establish as required under Section 85 (9) of the Act
that they genuinely required the said premises for residence to permanently
reside. So, the appeal was dismissed.

In the case: Smt. Gayatri De -vs- State of West Bengal the Court
observed that re-allotment of the apartment to a stranger not being a legal
heir of the deceased member is without jurisdiction, unwarranted, not
maintainable in law and liable to be set aside. The decision to re-allot the
apartment without considering the case of the legal heirs of the deceased
member without giving them any opportunity of hearing, appears to be
contrary to the principles of natural justice. It is clear from Section 87 (3)
of the West Bengal Co-operative Societies Act, 1983 that the Legislature
has recognised that the property in question is heritable and the legal heirs
of the deceased allottee are entitled to succeed to the flat in question.
In Karnataka State, there is a Housing Development Society for Legislators and Ministers named as The Legislators’ Housing Development Co-operative Society Ltd. This society allots plots to Legislators and Ministers. It allotted a plot in R. T. Nagar, Bangalore in favour of one B. Shivanna, an M.L.A. under the condition that the allottee was entitled to hold only one site. He was previously allotted in his favour another plot at Bangalore in Indiranagar by Bangalore Development Authority. He was asked by the Authority to relinquish one of the allotted plots. He secured the allotment at R. T. Nagar by filing a false Affidavit that he had no other house or site. Ultimately his allotment was cancelled. The M.L.A as he then was, challenged the cancellation order by filing a case in the Karnataka High Court. Styled as B. Shivanna -vs- Bangalore Development Authority. Previously he filed two Writ Petitions in 1997 for direction for execution of the Sale Deed for the plot at R.T.Nagar but did not challenge the cancellation of plot. He concealed from the Court the fact of his surrendering the site of R. T. Nagar. It was held that only to procure the trivial benefits at the cost of and determent to the common people, a man like the petitioner had sworn a false affidavit. The Court observed that if such persons who are expected to be men of character, integrity and honesty behave in such a fashion, it is dangerous to our democracy. The High Court passed harsh comments and rejected the Writ Petition.
One Girdhardas son of Narsingdas Chandak filed a PIL against the decision of the Govt. of Maharashtra in the Forest Development Corporation of that State of offering to a private party to construct and hand over buildings to the Corporation. In the case of Girdhardas son of Narsingdas Chandrak -vs- State of Maharashtra⁹ the Bombay High Court disposed of the matter arisen whether the State could offer a financial task to a private institution instead of Public Company or Undertaking.

At Nagpur, the Forest Development Corporation of Maharashtra Ltd. issued an advertisement in the Newspaper regarding its requirement for housing its officers at Nagpur thus giving all employees of the Corporation an opportunity to make their offers about the same. The Company examined the offers including those of Girdhardas Chandak and M/s Parkan Developers in the light of various factors of parameters evolved by the Committee which was formed for the purpose. It was observed that the accommodation offered by M/s Parkan Developers was more convenient and comfortable as compared to the accommodation offered by the petitioner. From the respective offer of the Petitioner and M/s Parkan Developers, it was clear that the total points awarded to M/s. Parkan Developers was 19. As regards location of the building, the building of the Parkan was in the heart of the city and nearer to Railway Station and market whereas that of the petitioner was in the outskirts of the city. So, the committee recommended the offer of M/s Parkan Developers.
Girdhardas challenged the acceptance of the offer of Parkan as being arbitrary, discriminatory and violative of Article 14 of the Constitution of India. It was held that although all State actions may be administrative in nature, but have to conform to the requirements or mandate of Article 14 of the Constitution and as the Corporation in the case is undisputedly as "state" within the meaning of Article 12 of the Constitution of India, its actions heed to conform to the standard and requirements of Article 14 of the Constitution. It was held that facts show that evaluation Committee had considered all the points and the requirements of Article 14 were satisfied in the case and the location of the property considered from convenience point of view cannot be said to be irrelevant. Though the other competitor in the case was the Nagpur Improvement Trust which is a Public Body whose building was so offered to the Corporation in response to the advertisement was not the petitioner in the case. Some other persons in the public interest litigation challenged the decision of the Corporation for preferring the offer of a private developer instead of a Public Body. The Improvement Trust was called as a party but the Court held that reversal of the decision of the Corporation at the stage would cause heavy financial burden upon the Corporation and so the PIL was rejected.

In A.G. Keni (by L.R.) -vs- Prasad Co-operative Housing Society Ltd.¹⁰, points came for decision of the High Court at Bombay on following grounds:
1) that the Co-operative Court has no jurisdiction to decide as its being a dealing with an outsider;

2) that he is a tenant of the society paying rent, so termination of his membership is invalid;

3) that in case the transfer of premises to an outsider is cancelled by the society, the expelled member is entitled to restoration of the premises.

A. G. Keni was a member of Prasad Co-operative Housing Society in the State of Maharashtra. He transferred his premises in the Housing Society to an outsider against the resolution of the society and in breach of its bye-laws. The matter went to the Co-operative Court in the form of a dispute. The Court held that the transfer was invalid. The Court also upheld the action of the society terminating membership for break of bye-laws for transferring the premises without the consent of the society and against its resolution. The Court also directed the society to take possession of the premises on payment of cost of shop and price of the flat to the expelled member.

It was held by the High Court at Bombay the following:

1) A dispute between a society and a member falls under Section 91 of the Maharashtra Co-operative Societies Act, 1960
which affects the business of the society as such the Co-operative Court has jurisdiction to decide the disputes;

2) The allotment of tenement in a Co-operative Housing Society is not a lease under Section 105 of the Transfer of Property Act, 1882. Tenement is allotted to a member not because he agrees to pay any money or render any service, but because he is a member of the society and holds certain number of shares. He is a member or co-partner of the society and is governed by Co-operative Act. So, the termination is valid.

3) As there has been admitted breach of bye-laws, the findings of the Co-operative Tribunal do not call for interference and as the price of the flat and shop has been directed to be paid, no loss is caused to the member.

In Dadar Co-operative Housing Society -vs- Bharat V. Thakore, it was held that prior sanction of Managing Committee would be necessary if one member likes to transfer his shares to another (vide Bye-laws 41 of Co-operative Society, Bombay).

The Allahabad High Court in Ganganagar Sahkari Avas Samity Ltd. -vs- State of Uttar Pradesh disposed of a matter of allotment of a plot of land to the member respondent executing a 99-year lease.
Under the lease agreement, the respondent was required to pay development charges and lease rent to the Samiti. Ultimately, as he failed to pay development charges, the society by a resolution cancelled the lease and allotment. An application under Section 70 and Section 71 of the Uttar Pradesh Co-operative Societies Act, 1966 was filed and an Arbitrator was appointed. Award of the Arbitrator upheld the termination of lease and held that the lease had been rightly cancelled. The Respondent preferred an appeal before the Assistant Registrar of Co-operative Societies, Uttar Pradesh. Avas and Vikash Parishad, Lucknow. The appeal was dismissed. But his review petition under Section 99 of the Uttar Pradesh Co-operative Societies Act was allowed by the latter authorities setting aside the orders passed in appeal and declaring the respondent to be the owner of the plot. A Writ Petition was filed to the Allahabad High Court by the Co-operative Society (Ganganagar Sahakari Avas Samity Ltd.) praying to quash the order passed on review petition.

It was held that the respondent had issued an irrevocable power of attorney and transferred all his interest in favour of a third person and the appeal itself was filed by the power holder by forging signature of the respondent. There was an opportunity on the part of the respondent to file new or important evidence before passing the order in appeal. Under the garb of review petition the Assistant Registrar (who is also Assistant Housing Commissioner) had re-written a judgment in appeal which is not
permissible in law. Hence the High Court quashed the impugned order passed under section 99 (1) of the Uttar Pradesh Co-operative Societies Act on review petition.

A matter came for adjudication in Kapur Chand Jivraj Jain -vs- Shri Datta Co-operative Housing Society, Amalner\(^\text{12}\) whether the Civil Court had jurisdiction to entertain a suit. Section 91(3) of the Maharashtra Co-operative Societies Act, 1960 lays down that save as otherwise provided under Section 93(2) of the Act, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in Section 91 (1). Section 91 of the said Act lays down that notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the Committees, conduct of General Meetings, management of business of a society shall be referred by any of the parties to a dispute or by a Federal Society, to which the society is affiliated, or by a creditor of the society to a Co-operative Court, if either both the parties thereto or either of them belong to the categories mentioned in the Section.

Shri Datta Co-operative Housing Society was a proposed society and was awaiting registration. A dispute arose between Kapur Chand Jivraj Jain and the society. The matter came ultimately to the Bombay High Court whether the dispute falls under Section 91 of the said Act.
It was held that the existence of a Co-operative Society is the precondition of exclusion of the jurisdiction of the Civil Court and assigning that jurisdiction to the Co-operative Court under Section 91. A proposed society is not a society within the meaning of Section 2 (27) of said Act. In the case when the dispute arose, the plaintiff was not a member of the society and the society in question was not a society within the meaning of Section 2 (27) of the Maharashtra Co-operative Societies Act. Therefore, the Civil Court in entertaining the case had jurisdiction.

In Madhya Pradesh, Rastriya Adarsha Griha Nirman Shakari Sanstha is a Co-operative Housing Society. The suit for a revision was filed by the Plaintiff respondent wherein the society impleaded as one of the Defendants allotting plots to its members after acquiring land for construction of houses. The society allotted a plot to the plaintiff. He claimed to be the owner of the plot for which the society executed a Sale Deed and it was registered. The plaintiff filed the Suit for declaration in respect of right, title and interest in the plot in his favour as the society was about to transfer the plot to someone else. The plaintiff in the suit sought for a decree for declaration that he was the owner-in possession of the plot in dispute and the Defendant had not right either to cancel or challenge his right. He also prayed for a permanent prohibitory injunction restraining the Defendant/society from transferring or alienating the plot and further not to cancel the same during the pendency of the Suit. During the pendency of
the Suit the society executed and registered another Sale Deed in respect of the same plot in favour of another person. It was held that as per Section 64 of the Madhya Pradesh Co-operative Societies Act, if a dispute falls within the purview of Section 64, it should be referred to the Registrar of Co-operative Societies and as per Section 84 (1) (c) ibid such dispute is the exclusive jurisdiction of the Registrar and expressly barred to be tried in a Civil Court. But if a case where the transaction of sale is claimed by the society to be viodable and further in all such cases where the relief claimed by the plaintiff is such which can not be granted by the Registrar or in any forum contemplated under this Act, then the bar of Section 84 was not attracted. A decree of permanent prohibitory injunction and declaration as sought for by the plaintiff could not have been granted in any forum under the Co-operative Societies Act. In this view of the matter also, the Civil Court could not be taken to have been ousted of its jurisdiction under the provisions of the code of Civil Procedure, 1908 to deal with the filed suit – Kusum Verma -vs- Pritam Singh Gulati.  

In people United for Beter Living in Calcutta -vs- Dimple Vincom Pvt. Ltd. 14 the main grievance of the appellants was that although at their instance, the Calcutta High Court had passed an order relating to the same Wetlands as in the case of People United for Better Living in Calcutta -vs- State of West Bengal, yet they were not made parties to the present Writ Petition which seeks to make changes in the same Wetlands. The appellant
stated that they were not given notice or from records it is not clear whether they had by themselves appeared before the High Court or whether they had filed any affidavit or made up any submission. The demand was in view of the fact that the two earlier decisions of the High Court had been obtained at the instance of the appellants, the matter be remanded to the Bench of the Calcutta High Court dealing with environmental issues to consider the submissions of the appellants and thereafter to make a fresh suitable order, either affirming or modifying the existing order or rejecting the petition. Liberty was granted to the appellants to file an affidavit before the Calcutta High Court and if filed the respondent might file the affidavit in reply.

It is to be noted in the case that Wetland is priceless, ensures to the benefits of the society at large and Wetland are bounty of nature to have significant role to play in the proper development of the society, be it from environmental perspective or from economic perspective. City of Calcutta tops the list in the Country as regards pollution and can not be allowed to be further endangered by reclamation of Wetland for expansion of Satellite Township in the eastern fringe of the city for the project of World Trade Centre. Encroachment of Wetland would be detrimental to the society. Wetland should be preserved and no interference or reclamation should be permitted which is the opinion expressed by the environmentalists with which the Bench of the Calcutta High Court fully agreed.
The Delhi Development Authority (D.D.A.) was allotting land to Co-operative Housing Societies among others. The plaintiff Agrasen Co-operative Group Housing Society Ltd. applied to D.D.A. for land for construction of multi-storied building of Group Housing Complex. The Society’s application was considered and D.D.A. allotted a land on deposit of cost of land. But the land consisted of a pond 6 feet deep covering almost 33% of the total land and the level of the surface on the whole was uneven. When the society took possession of the land it did not object as it was very much in need of lands. The society requested repeatedly the D.D.A. to develop the land but the D.D.A. did not take any action. Thereafter the society developed the land at an expenditure of Rs. 11.75 lakhs.

The present suit was filed by the society for recovery of the said amount of expenditure incurred to fill up the pond. It was held that the documentary as well as the oral evidence did not establish that it was imperative on the part of the D.D.A. to hand over fully developed lands. At best, it could be held to be semi-developed by providing the necessary surfaces upto the periphery. The land was allotted at a very concessional rate and it was the responsibility of the society to develop the same. The society however, chose to construct the flats and allot the same to its members. Normally, semi-developed lands are allotted to Group Housing Societies at most concessional rates and no such claim for development of
land was entertained from any other society. In view of the above findings the suit filed by the Agrasen Co-operative Group Housing Society Ltd. was dismissed by the Delhi High Court; Agrasen Co-operative Group Housing Society Ltd. -vs- Delhi Development Authority.  

5.3 Consumer Disputes Redressal Agencies and the Supreme Court in housing disputes:

In this chapter, it has been discussed under Article 5.1 that disputes in Co-operative Housing Societies are settled in the Court of Arbitrator or Co-operative Court under the Co-operative law and thereafter some matters go upto the highest level of the Judiciary.

The Civil Courts are kept outside the jurisdiction of deciding such matters in respect of disputes in Co-operative Housing Societies. But on the other part, the disputes arising in a Group housing other than Co-operative Housing are agitated in civil courts and thereafter on appeal the matter can go upto the highest level of the judiciary. We have thus seen the two systems of judicial remedy in two kinds of Group Housings.

But there is also another forum which recognised disputes concerning Group Housing of both types. The forum is under the law of consumer protection i.e. Consumer Protection Act, 1986. The Act being a Central Act provides in its Section 30 to both Central Govt. and State Govt. to make their own Rules for arranging out provisions of Section 7 (2)
By Section 9 of the Consumer Protection Act, 1986 three types of Consumer Disputes Redressal Agencies have been established one in every District of the Country, the second one in every State and the third in the Central level. The names of these Agencies have been given as “District Forum”, “State Commission” and “National Commission”. Jurisdiction of the three Agencies are fixed on the basis of value of goods or services shown in the complaint and the areas of business of the opposite party. Complaints with the value of goods or services together with compensation claimed within Rs. 20 lakhs, within Rs. 1 crore and above 1 crore shall be respectively filed to the District forum, State Commission and National Commission.

Though flat or plot is immovable property and is not “goods”, there can be deficiency in sale of flat/plot/building. In Lata construction -vs- Dr. Ram Chandra R. Shah, it was held that not delivering flat in time and then not refunding amount in time as per agreement is deficiency in Service.  

In Moju Goel -vs- G.D.A it was held that non-allotment of flat to allottee who has paid full amount to Development Authority because somebody had illegally occupied is deficiency of service and compensation for carrying out repairs and white wash is payable.
Moreover, in Haryana Urban Development Authority (HUDA) -vs-Darsh Kumar; the National Commission after considering case laws decided that in cases of non-delivery or late delivery of flat / plot, interest @ 18% p.a. should be paid.¹⁸

Thus the Consumer Disputes Redressal Agencies have also jurisdiction to decide disputes concerning group housings. Some landmark judgements of the Agencies guided by Consumer protection Act, 1986 are reproduced below in the next clause.

5.31 Consumer court cases in housing disputes.

In Haryana, a Co-operative Society named by Haryana officers’ Co-operative Group Housing Society Ltd. was developing plots for its members at Panchkula. The society gave a provisional membership to one Sant Prakash on 26.7.1995 on payment of Rs. 10,000. On 9.2.1999 he was admitted to regular membership by paying Rs. 50,000. While regularising his membership, the Co-operative Housing Society advised him interalia that he would have to pay Rs. 6.00 lakhs plus Rs. 75,000. alongwith an interest @20% with effect from 1.8.1995 upto 31.12.1998, during which period the original member in whose place this Sant Prakash had been inducted. Sant Prakash made all payments and after wards came to know that the defaulted amount with interest which the original member did not pay was charged upon him.
So, Sant Prakash filed a complaint before the concerned District Forum praying that the society be directed to refund the entire amount of interest or penalty charged from him on account of default committed by the previous member. He also prayed for a sum of Rs. 50,000 as costs and compensation on account of harassment and loss suffered by him. In written version filed by the petitioner society, it was stated that no extra amount had been charged and whatever amount had been received from the complainant was in terms of the information letter issued by the society to him.

The District Forum passed on 21.5.2001 following orders:

a) To refund the entire amount of Rs. 3,20,000 wrongly charged as interest / penalty with effect from 1.8.1995 to 9.2.1999.

b) To pay a sum of Rs. 10,00 for mental agony and harassment; and

c) To further pay Rs. 1000 as costs of proceedings.

The Haryana Officers’ Co-operative Group Housing Society Ltd. appealed before the State Commission, Haryana against the above order of the District Forum. The State Commission dismissed the appeal with a small modification of reducing the compensation from Rs. 10,000 to Rs. 200.
The society then filed Appeal to the National Commission, the case being Haryana Officers’ Co-operative Group Housing Society Ltd. -vs- Sant Prakash. The National Commission observed that the Respondent Sant Prakash should be put on the same pedestal like any original member and he was to pay the amount which an original member had paid and that amount he was bound to pay with interest @20%. He would have been put in the slot, the National Commission also observed, vacated by earlier member as late comer, the complainant could not claim any superior right and he could not turn back and contend that he had been wrongly charged interest as penalty. The approach of the District Forum and the State Commission resulted in mis-carriage of justice and so the orders of the Forum and State Commission did not stand and were set aside by the National Commission. The initial complaint, therefore, was dismissed with costs of Rs. 5000.

In the case of Ashis Shelter & Developers Pvt Ltd. -vs- Satish V. Chandarkar before the National Commission the matter came for adjudication whether charging of excess amount by the Developers’ Company than agreed to and whether construction of flats against the provisions of law amounted to deficiency in service.

The Respondent – Complainant Satish V. Chanderkar filed a complaint before the appropriate District Forum in Maharashtra that he had entered into an agreement with the petitioner Developer for purchase of a
flat to be built by the Petitioner. The petitioner charged excess amount than agreed to and also made illegal construction which had to be later regularized. The District Forum held that there was deficiency in service and so directed the Developers to refund the excess amount of Rs.10,000 to the Complainant and to pay Rs.5000 as compensation with Rs.1000 as cost. Interest was also awarded @ 18% per annum.

Ashish Shelters & Developers Pvt. Ltd. became aggrieved by the order of the District Forum and then went in appeal before the State Commission on the ground that the complaint was barred by limitation. The State Commission, Maharashtra observed that the limitation would start only when the construction was regularised by the local authorities and the complaint was within limitation. Hence, the State Commission rejected the appeal with modification of interest from 18% to 12% per annum.

The Developers then filed a revision petition before the National Commission which observed that the State Commission's decision was right, as possession of a flat which did not conform to the bye-laws of local authorities and was unauthorised, could not be taken as possession and it could best be de facto possession. There was threat of demolition of unauthorised construction and the possession would be legal only after construction was regularised. Upon above observation, the National
Commission agreed with the State Commission that the complaint was within the period of limitation.

Another grievance was raised by the petitioner on compensation allowed by the State Commission when excess price had been ordered to be refunded to the complainant. In this matter, the National Commission also agreed with the State Commission’s observation that the complainant had to suffer because of construction being unauthorised and in fact compensation of Rs.5000 for a period for construction remained unauthorised was only a patry sum. The reduction of interest to 12% from 18% made by the State Commission was also upheld by the National Commission.

Hence, the National Commission did not exercise jurisdiction under Section 21 (b) of the Consumers Protection Act, 1987 by dismissal of the revision petition.

The principle of decision of the National Commission was whether a Civil Court would not be barred as the consumer files a suit after possession of his house if he comes to know that there was a deficiency in service in construction of the house. The National Commission dealt with this matter in the case : Gaziabad Development Authority -vs- Gurudutt Pandey. Gurudutta Pandey filed a complaint before the District Forum, Gaziabad alleging that he had booked a house in Govindpuram Scheme.
developed by Gaziabad Development Authority (G.D.A) started in 1988. He was to be given possession of the house by 31.10.1990 but possession was given in 1995 after deposit of the whole amount of consideration money. He sought for relief to the District forum in the shape of interest on the amount paid by him. The defence of G.D.A. was that delay was beyond its control and there was a stay of the Allahabad High Court in operation for the period from 24.4.91 to 16.1.93. The District Forum directed G.D.A. to pay interest @18% per annum on amounts deposited by the complainant from 1.1.94 till the date of handing over the possession of the house. A cost of Rs.1000 was also awarded in favour of the complainant.

Gaziabad Development Authority filed appeal before the State Commission which dismissed it with further cost of Rs.1,000. Still Gaziabad Development Authority filed Revision petition to the National Commission contending that after having in taken possession the complaint could not have been filed i.e. the right of a consumer extinguished after possession of the house.

The National Commission was referred with the case of Premji Bhai Parmar & other -vs- Delhi Development Authority (D.D.A) AIR 1980 Sc 738 in which there was challenge to the collection of surcharge as a part of sale price of each flat from each of the petitioners as unauthorised and discriminatory treatment. The Supreme Court in this case observed that it was not obligatory on the part of the petitioners to buy the flats in as much
in the brochure issued by the D.D.A. the price was clearly mentioned. The price of the property was in the realm of contract between a seller and buyer. The Supreme Court at no point of time said that after possession, a consumer dispute can not be raised alleging deficiency of service.

On above observations of the Supreme court, the National Commission said that it is only when possession is taken and a consumer starts living then he would be able to know the deficiencies particularly those which are patent in the construction of the house. The National Commission further observed that the right of the consumer to approach a Consumer Forum would be barred only under Section 24A of the Consumer Protection Act, 1986 which provides for limitation for initiating action and it is a dangerous proposition to contend that right of consumer gets wiped out after the house had been possessed. The National Commission in another similar case awarded interest @18% per annum to Darsh Kumar, against Haryana Development Authority in the case of Haryana Development Authority -vs- Darsh Kumar (Revision Petition No. 1197/98). So the Commission did not exercise its jurisdiction under Section 21 (b) of the Consumer Protection Act, 1986, dismissing the Revision Petition of Gaziabad Development Authority.

In another case of Allam Ashlam -vs- Chairman, Tamil Nadu Housing Board & Ors.²², Alam Aslam, the Complainant read an advertisement in the daily “Hindu” in July 1991 inviting applications for
allotment of flats to be constructed by Tamil Nadu Housing Board & Ors (T.H.B). He paid Rs. 5000 on 21.8.91 as registration fee with his application to Tamil Nadu Housing Board which allotted an H.I.G. C type flat on first floor on condition that he was to pay tentative price of Rs. 2,13,600 within one month from 1.5.92, the date of receipt of the information letter by Allam. He accepted the offer and at the same time wanted a certificate and no-objection of mortgaging the property for applying for loan from his employer, the Madras Port Trust. The Housing Board issued certificates to him. He after getting loan from Trust’s G.P.F. Fund deposited Rs. 72,600 with the Board on 29.5.92 and applied for one months’ further time for deposit of the remaining amount. Meanwhile he visited the site and surprisingly saw that no construction was undertaken. Instead of any reply, the Board informed him on 21.8.92 canceling his allotment for non-payment of full amount. Allam Aslam protested but with no reply.

He then filed complaint to the Tamil Nadu State Commission alleging deficiency in service of the Housing Board and sought for restoration of allotment. The Board submitted that when the complainant did not comply with the condition of allotment by not paying the total sum within one month and the cancellation of allotment was as per rule and so there was no deficiency in service on the part of the Housing Board.
The State Commission upheld the contention of the Housing Board that no reply was necessary to be given to Allam Aslam by the Board. The State Commission noticed that on the date of allotment of the flat not an inch of the flat had been constructed and so the Board was not able to give no-objection of giving the property in mortgage. Thus the State Commission dismissed the complaint.

Allam Aslam filed appeal before the National Commission. The National Commission observed that the State Commission’s comment that the Board was not bound to give reply to each and every communication received from complainant was unfortunate. The National Commission further observed that no flat was still available and the Board was deficient in service. Meanwhile the Board refunded Rs.72,600 with interest @ 8% per annum to the complainant – appellant. As in their similar verdict in the case of Haryana Urban Development Authority -vs- Darsh Kumar (Revision Petition No. 1197/98 decided on 31.8.2001) the National Commission directed the Housing Board to pay Rs. 72,600 back to the complainant with interest @ 18% per annum from retrospective dates of deposit made by him with a cost of Rs. 5000. Thus, the order of the State Commission was set aside by the National Commission to the above extent.
5.4 Monopolies and Restrictive Trade Practices Commission and Consumer Court.

The Monopolies and Restrictive Trade Practices Act, 1969 (M.R.T.P.) was enforced for prevention of operation of economic system resulting in concentration of economic power, to control monopolies, to prohibit and control monopolistic and Restrictive Trade Practices and to deal with other matters relating to above. The Central Govt. has been empowered to establish M.R.T.P. Commission consisting of a Chairman and some members. The Commission has the same powers as are vested in a Civil Court under the C.P.C. It has powers to grant temporary injunction and also award compensation. It has the power to enforce orders passed by it. Before amendment of the M.R.T.P. Act in 1991, it did not apply to Govt. Companies, Undertaking, Financial Institutions and Govt. owned Cooperatives.

The Consumer Protection Act and M.R.T.P. Act have their common areas. Section 2 (1) (n) of C.P. Act defines “unfair trade practice” with numerous clauses and this is the same as the Section 36A of M.R.T.P. Act. Further Section 2 (1) (nnn) of C.P. Act defines “Restrictive Trade Practice” and Section 2 (o) of the M.R.T.P. Act also defines “Restrictive Trade Practice” of course in different way. Both the Acts have overlapping jurisdiction. Sometimes the M.R.T.P. Commission directs to avail of the remedies under the C.P. Act. If any person fails to comply with any order
of the M.R.T.P. Commission or commits a breach of the same he shall be
deemed to be guilty of an offence under Section 13 of the M.R.T.P. Act.
Moreover the Commission may cause investigation into why its order has
not been complied with (Section 13A). Procedure of the M.R.T.P.
Commission is specified in Section 18. Sections 36A to 36E are very
important as these deal with “unfair trade practices”. However, as in
Consumer Dispute Redressal Agencies, complaints are disposed of by
summary trial, consumers may find the C.P. Act more suited than the
M.R.T.P. Act. But complainant or his opposite party on appeal and by
revision petition can go up to the National Commission. In M.R.T.P. Act,
the M.R.T.P. Commissions’ order may be challenged in the Supreme Court
under Art. 136 of the Constitution of India. Special Leave petition (S.L.P)
can be made to the Supreme Court against an order of the National
Commission also. The only difference in M. R.T.P. Act is that the
applicant is to substantiate that the Defendant exercised Unfair Trade
Practice (U.T.P.) whereas in C.P. Act, defect in goods or deficiency in
service is to be proved.

M.R.T.P. Commission constituted under Section 5 has been
disposing of complaints received from any Trade Association or from any
consumer or a registered Consumer Association or from a State Govt. or
the Central Govt. or suo-moto under Sections 36A to 36E. In the following
clause, some landmark orders or directions issued or permissions given by the M.R.T.P. Commission are appended.

5.41 M.R.T.P. Commission cases in Housing disputes

In Neena Gupta -vs- Ekta Vihar Co-operative Group Housing Society, Mrs. Neena Gupta applied to the Housing Society for enrolment as a member but she was not enrolled whereas another person who applied at a later date was inducted as a member. As a result the complainant could not get membership vis-a-vis the flat which the other person got. Thus she was deprived. The Commission ordered that the membership be given to her as the society was guilty of restrictive trade practice. The society moved the Supreme Court which remanded the case to the Commission for decision afresh. It was revealed later on that the complainant suppressed the fact that there was a High Court case, at an order of which Registrar of Co-operative Societies held up her membership. So, this time, the Commission held the respondent housing society not guilty of restrictive trade practice and so the first order of the Commission was withdrawn.

In another case arising before the M.R.T.P. Commission, one Dr. Vikram Vir Chowdhury purchased two plots and paid Rs. 50,000 as part payment on an assurance given by Paradise Promoters that the areas was fully developed and approved by Competent Authority for construction. But the District Magistrate, Ghaziabad District Published an advertisement
warning the mass people not to purchase any plot in the Colony as it was unauthorised. Dr. Chaudhury filed a complaint to the M.R.T.P. Commission stating that the trade of the respondent promoters was unfair in nature and sought for refund of the deposited money with considerable interest. The Commission held that the Promoters had made false and misleading advertisement and indulged in unfair trade practice. The Commission directed the respondent to refund Rs. 50,000 with interest @ 18% per annum till recovery of the total amount - Dr. Vikram vir chowdhury -vs- Paradise Promoters.

A matter came to the M.R.T.P. Commission whether advertisement of a Promoters Pvt. Ltd. to sell plots of land of which he has no clear title and the land was not approved for residential purposes could be treated as an unfair trade practice. In S.P. Agarwal, New Delhi -vs- Mrs. S. Dahiya, Managing Director, Capital Promoters (P) Ltd., Capital Promoters (P) Ltd. floated a residential Complex Scheme and invited by public advertisements to purchase plots. The respondent had no right to sell the plot as he had no clear title to lands which was not duly approved for residential purposes by the Competent Authority. Some persons deposited money thinking that the land was free from encumbrances but afterwards they came to know the fact. They claimed refund of money but with no response. They filed complaint before the M.R.T.P. Commission which held that the Promoters (P) Ltd. indulged in unfair trade practice by
making false and misleading advertisement. So the Commission directed the respondent to refund the deposit along with interest @ 18% per annum till the date of decree and to pay further interest @ 12% per annum on the total amount till the date of realisation of the whole amount.

New Okhla Industrial Development Authority, a Govt. undertaking in New Delhi floated a Commercial Scheme for allotment of plots on the basis of first come first serve and a promoter named by A to Z Builders Co. applied for plots depositing Rs. 41,000. The Authority allotted a plot and asked the Builders company to pay 25% of the value of the plot amounting to Rs. 3,24,650 within 30 days. The Company deposited the amount and again paid Rs. 1,54,976 as first half yearly instalment with interest. But the Authority did not give possession of the land to the Builders. They filed a complaint to the M.R.T.P. Commission which passed an ad-interim ex parte injunction restraining the Authority to sell, transfer and part with the plot in question. The Case before the M.R.T.P. Commission was titled as A to Z Builders (P) Ltd. -vs- Chief Executive Officer, New Okhla Industrial Development Authority (Nuida) \(^{26}\). The respondent Authority contended that the allotment was cancelled as the required amount was not deposited within 30 days and the complainant applied for the plot in his personal capacity before formation of the Company.

It was held by the M.R.T.P. Commission in the above case that the respondent in the allotment letter to the complainant asked to deposit 25%
of the value which was deposited by them and only asked for certain documents and never mentioned about delayed payment and in later correspondences did not claim balance amount of 25% as initial premium. As the Authority was a Govt. Body granting extension of time in making payment, charging interest on defaulted amount was their accepted practice. So, cancellation of allotment letter should have not been done by the Authority. Hence the Commission observed that the Authority indulged in restrictive unfair trade practice which was prejudicial to the public interest. The Commission passed a “cease and desist” order against the respondent Authority and directed it to issue allotment letter in respect of the subject plot in favour of the complainant Builders Company.

5.5 Summing up of foregoing clauses

It is observed that in three different ways, disputes in housing activities either in the Co-operative Sector or in the Private Sector may be adjudicated. The Co-operative Housing disputes are initially disposed of quasi-judicially which is exercised by Co-operative Courts manned by officers of judicial service in some States or by officers of the Registrar of Co-operative Societies as Arbitrators in rest of the States in India. A person aggrieved with any order of a Co-operative Court may file appeal in the High Court. By turn it may go to a bench of the High Court and ultimately to the Supreme Court. On the other hand, a person aggrieved with an award passed by an Arbitrator may go upto the Supreme Court with
exhaustion of an additional tier of the Co-operative Tribunal existing in between Arbitrator and the High Court.

Disputes in private Sector and even in Co-operative Sector may also be referred to Consumer Dispute Redressal Agencies consisting of three tier system, because such disputes are recognised as part of service which is alleged as deficient under the Consumer Protection Act, 1986 in the form of complaint. According to pecuniary and territorial jurisdiction, a complaint may be filed in a District Forum or the State Commission. If such complaint is filed in a District Forum, a person aggrieved with its order may appeal before the State Commission against whose order, any person may further appeal to the National Commission and on a special leave petition (S.L.P.), the matter can go upto the Supreme Court. If a complaint is filed initially to the State Commission, then the lowest tier of the District Forum may be avoided.

Disputes in private as well as Co-operative Sectors may also be referred for inquiry and order to M.R.T.P. Commission. Its order is also equally effective like Consumer Dispute Redressal Agency and appellable upto the Supreme Court also.

Though there are so many legal forums for adjudication of disputes or complaints in housing activities, taking recourse of the legal system involves a huge expenditure and is time consuming. It causes thereby
frustration towards acquiring of housing facilities. Nonetheless, number of housing cases in several Courts, Forums and Commissions is increasing day by day causing erosion of money and unhealthy situation in the society. The best way to avoid this situation is to solve disputes in the periphery of the concerned Co-operative Society or the Group Housing within friends amicably.
Endnotes:


3) AIR 1996 Bom. 98; 1996 (3) Bom. CR 537


6) AIR 1997 Cal 374; 1997 (11) CWE (101) 557 concerning Sections 70 (4); 85 (2) & 85 (9) of West Bengal Co-operative Societies Act, 1983 and Rules 135 (3) & 142 (3).


9) 1996 (1) Bom CR 367; 1999 (1) case followed by Food Corporation of India vs Kamdhenu Cattle Feed Industries (1993) 1 SCC 71 on Articles 12, 14 and 226 of Constitution of India.

10) 1998 (4) Bom CR 367; 1999 (1), Mh L 1; 530 on Section 91 of Maharashtra Co-op Societies Act, 1960 and Section 105 of Transfer of property Act, 1882;

11) AIR 1999 All 105 on Section 99 of U.P. Co-operative Societies, 1966 and Art. 226, constitution of India.


14) AIR 1996 Cal 89; 1993 (1) C H N 136; 97 C W N 142.

15) AIR 1998 Del 164; 1998 (44) DRJ 387; 1998 (1) AD Del 768.


23) 1998 CTJ 65 (MRTPC).

24) 1993 (1) Comp IJ 309 (MRTPC).
