

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CWP-18880-2020 (O&M)
Date of decision : 12.11.2020

WWICS Estates Pvt. Ltd. and others

...Petitioners

Versus

Dr. Ghanshyam Bhupal and others

...Respondents

2. CWP-18883-2020 (O&M)
Date of decision : 12.11.2020

WWICS Estates Pvt. Ltd. and others

...Petitioners

Versus

Dr. H.K. Attri and others

...Respondents

3. CWP-18884-2020 (O&M)
Date of decision : 12.11.2020

WWICS Estates Pvt. Ltd.

...Petitioner

Versus

Gaurav Bose and others

...Respondents

4. CWP-18885-2020 (O&M)
Date of decision : 12.11.2020

WWICS Estates Pvt. Ltd. and others

...Petitioners

Versus

Deepak Sharma and others

...Respondents

5.

CWP-18886-2020 (O&M)

Date of decision : 12.11.2020

WWICS Estates Pvt. Ltd. and others

...Petitioners

Versus

Gian Sarup Sehgal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Ashwani Kumar Chopra, Sr. Advocate with
Mr. Akshit Chaudhary, Advocate for the petitioners.

ANIL KSHETARPAL, J.

By this order, 5 writ petitions viz. CWP No.18880, 18883 to 18886 of 2020 shall stand disposed of.

The petitioner No.1-company alongwith others have invoked the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India, seeking setting aside/quashing of the order dated 24.09.2020 passed by the State Consumer Disputes Redressal Commission, Punjab while allowing 5 complaints filed under Section 17 of the Consumer Protection Act, 1986 (hereinafter to be referred as “the Act of 1986”). The petitioners pray that this Court should entertain the writ petitions on the ground that the bench, which decided the complaints, did had complete quorum as only the President has singularly decided the complaints,

although, the Bench is required to be consisting of two members.

It is undisputed that the petitioners have a statutory right of filing an appeal under Section 19 of the Act of 1986 before the National Consumer Disputes Redressal Commission, New Delhi.

This Court has heard learned Senior Counsel for the petitioners and with his able assistance perused the paper book.

Learned counsel for the petitioners has relied upon a judgment of the Supreme Court in *Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai, (1999) 4 SCC 382* and a judgment passed by the Rajasthan High Court in *Divisional Manager National Insurance Company Limited, Jodhpur Vs. Rajasthan State Consumer Disputes Redressal Commission and another, 2019(1) RLW 90.*

This Court has considered the submissions and is of the considered view that since the petitioners have effective statutory alternative remedy of filing an appeal and therefore, the writ court should not entertain the writ petitions. The reasons for relegating the petitioner to the alternative remedy are as under:-

- i) Admittedly, a statutory appeal under Section 19 of the Act of 1986 can be filed against the impugned order, before the National Consumer Disputes Redressal Commission, New Delhi.
- ii) In equity also, the petitioners do not deserves indulgence of the Court, particularly when, after receipt of almost entire payment towards price of the residential properties, they have failed to deliver the possession of the residential properties to the respondents. The writ petitioners are colonizers and developers.

iii) In three cases, i.e. CWP No. 18880, 18883 and 18884 of 2020, the petitioners after entering into a mutual settlement, handed over a postdated cheques for refund of the entire amount alongwith the interest to the respondents (Complainants). However, the petitioners, thereafter, backed out of settlement, as all the cheques on presentation were dishonoured forcing the respondents to file applications for revival, which, of course, were allowed.

The judgments relied upon by learned senior counsel for the petitioner have been carefully examined. It is apparent that in the case of Whirlpool Corporation (Supra), the Hon'ble Supreme Court itself noticed that the Constitutional Courts have imposed upon itself certain restrictions, one of which is to the effect that if an effective and efficacious alternative remedy is available then the Constitutional court should not entertain a writ petition. In para 13, the Hon'ble Supreme Court noticed three exceptions, which are as under:-

- 1) Where the writ petition has been filed for enforcement of any of the fundamental rights
- 2) Where there has been a violation of principles of natural justice.
- 3) Where the order or proceedings are wholly without jurisdiction or vires of the Act are challenged.

Although, learned senior counsel for the petitioners has tried to convince the Court by stating that the orders passed are without jurisdiction, however, this Court does not find that the State Consumer Disputes Redressal Commission had no jurisdiction. Question here is "whether the quorum of the Bench, which heard and decided the complaints, was

complete or not”?. This issue can be examined by the National Consumer Disputes Redressal Commission. Learned Senior counsel has also relied upon a judgment in Divisional Manager National Insurance Company Limited (Supra). In that case, Rajasthan High Court did entertain a writ petition against the order passed by the Rajasthan State Consumer Disputes Redressal Commission, however, on careful reading thereof, it is apparent that as a ratio decidendi, it has not been laid down that in every case where lack of quorum of the bench is pleaded, the writ court should entertain the writ petition even if statutory remedy of appeal is available.

In view thereof, all the writ petitions are disposed of with liberty to the petitioners to file appeals before National Consumer Disputes Redressal Commission.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid order.

12.11.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No