**BEFORE THE HON’BLE STATE CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI**

I.A. NO. OF 2017

IN

C. C. NO. of 2016

**IN THE MATTER OF:-**

**Mr. RAKESH KAKKAR … COMPLAINANT**

 ***Versus***

**M/s BPTP Limited & ORS …Opposite Parties**

**APPLICATION ON BEHALF OF THE OPPOSITE PARTIES UNDER SECTION 8 READ WITH SECTION 5 OF THE ARBITRATION AND CONCILLIATION ACT, 1996.**

**most respectfully SHOWETH:**

1. That the Complainant has filed Complaint before this Hon’ble Commission and same is pending for adjudication. That in term of Flat Buyer Agreement, the parties have mutually agreed in terms of Clause 33 to refer dispute (if any) to *Arbitration*. It is stated that the present dispute arises out of the interpretation of the clauses of the Agreement, which is within the ambit of the Arbitration clause i.e. Clause 33. Hence, it is most humbly prayed, that in light of the abovementioned Clause and in accordance with the newly amended Section 8 of the Arbitration and Conciliation Act, 1996, this Hon’ble Commission graciously be pleased to refer the present matter to arbitration.
2. That the parties had mutually agreed vide clause 33 of the Buyers Agreement as under:-

*“All or any dispute arising out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion failing which the same shall be adjudicated upon and settled through arbitration by the sole Arbitrator. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modification thereto for the time being in force. The arbitration proceedings shall be held at an appropriate location in New Delhi by a sole Arbitrator who shall be appointed by the Managing Directors of the Seller/Confirming Party i.e. BPTP Limited and whose decision shall be final and binding upon the parties. The Purchaser(s) hereby confirms and agrees that he/she/it shall have no objection to this appointment of sole Arbitrator by the Seller/Confirming party. The purchaser(s) hereby confirms and agrees that he/she/it shall have no objection to this appointment even if the person so appointed as the sole arbitrator, is an employee or advocate of the Seller/Confirming Party or is otherwise connected to the seller/Confirming Party and the Purchaser(s) confirms that notwithstanding such relationship/connection, the purchaser shall have no doubts or objections to the independence or impartiality of the said sole Arbitrator.”.*

Copy of Flat Buyer’s Agreement is already placed on record as Annexure B of the instant complaint**.**

1. That, it is submitted that, in light of the valid arbitration agreement between the Complainant and the opposite parties, this Hon’ble Commission does not have the original jurisdiction to entertain the present Complaint. It is submitted that the Arbitration and Conciliation Act, 1996 would be the special Act governing the present dispute and not the Consumer Protection Act, 1986.
2. That the reference to arbitration, in the present case, would be on account of a statutory mandate in terms of S. 8(1) of the 1996 Act and not merely on the basis of valid arbitration agreement between the parties.
3. That it is submitted that the present dispute arises out of the interpretation of the clauses of the Agreement, which is within the ambit of the arbitration clause i.e. Clause 33. Hence, it is most humbly prayed, that in light of the abovementioned clause and in accordance with the newly amended Section 8 of the Arbitration and Conciliation Act, 1996, this Hon’ble Commission graciously be pleased to refer the present matter to arbitration.
4. That the present application is being filed under bona fide belief and in the interest of justice and without prejudice to the rights and contentions of the Respondent, in accordance with law.

**PRAYERS**

 It is most respectfully prayed that this Hon’ble Commission may graciously be pleased to:-

1. allow the present application and dismiss the present complaint; and/or
2. Refer the parties to Arbitration as per Clause 33 of the Buyer’s Agreement; and/or
3. Pass such other and further orders, as this Hon’ble Commission may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANT/OPPOSITE PARTIES AS IN DUTY BOUND SHALL EVER PRAY.

**OPPOSITE PARTY**

**THROUGH**

**COUNSEL**

**New Delhi**

**Date**