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RESEARCH ARTICLE ON- TOPIC- **RERA-AND THE CONSUMER -PROTECTION** **ACT 2019.**

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LLM –2nd,Year-2021-2022, Semester-IV, Roll No-08.

Introduction:

- **The Consumer Protection Act, 2019, as a consumer,**
- **Real Estate (Regulation and Development) Act, 2016 (RERA Act) as an allottee.**

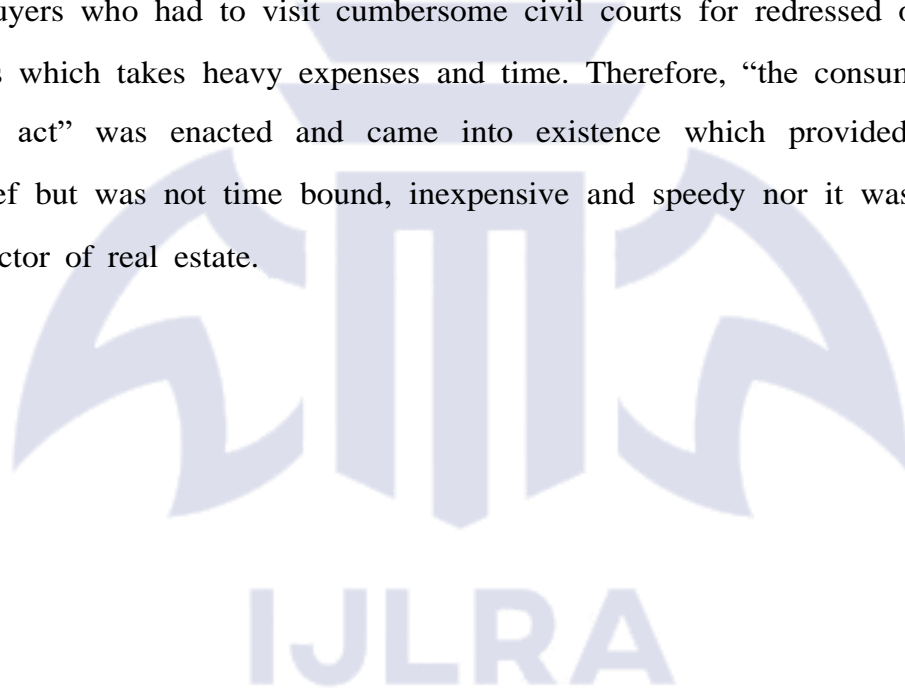
Homebuyers have been subjected to excessive delays under the justice delivery system because construction projects have long gestation periods. From a mere contractual dispute to instances of fraud and delays in handing over the property, homebuyers face a lot of challenges. So remedies under one particular legislation may not be sufficient to cover all the offences and problems. Consequently, there is a need to give expansive remedies to them under different Acts.

In case of any dispute,- they can now approach three possible forums under three different Acts: **The Consumer Protection Act, 2019**, as a consumer; **Real Estate (Regulation and Development) Act, 2016 (RERA Act)** as an allottee; and **Insolvency and Bankruptcy Code, 2016**, as a financial creditor.

The new Consumer Protection Act, 2019, has been a relief in more ways than one and has wide-ranging provisions with respect to both defining the offence under the Act and dispute resolution. It is also not specific to resolution like the Insolvency Code. Therefore, it is important to understand that the remedies should be simultaneous and not mutually exclusive.

The fact that the RERA Act contains a 'bar of jurisdiction' clause has not stopped the courts from providing the homebuyers with simultaneous remedy under the Consumer Protection Act for issues that go beyond the RERA Act.

Act, 2019 Thirdly, it addresses the question whether RERA is actually a better forum than the consumer forum which is common for all types of consumers?, Earlier, Real estate was largely an unregulated sector where investors or homebuyers, Used to pool or invest their money but due to the lack of unbound laws these innocent buyers or investors were fooled by the builders, delay in possession was the common issue and due to lack of laws or any legal protection which was hardly there in order to protect the homebuyers who had to visit cumbersome civil courts for redressed of their grievances which takes heavy expenses and time. Therefore, "the consumer protection act" was enacted and came into existence which provided them with some relief but was not time bound, inexpensive and speedy nor it was in specific for the sector of real estate.



Abstract:

“Consumer protection Act, 2019” is a legislation which protects the consumer’s interests and it consists of group of laws which was designed to ensure consumers rights.

The main objective or the **purpose of** this law is to provide all-round and a better protection and safeguarding their rights and ensures speedy redressed of their grievances. “The Real Estate regulatory authority Act, 2016” is legislation which supervises all the activities carried out or in by the real estate sector which was framed to take out the transparency in the sector of real estate and to regulate all the activities under it with a strict hand. This paper focuses on the areas and the changes which has taken place after the enactment of “the Real estate regulatory authority Act, 2016” secondly, it studies as to what extent does the newly enacted law has reduce the scope of the consumer protection

Act, 2019 Thirdly, it addresses the question whether RERA is actually a better forum than the consumer forum which is common for all types of consumers?, Earlier, Real estate was largely an unregulated sector where investors or homebuyers ,Used to pool or invest their money but due to the lack of unbound laws these innocent buyers or investors were fooled by the builders, delay in possession was the common issue and due to lack of laws or any legal protection which was hardly there in order to protect the homebuyers who had to visit cumbersome civil courts for redressed of their grievances which takes heavy expenses and time. Therefore, “the consumer protection act” was enacted and came into existence which provided them with some relief but was not time bound, inexpensive and speedy nor it was in specific for the sector of real estate.

Therefore, in order to avoid all these unfair and expensive legislation there came a complete change in the scenario, the government came with a new legislation and enacted “Real estate regulatory authority act, 2016” which was strongly in favour of homebuyers and to provide them with inexpensive and a speedy justice. Pursuant to this new legislation, a new issue came up i.e. which was the correct forum for the homebuyers to approach – “RERA” or “Consumer Court”. Therefore, this paper addresses this question and seeks to state the inter-relationship between the two Acts.

About The “Consumer Protection Act”

According to the “Consumer Protection Act,2019”, “consumer” “means any person who buys goods or avails any type of services for which consideration has been paid or promised, or under any system of deferred payment and includes any user or such goods aside from the one that buys such goods for consideration, paid or promised or partly paid or partly promised, or under any system of credit, when such use is formed with the approval of such person, but doesn’t include an individual, who obtains such goods for resale or for any

commercial purpose.”

This Act was enacted to safeguard the interests of the consumers, provide, less formal,

inexpensive and faster access to justice. The Act further enlists the objectives with which it was drafted, which includes better protection of the interest of consumers. To enforce this objective, the Act makes provision for the establishment of “Consumer Councils” and Forums. “Consumer Forums” are established for settling the consumer disputes and follows

The following hierarchy in ascending order: -

- “District Forum – It entertains consumer complaints, where the value of the subject matter does not increase Rs. 1 crore.”³
- “State Commission – Consumer complaints with pecuniary value ranging from Rs. 1 crore to Rs. 10 crore are filed in this forum”.
- “National Commission – It has the pecuniary jurisdiction beyond Rs. 10 crores in consumer complaints.

In the “real estate sector”, the forum for settling disputes is “National Consumer Disputes Redressed Commission”. In cases of delayed possession, the forum has pointed out that “the cause of action on the builder continues till the time allotment of the site or full refund of money if refused to allot” which means “that to honour his/her service agreement, irrespective of the period of delay”, the builder has to abide by the agreement and complete the assignment on time. Secondly, it was observed that “each property developer is liable to execute an agreement for sale and a failure to do so can be a cause of action against the builder in the “Consumer Court”.

Under the Act, if there is any delay in payment of any instalment, interest would be chargeable at specified rate according to the agreement, but if the construction is not scheduled, the builder is not made accountable for any financial liability. Eventually, it is the

buyer who bears the burden of interest liability. Further, many cases of delayed possession and deficiencies in construction of flats have been reported. False and deceptive advertisements are one of the most popular ways of misleading the consumer. Under a “consumer dispute redressed forum”, if a builder is found guilty of non-compliance, he/she is punished with imprisonment. However, it gives no respite to the consumer imprisoning the builder will only add to the delay in the consumer’s possession, escalating his/her misery.. Therefore, in order to protect the buyers, a growing need to bring a transparent government body was felt, to act as a check for the developers and consequently, the Legislature passed “the Real Estate Regulatory Authority Act (RERA)” in 2016.

ABOUT THE “REAL ESTATE REGULATORY AUTHORITY ACT”

In March 2016, the Parliament passed the legislation called “Real Estate Regulatory Authority Act (RERA)” wherein, it is the duty of the authority to look after the under construction projects. The objective of the Act behind focusing on the ‘under-construction phase’ was to curb the swindling activities, which are mainly prevalent during this phase. Prior to the passing of the Act, the “real estate sector” was highly unregulated in India. When a consumer wished to file a complaint against a developer, he/she would have to go through the lengthy and cumbersome process of civil or “consumer courts”, which are already overburdened.⁴ Further, “absence of standardization and lack of suitable consumer protection has constrained the healthy and orderly growth of the industry.” After the passing of the Act, the buyers/consumers will no longer have to worry anymore because buyers can reach the forum easily under the Act. Additionally, the act makes it compulsory for all the builders, where the land exceeds “500 square meters,” to register themselves with “RERA” before

launching or even before advertising their project. Non-compliance of this provision attracts a “maximum

imprisonment of 3 years or penalty of up to 10%” of the total project cost. Developers are mandated to maintain a separate account of 50% of “the money collected from a buyer to meet the construction cost of the on-going project as it will put a check on the general practices of developers”. This will prevent them to divert buyer’s money for starting a new project instead of completing the on-going one, for which the money had already been collected. This will enable the construction to be completed on time.

The Act is beneficial not only to the consumers but also the builders.⁵ Firstly, “it proposes to impose penalty on allotter for not paying the dues on time”. For this the builder will also have an opportunity to approach the regulator in case there is any issue/grievance with the buyer/consumer. But the builders believe that the bill was heavily stacked against them and renders them liable even if there is delay on the part of the company or a builder. Only a consumer or a buyer is eligible to knock the doors of the “real estate regulatory authority (RERA)” for redressed, which aims at ensuring transparency through the requirement for disclosure of architects, contractors, engineers and other involved parties in the development of the project along with the existing parties in the on-going project. Secondly, the builders are also bound by the “rules and regulations” of the “real estate regulatory authority” for ensuring transparency by submitting all the original documents for all the projects they carry out, they will also have to focus on maintaining the quality and they must also rectify any kind of issue faced by the consumer/buyer within 6 years of purchase of a property.

RERA REDUCE THE SCOPE OF “CONSUMER PROTECTION ACT”?

In order to answer the question, we need to look at “section-3” of “the Consumer Protection Act, 2019”, which says that the provisions of this section shall be “In addition to but not in derogation” of the provisions of any other statute for the time being in force which means that if any other statute comes or exists which supports or is beneficial for the consumers, then it will not be in derogation but will be in addition to the law of this act. Further, “Preamble to the Act suggests that it is to provide better protection for the consumer and their interests”. For example: - under consumer protection act, if a consumer of real estate wants relief from the issues/grievances, the only relief would be a regular suit.

However, for compensation or other reliefs they consumer/buyer may have to approach Real estate regulatory authority forum. The newly passed legislature has also framed “quasijudicial tribunals/forums” as an alternative system of adjudicating consumer issues/grievances. The protection provided under “the consumer protection act” to consumers is “in addition to the remedies available under any other statute”. It does not override the remedies under another law/statute but it provides an additional or alternative remedy. Hence, it can be seen that “the real estate regulatory authority act(RERA)” is in addition to the “consumer protection act” and Under “RERA” there are certain guidelines which are formed by the government where the buyer of a flat or a property can file his/her complaint and remedies for a real estate home buyer if we talk about the jurisdiction for filing a complaint to the “consumer court”, the home buyer will have to determine the pecuniary jurisdiction and file the case depending upon the subject matter and compensation claimed whereas under “real estate regulatory authority board (RERA)” a home buyer can file a complaint under the authority of the state where the property is situated. The jurisdiction regarding the appeal from decisions of the “RERA” will lie with the High Court. Hence, it can be said that neither act overrides the provisions of the other nor both the acts must be construed harmoniously by the courts.

SCOPE OF “REAL ESTATE REGULATORY AUTHORITY BOARD (RERA)”

Under the “real estate regulatory authority” board there is a strict time frame for deciding the matter by appellate authority, but in “consumer courts”, there is no such time limit. In order to file a complaint or to seek redressed a buyer/consumer has to approach the “consumer courts” when although the flat/apartment purchased by them has been delivered by the builder, there is any deficiency or any other defects in the same and the consumer holds the completion certificate, then such cases will not come under the jurisdiction of the “real estate regulatory authority board.”

The aggrieved party will have to approach the “consumer court” which is “National consumer dispute redressed commission”. In cases of projects where the certificates of completion are not granted and the possession is not with the buyers, the buyer (consumer) can approach the “real estate regulatory board (RERA)” and for other legal remedies during prudency are that in case a person has approached “consumer court” for relief, then a consumer cannot approach any other authority for an kind of grievance which states that a consumer cannot file two cases at the same time in different forums or any appropriate authority.

Under the “Real estate regulatory authority act (RERA)”, forum specifically takes an undertaking from the person who making a complaint at the time of making a complaint that the buyer/consumer has not filed any other complaint in addition which clearly infringes the rights of the complainant to claim a consolation. There are certain other rights of an allotter, for example to know the state wise time schedule of completion of the project, to claim the refund of the amount paid along with interest and compensation if the promoter fails to give the possession of the property, and to take the possession of the property within two months of issue of an occupancy certificate for the property.

“Real estate regulatory authority Act (RERA)” also makes it compulsory for all the builders who are developing a project where the land exceeds 500 square metre to register with the local state regulatory authority before launching or even advertising their project and also prohibits the builders to sell and the non-compliance invites a punishment up to maximum “imprisonment of 3 years or fine up to 10% of the total project cost”. Further, the developers are also bound to upload all the project details such as approved layout of the plan, timeline, cost etc. The developers who fulfil these mandates would only be permitted to advertise their project to prospective buyers. On-going under construction projects, both the residential and commercial building are also

covered under the newly passed legislation, the best thing is that the agents and “Real estate” brokers also falls under it whose main motive is to provide with comfort and ease to the home buyer.

“RERA” COMPLAINT REGISTRATION BETTER THAN THE “CONSUMERFORUM?”

“Real estate regulatory authority” has provided security and welfare to buyers/consumers against the malpractices of the builders related to property, whereas prior to the commencement of the Act, consumers/buyers had to file a complaint before “National consumer dispute redressed commission”.

Firstly, “Real estate regulatory authority act” deals only in the cases which are related to the properties and a complaint can be filed by any of the agencies or by the complainant himself/herself, whereas, under consumer protection act only registered agencies are allowed to do so. Therefore, “Real estate regulatory authority act (RERA)” is a specific legislation, while “Consumer Protection Act” relates generally to all consumers.

Secondly, under “consumer protection act” it used to take around 5-6 years for seeking redressed of consumers/buyer’s grievances or any kind of adjudication of dispute by “consumer forum” but now after the enactment of the new legislation “(RERA)” on an average it just takes couple of years for grievances. Therefore, speedy disposal of cases is another merit of “Real estate regulatory authority Act”.⁹

Thirdly, “Real estate regulatory authority” exercises its own power and control by deregistering the firms, imposing fines, putting them in defaulters list and orders to complete the project by using state government’s guidelines and passes orders appropriately. “Real estate regulatory authority Act (RERA)” lays down various measures to complete the project by empowering the authority regarding the same to keep home buyers away from the lurch, by penalizing builder’s forum also prevents and discourages the builders from undertaking any further projects when they do not have requisite funds. While, the “national consumer dispute redressed commission” has its own power to execute orders, in comparison of regular suits or orders passed by any various forums making the execution a steady affair since scope of consumer act is very limited. The only relief which the buyers/consumers are particularly interested in is the completion and handing over possession of their properties, so conclusively “Real estate regulatory authority (RERA)” is a better and a less time consuming and an effective remedy where buyers/consumers may easily seek relief and can claim injunctions for their damages.

Pointers Between Rera And Cpa For Consideration:

A. Remedies Available To The Homebuyers- Rera-

Under RERA various remedies available for the damages to the buyers are as below

(i) Under Section 7 of the Act, the regulatory authority may revoke the registration of the promoter who is involved in unfair trade practices or makes default in consideration with the rules or regulation of this act upon the complaint filed by aggrieved or Suo motu by giving a 30 days’ notice to the promoter or instead of revocation of the registration may take necessary actions to protect the interest of the allottees.

(ii) Under Section 8 of the act, the remedy being provided for lapse of registration or on revocation of registration is to carry out the remaining development work by the competent authority as determined by the authority under Section 13 of the Act, a promoter is not liable to accept payment in advance which is more than 10 % of the cost of the apartment without first entering into a written agreement for sale, under Section 14(1) of the act no alteration in the previously approved sanctioned plan without consent of that person and can only make

alterations as may be required by the allottee

(iii) As per Section 12 of the Act “where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act”.

(iv) Under Section 13 of the Act, a promoter is not liable to accept payment in advance which is more than 10 p% of the cost of the apartment without first entering into a written agreement for sale,

(v) Section 14(3) provides that In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

Section 15 of the Act provides that the promoter cannot transfer his rights and liabilities in respect of real estate project to a third party without obtaining prior consent from the two-third allottees and without written approval from the authority.

(vi) Under Section 17(1) the promoter has to execute the conveyance deed in favour of the allottees within three months from the date of issue of occupancy certificate, in the absence of any local laws, and in the absence of the same, the promoter has to handover the necessary documents and plans within 30 days after issuing the occupancy certificate.

(vii) Section 18(1) provides that if the promoter fails to provide the possession of the apartment in accordance with the provision of the act, and the allottee wants to withdraw from the project shall be liable to receive the compensation along with interest or if does not want to withdraw, shall be liable for interest each month till the delayed possession of the apartment is allotted.

(viii) Section 18(2) provides that in case of defective title of the land the promoter is liable to compensate the allottees for the same and seeking compensation under this clause would not be barred by limitation.

(ix) Section 19 provides for the rights of the allottees such as the allottees has the right to know regarding the stage wise completion of the project, they can claim the refund of the compensation with interests, if possession of apartment not yet made, etc.

(x) Under Section 19(10) the allottee has to take the physical possession of the flats/apartment or the building as the case may be without a period of 2 months of issuance of occupancy certificate.

◆ CPA- The parties can seek compensation under the consumer protection act under District Commission, State Commission or National Commission as per the pecuniary limits for the compensation

B. REFUND WITH/WITHOUT INTERESTS-

◆ **RERA 1.** The homebuyer can get refund for Loss or damage sustained by homebuyer due to false/incorrect statement/information included in an advertisement or project prospectus by the Promoter. The homebuyer shall be returned his entire investment along with interest at such rate as may be prescribed. (Section 18(1))

2. In case the allottee does not wish to withdraw from the project due to the failure of the Promoter to complete or give possession in accordance with the terms of the agreement for sale or due to discontinuance of his business, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. (Section 18(1))

◆ **CPA-** If District/State/National Forum is satisfied that the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to refund of price/charges paid by the complainant along with interest

C. WHO CAN FILE COMPLAINTS/ACTIONS?

◆ **RERA-** As per Section 31(1) of the act “Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent”. Therefore, any aggrieved person may file a complaint under RERA. The “person” in this section signifies that it shall include any association of allottees or any consumer association i.e., it is not limited to a single person

◆ **CPA-** Under Section 2(d) of the act a Consumer who satisfies the requirement under Section 2(d) of CPA can file a CPA complaint. An Individual who enters into agreement for purchase of Flat can file complaint when he purchases the same for his individual use and residence.

D. PECUNIARY LIMIT FOR FILING THE COMPLAINT

◆ **RERA-** RERA does not provide for any pecuniary limit for filing of any Complaint

◆ **CPA-** Chapter- IV of the Act deals with Consumer protection redressed commissions i.e., District, State and National Commission provides for entertainment of complaints based on the pecuniary limit which varies from the case-to-case basis.

Section 28 of the Act provides for the establishment of the District Commission which is to be established by the State Government.

Section 31(1) of the Act provides for jurisdiction of the district commission which provides that the complaints would be entertained where the value of goods and services paid as consideration does not exceed 1 crore rupees

As per Section 41(1) of the Act:-

“Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed”

Section 42 of the Act provides for establishment of the State Consumer Dispute Redressed Forum established by the State Government.

Section 47(1) of the Act deals with the pecuniary limit of State Commission which is greater than 1 crore but not exceeding 10 crores.

Section 51(1) of the Act provides that: –

“Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner”

Section 53(1) of the Act provides for the establishment of National Consumer Disputes Redressed forum which is to be established by the Central Government.

Section 58 of the Act provides for the jurisdiction which is for the matters wherein the value of goods and services is exceeding 10 Crores.

E. LIMITATION PERIOD

♦ RERA- RERA does not specifically provides for any limitation period for filing of complaints from the date of cause of action.

♦ CPA- As per Section 69(1) of the Act the limitation period for entertainment of the complaints in the district, State and National Commission is 2 years from the date on which the cause of action arises.

F. RESOLUTION TIME

♦ RERA- Section 29(4) of the Act provides for the time period within which the authority shall expeditiously dispose of any questions that comes up before the authority which is a period of 60 days.

♦ CPA- Section 38(7) of the Act provides that any complaint shall be disposed of within a period of 3 months from the date of receipt of notice by the opposite parties.

G. OUT OF COURT SETTLEMENTS?

♦ RERA- Section 32(g) of the Act provides that “measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations”. Therefore, this section provides that out of court settlements can be made through the conciliation forums which is set up by various states in accordance with this provision

♦ CPA- Chapter 5 of the CPA in detail provides for the settlement of disputes through mediation.

CONCLUSION:

For regulating the “real estate” sector “the Real estate regulatory authority act” is a piece of landmark legislation imposing time bound obligations on promoters. By bringing a fair play consumers or homebuyers rights are intended to be protected. Thus we can conclude that in a highly unregulated sector “Real Estate regulatory authority Act” was a much needed and an awaited legislation, so as to protect the buyers from frauds and from delay in possession of property and to provide a grievance redressed mechanism effectively. The newly enacted legislation will not only bring transparency and accountability but will also help the consumers or the property buyers to get a possession easily and timely or file complaints against the builder or any “real estate” firms. The consumers or home buyers may even expect early and fair judgments and can seek a relief without much difficulty within the framework of three months unlike before the act when it took years and years to solve a case. “Real Estate authority act” is beneficial for both the builders and consumers. But it has added some uncertainty for “the Real Estate sector”

1. Real Estate (Regulation and Development) Act, 2016.

2. Consumer Protection Act, 1986

3. Imperia Structure versus Anil Patni and Others (SC), CIVIL APPEAL NO. 3581-3590 of 2020. Can be found as provided below: –

Availability of alternate remedy is no bar in entertaining a complaint under Consumer Protection Act, 1986.

4. Noor City versus State of Punjab and Others, 2017.

Tags: Consumer Protection Act, RERA

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THANK YOU.....