

Ms. Nidhi Gupta vs M/S Puma Realtors Private Limited on 10 June, 2015

Daily Order

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Consumer Complaint

:

55 of 2015

Date of Institution

:

20.03.2015

Date of Decision

:

10.06.2015

Ms. Nidhi Gupta, daughter of Sh.L.B. Gupta, House No.514, Sector 18-B, Chandigarh.

.....Complainant.

Versus

M/s Puma Realtors Private Limited, a Company incorporated under the Companies Act, 1956
M/s Puma Realtors Private Limited, a Company incorporated under the Companies Act, 1956

....Opposite Parties.

Complaint under Section 17 of the Consumer Protection Act, 1986.

BEFORE: JUSTICE SHAM SUNDER (RETD.), PRESIDENT.

SH. DEV RAJ, MEMBER.

MRS. PADMA PANDEY, MEMBER.

Argued by:

Sh.Sandeep Bhardwaj, Advocate for the complainant.

Sh. Ramnik Gupta, Advocate for the Opposite Parties.

PER DEV RAJ, MEMBER The facts, in brief, are that, in the year 2010, the Opposite Parties made a number of assurances through various newspapers, marketing emails and telemarketing with regard to launching of their integrated residential project under the name and style of "IREO HAMLET, in Sector 98, SAS Nagar, Mohali, having salient features. It was stated that, as such, the complainant met the representative of the Opposite Parties for the purchase of a residential, plot in their project. It was further stated that the Opposite Parties assured that since the development activity, at the site, had started in full swing, as such, on booking the plot, in the said project, possession thereof, complete in all respects, would be handed over to the purchasers, within a maximum period of 30 months, from the date of execution of the Plot Buyer's Agreement. It was further stated that on such assurances, the complainant applied for the allotment of a residential plot, in their project, vide application dated 18.02.2011 and paid a sum of Rs.6,50,000/- as booking amount vide cheque No.568620 dated 11.02.2011 drawn on the State Bank of India and receipt dated 26.04.2011 (Annexure C-1), in this regard, was issued by the Opposite Parties.

It was further stated that subsequently the complainant was allotted plot No.221, in the residential project "IREO Hamlet" approximately measuring 246.97 square yards, Sector 98, S.A.S. Nagar, Mohali, Punjab vide Provisional Allotment Letter dated 29.04.2011 (Annexure C-2) alongwith details of plot and time linked payment plan. It was further stated that thereafter as per the demand, the complainant paid Rs.2,02,047/-, towards part price of the said plot, vide cheque

No.568626 dated 18.06.2011, drawn on the State Bank of India, vide receipt No.12080314 dated 18.06.2011 (Annexure C-3). It was further stated that Plot Buyer's Agreement dated 01.07.2011 (Annexure C-4) was executed between the parties, at Chandigarh and, as per Clause 3, the basic sale price of the plot was Rs.56,80,310/-. The complainant was also required to pay External Development Charges (EDC) @Rs.1,275.10/- per square yard of the plot area, and also costs, charges, fees, which in all constituted the sale consideration. It was further stated that the complainant opted for the Time Linked Payment Plan, according to which, the complainant was required to pay 95% of the total sale consideration within 18 months, from the date of booking and the remaining 5% was to be paid on delivery of possession.

It was further stated that according to Clause 21.2 of General Clauses of Plot Buyer's Agreement dated 01.07.2011, the Opposite Parties were to develop the said project, and were liable to handover physical possession of the plot to the complainant within a period of 24 months, with a grace period of 6 months, i.e. not later than 30 months from the date of execution of the Agreement i.e. latest by 31.12.2013. It was further stated that, thereafter, as per the demands raised by the Opposite Parties, the complainant kept on making payment, as per the Time Linked Payment Plan. It was further stated that another amount of Rs.9,30,775/- was paid by the complainant vide cheque No.568629 dated 03.09.2011 and receipt No. 12080678 dated 06.09.2011 was issued to her.

It was further stated that to the utter surprise of the complainant, the Opposite Parties vide letter dated 26.09.2011 (Annexure C-5) unilaterally changed the Time Linked Payment Plan to Development/Construction Linked Payment Plan without assigning any reason. It was further stated that under compelling circumstances, the complainant made the payments of Rs.4,65,387/- twice on 28.5.2013 vide receipts No.1410022 and 14100223 (Annexures C-6 & C-7 respectively). It was further stated that by 28.05.2013, the complainant had made the payment of Rs.27,13,596/- i.e. more than 50% out of the total sale consideration. It was further stated that on visiting the site, the complainant was shocked to see that there was no development. It was further stated that the complainant met the officials of the Opposite Parties, and requested them to apprise with regard to development at the site and delivery of possession of plot, but to no avail. It was further stated that the complainant wrote a detailed letter dated 18.06.2013 (Annexure C-8) to Opposite Parties No.2, wherein she clearly stated that despite payment of more than 50% of the amount, there was no development and even the roads dividing between Sectors 86-87 and approach road to reach the site were not there. It was further stated that in the said letter, the complainant made enquiries, from the office, but no satisfactory reply was received by her. It was further stated that since the amount of Rs.27,13,596/- had been used by the Opposite Parties in the absence of development work, she be paid interest thereon.

It was further stated that in reply to letter dated 18.06.2013, it was intimated by Opposite Party No.2 vide letter dated 03.07.2013 (Annexure C-9) that they were making all efforts to closely follow-up the complete development work of roads with the Govt. It was further intimated that the contractor had begun mobilization at site and it was admitted that the process of mobilization would take some-time. It was further stated that when the complainant again visited the site in August 2013, still there was no development at the site. It was further stated that possession of the plot was neither offered nor delivered to the complainant by the stipulated date i.e. 31.12.2013. It was further stated that to the utter surprise of the complainant even in the absence of development work at the site, Opposite Party No.2 vide letter dated 16.01.2014 (Annexure C-10) raised another demand of Rs.9,30,773.58Ps., towards part price of the plot. It was further stated that again there was no development at the site. It was further stated that left with no other alternative, legal notice dated 21.01.2014 (Annexure C-11) was served on Opposite Party No.2 to refund the amount of Rs.27,13,596/- alongwith interest @24% P.A., within a period of 15 days. It was further stated that in reply to the legal notice dated 21.01.2014, the Opposite Parties sent reply dated 12.03.2014 (Annexure C-12), wherein they denied the claim of the complainant regarding non-development at the site and threatened vide reply dated 12.03.2014 (Annexure C-12) that any further default in payment of due installments, shall be at the sole risk and responsibility of the complainant.

It was further stated that the complainant in order to avoid any legal impediment, made payment of amount of Rs.9,30,774/- to Opposite Party No.2 vide receipt dated 12.04.2014 (Annexure C-13). It was further stated that thereafter vide letter dated 10.07.2014 (Annexure C-14), Opposite Party No.2 demanded Rs.9,30,773.95Ps. from the complainant on account of partial (50%) completion of laying of services i.e. excavation, laying of pipes etc. and the complainant made payment of Rs.4,65,387/- twice on 7.8.2014 vide receipts No.15100805 and 15100859 (Annexures C-15 & C-16 respectively). It was further stated that the Opposite Parties had been raising the demands, on false grounds of development, at the site It was further stated that the Opposite Parties had been claiming that all the Public Health and Electricity Services were complete, which included water, sewerage and electricity connections, whereas, on the other hand, even necessary permissions/approvals, with regard to the same had not been obtained by them from the Competent Authority as the documents sent by them to the GMADA were having various deficiencies.

It was further stated that the Opposite Parties made demand of Rs.5,68,030.95Ps vide letter dated 08.12.2014 (Annexure C-17), to be paid by 28.12.2014. It was further stated that the complainant again visited the site and found that the development work was being carried out at a very snail speed and there was no possibility of delivery of possession of plot in the near future. It was further stated that, as such, the complainant before making payment of the amount, sent letter dated 17.12.2014 (Annexure C-18), vide which she requested the Opposite

Parties, to provide her necessary approvals/permissions, regarding basic amenities/PHE services, obtained from the GMADA and PSPCL but the Opposite Parties did not bother to reply the same. It was further stated that even the reminder dated 31.12.2014 (Annexure C-19) sent by the complainant to the Opposite Parties, was not replied to. It was further stated that the Opposite Parties sent final notice dated 05.01.2015 (Annexure C-20) to the complainant to make payment of Rs.5,68,030.95Ps., failing which they threatened to cancel the allotment. It was further stated that the complainant again sent letters dated 10.01.2015 and 20.01.2015 (Annexures C-21 and 22) to the Opposite Parties, informing that she had already paid 75% of the sale consideration, but the queries raised by her, regarding development at the site were not answered.

It was further stated that the complaint being in disadvantageous position and being under the threat of cancellation of allotment, finally made payment of Rs.5,68,031/-, to the Opposite Parties, vide cheque No.859110 dated 03.02.2015 under protest, vide letter dated 03.02.2015 (Annexure C-23 colly.) against Receipt No.15101888 dated 04.02.2015 (Annexure C-24). It was further stated that till 10.02.2015, possession of the plot was not offered by the Opposite Parties. It was further stated that the Opposite Parties again demanded Rs.6,55,470.45Ps vide letters dated 10.02.2015 and 13.03.2015 (Annexures C-25 & C-26) towards BSP+ IFMS without intimating status of the project. It was further stated that the complainant was, thus, not only deprived of the use of her hard earned money for a long time, deposited with the Opposite Parties, but also suffered a lot of mental agony, physical harassment and financial loss in the absence of delivery of plot by the predetermined date and even till date. It was further stated that till date, neither possession of the plot was offered nor delivered nor even a single penny had been paid as compensation/penalty for the period of delay nor the amount deposited was refunded to her despite making request.

It was further stated that the complainant had filed a consumer complaint earlier in respect of plot No.221 before this Commission, which was dismissed vide order dated 29.01.2015 as withdrawn due to some technical defect, with liberty to file the same on the same cause of action. It was further stated that even on the assurance of the Opposite Parties for amicable settlement, the complainant tried to settle the matter and withdrew CC No.44 of 2014 on 02.04.2014 filed before the State Commission Punjab, at Chandigarh, but thereafter the same could not be arrived at.

10. It was further stated that the, aforesaid acts, on the part of the Opposite Parties, amounted to deficiency, in rendering service, and indulgence into unfair trade practice. When the grievance of the complainant, was not redressed, left with no alternative, a complaint under Section 17 of the Consumer Protection Act, 1986 (hereinafter to be called as the Act only), was filed, directing the Opposite Parties, to refund the amount of Rs.51,43,175/- deposited by the complainant towards price of plot No.221 alongwith interest @ 18% P.A. from the respective dates of deposits till

realization; pay Rs.10,00,000/- as compensation for mental agony, physical harassment and financial loss caused to the complainant; and Rs.50,000/- as litigation expenses.

11. The Opposite Parties, were served and put in appearance on 27.04.2015. They filed their joint written statement on 07.05.2015. In the written statement, the Opposite Parties, took-up certain preliminary objections, to the effect that the complaint was liable to be dismissed due to existence of arbitration clause No.33 in the Plot Buyer's Agreement dated 01.07.2011; that the complainant was not a consumer as the present complaint related to an agreement to sell/purchase of a residential plot i.e. an immoveable property and hence, was not covered under the Act; that the complainant did not hire any services of the Opposite Parties, as the parties did not enter into any contract for hiring of the services; that the complainant did not book the plot for her personal use but for investment/commercial purposes; that the allegations in the complaint being of contractual nature, were only triable by a Civil Court and that this Commission had no territorial and pecuniary jurisdiction to entertain and try the complaint.

12. On merits, it was stated that bare perusal of the Agreement showed that the complainant examined all the documents with respect to the title, approvals, sanctions, layout plan etc. and authority of the Opposite Parties and after satisfying herself about all aspects of the project, she exercised her own discretion to apply for the plot, in question. It was further stated that the complainant vide recital No.'K' of the said Agreement herself represented that she was not influenced by any kind of sales brochures, advertisements, representations, warranties etc. and she had relied upon her own independent investigations while deciding to purchase the plot, in question. It was denied that at the time of submitting the application for booking, the complainant was assured that the development activity, at the site, had started in full swing and possession would be handed over within a period of 30 months from the date of execution of the Agreement. It was further stated that Clause 11 was to be read in its entirety and not selectively in order to ascertain the real intention of the parties. It was further stated that the period of handing over of the plot was subject to the complainant complying with all her obligations under the terms and conditions of the Agreement. It was further stated that as per Clause 11.2 of the Agreement, the period for offering possession did not end with the efflux of alleged 30 months.

13. It was further stated that the Opposite Parties offered change of payment plan to all of its allottees including the complainant from 'Time Linked Payment Plan' to 'Development Linked Payment Plan' vide its letter dated 26.9.2011 and development linked payment plan was annexed as Schedule-I. It was further stated that the offer letter was received by the complainant but she did not raise any objection to the same. It was further stated that development work started at the site on 1.5.2013 and according to the agreed payment plan, the Opposite Parties raised demands from time to time. It was further stated that the complainant violated clause 19.1 of the

Agreement as she did not adhere to the payment plan and made the payment either with delay or defaulted in making payment. It was further stated that the complainant defaulted in timely payments of 1st, 2nd, 4th, 6th and 7th installment, for which demands were raised vide letters dated 29.4.2011/29.5.2011, 4.7.2011/31.7.2011, 16.1.2014/12.2.2014, 10.7.2014/ 6.8.2014, 16.10.2014/12.11.2014 and 10.2.2015/ 9.3.2015 respectively. It was further stated that reminders dated 2.6.2011, 4.8.2011/19.08.2011, 16.2.2014/10.4.2014/31.3.2014, 17.11.2014/ 8.12.2014/5.1.2015 and 13.3.2015/3.4.2015 were sent to the complainant (Annexures OP-9 to OP-23 respectively). It was further stated that as per Clause 11.2 of the Agreement, the complainant agreed to receive liquidated damages/compensation from the Opposite Parties, if they (Opposite Parties) failed to offer possession of the plot after expiry of the grace period. It was further stated that now when possession of the plot has been offered and the complainant had not made any request for refund of her amount before offer of possession, she was not entitled to get refund of the deposited sale consideration as per clause 11.3 of the Agreement.

14. It was further stated that as per Clause 21 of the Agreement, the Opposite Parties were to carry out the internal development within IREO Hamlet project only, which inter alia, included laying of roads, water lines, sewer lines, electrical lines etc. and it was agreed that external linkages for these services beyond the periphery of IREO Hamlet project, were to be provided by the State Government and/or local authorities. It was further stated that it was told to the complainant that the Opposite Parties had already deposited the entire amount of EDC from time to time with the Government. It was denied that in August, there was no development at the site, as alleged, as the development work was continuously carried on from its commencement w.e.f 1.5.2013. It was also denied that the Opposite Parties gave any false assurance vide letter dated 3.7.2013 with regard to the development at the site. It was further stated that demand notice was sent to the complainant on 16.1.2014, and in order to delay the payment, she sent notice dated 21.1.2014 (Annexure OP-26) to the Opposite Parties. It was further stated that the Opposite Parties replied to the said notice vide letter dated 12.3.2014 and after satisfying herself about the quality and pace of the ongoing development at the site, the complainant made payment of due installment of Rs.9,30,774/- vide cheque dated 11.4.2014. It was further stated that an amount of Rs.27,13,596/- had been paid by the complainant towards discharge of her contractual obligation to pay the sale consideration in installments as per agreed payment plan.

15. It was further stated that the development at the site was in full progress from its inception on 1.5.2013. It was further stated that the Opposite Parties had obtained all the requisite approvals from the Competent Authorities. It was further stated that the Opposite Parties were granted exemption from the provisions of the Punjab Apartment and Property Regulation Act, 1995 and they were having all the necessary statutory clearances and permissions at all the relevant times as required as per law. It was further stated that when another milestone of completion of PHE services to

the property was achieved, then the Opposite Parties raised demand for the payment of due installments vide demand notice dated 16.10.2014, which was agreed to be paid by the complainant. It was denied that any demand was raised vide letter dated 8.12.2014 since the said letter was the second reminder to the demand dated 16.10.2014. It was denied that there was no possibility of delivery of possession of the plot in near future. It was further stated that the development activities are continuously carried on at the site in a phased manner and up to February 2015, the same were almost near completion and, accordingly, possession of the plot was offered to the complainant vide notice of possession dated 4.5.2015. It was further stated that on completion of 2 course of WBM, the next installment which became due was demanded vide demand note dated 10.2.2015 strictly, in accordance with the development linked payment plan, which the complainant had not deposited till date. It was further stated that neither there was any deficiency, in rendering service, on the part of the Opposite Parties, nor they indulged into unfair trade practice. The remaining averments, were denied, being wrong.

16. The complainant, in support of her case, submitted her affidavit, by way of evidence, alongwith which, a number of documents were attached.

17. The Opposite Parties, in support of their case, submitted affidavit of Sh. Rajneesh, their Authorised Representative, by way of evidence, alongwith which, a number of documents were attached.

18. We have heard the Counsel for the parties, and have gone through the evidence, and record of the case, carefully.

19. It is evident, on record, that the complainant applied for the residential plot, in the project of the Opposite Parties. She was allotted Plot No.221 in "IREO Hamlet" measuring approximately 246.97 Square Yards in Sector 98, S.A.S. Nagar, Mohali and Plot Buyer's Agreement (Annexure C-4) was executed between the parties at Chandigarh on 01.07.2011. The complainant opted for Time Linked Payment Plan, according to which, she (complainant) was required to pay 95% of the total sale consideration within 18 months from the date of booking and remaining 5% on delivery of possession. Against the total sale consideration of Rs.56,80,310/- (External Development Charges @Rs.1,275.10Ps per Square Yard were also payable), the complainant till 03.02.2015 paid Rs.51,43,175/-. It is also evident (Page 124) that the complainant, by and large, made payment of installments in time as and when called upon to do so, by the Opposite Parties, except delay of 19 days, 36 days, 58 days, 1 day and 83 days in some of the allotments. It is also evident that the Opposite Parties offered change of payment plan to its allottees including the complainant from Time Linked Payment Plan to Development Linked Payment Plan vide letter dated 26.09.2011 and she (complainant) did not raise any objection, to the same. As admitted by the Opposite Parties, the development work started at the site only on 01.05.2013, and the Opposite Parties raised demands from time to time. Thus, after

issuance of provisional allotment letter on 29.4.2011 (Annexure C-2) and execution of Plot Buyer's Agreement at Chandigarh on 1.7.2011 (Annexure C-4), development work did not start for almost two years.

20. The first objection, raised by the Opposite Parties, is as regards the existence of arbitration clause 33 in the Plot Buyer's Agreement dated 01.07.2011. To this effect, the Opposite Parties also moved an application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 (as amended up to date) for referring the parties to resolve the matter through Arbitration in terms of Clause 33 of the Plot Buyer's Agreement dated 01.07.2011. In this context, the Counsel placed reliance on Auro Developers Vs. Mala Mukherjee, C.O. No.2828 of 2010, decided by Hon'ble Calcutta High Court on 23.12.2011, wherein the Calcutta High Court while relying upon the judgment of Hon'ble Supreme Court passed by seven Judges Bench in SBP and Co. Vs. M/s Patel Engineering Ltd. & Anr., AIR 2006 SC 450, held, inter alia, that ".....It would certainly include the Court as defined in section 2(e) of the Act and would also, in our opinion, include other courts and may even include a special tribunal like the Consumer Forum [See Fair Air Engineers (P) Ltd. & Anr. Vs. N. K. Modi, MANU/SC/0141/1997: 1996 (6) SCC 385]...." The Opposite Parties further placed reliance on judgments of Hon'ble Calcutta High Court in Indusind Bank Vs. Gadadhar Banerjee, C.O. No.223 of 2009 decided on 01.04.2010 and Sudarshan Vyapar Pvt. Ltd. & Anr. Vs. Madhusudan Guha & Anr., C.O. No.2648 of 2012 decided on 06.12.2012, wherein in Para 15, it was held that "...once the parties had agreed to resolve their disputes by the arbitration, the jurisdiction of a Civil Court is clearly ousted by reason of Section 5 of the Arbitration and Conciliation Act. In view of the aforesaid and having regard to the law laid down in SBP (supra), this Court is of the view that the consumer forum has no jurisdiction to entertain the said complaint...." The Opposite Parties also placed reliance on CDC Financial Services (Mauritius) Ltd. Vs. BPL Communications Ltd. and others, (2003) 12 SCC 140 and Shin-Etsu Chemical Co. Ltd. Vs. Aksh Optifibre Ltd. and another, (2005) 7 SCC 234, to contend that if there was an arbitration Agreement, then the parties were required to be directed to go in for arbitration as per the mandatory provisions of Section 8 of the Arbitration and Conciliation Act. The Opposite Parties also referred to K. Sagar, Managing Director, Kiran Chit Fund, Musheerabad Vs. A. Bal Reddy and another, (2008) 7 SCC 166, to contend that jurisdiction of forums has to be decided first. Further, the Opposite Parties cited the case of Allahabad Bank Vs. Canara Bank & Ors., (2000) 4 SCC 406, to contend that the Hon'ble Supreme Court in Para 40 held that the provisions of the latter special law are to prevail over the former special law.

21. With a view to appreciate the controversy, in its proper perspective, reference to Section 3 of the Act is made, which reads as under;

"3. Act not in derogation of any other law.--

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

Section 3 of the Act, is worded in widest terms, and leaves no manner of doubt, that the provisions of the Act, shall be, in addition to, and not in derogation of any other law, for the time being, in force. The mere existence of an arbitration clause, in the document, aforesaid, would not oust the jurisdiction of the Consumer Fora, in view of the provisions of Section 3 of the Act. In *Fair Air Engg. Pvt. Ltd. & another Vs. N.K.Modi* (1996) 6 SCC 385, the Hon'ble supreme Court of India held in Paras 11 to 16 held as under:-

"11. The question then is : whether the case shall be stayed by operation of Section 34 of the Arbitration Act? Section 34 envisages that where any party to an arbitration agreement or any person claiming under him commences any legal proceedings against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceedings, before filing a written statement at any time or before taking any other step in the proceedings, shall apply to the judicial authority before which the proceedings are pending to stay the proceedings; and such authority, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

12. It would thus be clear that, by invocation of Section 34, the party to the proceedings does not get an automatic right to have the proceedings pending before the judicial authorities stayed. The said section gives discretion to the authorities to stay the proceedings on their satisfying that there was no sufficient reason why the matter should not be referred in accordance with the agreement between the parties for arbitration when the party seeking stay of the proceedings was and still remains ready and willing to do all things necessary to the proper conduct of the arbitration. In other words, on judicial satisfaction as to the contract between the parties and subject matter of the dispute as to the nature of the dispute, the judicial authority has been invested with a discretion to stay the proceedings or proceed with the matter pending before it. Similar power is available under Section 8 of the Arbitration and Conciliation Third Ordinance, 1996. The Act was enacted to provide for protection of the interests of consumers and for that purpose the Act has made provision for the establishment of Consumer. Councils and other authorities, viz., District Forums, State Commissions and National Commission for the settlement of consumers' disputes and for matters connected therewith.

13. This Court in *Lucknow Development Authority v. M.K. Gupta* elaborately considered the scheme and object of the Act. It was held that object was to secure

social purpose to promote the facilities in a comprehending manner for settlement of issue involved in the consumer complaints and to assess the damage. In construing the object of the Act, the interests of the consumers which the Act seeks to protect are given predominance. The Act has departed from the settled legal forums provided under the CPC. The importance of the Act is to promote the welfare of the society by enabling the consumers to participate directly in the market economy. It attempts to remove the helplessness of a consumer which he faces against powerful business, described as a 'network of rackets' or a society in which producers have secured power' to rob the rest or as the might of public bodies which are degenerating into storehouses of inaction where papers do not move from, one desk to another as a matter of duty and responsibility but for extraneous consideration leaving the common man helpless, bewildered and shocked. The malady is becoming so rampant, widespread and deep that the society, instead of bothering, complaining and fighting against it, is accepting it as a part of life. The Act, therefore, intends to secure inexpensive and expeditious consumer service.

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

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

own and on the peculiar facts and circumstances of the particular case, come to the conclusion that the appropriate forum for adjudication of the disputes would be otherwise those given in the Act.

16. Considered from this perspective, we hold that this dispute need not be referred to arbitration under Clause (12) of the agreement and the matter could be decided on merits by the State Commission itself."

It may be stated here that the Hon'ble Supreme Court of India in its judgment in National Seeds Corporation Limited Vs. M. Madhusudhan Reddy & Anr., I (2012) CPJ 1 (SC), held in Paras 27 to 31 as under:-

"27. The next question which needs consideration is whether the growers of seeds were not entitled to file complaint under the Consumer Act and the only remedy available to them for the alleged breach of the terms of agreement was to apply for arbitration. According to the learned Counsel for the appellant, if the growers had applied for arbitration then in terms of Section 8 of the Arbitration and Conciliation Act the dispute arising out of the arbitration clause had to be referred to an appropriate arbitrator and the District Consumer Forums were not entitled to entertain their complaint. This contention represents an extension of the main objection of the appellant that the only remedy available to the farmers and growers who claim to have suffered loss on account of use of defective seeds sold/supplied by the appellant was to file complaints with the concerned Seed Inspectors for taking action under Section(s) 19 and/or 21 of the Seeds Act.

28. The consideration of this issue needs to be prefaced with an observation that the grievance of a farmer/grower who has suffered financially due to loss or failure of crop on account of use of defective seeds sold/supplied by the appellant or by an authorised person is not remedied by prosecuting the seller/supplier of the seeds. Even if such person is found guilty and sentenced to imprisonment, the aggrieved farmer/grower does not get anything. Therefore, the so-called remedy available to an aggrieved farmer/grower to lodge a complaint with the concerned Seed Inspector for prosecution of the seller/supplier of the seed cannot but be treated as illusory and he cannot be denied relief under the Consumer Act on the ground of availability of an alternative remedy.

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

in addition to and not in derogation of the provisions of any other law for the time being in force. In *Fair Air Engineers (P) Ltd. v. N.K. Modi* (supra), the 2-Judge Bench interpreted that section and held as under:

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

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

(Emphasis supplied)

30. In *Skypak Couriers Limited v. Tata Chemicals Limited* (supra), this Court observed:

"Even if there exists an arbitration clause in an agreement and a complaint is made by the consumer, in relation to a certain deficiency of service, then the existence of an arbitration clause will not be a bar to the entertainment of the complaint by the Redressal Agency, constituted under the Consumer Protection Act, since the remedy

provided under the Act is in addition to the provisions of any other law for the time being in force.

31. In *Trans Mediterranean Airways v. Universal Exports (supra)*, it was observed:

"In our view, the protection provided under the CP Act to consumers is in addition to the remedies available under any other statute. It does not extinguish the remedies under another statute but provides an additional or alternative remedy."

In view of the law settled by the Hon'ble Supreme Court of India in *National Seeds Corporation Ltd. Vs. M. Madhusudhan Reddy & Anr.*'s case (*supra*), wherein the Hon'ble Apex Court, while discussing a number of judgments thread-bare, clearly held that "...The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996." In *DLF Limited Vs. Mridul Estate (Pvt.) Ltd.*, Revision Petition No.412 of 2011 decided on 13.05.2013 by a three Member Bench of the National Consumer Disputes Redressal Commission, New Delhi, after discussing a number of cases decided by the Hon'ble Supreme Court, it was held that mere existence of an arbitration clause in the Agreement did not oust the jurisdiction of the Consumer Fora from entertaining and deciding the consumer complaint. In the instant case also, the complainant chose to file consumer complaint first and, as such, she cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996. As such, this Commission has the jurisdiction to entertain and try the complaint. In this view of the matter, this objection of the Opposite Parties, being devoid of merit, must fail, and the same stands rejected. Accordingly, the application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 for referring the parties to resolve the matter through Arbitration in terms of Clause 33 of the Plot Buyer's Agreement dated 01.07.2011, is dismissed.

22. As regards the next objection of the Opposite Parties that the complainant, did not book the plot for her personal use but for investment/commercial purpose, and, as such, she was not a consumer, it may be stated here that in the absence of any cogent documentary evidence, to this effect, the objection of the Opposite Parties, to this extent, is hollow and the same is not sustainable in the eyes of law. The same, therefore, stands rejected.

23. The contention of the Opposite Parties that an Agreement for sale/purchase of a plot, cannot be treated as service and, therefore, the complainant is not a consumer, is also not on sound footing. The Opposite Parties, as is evident from the contents of the Agreement, were to offer possession of the plot, in question, after developing the same. However, it failed to develop the same and offer possession within the time-limit laid down in the Agreement, which amounted to deficiency, in rendering service. The objection, being devoid of merit, is not sustainable and the same, is therefore, rejected.

24. The next question, which falls for consideration, is, as to whether the complainant is entitled to refund of the amount deposited by her or not. Clauses 11.2 and 11.3 under heading "POSSESSION AND HOLDING CHARGES", of Plot Buyer's Agreement dated 01.07.2011 (Annexure C-4), being relevant, are extracted hereunder:-

11.2 Subject to Clause 11.1, if the Company fails to offer possession of the said Plot to the Allottee by the end of the Grace Period, it shall be liable to pay to the Allottee compensation calculated at the rate of Rs.50/- (Rupees Fifty only) per sq. yd. of the area of the said Plot ("Delay Compensation") for every month of delay until the actual date fixed by the Company for handing over of possession of the said Plot to the Allottee. The Allottee shall be entitled to payment against such 'Delay Compensation' only after completion of all documentation including registration of the Conveyance Deed.

11.3 Subject to Clause 11.1, in the event of delay by the Company in handing over the possession of the said Plot beyond a period of 12 months from the end of the Grace Period (such 12 month period hereinafter referred to as the "Extended Delay Period"), then the Allottee shall become entitled to opt for termination of the Allotment/Agreement and refund of the actual paid up installment(s) made against the said Plot after adjusting the interest/penalty on delayed payments along with Delay Compensation for 12 months. Such refund shall be made by the Company within 90 days of receipt of intimation of this effect from the Allottee, without any interest thereon. For removal of doubt, it is clarified that Delay Compensation payable to the Allottee who is validly opting for termination, shall be limited to and calculated for the fixed period of 12 months only irrespective of the date on which the Allottee actually exercised the option for termination. This option of termination may be exercised by the Allottee only up till dispatch of the Notice of Possession by the Company to the Allottee whereupon the said option shall be deemed to have irrevocably lapsed. No other claim, whatsoever, monetary or otherwise shall lie against the company nor be raised otherwise or in any other manner by the Allottee.

25. In the instant case, the Plot Buyer's Agreement was executed on 01.07.2011 and as per the terms of the Agreement, the complainant was entitled to compensation @Rs.50/- per sq. yard of the actual area of the said plot for every month of delay until the actual date fixed by the Company for handing over of possession of the said plot. As per Clause 11.3 aforesaid, in the event of delay by the Company in handing over possession of the said plot beyond a period of 12 months from the end of the Grace Period (such 12 month period hereinafter referred to as the "Extended Delay Period"), then the complainant could have opted for termination of the Allotment/Agreement and refund of the actual paid up installment(s) made against the said Plot after adjusting the interest/penalty on delayed payments along with delayed compensation for 12 months. In the instant case, the period aforesaid of 12 months including grace period had already expired on 01.01.2015, whereas, admittedly, the possession was offered by the Opposite Parties to the complainant vide letter dated 04.05.2015 (Annexure OP-2), after filing the instant complaint on 20.03.2015. The complainant sought refund of the deposited amount vide legal notice dated 21.01.2014 (Annexure OP-26), which

was not made to her. As such, the Opposite Parties, under the aforesaid clause, were required to refund the entire amount paid by the complainant, to her, when they (Opposite Parties) failed to handover possession of the allotted plot till the date of filing the complaint before this Commission. The complainant has placed reliance on National Commission judgment in case titled Puneet Malhotra Vs. Parsvnath Developers Ltd., Consumer Complaint No.232 of 2014 with IA/9215/2014, decided on 29.01.2015, in which the National Commission in Para 9 held as under:-

"9. In our opinion, the aforesaid Clause applies only in a case where construction of flat is delayed but despite delay, the buyer accepts possession of the said flat from the seller, and consequently, accounts have to be settled between the parties. At that stage, the buyer would pay the agreed holding charges to the seller, who will pay the agreed compensation on account of delaying the construction of the flat. The aforesaid Clause, in our opinion would not apply to a case where the buyer, on account of the delay on the part of the seller in constructing the flat, is no more interested in the flat subject matter of the agreement and wants to take refund of the amount, which he had paid to the seller. In any case, such a clause, where the seller, in case of default on the part of the buyer, seeks to recover interest from him at the rate of 24% per annum will amount to an unfair trade practice since it gives an unfair advantage to the seller over the buyer. We may note here that the enumeration of the unfair trade practices in Section 2(r) of the Act is inclusive, not exhaustive."

The complainant is thus, entitled, to the refund of the amount paid by her towards installments of the said plot, in terms of Clause 11.3 and 20.1 of Plot Buyer's Agreement dated 1.7.2011 alongwith interest @7.5% from the respective dates of deposits.

26. The next question, which falls for consideration, is, as to whether, the complainant is entitled to any compensation or not. The complainant deposited her hard earned money in the hope that she will have a house to live in. As admitted by the Opposite Parties, development started in May, 2013 i.e. almost two years after execution of Plot Buyer's Agreement on 1.7.2011. On account of non-delivery of possession of the plot, in question, by the Opposite Parties, to the complainant, complete in all respects, within the stipulated period or the extended delay period, or even till the filing of the complaint, and not refunding the amount deposited when she (complainant) opted for refund in terms of Clause 11.3 and sent legal notice dated 21.01.2014 (Annexure C-11) she (complainant) had certainly suffered physical harassment and mental agony at the hands of the Opposite Parties, for which, she needs to be suitably compensated. In our considered opinion, compensation in the sum of Rs.1,50,000/- would be just and adequate, to meet the ends of justice.

27. No other point, was urged, by the Counsel for the parties.

28. For the reasons, recorded above, the complaint is partly accepted, with costs, and the Opposite Parties are jointly and severally held liable and directed in the following manner:-

(i) To refund the amount of Rs.51,43,175/-, alongwith interest @7.5% per annum, from the respective dates of deposits, till realization, within three months, from the date of receipt of a certified copy of this order.

(ii) To pay an amount of Rs.1,50,000/- (Rupees One Lac Fifty Thousand only), to the complainant, as compensation for mental agony and physical harassment, within a period of three months from the date of receipt of a certified copy of the order.

(iii) To pay cost of litigation, to the tune of Rs.15,000/-, to the complainant.

(v) In case, the payment of amounts, mentioned in Clauses (i) and (ii), is not made, within the stipulated period, then the Opposite Parties, shall be liable to pay the amount mentioned in Clause (i) above, with interest @10.5% per annum, instead of 7.5% per annum, from the respective dates of deposits, till realization and amount mentioned in Clause (ii) above, with interest @12% per annum from the date of default till realization, besides payment of costs, to the tune of Rs.15,000/-.

29. Certified Copies of this order be sent to the parties, free of charge.

30. The file be consigned to Record Room, after completion.

Pronounced June 10, 2015.

Sd/-

[JUSTICE SHAM SUNDER (RETD.)] PRESIDENT Sd/-

[DEV RAJ] MEMBER Sd/-

[PADMA PANDEY] MEMBER Ad