

Mrs. Hardesh Mehta vs Parkwood Developers Pvt.Ltd. And ... on 17 May, 2021

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
PUNJAB, CHANDIGARH.

Consumer Complaint No.07 of 2021

Date of Institution : 01.02.2021

Reserved on : 29.04.2021

Date of Decision : 17.05.2021

Mrs. Hardesh Mehta, aged 60 years W/o Mr. Manohar Lal Mehta,
resident of House No.208-B, Ward No.9, Shiv Chowk, Fatehabad,
District Fatehabad (Haryana).

.....Complainant

Versus

1. Parkwood Developers Pvt. Ltd., through its
Chairman/Managing Director.
2. Harpreet Singh, Director,
3. Dakshdeep Singh, Director,

All residents of # 1001, Hemkunt Chambers, 89 Nehru
Place, New Delhi-110019.

Second Address :

Parkwood Developers Pvt. Ltd., Village Sante-Majra, Tehsil
Kharar, District SAS Nagar, Punjab-160059.

E-mail of OP No.1 to 3: mail@parkwoodgroup.in

.....Opposite Parties

Consumer Complaint under Section 47
read with Section 49(2) of the Consumer
Protection Act, 2019.

Quorum:-

Hon'ble Mr. Justice Paramjeet Singh Dhaliwal, President
Mr. Rajinder Kumar Goyal, Member

Mrs. Kiran Sibal, Member

- 1) Whether Reporters of the Newspapers may be allowed to see the Judgment? Yes/No
- 2) To be referred to the Reporters or not? Yes/No
- 3) Whether judgment should be reported in the Digest? Yes/No Argued by:-

For the complainant : Sh. G.S. Dhaliwal, Advocate For the opposite parties : Ex-parte
JUSTICE PARAMJEET SINGH DHALIWAL, PRESIDENT:

The complainant has filed this complaint under Section 47 read with Section 49 (2) of the Consumer Protection Act, 2019 (in short "the Act"), against the opposite parties seeking reliefs:-

a) That Flat Buyer Agreement (Ex.C-3) and the allotment letter (Ex.C-2) be declared as illegal, null and void, being one-

sided and unfair contract, as defined under Section 2(46) of the Consumer Protection Act, 2019;

b) The opposite parties be directed to deliver the actual and physical possession of Flat No.A305, Block/Tower A, Floor 3, along with all the facilities i.e. car parking and club as contained in the approved site plan of the project i.e. Parkwood Glade, Mohali within two months from the date of filing the present complaint; and

c) to apply and obtain the Completion and Occupation Certificates that are required for the project to be completed and handed over in all respects as per the law of land; Or in the alternative;

d) to refund the total amount paid i.e. 33,86,586/- along with interest @18% p.a. from the date of deposit till realization;

e) to pay an amount of 5,00,000/- as compensation for mental pain and harassment suffered by the complainant, on account of non-delivery of possession; and

f) to pay an amount of 60,000/- as litigation expense.

g) Any other relief, as may be deemed fit in view of the facts and circumstances of the case, may also be awarded. Facts of the complaint:

2. The brief facts, as averred in the complaint, are that opposite party No.1 is a Company duly incorporated under the provisions of the Companies Act. The Company being a juristic person under the Act can be sued in a Court of law. Opposite parties No.2 and 3 are the Directors of opposite party No.1-

Company and are responsible for the day-to-day conduct and work of it jointly and severally. The opposite parties have floated a residential project namely "Parkwood Glade Mohali", located in Village Sante-Majra, Tehsil Kharar, District SAS Nagar (Punjab). The complainant booked 2 BHK flat with opposite parties and he was allotted Flat No.A305, Block/Tower A, Floor 3 having built up area of 1260 square feet, vide letter dated 22.03.2012, Ex.C-2. Flat Buyer Agreement was executed between the parties on 16.05.2012, Ex.C-3. The opposite parties also supplied schedule of payment as per schedule of construction, vide demand letter- cum-service invoice dated 01.07.2013, Ex.C-4. The complainant made the following payments to opposite parties:-

Sr. No.	Date	Amount	Exhibit
1.	22.03.2012	4,52,972/-	C/5

2.	04.05.2012	3,52,972/-	C/6
3.	21.06.2012	3,05,000/-	C/7
4.	21.09.2012	3,03,496/-	C/8
5.	30.10.2012	3,03,496/-	C/9
6.	18.04.2013	2,81,155/-	C/10
7.	19.04.2013	61,000/-	C/11
8.	22.05.2012	3,42,155/-	C/12
9.	16.07.2013	2,61,330/-	C/13
10.	19.10.2013	2,61,330/-	C/14
11.	29.06.2016	2,30,722/-	C/15
12.	02.12.2017	2,30,958/-	C/16
		33,86,586/-	

In the above said total amount of 33,86,586/-, 61,000/- was deposited by the complainant as club membership charges and 75,000/- was deposited by him towards open car parking charges. As such, the basic sale price of the said flat is 29,43,990/-, as per Agreement and against that he had deposited total amount of 33,86,586/- with the opposite parties. As per Clause 19-A of the Flat Buyer Agreement, the last date of possession was 30.11.2014, but till date the possession has not been handed over to him by the opposite parties and it amounts to deficiency in service. It is further averred that Flat Buyer Agreement dated 16.05.2012, Ex.C-3, which has been executed between the parties, as well as the allotment letter, Ex.C-2, is an unfair contract, because the terms of these documents are totally one sides and bias and totally in favour of the opposite parties and are liable to be set aside on the following grounds:-

a) That as per the allotment letter dated 22.03.2012, Ex.C-2, the opposite parties have stated that the project is a construction linked plan and the basic price of the Flat is 29,43,990/- and club membership charges 61,000/-

and open car parking charges 75,000/- are additional charges. In case of any delay in payment on behalf of the complainant, the opposite parties shall charge interest @18% p.a. on the delayed payment, which is unjust and against the law and it constitutes an unfair contract under the

provisions of Act. The opposite parties have unilaterally fixed the interest rate, which is much higher than the rate of interest of the Banks.

b) As per Clause 19(a) of the Flat Buyer Agreement, Ex.C-3, the opposite parties were supposed to provide physical possession of the flat till 30.11.2014, but till date physical possession of the Flat has not been handed over to the complainant, which is violation of crucial terms of the said Agreement and there is no legal redressal except for filing of the instant complaint.

c) As per Clause 19(b) of the Flat Buyer Agreement, in case the construction is stopped, no compensation shall be provided to the complainant for delay or suspension of the project. Further in case possession is not delivered, the complainant shall be entitled to refund of the amount paid only and no interest is liable to be paid and further no compensation of any kind shall be liable to be paid. As such, this Clause is totally one sided and is in favour of the opposite parties.

d) The opposite parties have received the payments in the year 2012 and 2013 and they have been using the said money for the period of more than 7/8 years, but as per terms of the Contract, the complainant is not entitled to interest on the amount paid and also to recover any amount of compensation for the delay in delivery of the possession.

e) As per Clause 20(a) of the agreement, the opposite parties can impose holding charges upon the complainant, if the flat is not constructed. The complainant is barred from approaching the Court of law and also liable to pay holding charges to them. This Clause itself renders the contract unfair. It is a fact that most of the times, the builders cut corners to reduce the cost and do not follow the mandates of the agreement.

f) The opposite parties have provided themselves a grace period of 90 days over and above the date of possession that has imposed a condition to take possession of the flat within 30 days from the date of notice. It has not been mentioned that on what basis the grace period has been provided to the opposite parties in the contract. This condition is biased and in favour of the opposite parties.

g) Clause 21 of the Contract provides that the taxes and levies of the Government are to be recovered from the complainant irrespective of the time period. In fact the complainant is only bound to pay the taxes and levies on the flat after delivery of possession and not before that. The opposite parties have very unfairly shifted the financial liability upon the complainant without any legal basis.

h) Clause-22 of the agreement states that the complainant shall have no claim against the developer in respect of the items of work that was not carried out as per the contract. It is a fact that the construction is carried out by the opposite parties and the complainant had no say in the construction and has no role to supervise the building. It is, therefore, unfair that if there is any variation in the construction or any deficiency in the amenities, the complainant shall have no right to object to the same. So, this condition is also unfair.

i) As per Clause 23 of the agreement, the complainant cannot object to the opposite parties on the point of raising construction upon the tower or any other building in the vicinity of the tower. In

fact, the complainant had seen the master plan of the opposite parties at the time of booking of the flat and was greatly impressed with the open area and the general layout, but it is shocking that the complainant shall have no right to object or raise objection on the construction upon the open area of the project. This condition itself renders the contract unfair.

j) As per Clause 25 of the agreement, the complainant cannot get the name of her nominee or assignee entered into the record of the opposite parties and can also not get the Conveyance Deed executed in the name of the person of her choice. Once the entire sale consideration has been paid to the opposite parties in advance, no objection can be raised by the opposite parties to the execution of the Conveyance Deed in favour of any other person, other than the complainant.

k) As per schedule of payment, the entire payment was made to the opposite parties in the year 2012/2013. The payment schedule was construction linked plan and the opposite parties, having already received all the payment under the schedule, have been unable to construct and complete the flat as per schedule and have also failed to deliver the possession till date. The last date of handing over the physical possession of the Flat was 30.11.2014, but even after the expiry of more than 6 years therefrom, the project is still not completed and the possession has not been handed over to the complainant till date. The entire money of the complainant is in the custody of the opposite parties till date, leading to great financial loss to the complainant.

l) The basic price of the flat at the time of allotment was 29,43,990/- and the payment was construction linked plan. As per the demand letter Ex.C-4, the payment was to be made as per the schedule of construction while the opposite parties have been receiving the payment not as per pace/level of construction. The opposite parties have failed to comply with the schedule, thereby violating the contract on their own and causing great financial loss to the complainant and huge financial gain to themselves.

3. It is further averred that in order to finance the Flat, the complainant took a loan of 10,00,000/- from the HDFC Bank on 18.09.2012, vide Loan Agreement No.604961442, Ex.C/17. She paid the entire EMIs and has now paid off the loan. As the possession was never delivered, as such, she suffered huge financial loss, as the loan amount was liquidated before time. The opposite parties have failed to offer and hand over actual and physical possession of the flat till date. Even the basic amenities like electricity, water, sewerage, road and parking have not been completed/provided. The opposite parties have failed to obtain all the clearances till date. All the terms of the agreement are against the complainant and are one-sided and against the interest of the complainant. The unfair terms and conditions of the allotment letter and Flat Buyer Agreement come within the purview of Section 2(46) of the C.P. Act, 2019. One sided terms infringe upon the basic rights of a citizen. The complainant spent all her life savings to purchase the flat, in question. The aforesaid act and conduct of the opposite parties amount to deficiency in service and unfair trade practice. Hence, the present complaint. Defence of the opposite parties

4. Upon notice, opposite parties failed to appear, despite service and, as such, they were proceeded exparte, vide order dated 19.03.2021.

Evidence of the complainant

5. To prove her claim, the complainant, along with the complaint, filed her self-attested affidavit and photocopies of documents i.e. list of Directors of the Company Ex.C-1, allotment letter dated 22.03.2012 Ex.C-2, Flat Buyer Agreement dated 16.05.2012 Ex.C-3, demand letter-cum-Service Notice dated 01.07.2013 Ex.C-4, receipts for payments Ex.C-5 to C-16 and Loan Agreement Ex.C-17.

Contentions of the complainant

6. We have heard learned counsel for the complainant and have gone through the written arguments submitted on her behalf and record of the case carefully.

7. The written arguments submitted on behalf of the complainant are on the lines of the complaint. The sum and substance of oral and written arguments is that the opposite parties failed to develop the project and deliver possession of the flat, in question, along with complete development and Completion Certificate to the complainant within the stipulated period despite receipt of entire sale price and other charges. The complainant so many times requested the opposite parties to deliver possession of the flat, but to no effect. They kept on utilizing the amount deposited by the complainant for their own use, without bothering to complete the project and to deliver possession of the plot to the complainant. The opposite parties also failed to obtain the requisite approvals/sanctions from the competent authorities before setting up the project, in question. It has been further contended that the prayer for declaring the terms of contract(s), as unfair, null and void, has been made; as only the State Commissions and Hon'ble National Commission has the power to adjudicate this kind of dispute. Hence, this Commission has territorial and pecuniary jurisdiction to try and adjudicate the present complaint. The learned counsel has made reference to various Clauses of the allotment letter and Flat Buyer's Agreement, as mentioned above, to contend that these terms are unfair and, resultantly, the contract is required to be declared null and void. The learned counsel further contended that the complainant falls under the definition of "consumer", as defined in the Consumer Protection Act, 2019. No opportunity was afforded to the complainant to read and go through the contents of allotment letter and Flat Buyer's Agreement. Rather, the conduct of the opposite parties was "take it or leave it". Learned counsel further contended that the terms of the contract being unilateral, unfair and detrimental to the interest of the complainant be declared null and void. The opposite parties have committed deficiency in service and indulged in unfair trade practice. Hence, the complainant is entitled to all the reliefs, as prayed for in the complaint. In support of his contentions, learned counsel for the complainant has relied upon following cases:

i) Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors.

v. DLF Southern Homes Ltd. 2020 (3) RCR (Civil) 544;

ii) Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna and Ors.

Civil Appeal No.5785 of 2019 decided on 11.01.2021 by the Hon'ble Apex Court; and

iii) Air Force Naval Housing Board v. Air Cde B.K. Gandhi F.A. No.2073 of 2019 decided on 07.01.2020 (NC). Consideration of Contentions

8. We have given our thoughtful consideration to the contentions raised by the learned counsel for the complainant.

9. For deciding the present complaint, following questions of law and fact arise for determination:

A) Whether the complainant falls under the definition of "consumer", as defined in Section 2 (7) of the Consumer Protection Act, 2019?

B) Whether the State Commission has pecuniary and territorial jurisdictions to try and adjudicate the complaint?

C) Whether the complaint is within limitation?

D) Whether the allotment letter dated 22.03.2012 Ex.C-2 and Flat Buyer's Agreement dated 16.05.2012 Ex.C-3, are loaded with unfair unilateral terms, in view of the provisions of the Consumer Protection Act, 2019 and, as such, the 'unfair contract' is liable to be declared as null and void?

E) Relief.

In Re: Question (A):

Whether the complainant falls under the definition of "consumer", as defined in Section 2 (7) of the Consumer Protection Act, 2019?

10. To maintain a complaint under the provisions of the Act, the complainant must be a 'consumer' within the meaning of Section 2(7) of the Act. The word 'consumer' is defined under Section 2(7) of the Act, which reads as under:

"2. Definitions.- In this Act, unless the context otherwise requires,-

(7) "consumer" means any person who--

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation.--For the purposes of this clause,-- (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing."

The complainant had applied for allotment of a flat in the aforesaid project of the opposite parties and vide allotment letter dated 22.03.2012, Ex.C-2, she was allotted unit No.A305 (2 bedrooms + 2 bathrooms), having super built area of 1260 sq.ft. at a basic sale price of 2,337/- per sq.ft. plus additional charges of 60,000/- towards club membership charges and 75,000/- towards open car parking. Later on, Flat Buyer's Agreement dated 16.05.2012, Ex.C-3, was executed between the parties about allotment of that unit. She has deposited a total sum of 33,86,586/- with them towards the price of that flat, including club membership charges and towards open car parking, vide receipt Ex.C-5 to Ex.C-16. It is the categorical averment of the complainant that she has purchased the said unit, in question, for her personal use. The housing construction and building activities by the builders, where the consumers seek allotment, fall under the definition of services. So, the complainant falls under the definition of 'consumer' as defined in Section 2(7) of the Consumer Protection Act, 2019. In Narne Construction P. Ltd. etc. v. Union of India & Ors. AIR 2012 SC 2369, the Hon'ble Supreme Court has held that housing construction and building activities come under the definition of "services", as defined under Section 2(1)(o) of the Consumer Protection Act, 1986 (now Section 2(42) of the Act of 2019). Hon'ble National Commission has also held in Meghna Singh Khera and Ors. v. Unitech Ltd., 1 (2020) CPJ 93 (NC) as under:-

"....

15. Another contention of the Opposite Party was that the purchase of the residential unit was for commercial purpose and the complainants were not consumers within the meaning of Section 2(1)(d) of the Consumer Protection Act, 1986. The expression commercial purpose used in Section 2(1)(d) of the Act came up for consideration of this Commission in Kavita Ahuja Vs. Shipra Estates Ltd., CC 137 of 2010 decided on 12-02- 2015 and the following view was taken:

"The expression 'commercial purpose' has not been defined in the Act and therefore, as held herein below by the Hon'ble Supreme Court in Laxmi Engineering Works Vs. P.S.G. Industrial Institute (1995) 3 SCC 583, we have to go by the dictionary

meanings, "In the absence of a definition, we have to go by its ordinary meaning 'Commercial' denotes "pertaining to commerce" (Chamber's Twentieth Century Dictionary); it means "connected with, or engaged in commerce; mercantile, having profit as the main aim" (Collins English Dictionary) whereas the word 'commerce' means "financial transactions especially buying and selling of merchandise on a large scale" (Concise Oxford Dictionary)".

6. Going by the Dictionary meaning of the expression 'Commerce' as far as hiring or availing services are concerned, a person can be said to have hired or availed services only if they are connected or related to the business or commerce in which he is engaged. In other words, the services in order to exclude the hirer from the ambit of Section 2(1)(d) of the Act should be availed for the purpose of promoting, advancing or augmenting an activity, the primary aim of which is to earn profit with use of the said services. It would ordinarily include activities such as manufacturing, trading or rendering services. In the case of the purchase of houses which the service provider undertakes to construct for the purchaser, the purchase can be said to be for a commercial purpose only where it is shown that the purchaser is engaged in the business of purchasing and selling houses and / or plots on a regular basis, solely with a view to make profit by sale of such houses. If however, a house to be constructed by the service provider is purchased by him purely as an investment and he is not undertaking the trading of houses on a regular basis and in the normal course of the business profession or services in which he is engaged, it would be difficult to say that he had purchased houses for a commercial purpose. A person having surplus funds available with him would not like to keep such funds idle and would seek to invest them in such a manner that he gets maximum returns on his investment. He may invest such funds in a Bank Deposits, Shares, Mutual Funds and Bonds or Debentures etc. Likewise, he may also invest his surplus funds in purchase of one or more houses, which is/are proposed to be constructed by the service provider, in the hope that he would get better return on his investment by selling the said house(s) on a future date when the market value of such house (s) is higher than the price paid or agreed to be paid by him. That by itself would not mean that he was engaged in the commerce or business of purchasing and selling the house (s).

7. Generating profit by way of trading, in my view is altogether different from earning capital gains on account of appreciation in the market value of the property unless it is shown that the person acquiring the property was engaged in such acquisition on a regular basis and it was by way of a business activity."

16. The Complainants are senior citizens.

Complainant No.1 is a retired Professor and Complainant No.2 is a homemaker. No evidence, whatsoever has been adduced to show that they are involved in any commercial activity. There is no merit in the contention of the Opposite Party that they are not consumers as per the Consumer Protection Act, 1986. It is just another routine, technical objection raised in the reply."

11. In view of the above discussion, we hold that complainant falls under the definition of "consumer", as defined under section 2(7) of the Act and has hired the "service" of the opposite parties under section 2(42) of the Act. In Re: Question (B):

Whether the State Commission has pecuniary and territorial jurisdictions to try and adjudicate the complaint?

12. The legal issues of substantial public importance pertaining to Court's territorial and pecuniary jurisdiction concerning consumer complaints filed under Chapter IV of the Consumer Protection Act, 2019 has been raised in this consumer complaint. It is an undisputed fact that complainant has been allotted the unit, in question, in the project of the opposite parties located in village Santemajra, Kharar-Landran Road, Tehsil Kharar, District S.A.S. Nagar (Mohali). Thus, the property in question is situated in the territorial jurisdiction of Punjab and the complainant had paid 33,86,586/- to the opposite parties towards the entire sale price of the unit and other charges.

13. It would be appropriate to reproduce the Section 47 of the Act, which reads as under:

47. Jurisdiction of the State Commission.-

(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction--

(a) to entertain--

(i) complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;

(iii) appeals against the orders of any District Commission within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Commission within the State, where it appears to the State Commission that such District Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit:

Provided that the senior-most member shall preside over the Bench.

(3) Where the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it:

Provided that the President or the other members, as the case may be, shall give opinion on the point or points so referred within a period of one month from the date of such reference.

(4) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,--

(a) the opposite party or each of the OPs, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the OPs, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided in such case, the permission of the State Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain.

14. Now, we proceed to examine the issue of pecuniary jurisdiction of this Commission. In the present complaint, the complainant has challenged the unfair terms of the contract and had sought to declare that contract null and void. It is true that that under section 47(1)(i) of the Act, for the complaint with the value of goods or services paid as consideration exceeds Rupees One Crore but did not exceed Rupees Ten Crore, the State Commission has pecuniary jurisdiction to entertain complaint. As per Section 47(1)(ii) of the Act reproduced above, it is specifically mentioned that the complaint can be entertained by the State Commission against unfair contracts where the value of goods or services paid as consideration does not exceed 10 Crore. In this Section, minimum value of the goods or services paid has not been laid down, but maximum value of goods or services paid has been mentioned as not exceeding 10 Crore. Furthermore, it would be appropriate to refer to Section 49 of the Act; which reads as under:

"49. Procedure applicable to State Commission. -

(1) The provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable to the disposal of complaints by the State Commission.

(2) Without prejudice to the provisions of sub-section (1), the State Commission may also declare any terms of contract, which is unfair to any consumer, to be null and void."

15. Thus, the State Commission, under section 47(1)(a)(ii) read with section 49 (2) of the Act, has pecuniary jurisdiction to entertain and determine the issue of unfair contract and can declare any term of the contract, which is unfair, as null and void. Hence, we hold that this Commission has pecuniary jurisdiction to hear the present complaint, though the value of goods or services paid as consideration is 33,86,586/-; as under Section 47 (1) (ii) of the Act, no minimum value of goods or services paid as consideration has been fixed and challenge to the unfair terms of contract is made. It is immaterial what amount the complainant has paid. It has been specifically prayed to declare the allotment letter Ex.C-2 and Flat Buyer's Agreement Ex.C-3 as null and void being 'unfair contract'. Specific averments regarding the unfair and one- sided clauses in the said documents have also been raised. The Act gives power to the State Commission and the Hon'ble National Commission to examine the unfair terms of the Contract. Only State Commissions and the Hon'ble National commission have power to declare the unfair contract null and void. This power has not been conferred on the District Commissions under the Act.

16. Now, we examine the issue of territorial jurisdiction. The Consumer Protection Act, 2019 is a special statute. Section 2(9)(iv) of the Act states that consumer rights include "the right to be heard and to be assured that consumers interest will receive due consideration at appropriate fora." The territorial jurisdiction of the Commission, having regard to the terminologies used therein must be held to be wider than the Civil Court. A complainant has wide options and Section 47(4) of the Act, which reads as under, also determines territorial jurisdiction of the Commission:

47 (4) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,--

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided in such case, the permission of the State Commission is given; or

(c) the cause of action, wholly or in part, arises; or

(d) the complainant resides or personally works for gain."

17. The plot, in question, is situated in village Santemajra, Kharar-Landran Road, Tehsil Kharar, District S.A.S. Nagar (Mohali), Punjab and the opposite parties are also having address of that place in District Mohali. Therefore, in view of Section 47 (4)

(a) (b) (c) of the Act, this Commission has territorial jurisdiction to entertain and try this consumer complaint. In Re: Question (C):

Whether the complaint is within limitation?

18. The complainant is praying for delivery of possession of the unit, in question and, in the alternative, refund of the entire amount deposited by her. However, neither possession of the unit, in question, complete in all respects with agreed facilities and Completion and Occupation Certificates has been delivered, nor the amount deposited by the complainant has been refunded till date. Hon'ble National Commission in "Navin Sharma (Dr.) & others v. Unitech Reliable Projects Pvt. Ltd. & Anr." 2016(2) CLT 457 has held that unless or until the Complainants get possession of the flats, complete in all respects, they have got continuous cause of action. In Para-8 of the said judgment, it has been observed as under:-

"8. The first submission made by the counsel for the opposite party was that the case is barred by time. This argument was raised merely for the sake of cavil. It is now well settled that unless or until the complainants get the possession of the flats, they have got continuous cause of action. This view finds support from this authority reported in "Raghava Estates Ltd. v. Vishnupuram Colony Welfare Association" Special Leave to Appeal (Civil) No.35805 of 2012, decided on 07.12.2012."

19. In another case Satish Kumar Pandey & Anr. v. M/s Unitech Ltd. 2015 (3) CPJ 440 (NC), the Hon'ble National Commission held in Para-17 as follows:

"17. It was next contended by the learned counsel for the respondent that since the last date stipulated in the buyers agreement for giving possession of the flat to them expired more than two years ago, the complaint is barred by limitation prescribed in Section 24A of the Consumer Protection Act. It is now settled legal proposition that failure to deliver possession being a continuous wrong it constitutes a recurrent cause of action and, therefore, so long as the possession is not delivered to him the buyers can always approach a Consumer Forum. It is only when the seller flatly refuses to give possession that the period of limitation prescribed in Section 24A of the Consumer Protection Act would begin to run. In that case, the complaint has to be filed within two years from the date on which the seller refuses to deliver possession of the flats to the complainants at any point of time and, therefore, the cause of action continues to subsist in favour of the complainants. Reliance in this regard may be placed upon the decision of the Hon'ble Supreme Court in Meerut Development Authority v. M.K. Gupta IV (2012) CPJ 12, where the Hon'ble Supreme Court held that in such a case the buyer has a recurrent cause for filing a complaint for non-delivery of possession of the plot."

In view of the law laid down in the above noted cases, since neither possession of the plot, in question, complete in all respects and demarcation etc., along with Completion and Occupation Certificates has been delivered, nor the amount has been refunded, so the complainant has continuous cause of action and the complaint is within limitation.

In Re: Question (D):

Whether the allotment letter dated 22.03.2012 Ex.C-2 and Flat Buyer's Agreement dated 16.05.2012 Ex.C-3, are loaded with unfair unilateral terms, in view of the provisions of the Consumer Protection Act, 2019 and, as such, the 'unfair contract' is liable to be declared as null and void?

20. The main contention of the learned counsel for the complainant is that terms of the allotment letter dated 22.03.2012 Ex.C-2 and Flat Buyer's Agreement dated 16.05.2012 Ex.C-3, are unfair. The specific challenge is to Clause 3 contained in allotment letter Ex.C-2 and Clauses 19(a), 19(b), 20(a), 21, 22, 23, 25 etc. of Flat Buyer's Agreement Ex.C-3.

21. Section 2(46) of the Act defines "unfair contract" and it reads as under:

"Section 2 (46): "unfair contract" means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely:--

(i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or

(ii) imposing any penalty on the consumer, for the breach of contract thereof which is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or

(iii) refusing to accept early repayment of debts on payment of applicable penalty; or

(iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or

(v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or

(vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage."

22. Now, we proceed to examine the alleged unfair terms of allotment letter dated 22.03.2012 Ex.C-2 and Flat Buyer's Agreement dated 16.05.2012 Ex.C-3, in the light of above definition and

their effect on the contract between the parties, as under:

a) Clause 19(a) of the Flat Buyer's Agreement, Ex.C-3, states that possession of the unit is proposed to be delivered to the buyer on 30.11.2014, subject to receipt of all payments punctually, as per terms and on receipt of complete payment of basic sale price and other charges, subject to force majeure circumstances. If delay is due to force majeure circumstances, restrictive direction of the authorities or for reasons beyond the control of the developer, the time for completion shall be deemed to be reasonably extended. This Clause of the Flat Buyer's Agreement is unfair, as it binds the buyer to pay the entire sale price and other charges before delivery of possession of the unit and even in case of non-development of the site and it condones the delay in completion of project, on the basis of so-

called force majeure circumstances out of which many can be well foreseen. This Clause is also unfair, as no reciprocal benefit has been given to the buyer. The identical situation may arise to the allottee/buyer also. Hence, this Clause is unilateral and unfair.

b) Clause 19(b) of the Flat Buyer's Agreement, Ex.C-3, provides that on occurrence of any event delaying possession or contemplated in 19(a) above, the developer reserves its right to alter or vary the terms and conditions of allotment or it may suspend the project for such period as it may consider expedient and no compensation of any nature shall be claimed by the purchaser for the period of delay/suspension of the scheme. In the event of abandoning the project, the developer's liability shall be limited to the refund of the amount paid by the purchaser without any interest. This condition is also one-sided in favour of the builder and in case there has been huge delay in giving possession of the apartment/unit and the scheme is abandoned, not only money invested by the complainant is blocked for long time but also, she is deprived of looking for alternative options during the whole period. No compensation is allowed under such circumstances. Hence, this Clause too is unilateral and unfair.

c) Clause 3 of the allotment letter Ex.C-2, states that all payments shall be made in accordance the manner specified for payment in the enclosed payment plan. In the event of delayed payment, interest shall be charged at the rate of 18% per annum. Similar is ratio of Clause 2(a) of the Flat Buyer' Agreement Ex.C-3. This Clause of the allotment letter is in contravention of Clause 20(b) of the Flat Buyer's Agreement, Ex.C-3, which states that for delay in delivery of possession, the allottee is entitled to compensation of 5/- per sq.ft. per month after allowing the developer a grace period of 90 days after the expiry of stipulated period fixed for delivery of possession. No other compensation of any kind is prescribed. It is to be noted that no time limit for delivery of possession has been fixed nor provision for payment of adequate compensation for delay in handing over possession of the apartment/flat has been made to the complainant till date. Both these clauses of the allotment letter and Flat Buyer's Agreement are one sided. It is apposite to note that in case of delay on the part of the buyer, the developer charge exorbitant rate of interest i.e. 18% per annum, whereas in case default on its part for delivery of possession, it offers a meagre compensation of 5/- per sq.ft. per month. Thus, both these clauses of the allotment letter and Flat Buyer's Agreement being one sided, unfair and detriment to the rights of the consumer/buyer are liable to be set aside.

d) Clause 20(b) of the Flat Buyer's Agreement provides that in case the purchaser fails to take possession after expiry of 30 days from the date of call notice, she shall be deemed to have received the possession and she shall be liable to pay holding charges in addition to the amount payable by her as share of the Govt., Municipal or maintenance/administration charges. This Clause is also unfair, as the buyer is expected to take possession of the unit/plot etc. subject to provision of agreed and basic amenities and Completion and Occupation Certificates issued by the competent authorities, as per Section 14 of the Punjab Apartment and Property Regulation Act, 1995 (in short, "PAPRA"). In the absence of complete possession with all the agreed facilities, the demand of holding charges is one sided and unfair to the detriment of the complainant.

e) Clause 21 of the Flat Buyer's Agreement Ex.C-3 binds the purchaser to pay and/or reimburse to the developer on demand all taxes, levies or assessments whatever levied now or leviable in future on land and/or buildings of the project.

This Clause is also one sided and biased, as the complainant is liable to pay only the applicable taxes, in accordance with law and statute and policy of the Government and not at the whims and fancies of the opposite parties. Hence, unfair.

f) Clause 22 of the Flat Buyer's Agreement Ex.C-3 states that the after taking possession of the unit, the purchaser shall have no claim against the developer in respect of any item or work, which may be alleged not to have been carried out or completed or for any design, specifications, building materials used etc. and she is to occupy the unit without any interference. This Clause of the agreement is totally unfair and one sided. This Clause illegally prohibits any purchaser from raising any kind of dispute with regard to shortcomings in construction of the unit or inferior quality of building material, if used. The purchaser has every right to complain against the hidden shortcomings in the construction, building materials or any work remained to be completed by the developer. Hence, this Clause is also unfair and is liable to set aside.

g) Clause 23 of the Flat Buyer's Agreement Ex.C-23 binds the purchaser, after taking possession or at any time before or thereafter, not to object to the developer constructing or continuing with the construction of other building(s) adjoining and put up additional floors to the same building.

This Clause is also unfair, as the purchaser has every right to object to the developer, in case due to raising of construction in adjoining area, any material interference is caused to the unit allotted to the purchaser. If any loss occurs to the property of the person, who has taken possession of his unit, he/she can always raise his/her concerns with the developer or competent authority in that regard.

h) Clause 25 of the Flat Buyer's Agreement states that the purchaser shall not be entitled to get the name(s) of his nominee(s) substituted in her place. However, the developer may permit such substitution, subject to terms and conditions including payment of such service charges as may be determined by it from time to time.

This Clause of the agreement is biased and unfair, as it gives undue advantage to the Builder. The purchaser has every right to get the name(s) of his/her nominee(s) substituted in his/her place, in

case of need be, without payment of any service charges etc. The developer cannot create any unfounded terms and conditions for such substitution.

23. The above discussion abundantly makes it clear that the terms of the allotment letter Ex.C-2 and Flat Buyer's Agreement, Ex.C-3, are unilateral and onerous, favouring the opposite parties and are covered under the definition of Section 2(46) of the Act being unfair. The list of unfair terms mentioned in this Section is merely indicative and not exhaustive. It shows, how the allotment letter Ex.C-2 and Flat Buyer's Agreement, Ex.C-3, are loaded with unilateral unfair terms of the contract. Furthermore, these terms being unfair cause a significant imbalance in the parties and obligations and the opposite parties have undue advantage over the consumers. This amounts to deficiency in service and unfair trade practice. These terms do not reasonably protect the legitimate interest of the allottee/complainant. The majority of the terms irrevocably bind the complainant/consumer, without any opportunity before the conclusion of contract. The variation in the clauses unilaterally enable the opposite parties to alter the terms of contract without valid reasons, on the basis of presumptive consent. The opposite parties have disproportionate power to amend or cancel the allotment. Such terms have been expressly held to be unfair and one-sided.

24. The Hon'ble Supreme Court in case Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna and Ors. Civil Appeal No.5785 of 2019 decided on 11.01.2021, relying upon the judgments rendered in cases of Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. v. DLF Southern Homes Ltd. 2020 (3) RCR (Civil) 544, has upheld the power of the Consumer Commissions at State and National level to declare such contracts as null and void. The relevant portion is being reproduced herein below:-

"....

19. Whether the terms of the Apartment Buyer's Agreement are one-sided?

The second issue which has been raised by the Apartment Buyers is that the Agreement in this case, contains wholly one-sided clauses, and would not be bound by its terms.

19.1 We have carefully perused the terms of the Agreement, and an analysis of the same reveals that:

a) Under the construction-linked plan, Clause 6 provided that the apartment buyers would be required to deposit 20% of the sale consideration within 45 days of booking of the apartment.

b) Clause 7.4 of the Agreement provides that if there is a delay in payment of an instalment, the apartment buyer would be required to pay Interest on every delayed payment of such instalment @ 20% S.I. p.a.

c) Clause 13.2 of the Agreement provides that if the allottee fails, ignores or neglects to take possession of the said Apartment in accordance with the Notice of Possession,

the allottee shall be liable to pay "Holding Charges" on the super area @ Rs.7.5 per sq. ft. per month.

d) In contrast, Clause 13.3 of the Agreement provides that if the Company fails to offer possession by the end of the Grace Period i.e. 42+6 months, it would be liable to pay Delay Compensation @ Rs.7.5 per sq. ft. of the super area for every month of delay.

Delay compensation at Rs. 7.5 per sq. ft. works out to approximately 0.9% to 1 % Interest per annum. The price per sq. ft of an apartment under the Apartment Buyer's Agreement was Rs. 10,350/- per sq. ft. The compensation payable for delay was Rs. 7.5 per sq. ft. The compensation payable by the Developer for delay in offering possession works out to :

$$7.5/10,350 \times 100 \times 12 = 0.9 \% \text{ to } 1\% \text{ p.a.}$$

e) Clause 13.5 provides that the allottee may opt for termination, only after 42 months from the date of issuance of Fire NOC + 6 months' Grace Period, plus a further period of 12 months.

The Delay Compensation would be payable to the allottee only if the termination was "validly opted". The compensation was limited to a fixed period of 12 months only, and that no other claim whatsoever, whether monetary or otherwise, was payable by the Developer.

f) Clause 13.8 of the Agreement provides that the allottee shall be deemed to have waived all its claims in respect of the area, specifications, quality, construction, any other provision in the apartment against the Developer upon taking possession of the apartment.

g) Clause 21 provides for termination of the Agreement and forfeiture of earnest money by the Developer, if the allottee neglects or fails to make timely payments as stipulated in the Agreement, or fails to exercise the options offered by the Developer.

Clause 21.3 provides that upon such termination, the Appellant Company shall be under no obligation, except to refund the amounts already paid by the allottee, without any interest, and after forfeiting and deducting the earnest money, interest on delayed payments, brokerage / commission / charges, service tax and other amounts due and payable to it. The principal amount after the aforesaid deductions are made, would be refunded at an uncertain future date i.e. after the Developer had sold the apartment allotted to the complainant.

In contrast, the allottee is given a very limited right to cancel the Agreement solely in the event of the clear and unambiguous failure of the warranties of the Company, which leads to frustration of the Agreement on that account. In such case, the allottee will be entitled to a refund of the instalments actually paid, along with interest @ 8% p.a. within a period of 90 days from the date of determination to this effect. No other claim, whatsoever, monetary or otherwise shall lie against the Company.

19.2 The aforesaid clauses reflect the wholly one- sided terms of the Apartment Buyer's Agreement, which are entirely loaded in favour of the Developer, and against the allottee at every step.

The terms of the Apartment Buyer's Agreement are oppressive and wholly one-sided, and would constitute an unfair trade practice under the Consumer Protection Act, 1986.

.....

19.4 Clause 2(1)(r) of the Consumer Protection Act, 1986 defines "unfair trade practice" as follows :-

"2(1)(r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:- " (emphasis supplied) The said definition is an inclusive one, as held by this Court in Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan, (2019) 5 SCC 725 wherein this Court speaking through one of us (J. Indu Malhotra) held :-

"6.1 The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. In Fortune Infrastructure v. Trevor D'Lima [Fortune Infrastructure v. Trevor D'Lima, (2018) 5 SCC 442 : (2018) 3 SCC (Civ) 1] , this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

6.2. The respondent flat purchaser has made out a clear case of deficiency of service on the part of the appellant builder. The respondent flat purchaser was justified in terminating the apartment buyer's agreement by filing the consumer complaint, and cannot be compelled to accept the possession whenever it is offered by the builder. The respondent purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation.

6.3 The National Commission in the impugned order dated 23-10-2018 [GeetuGidwani Verma v. Pioneer Urban Land and Infrastructure Ltd., 2018 SCC OnLine NCDRC 1164] held that the clauses relied upon by the builder were wholly one-sided, unfair and unreasonable, and could not be relied upon. The Law Commission of India in its 199th Report, addressed the issue of "Unfair (Procedural & Substantive) Terms in Contract".

The Law Commission inter alia recommended that a legislation be enacted to counter such unfair terms in contracts. In the draft legislation provided in the Report, it was stated that:

"a contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties."

6.8. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5- 2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(1)(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder."

19.5 In a similar case, this Court in Wg. Cdr.Arifur Rahman Khan & Others v. DLF Southern Homes Pvt. Ltd., 2020 SCC Online SC 667 affirmed the view taken in Pioneer (supra), and held that the terms of the agreement authored by the Developer does not maintain a level platform between the Developer and the flat purchaser. The stringent terms imposed on the flat purchaser are not in consonance with the obligation of the Developer to meet the timelines for construction and handing over possession, and do not reflect an even bargain. The failure of the Developer to comply with the contractual obligation to provide the flat within the contractually stipulated period, would amount to a deficiency of service. Given the one-sided nature of the Apartment Buyer's Agreement, the consumer fora had the jurisdiction to award just and reasonable compensation as an incident of the power to direct removal of deficiency in service.

19.6 Section 14 of the 1986 Act empowers the Consumer Fora to redress the deficiency of service by issuing directions to the Builder, and compensate the consumer for the loss or injury caused by the opposite party, or discontinue the unfair or restrictive trade practices.

19.7 We are of the view that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.

In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement."

25. In view of the law laid down in the above said judgement(s) and detailed discussion held above, we are of the view that the terms of the allotment letter Ex.C-2 and Flat Buyer's Agreement, Ex.C-3, are unfair and are wholly disproportionate to the loss occurred due to any breach of contract. These terms of the contract allow the opposite parties to terminate the contract unilaterally without any reasonable cause. The terms of these contracts, as discussed above, impose on consumer only unreasonable chances, obligations and conditions, which put her to the disadvantage. Hence, we hold that the unfair terms of contract are not binding on the complainant and these terms go to the root of the contract. Accordingly, we declare the contracts in question, as null and void.

26. We have already held about that the contract is null and void. Besides the above reasons, allotment letter Ex.C-2 and Flat Buyer's Agreement, Ex.C-3, are a standard form contracts, which have been prepared by the opposite parties, where the complainant had little or no opportunity to negotiate the terms. The standard form contracts are pretended contracts, that have only the name of contract. They are called contract of adhesion. The opposite parties get expert advice and introduce terms, in the printed forms, which are more favourable to them. They are drafted by the legally skilled persons and standard terms and conditions are prepared by one party and offered to the other on a "take it or leave it" basis. On this ground also, the contract(s), in question, are not sustainable, hence declared null and void. Other Legal Points:

No denial/rebuttal to averments/evidence of the Complainant:

27. The whole purpose of pleadings is to give fair notice to each party of what the opponent's case is and to ascertain with precision the point(s) on which the parties agree and those on which they differ. The purpose is to eradicate irrelevancy. The complaint is a concise statement of facts and if no reply is filed to the complaint, the averments made therein are deemed to have been admitted. For the sake of repetition, it is relevant to mention that the opposite parties failed to appear before this Commission despite service and, hence they were proceeded against ex parte. Thus, all the averments made in the complaint are deemed to have been admitted by the opposite parties and the evidence led by the complainant stands unrebutted; for which an adverse inference is to be drawn against them.

Completion and Occupation Certificates

28. Thus, no documents have been placed on record by the opposite parties, to show that they have communicated the status of the completion of the project/project report, along with proof of development to the complainant at any point of time. Merely demands were being raised by the opposite parties without any proof as to the status of development of the project. The complainant has already paid the entire sale price and other charges. The opposite parties have further failed to prove, by placing any document on record, that the development of the project was completed within the stipulated timeframe. The possession of the unit, in question, was to be delivered up to 30.11.2014. However, there is no whisper of offer of possession from the side of the opposite parties. No Completion and Occupation Certificate has been produced by opposite parties on record to prove that the project/plot, in question, are complete in all respects, along with basic amenities. The delay in getting Completion/Occupation Certificate has been held to be 'deficiency in service' by the Hon'ble Supreme Court in Govindan Raghavan's case (supra). It was held that the Flat/Plot Purchaser cannot be made to take possession, whenever the Builder offered the possession after a substantial delay from the stipulated date. The relevant portion of the case is being reproduced here:-

"....

6. We have heard the learned Counsel for both the parties, and perused the pleadings, and written submissions filed.

6.1. In the present case, admittedly the Appellant Builder obtained the Occupancy Certificate almost 2 years after the date stipulated in the Apartment Buyers Agreement. As a consequence, there was a failure to hand over possession of the flat to the Respondent-Flat Purchaser within a reasonable period. The Occupancy Certificate was obtained after a delay of more than 2 years on 28.08.2018 during the pendency of the proceedings before the National Commission.

In Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243 this Court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a service as defined by Section 2 (o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. In Fortune Infrastructure & Anr. v. Trevor DLima & Ors., (2018) 5 SCC 442 this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

6.2. The Respondent-Flat Purchaser has made out a clear case of deficiency of service on the part of the Appellant Builder. The Respondent Flat Purchaser was justified in terminating the Apartment Buyers Agreement by filing the Consumer Complaint, and cannot be compelled to accept the possession whenever it is offered by the Builder. The Respondent Purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation."

Violation of Provisions of PAPRA

29. The opposite parties have failed to comply with the provisions of the PAPRA. As per Section 3 (General Liabilities of Promoter) of the PAPRA, the opposite parties were required to make full and true disclosure of the nature of their title to the land, on which such project is developed or such building is constructed or is to be constructed, make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land. They were also required to give inspection on seven days' notice or demand of the layout of the colony and plan of development works to be executed in a project, as approved by the prescribed authority in the case of a project. However, the opposite parties have not led any evidence to prove that they have complied with Section 3 of the PAPRA.

30. As per Section 5 (Development of land into Colony) of PAPRA, the opposite parties were liable to obtain permission from the competent authority for developing the project, but they failed to produce on record any such valid permission. So, they also violated Section 5 of PAPRA.

31. As per Section 9 of PAPRA, every builder is required to maintain a separate account in a scheduled Bank, for depositing the amount deposited by the buyers, who intend to purchase the plots/flats/commercial space/unit, but no evidence has been led on the record by the opposite parties to prove that any account has been maintained by them in this respect. As such, the opposite

parties also violated Section 9 of the PAPRA. CONCLUSION AND RELIEF

32. In view of our above discussion, since we have already held that the terms of the contracts, allotment letter Ex.C-2 and Flat Buyer's Agreement, Ex.C-3, are unfair and go to the root of the contracts, which have been held to be null and void, so in these circumstances we have no option but to order for refund of the entire amount deposited by the complainant with the opposite parties towards the price of the flat, in question, etc. along with compensation, on account of financial loss suffered by the complainant for depriving her of the utilization of the said amount during the period it remained with opposite parties, calculated at the rate of 12% per annum from the respective dates of deposit till realization. Besides this, the complainant is also entitled to suitable compensation for the mental agony and harassment etc. suffered by her due to the deficiency in service and unfair trade practice adopted by the opposite parties, including litigation costs and other expenses.

33. Accordingly, the complaint filed by the complainant is partly allowed and following directions are issued to the opposite parties:

i) to refund the entire amount deposited by the complainant, i.e. 33,86,586/- (Rupees Thirty Three Lac Eighty Six Thousand Five Hundred and Eighty Six only), along with compensation, on account of financial loss suffered by the complainant for depriving her of the utilization of the said amount during the period it remained with the opposite parties, calculated at the rate of 12% per annum from the respective dates of deposit till realization, as per Rule 17 of PAPRA; and

ii) to pay 33,000/- (Rupees Thirty Three Thousand only) as compensation for the mental agony and harassment etc. suffered by the complainant, including litigation costs and other expenses.

34. The compliance of this order shall be made by the opposite parties within a period of 30 days of the receipt of certified copy of the order.

(JUSTICE PARAMJEET SINGH DHALIWAL) PRESIDENT (RAJINDER KUMAR GOYAL)
MEMBER (MRS. KIRAN SIBAL) May 17, 2021. MEMBER (Gurmeet S)