

Paramjit Kaur Gill vs M/S Puma Realtors Private Limited on 8 August, 2017

Daily Order

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

U.T., CHANDIGARH

Consumer Complaint

:

230 of 2017

Date of Institution

:

17.03.2017

Date of Decision

:

08.08.2017

Paramjit Kaur Gill W/o Gurmail Singh

Correspondence Address: - 679-E, BRS Nagar, Ludhiana, Punjab.

.....Complainant

Versus

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

....Opposite Party.

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

BEFORE: JUSTICE JASBIR SINGH (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 Party.

PER DEV RAJ, MEMBER The facts, in brief, are that one Samir Singh S/o Late Maj. Arbinder Singh resident of House No. 47, Sector 19-A, Chandigarh and Ms.Bhupinder Kaur W/o Late Brig. D.D. Singh VSM resident of House No. 199, G.F., Sector 45-A, Chandigarh applied to the opposite party for the allotment of a residential plot, in their project and paid a sum of Rs.6,00,000/- vide receipt dated 26.04.2011 (Annexure C-1). He was allotted plot No.128, in the residential project "IREO Hamlet" approximately measuring 250.59 square yards, Sector 98, S.A.S. Nagar, Mohali, Punjab vide provisional allotment letter dated 29.04.2011 (Annexure C-2) alongwith Time Linked Payment Plan, according to which, the allottee was required to pay 95% of the total sale consideration within 18 months, from the date of booking and remaining 5% of the sale consideration + miscellaneous charges were to be paid on delivery of possession. The opposite party received an amount of

Rs.1,13,474/- from Sh. Samir Singh and issued a receipt dated 16.08.2011 (Annexure C-3). Plot Buyer's Agreement (Annexure C-4) was executed between the original allottees and the opposite party at Chandigarh on 18.08.2011. The basic sale price of plot, in question, was Rs.55,12,980/- and the allottee was also required to pay Rs.1275.10 per square yard of the plot area towards External Development Charges i.e. Rs. 3,19,527.30 and Rs.350/- per square yard towards IFMS, i.e. Rs.87,706.50, totaling Rs.59,20,213.81. As per Clause 21.2 of the Agreement, the opposite party was to develop the said project by laying roads, water lines, sewer lines, electrical lines etc. Further as per Clause 11.1 of the said Agreement, the opposite parties were liable to hand over physical possession of plot 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. by February 2014.

It was further stated that in September 2011, the complainant, an NRI, approached the opposite party for purchase of a plot exclusively for the purpose of her residence and for her family members, by constructing house thereon as she did not have a residential house in India. The complainant came to know about plot No.128 and with the intervention of the opposite party, the predecessor of the complainant agreed to transfer all rights pertaining to the said plot in the name of the complainant. The opposite party received Rs.10,67,287/- from the complainant and the complainant paid an amount of Rs.12,13,474/- to Samir Singh, the original allottee, vide cheques bearing no.034529, 034530, 034531 and 034533, dated 15.09.2011, 15.09.2011, 15.09.2011 and 16.09.2011, amounting to Rs.4,13,474/-, Rs.10,67,287/-, Rs.5,00,000/- and Rs.3,00,000/- respectively (Annexure C-5 to C-8). The opposite party issued a receipt dated 17.09.2011 for having received an amount of Rs.10,67,287/- (Annexure C-9). Thereafter the opposite party received an amount of Rs.28,551/- from the complainant towards the transfer charges (Annexure C-10) and the plot was transferred in the name of the complainant vide endorsement dated 22.09.2011.

Thereafter the opposite party vide letter dated 28.09.2011 (Annexure C-11) changed the payment plan from 'TIME LINKED' to 'DEVELOPMENT LINKED' and as per the demands raised by the opposite party through letter dated 30.04.2013 (Annexure C-12), the complainant paid Rs.9,59,621.86 vide cheques dated 27.05.2013 and 28.05.2013 (Annexure C-13 and C-14). Thus, by May 2013, the opposite party had already received the amount of Rs.27,40,412/- in respect of plot No.128. It was further stated that since as per the Agreement, possession of plot was to be handed over by February 2014, the complainant waited patiently for demand of further payments and delivery of possession. Thereafter, the opposite party issued a last and final opportunity letter dated 13.06.2014 for balance payment of Rs.10,34,024.24 and the complainant paid an amount of Rs.9,59,594/- vide receipt dated 08.07.2014 (Annexures C-15 and C-16). It was further stated that the opposite party kept silent and did not make any demand, upon which, the complainant visited the site to see the development, but was surprised to see that it was being done at a

snail speed. It was further stated that the complainant kept on visiting the Chandigarh office of the opposite party to know about delivery of possession as she wanted to start construction but they did not entertain her request and lingered on the matter on one pretext or the other and told her that possession would be delivered soon. It was further stated that by July 2014, the opposite party received an amount of Rs.37,00,000/- approximately out of the total sale consideration of Rs.57,00,923/- yet possession of the plot was not even offered to her. It was further stated that the complainant again visited the site in the year 2015 and was shocked to see that still the development work was being carried out at a very snail speed, whereas on the other hand the opposite party had been making demands on false grounds of development work at pace. Even there were no motor roads and connecting roads to the site, plot nos. were not marked, no boundary walls were made and basic amenities such as electricity, roads, water etc were not provided. The complainant met the officials of the opposite party and requested them to apprise with regard to the completion of development work at the site and delivery of possession of plot but they did not give any satisfactory reply and told that it would be delivered shortly.

It was further stated that the opposite party issued notice of possession letter dated 12.05.2015 (Annexure C-17). It was further stated that on receipt of above notice of possession, the complainant again visited the site and found that still the project was not complete for want of basic amenities and approvals/sanctions, but on the other hand the opposite party had issued dummy possession letter. Subsequently, the opposite party issued a letter dated 29.06.2015 (Annexure C-18) informing the complainant about non completion of basic amenities clearly proving the unfair trade practices. It was further stated that the opposite party is not even ready with basic amenities to be provided to the allottees, which fact is established from letter dated 29.06.2015 issued by themselves only, after offer of possession and, thus notice of possession letter dated 12.05.2015 is just a piece of paper issued by the opposite party in a haste manner, with a view to evade their liability. It was further stated that the acts of the Opposite Party amounted to deficiency, in rendering service and indulgence into unfair trade practice.

5. Alleging deficiency, in rendering service, and indulgence into unfair trade practice, on the part of the Opposite Party, the complainant filed the instant complaint under Section 17 of the Consumer Protection Act 1986 (in short 1986 Act) claiming refund of Rs.37,96,373/- alongwith interest @18% p.a. from the respective dates of deposits, Rs.5,00,000/- as compensation on account of mental agony & physical harassment and Rs.1,00,000/- as cost of litigation.

6. The Opposite Party, in its written statement, 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 18.08.2011; that present complaint related to the enforcement of agreement to sell/purchase of a

residential plot i.e. an immovable property and hence was not covered under the Act; that the complainant did not hire any services of the Opposite Party, as the parties did not enter into any contract for hiring the services and the contract was only to sell a piece of land to the complainant; that the complainant did not purchased the plot for her personal use but for investment/commercial purpose as her nationality has been mentioned as Canadian and she is holder of Passport issued by the Authorities of Canada and that the allegations in the complaint being of contractual nature, were only triable by the Civil Court. It was further pleaded that jurisdiction issues be decided as preliminary issues and only thereafter, decision be taken on merits. Apart from above objections, a specific objection with regard to the territorial jurisdiction of this Commission on account of existence of Clause 35 in the Agreement has been raised stating that the Courts at Mohali and the Punjab & Haryana High Court at Chandigarh alone had the jurisdiction.

7. On merits, it was stated that the complainant is a subsequent purchaser and the Opposite Party transferred/assigned the allotment rights of the plot, in question, in her favour vide letter dated 27.09.2011 (Annexures OP-30/31). It was further stated that original allottee vide recital No.'K' of the said Agreement herself represented that he was not influenced by any kind of sales brochures, advertisements, representations, warranties etc. and he had relied upon his own independent investigations while deciding to purchase the plot, in question. It was further stated that the total sale consideration price of the plot, in question, was Rs.61,08,156/- and not Rs.59,20,213.81, as alleged. It was denied that the possession was to be delivered within 30 months or latest by February 2014 but the same was subject to timely payment of installments. It was further stated that the period to offer possession of the unit, in question, was to travel beyond 30 months. It was agreed vide Clause 11.1 of the Agreement that the complainant shall punctually pay the due installments in time and further, if the Opposite Party failed to offer possession on expiry of grace period (30 months), the Opposite Party shall be liable to pay compensation @50/- per sq. yard per month till actual date fixed for handing over of possession. It was further stated that the possession was offered vide letter dated 04.05.2015 (at the time of arguments, the same was agreed to be offered on 12.05.2015 as per notice offering possession placed on record by the complainant as Annexure C-17). It was further stated that the complainant duly accepted the change in payment plan by signing the same. It was further stated that the original allottee and the complainant defaulted in making payment of installments, which were paid belatedly.

8. It was further stated that development work commenced on site w.e.f. 01.05.2013 and stood carried on continuously in a phased manner at a good pace till April, 2015 and resultantly, the Opposite Party started process of handing over of the developed plots by way of issuing notices of possession to various allottees w.e.f. May 2015. It was denied that there was no development at the site either in April 2015 or in May 2015. It was further stated that all basic amenities/facilities for handing over

a plot, were in existence at the site at the time of offer of possession on 12.05.2015. It was further stated that even the report of Local Commissioner filed in complaint titled 'Abha Arora Vs. PUMA Realtors Pvt. Ltd. and another', bearing No.170 of 2015, clearly unveils the false allegations made by the complainant.

9. It was further stated that since the Opposite Party has been granted exemption from the provisions of the Punjab Apartment and Property Regulation Act, 1995 (in short 'PAPRA 1995') by the Govt. of Punjab, the Opposite Party was/is not under any obligation to obtain the completion certificate under PAPRA 1995. It was further stated that letter dated 29.06.2015 was in no way any admission of non completion of amenities, as alleged.

10. It was further stated that the Opposite Party is possessed of all the necessary approvals and permissions to sell, develop and offer possession of the plots to its allottees but not limited to the notification dated 14.08.2008 issued by Government of Punjab exempting the Opposite Party from the provisions of the Punjab Apartment and Property Regulation Act, 1995 (in short 'PAPRA 1995'). It was further stated that NOC for withdrawal of ground water was granted on 19.08.2011, environmental clearance was granted on 30.11.2012; NOC by Punjab Pollution Control Board was granted on 14.05.2013, which was then extended vide letters dated 09.12.2014 & 29.06.2015; NOC for various services subject to fulfilling number of conditions was given on 18.05.2015; NOC by PSPCL was granted on 08.07.2015; approval for commissioning of electrical installations was accorded on 07.08.2015; consent to operate was granted by Punjab Pollution Control Board on 05.01.2016 and Bank Guarantee to the tune of Rs.3,24,10,301/- was submitted to PSPCL on 22.03.2016. It was further stated that neither there was any deficiency, in rendering service, on the part of the Opposite Party, nor it indulged into any unfair trade practice. The remaining averments, were denied, being wrong.

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

12. The Opposite Party, in support of its case, submitted the affidavit of Shri Rohit Tanwar, its Authorised Representative, by way of evidence, alongwith which, a number of documents were attached.

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

14. It is evident, on record, that Plot No.128 in the residential project "IREO Hamlet" admeasuring 250.59 sq. yard, Sector 98, SAS Nagar, Mohali, was allotted vide provisional allotment letter dated 29.04.2011 (Annexure C-2), to Mr. Samir Singh and as per details of Plot (at page 42 of the complaint), basic sale price of the said plot was Rs.22,000/- per sq. yard besides External Development Charges (EDC)

@Rs.1,275.10 per sq. yard, Preferential Location Charges (PLC) @Rs.750/- per sq. yard and IFMS charges @Rs.350/- per sq. yard. Admittedly, Plot Buyer's Agreement was executed between Mr. Samir Singh, Mrs. Bhupinder Kaur (co-allottee) and the Opposite Party on 18.08.2011 (Annexure C-4) at Chandigarh. The payment against the aforesaid plot was to be regulated as per payment plan annexed with the Agreement as Annexure I. Vide letter dated 28.09.2011 (Annexure C-11), 'Time Linked Payment Plan' was changed to 'Development Linked Payment Plan'. Onward rights/ obligations with respect to the said plot were assigned in the name of the complainant, Mrs. Paramjit Kaur Gill vide letter dated 27.09.2011 (Ann. OP-31). Against the total price of the plot including External Development Charges, Preferential Local Charges and IFMS Charges, in the sum of Rs.61,25,578.58, as per Statement of Account (Annexure C-36), the Opposite Party received an amount of Rs.37,00,006.00 towards installments including IFMS + Rs.67,816.00 towards delayed interest, totaling Rs.37,67,822.00. The last payment made by the complainant was on 08.07.2014. As admitted by the Opposite Party, the development work started at the site only on 01.05.2013, almost two years after the execution of Plot Buyer's Agreement dated 18.08.2011. The possession was offered on 12.05.2015 i.e. before filing of the present complaint on 17.03.2017. The case of complainant is that possession offered was without development of the site and basic amenities.

15. The first question, that falls for consideration, is, as to whether, in the face of existence of arbitration clause in the Agreement, to settle disputes between the parties through Arbitration, in terms of provisions of Section 8 (amended) of 1996 Act, this Commission has no jurisdiction to entertain the consumer complaint. It may be stated here that this Commission in case titled 'Sarbjit Singh Vs. Puma Realtors Private Limited', IV (2016) CPJ 126, noted that litigation in the Consumer Fora is cost effective. The complaint in the State Commission can be filed by making payment between Rs.2,000/- to Rs.4,000/- only. Whereas, as per principal Act (1996 Act), the consumer will be forced to incur huge expenses towards his/her share of arbitrator's fee. As per mandate of 1986 Act, a complaint is proposed to be decided within three months from the date of service of the other party. On the other hand, it is admissible to an Arbitrator to decide a dispute within one year. Thereafter, the Court wherever it is challenged may also take upto one year and then there is likelihood that the matter will go to the High Court or the Hon'ble Supreme Court of India. Such an effort will be a time consuming and costly one. Taking note of fee component and time consumed in arbitration, it was observed that if the matter is referred to an Arbitrator, it would defeat the very purpose of the provisions of 1986 Act. Paras 26, 33 and 34 of the said order, inter-alia, being relevant, are extracted hereunder:-

"26. To decide above said question, it is necessary to reproduce the provisions of Section 3 of the Consumer Protection Act 1986 (in short the Act), 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."

33. The 1986 Act provides for better protection of interests and rights of the consumers. For the said purpose, the Consumer Foras were created under the Act. In Section 3 of 1986 Act, it is clearly provided that the said provision is in addition to and not in derogation of any provisions of any other law, for the time being in force. The 1986 Act is special legislation qua the consumers. The poor consumers are not expected to fight the might of multinational companies/traders, as those entities have lot of resources at their command. As stated above, in the present case, the complainant has spent his entire life earnings to purchase the plot, in the said project, launched by the opposite party. However, his hopes were shattered, when despite making substantial payment of the sale consideration, he failed to get possession of the plot, in question, in a developed project. As per ratio of the judgments in the case of Secretary, Thirumurugan Cooperative Agricultural Credit Society v. M. Lalitha (2004) 1 SCC 305 and United India Insurance Co. Ltd. Vs. M/s Pushpalaya Printers, I (2004) CPJ 22 (SC), and LIC of India and another Vs. Hira Lal, IV (2011) CPJ 4 (SC), the consumers are always in a weak position, and in cases where two interpretations are possible, the one beneficial to the consumer needs to be accepted. The opinion expressed above, qua applicability of Section 8 (amended) of 1996 Act, has been given keeping in mind the above said principle.

34. Not only this, recently, it was also so said by the National Commission, in a case titled as Lt. Col. Anil Raj & anr. Vs. M/s. Unitech Limited, and another, Consumer Case No.346 of 2013, decided on 02.05.2016. Relevant portion of the said case, reads thus:-

"In so far as the question of a remedy under the Act being barred because of the existence of Arbitration Agreement between the parties, the issue is no longer res-integra. In a catena of decisions of the Hon'ble Supreme Court, it has been held that even if there exists an arbitration clause in the agreement and a Complaint is filed by the consumer, in relation to certain deficiency of service, then the existence of an arbitration clause will not be a bar for the entertainment of the Complaint by a Consumer Fora, constituted under the Act, since the remedy provided under the Act is in addition to the provisions of any other law for the time being in force. The reasoning and ratio of these decisions, particularly in Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha (Dead) Through LRs. & Others - (2004) 1 SCC 305; still holds the field, notwithstanding the recent amendments in the Arbitration and Conciliation Act, 1986. [Also see: Skypak Couriers Ltd. Vs. Tata Chemicals Ltd. - (2000) 5 SCC 294 and National Seeds Corporation Limited Vs. M. Madhusudhan Reddy & Anr. - (2012) 2 SCC 506.] It has thus, been authoritatively held that the protection provided to the Consumers under the Act is in addition to the remedies available under any other Statute, including the consentient arbitration under the Arbitration and Conciliation Act, 1986."

Same is the ratio of recent judgment passed by Hon'ble National Commission on 13.07.2017 in case titled 'Aftab Singh Vs. Emaar MGF Land Ltd. & Anr.', in Consumer Complaint No.701 of 2015, with IA/247/2016, IA/505/2017, IA/7294/2015, IA/9570/2015 & IA/11813/2016.

In view of the above, the plea taken by the Opposite Party, that in the face of existence of arbitration clause in the Agreement, to settle disputes between the parties through Arbitration, in terms of provisions of Section 8 (amended) of 1996 Act, this Commission has no jurisdiction to entertain the consumer complaint, being devoid of merit, is rejected.

16. To defeat claim of the complainant, the next objection raised by the Opposite Party was that the complainant, is a Passport holder of Canada, being NRI, she had purchased the plot, in question, for investment/commercial purpose i.e. for resale, as and when there was escalation in the prices of real estate, as such, she would not fall within the definition of consumer, as defined by Section 2(1)(d)(ii) of 1986 Act. It may be stated here that there is nothing, on record to show, that the complainant is a property dealer, and is indulged in sale and purchase of property, on regular basis. Moreover, the complainant in Para 11 of the complaint has clearly stated that she approached the Opposite Party for purchase of a plot exclusively for the purpose of residence and for family members, by constructing house thereon as she did not have a residential house in India. Even otherwise, the mere fact that it was a residential unit, which was endorsed, in favour of the complainant, was sufficient to prove that it was to be used for the purpose of residence, by the complainant. As regards objection taken by the Counsel for the Opposite Party that the complainant is NRI, no law debar an NRI, who basically belonged to India, to purchase a residential property in India. Under similar circumstances, the Hon'ble National Commission, in a case titled as Smt. Reshma Bhagat & Anr. Vs. M/s Supertech Ltd. Consumer Complaint No. 118 of 2012, decided on 04.01.2016, held as under:-

"We are unable to clap any significance with these faint arguments. It must be borne in mind that after selling the property at Bangalore, and in order to save the money from riggers of capital gain tax, under Section 54 of the Income Tax Act, 1961, there lies no rub in getting the property, anywhere, in whole of India. There is not even an iota of evidence that they are going to earn anything from the flat in dispute. From the evidence, it is apparent that the same had been purchased for the residence of the complainants. Moreover, Sh. Tarun S. Bhagat, who is an independent person. It cannot be made a 'rule of thumb' that every NRI cannot own a property in India. NRIs do come to India, every now and then. Most of the NRIs have to return to their native land. Each NRI wants a house in India. He is an independent person and can purchase any house in India, in his own name."

In the absence of any cogent evidence, in support of the objection raised by the Opposite Party, mere bald assertion to that effect, cannot be taken into consideration. It may be stated here that in a case titled as Kavita Ahuja Vs. Shipra Estate Ltd. and Jai Krishna Estate Developer Pvt. Ltd., Consumer Complaint No.137 of 2010, decided on 12.02.2015, by the National Consumer Disputes Redressal Commission, New Delhi, it was held that the buyer(s) of the residential unit(s), would be termed as consumer(s), unless it is proved that he or she had booked the same for commercial purpose. The

principle of law, laid down, in Kavita Ahuja's case (supra) is fully applicable to the present case. Under these circumstances, by no stretch of imagination, it can be said that the plot, in question, was purchased by the complainant, by way of investment, with a view to earn profit, in future. Similar view was reiterated by the National Commission, in DLF Universal Limited Vs Nirmala Devi Gupta, 2016 (2) CPJ 316. Not only above, recently under similar circumstances, in a case titled as "Aashish Oberai Vs. Emaar MGF Land Limited", Consumer Case No.70 of 2015, decided on 14 Sep. 2016, the National Commission, while rejecting similar plea raised by the builder, observed as under:-

"In the case of the purchase of the house which a builder undertakes to construct for the buyer, the purchase can be said to be for a commercial purpose where it is shown, by producing evidence, that the buyer is engaged in the business of a buying and selling of houses and or plots as a trading activity, with a view to make profits by sale of such houses or plots. A person cannot be said to have purchased a house for a commercial purpose only by proving that he owns or had purchased more than one houses or plots. In a given case, separate houses may be purchased by a person for the individual use of his family members. A person owning a house in a city A may also purchase a house in city B for the purpose of staying in that house during short visits to that city. A person may buy two or three houses if the requirement of his family cannot be met in one house. Therefore, it would not be correct to say that in every case where a person owns more than one house, the acquisition of the house is for a commercial purpose. In fact, this was also the view taken by this Commission in Rajesh Malhotra & Ors. vs. Acron Developers Pvt. Ltd. & Ors. First Appeal No.1287 of 2014 decided on 05.11.2015."

The principle of law, laid down, in the aforesaid cases, is fully applicable to the present case. The facts of the case titled 'Ashok Cheriyan Vs. Kerala Trade Centre and Ors.', II (2017) CPJ 71 (NC), relied upon by Counsel for the Opposite Party are distinguishable on facts. In that case, the complainant owned a residential house in Tharakantangu besides three residential houses in Cochin at the time the flat was booked. The complainant, thus, falls within the definition of a 'consumer', as defined under Section 2(1)(d) of the Act. Such an objection, taken by the Opposite Party, in its written reply, therefore, being devoid of merit, is rejected.

17. Another objection raised by Counsel for the Opposite Party was that since the complainant did not buy goods and did not hire any services, and was seeking enforcement of the Agreement in respect of immovable property, therefore, only a Civil Court can decide the complaint, and consumer complaint was not maintainable. It may be stated here, that the complainant hired the services of the Opposite Party, for purchasing the plot, in question, in the manner, referred to above. According to Clause 11.1 of the Agreement, subject to force majeure conditions and reasons, beyond the control of the Opposite Party, it was to deliver physical possession of the unit, within a period of 30 months i.e. (24 months + 6 months grace period), from the date of execution of the same (Agreement), with complete basic amenities, as provided in Clause 21.2. Section 2 (1) (o) of the Act,

defines service as under:-

"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service"

From the afore-extracted Section 2(1)(o) of the Act, it is evident that housing/construction, also comes within the definition of a service. In *Narne Construction P. Ltd., etc. etc. Vs. Union Of India and Ors. Etc., II* (2012) CPJ 4 (SC), it was held that when a person applies for the allotment of a building or site or for a flat constructed by the Development Authority and enters into an agreement with the Developer, or the Contractor, the nature of transaction is covered by the expression 'service' of any description. Housing construction or building activity carried on by a private or statutory body constitutes 'service' within the ambit of Section 2(1)(o) of the Act. Similar principle of law, was laid down, in *Haryana Agricultural Marketing Board Vs. Bishambar Dayal Goyal & Ors.* (AIR 2014 S.C. 1766). Under these circumstances, the complaint involves the consumer dispute, and the same is maintainable. Not only this, Section 3 of the Act provides an alternative remedy. Even if, it is assumed that the complainant has a remedy to file a suit in the Civil Court, the alternative remedy provided under Section 3 of the Act, can be availed of by her, as she falls within the definition of consumer, as stated above. In this view of the matter, the objection of Opposite Party, in this regard, being devoid of merit, must fail, and the same stands rejected.

18. The next objection raised by the Opposite Party is that Clause 35 in the Plot Buyer Agreement, bars the territorial jurisdiction of this Commission, to entertain and try the complaint. It may be stated here that this issue has already been dealt with in detail by this Commission in the case of '*Jarnail Singh Sandhu Vs. M/s Puma Realtors Pvt. Ltd. & Anr.*', Consumer Complaint No.173 of 2016 decided on 02.09.2016. Para 19 of the said judgment, being relevant is, inter-alia, extracted hereunder:-

"19.....It may be stated here that according to Section 17 of the Act, a consumer complaint could be filed by the complainant, before the State Consumer Disputes Redressal Commission, within the territorial Jurisdiction whereof, a part of cause of action arose to him. In the instant case, it is evident, that receipt dated 12.07.2011 in the sum of Rs.9,37,500/- (Annexure C-I), provisional allotment letter dated 04.08.2011 (Annexure C-II), receipt dated 15.10.2011 in the sum of Rs.10,53,130.58 (Annexure C-III), letter dated 26.09.2011 regarding offer for change of payment plan (Annexure C-IV) and two receipts dated 13.08.2013 (Annexure C-V colly.) were issued by the Chandigarh office of the Opposite Parties i.e. Puma Realtors Private Limited, S.C.O. no.6-7-8, Second Floor, Sector 9-D, Chandigarh. Since a part of cause of action, arose to the complainant, at Chandigarh, this Commission has got territorial Jurisdiction to entertain and decide the complaint. A similar question arose, before the National Commission, in *Smt. Shanti Vs. M/s. Ansal*

Housing & Construction Ltd., First Appeal No.142 of 2001 decided by the National Commission on 11.04.2002, wherein the National Commission held as under:-

"This appeal is directed against the order dated 9.4.2001 of the Delhi Consumer Disputes Redressal Commission non suiting the appellant on a preliminary issue holding that Delhi State Consumer Dispute Redressal Commission will have no jurisdiction to entertain the complaint.

What led the State Commission to pass this order was clause 24 of the agreement for allotment of residential flat to the appellant. It is stated that 'any dispute arising out of this agreement shall be subject to jurisdiction of Lucknow Courts only'. State Commission also relied on the decision of the Supreme Court in the case of A.B.C. Laminart Pvt. Ltd. & Anr. Vs. A.P. Agencies, Salem - AIR 1989 SC 1239 to hold that only the courts in Lucknow would have jurisdiction.

We do not think State Commission examined the whole issue in a pragmatic manner. Complainant is a consumer and raised a consumer dispute under the Consumer protection Act, 1986. To help and assist a consumer and to achieve the objects of the Act, Section 11 of the Act was amended. This Section relates to the jurisdiction of the District Forum. Now a complaint could be filed against the opposite party not only at the place where he actually or voluntarily reside or personally works for gain but also where he carries on business or has branch office. The words "carries on business or has a branch office" were added by the amending Act of 1993. Jurisdiction of a District Forum is exclusively covered by Section 11 of the Act. For this we do not have to refer any provisions of the Code of Civil Procedure. Any provision of the agreement which oust the jurisdiction of a District Forum even from a place where the opposite party has a branch office cannot be held to be valid or binding. Moreover, the clause on which the complainant was non-suited refers to the jurisdiction of Lucknow Courts. District Forum is not a court as understood in the Code of Civil Procedure. That clause in the agreement will have no meaning as far as jurisdiction of the District Forum where the opposite party has even branch office is concerned.

National Commission has already taken a view on this aspect of the matter. Accordingly the impugned order of the State Commission is set aside and the matter is remanded to the State Commission to decide the complaint in accordance with law. Party shall appear before the State Commission on 8.7.2002 for further directions. This appeal is disposed of as above."

It may be stated here that, for determining the territorial jurisdiction, to entertain and decide the complaint, the Consumer Foras are bound by the provisions of Section 11 of the Act. In Associated Road Carriers Ltd., Vs. Kamlander Kashyap & Ors.-I (2008) CPJ 404 (NC), the principle of law, laid down, by the National Commission, was to the effect, that a clause of jurisdiction, by way of an agreement, between the parties, could not be made applicable, to the consumer complaints, filed

before the Consumer Foras, as the Foras are not the Courts. It was further held, in the said case, that there is a difference between Section 11 of the Act, and the provisions of Sections 15 to 20 of the Civil Procedure Code, regarding the place of jurisdiction. Further, in *Ethiopian Airlines Vs Ganesh Narain Saboo*, IV (2011) CPJ 43 (SC)=VII (2011) SLT 371, the principle of law, laid down was that the restriction of jurisdiction to a particular Court, need not be given any importance in the circumstances of the case. In *Cosmos Infra Engineering India Ltd. Vs Sameer Saksena & another* I (2013) CPJ31 (NC) and *Radiant Infosystem Pvt. Ltd. & Others Vs D. Adhilakshmi & Anr.*, I (2013) CPJ 169 (NC) the agreements were executed, between the parties, incorporating therein, a condition, excluding the jurisdiction of any other Court/Forum, in case of dispute, arising under the same, and limiting the jurisdiction of the Courts/Forums at Delhi and Hyderabad. The National Commission, in the aforesaid cases, held that such a condition, incorporated in the agreements, executed between the parties, excluding the jurisdiction of a particular Court/Forum, and limiting the jurisdiction of a particular Court/Forum, could not be given any importance and the complaint could be filed, at a place, where a part of cause of action arose, according to Section 11 of the Act. The principle of law, laid down, in the aforesaid cases, is fully applicable to the instant case. At the same time, it is also held in the face of case *Ethiopian Airlines Vs Ganesh Narain Saboo's* (supra), decided by the Supreme Court of India, the judgment titled as *M/s Taneja Developers and Infrastructure Limited Vs. Gurpreet Singh and another*, First Appeal No.33 of 2014, decided on 25.02.2016, by the National Commission, reliance whereupon has been placed by Counsel for the opposite parties, to support his contention, that this Commission has no territorial jurisdiction, shall not hold the field. In these circumstances, such a Clause contained in the Agreement, therefore, could not exclude the jurisdiction of this Commission, at Chandigarh, where a part of cause of action accrued to the complainant, to file the complaint. The objection taken by the Opposite Parties, in this regard, being devoid of merit, must fail, and the same stands rejected."

In the instant case, provisional allotment letter dated 29.04.2011 (Annexure C-2), receipt dated 16.08.2011 (Annexure C-3) and possession letter dated 12.05.2015 (Annexure C-17) were issued from the Chandigarh Office of the Opposite Party. Not only this, the Plot Buyer's Agreement dated 18.08.2011 was also executed between the parties at Chandigarh. Since a part of cause of action arose to the complainant at Chandigarh, this Commission has got territorial jurisdiction to entertain and decide the complaint.

In view of above, this objection raised by the Opposite Party stands rejected.

19. The next question, which falls for consideration, is, as to whether the possession offered vide letter dated 12.05.2015 (Annexure C-17) was complete and proper or not. The Counsel for the complainant submitted that possession of the plot, in question, offered vide letter dated 12.05.2015 was of undeveloped plot/project.

20. The complainant has challenged the offer of possession dated 12.05.2015 by filing the instant complaint for lack of development at the site. It has been stated in Para 20 of the complaint that she visited the site in 2015 and found that there was no development at the site, which was to be done by

the Opposite Party by laying Roads, Water Lines, Sewer Lines, Electrical Lines etc. No doubt, nothing by way of evidence has been placed on record but apparently there was promise to make development and then offer/hand over possession of the plot, to the complainant.

21. Undoubtedly, Opposite Party was duty bound to provide all basic facilities like roads, sewerage, drinking water, electricity, street lights, drainage etc. There is nothing, on record, that complete development, in respect of the plot, in question, and amenities at the site as promised, as per the Agreement, were available at the site. The complainant has alleged deficiency in regard to development and approvals. It may be stated here that certain approvals such as electrical installations, NOC subject to making arrangements for suitable provision for drinking water supply and safe disposal of sullage/storm discharge and solid waste management, are inter-linked with development and basic amenities. The fact that certain amenities and approvals were complete/obtained after offer of possession, clearly proves deficiency of the Opposite Party, as is evident from the position indicated hereinafter.

22. When we look into inter se communication between the parties, it becomes apparently clear that there was a promise to make development and then hand over possession of the plot, to the complainant. From letter dated 29.06.2015 of the Opposite Party (Annexure C-18), which was issued a month prior to offer of possession, the Opposite Party admitted that the following amenities were yet to be completed:-

Internal roads not complete as it could be damaged on account of movement of trucks carrying heavy construction material.

In process of completing the balance blacktopping work also.

The work of roads would be taken up after considerable number of houses are constructed by the allottees.

Only temporary electricity connection would be made available for construction.

External roads, networks and infrastructure are the responsibility of Government and the opposite parties are following up with the Government to do so.

Sewerage treatment plant has not been constructed and will be taken when there is adequate habitation.

For construction purpose water can be purchased from any authorised vendor permitted by Panchayat, Irrigation department, GMADA etc. Thus, the averment of the complainant that the basic amenities like roads and sewerage were not complete/developed at the site, stands corroborated from the contents of aforesaid letter. The position stated hereinafter also clearly reveals that development/amenities were not complete when possession of the plot, in question, vide letter dated 12.05.2015 was offered by the Opposite Party.

23. In Memo No.5001 dated 7.8.2015 (Annexure OP-21), which is letter from the Chief Electrical Inspector to Govt. Punjab, Patiala, to M/s IREO Hamlet (Residential Township Sector 98, Mohali, it is stated that inspection of subject cited electrical installation was carried out by the Electrical Inspectorate and the same was found to be conforming to the relevant provisions of Central Electricity Authority (Measure relating to safety and Electric Supply) Regulations, 2010 and the installations were approved for commissioning but clearly, this approval was accorded after offer of possession vide letter dated 12.05.2015.

24. Even the final NOC to the Opposite Party for 85.25 Acres residential township in Sectors 86, 98 and 99 in Village Sambhalkhi, SAS Nagar, Mohali was accorded by Punjab State Power Corporation Limited on 8.7.2015 (Annexure OP-20), after offer of possession on 12.05.2015. Further letter dated 18.05.2015 (Annexure OP-19) from Greater Mohali Area Development Authority (GMADA), informing the Opposite Parties that ".....Therefore, the arrangements for suitable provision for drinking water supply and safe disposal of sullage/storm discharge and solid waste management shall be made by promoter at his level separately and he shall obtain all necessary approvals from the concerned Authorities as per law in this regard independently. The construction work shall commence only after obtaining approvals as per law from the concerned Authorities....." was issued after offer of possession. As per this letter, number of other conditions were also required to be complied with by the promoter. The Opposite Party has not stated whether it complied with the aforesaid conditions. Further, consent to operate an outlet for discharge of the effluent u/s 25/26 of Water (Prevention & Control of Pollution) Act, 1974 was granted to the Opposite Parties vide letter dated 05.01.2016 (Annexure OP-22) i.e. after offer of possession. It may also be stated here that the Opposite Party furnished Bank Guarantee dated 22.03.2016 (Annexure OP-23) with expiry date/claim expiry date as 21.03.2021 in the sum of Rs.3,24,10,301/- to the PSPCL, after offer of possession. As such, the Opposite Party had neither completed the development nor did it has all the necessary sanctions/approvals from the Competent Authorities up-till 12.05.2015 when offer of possession was made. The contention of the complainant that possession offered was not a valid and proper possession is, thus, corroborated from the evidence on record. It is, therefore, held that the Opposite Party was not only deficient, in rendering service but also indulged into unfair trade practice, by offering a paper possession to the complainant, before completing the development as also without obtaining the necessary approvals.

25. The next question which falls for consideration, is, whether the complainant is entitled to refund of the entire amount deposited by her. The Counsel for the Opposite Party submitted that the complainant made various payment(s) without any protest and she never sought refund. It may be stated here that Plot Buyer Agreement was entered into between the parties on 18.08.2011. As per Clause 11.1 of General Clauses of the Agreement, possession of the plot, in question, was to be handed over within 24 months from the date of execution of the said Agreement with further grace period of 6 months but not later than 30 months i.e. latest by 17.02.2014. Further, as per Clause 11.2 of the Agreement, in case, possession was not offered within the stipulated period, then the Opposite Party was liable to pay compensation calculated @Rs.50/- per sq. yard of the area every month until possession is actually handed over. Clauses 11.1 and 11.2 of the Plot Buyer Agreement dated 18.08.2011, being relevant, are extracted hereunder:-

"11.1 - Subject to Force Majeure, as defined herein, and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement, and not being in default of any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges, and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to hand over the possession of the said Plot to the Allottee within a period of 24 (Twenty Four) months from the date of execution of this Agreement ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (Six) months ("Grace Period"), after the expiry of the said Commitment Period.

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".

26. Since the Plot Buyer Agreement was executed on 18.08.2011, 30 months period including 6 months grace period expired on 17.02.2014. Even the extended period of 12 months, in terms of Clause 11.3 of the Agreement expired on 17.02.2015. Admittedly, possession of the unit, in question, offered to the complainant vide letter dated 12.05.2015 (Annexure C-17) was a paper possession only. The total price of the unit was Rs.61,25,578.58 and the Opposite Party received an amount of Rs.37,67,822/-, which was undoubtedly hard earned money of the complainant. No plausible reason has been assigned by the Opposite Party, as to why it (Opposite Party) failed to deliver complete possession of the unit, by the date stipulated. Delay could only be condoned, under the terms and conditions of the Agreement, if there existed plausible and justified reasons. Clearly, there is delay in handing over of possession. It may be stated here that offer sent vide letter dated 12.05.2015, has been held to be a mere paper possession. Under similar circumstances, this Commission, in the case of Brig Ajay Raina (Retd.) and another Vs. M/s Unitech Limited, Consumer Complaint No.59 of 2016, decided on 24.05.2016, while relying upon the judgments rendered by the Hon'ble National Commission, held as under:-

"Further, even if, it is assumed for the sake of arguments, that offer of possession, was made to the complainants, in July 2015 i.e. after a delay of about three years, from the stipulated date, even then, it is not obligatory upon the complainants to accept the same. It was so held by the National Commission in Emaar MGF Land Limited and another Vs. Dilshad Gill, III (2015) CPJ 329 (NC). Recently also, under similar circumstances, in the case of M/s. Emaar MGF Land Ltd. & Anr. Vs.

Dr.Manuj Chhabra, First Appeal No.1028 of 2015, decided on 19.04.2016, the National Commission, held as under:-

"I am of the prima facie view that even if the said offer was genuine, yet, the complainants was not obliged to accept such an offer, made after a lapse of more than two years of committed date of delivery".

The principle of law laid down in the aforesaid cases is fully applicable to the present case. It is therefore held that the complainants could not be held guilty, of filing the present complaint, seeking refund of the deposited amount, alongwith interest and compensation, as possession of the unit was not offered to them by the stipulated date.

It was clearly stated by the National Commission, in Emaar MGF Land Limited and another Vs. Dilshad Gill, III (2015) CPJ 329 (NC), that when the promoter has violated material condition, in not handing over possession of the unit, in time, it is not obligatory for a purchaser to accept possession after that date.

27. In the present case also, the Opposite Party committed breach of its obligation, in not offering possession of the plot, in question, within 30 months from 18.08.2011 i.e. date of signing of Buyer's Agreement and even after expiry of extended delay period of 12 months, on 17.02.2015. A perusal of Clause 11.3 of the Plot Buyer's Agreement clearly provides that ".....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....". Since the Opposite Party failed to hand over valid possession of the plot, in question, with complete development and all basic amenities, to the complainant, even after expiry of 42 months from the execution of Plot Buyer's Agreement, in view of law laid down in Emaar MGF Land Limited and another Vs. Dilshad Gill 's case (supra), the complainant was entitled to seek refund. Thus, in our considered opinion, the complainant is entitled to refund of the deposited amount and by not offering possession of the unit, in question, within the stipulated period and during extended delay period and by not refunding the deposited amount, the Opposite Party was deficient in rendering service.

28. It is to be further seen, as to whether, interest, on the amount to be refunded can be granted, in favour of the complainant. It is not in dispute that an amount of Rs.37,67,822/-, was paid by the complainant, without getting anything, in lieu thereof. The said amount has been used by the Opposite Party, for its own benefit. There is no dispute that for making delayed payments, the Opposite Party was charging heavy rate of interest, for the period of delay in making payment of installments. It is well settled law that whenever money has been received by a party which ex ae quo et bono ought to be refunded, the right to interest follows, as a matter of course. The obligation to refund money received and retained without right implies and carries with it, the right to interest. It was also so said by the Hon'ble Supreme Court of India, in UOI vs. Tata Chemicals Ltd (Supreme Court), (2014) 6 SCC 335 decided on March 20th, 2014 (2014) 6 SCC 335). In view of above, the complainant is certainly entitled to get refund of the amount deposited by her, to the tune of Rs.37,67,822/-, alongwith interest till realization. However, since rights in the plot were assigned in

favour of the complainant on 27.09.2011, in view of ratio of judgment in case titled ' Darbara Singh and ors. Vs. Emaar MGF Land Limited and Ors.', Complaint Case No.147 of 2016 decided by this Commission on 22.08.2016, on the amount(s) paid by the previous allottee up-to 27.09.2011, interest shall be payable w.e.f. 27.09.2011.

29. The next question, which falls for consideration, is, as to what rate of interest, on the amount to be refunded to the complainant, is to be granted. As already stated above, Plot Buyer's Agreement with the original allottee(s) was executed on 18.08.2011. The complainant purchased the unit, in question, from them (original allottees) and the onward rights/obligations in her favour were assigned on 22.09.2011. Offer of possession on 12.05.2015 from the date of execution of the Agreement, was after 3 years 9 months 24 days and from the date of transfer of the unit in favour of the complainant, the possession offered was after a period of 3 years 7 months 20 days. Computing 42 months period in terms of Plot Buyer's Agreement (24 months + 6 months grace period + 12 months extended delayed period), the due date for possession was 17.02.2015. As already stated above, the complainant has stated that she visited the site in 2015 and found that there was no development. After receipt of the notice dated 12.05.2015 offering possession, cause of action arose to her to seek refund in May 2015 or say 12.05.2015. The complainant could mitigate her loss by filing the consumer complaint within a period of a month or so from the date possession offering letter dated 12.05.2015 was received. The complainant even did not send any legal notice to the Opposite Party seeking refund of the deposited amount. The complaint was filed on 17.03.2017 after around 22 months. Therefore, in our considered opinion, the complainant is entitled to lesser rate of interest for the period beyond 12.05.2015 + 1 month i.e. 12.06.2015 onwards. The complainant is, therefore, held entitled to interest as under:-

(a) 12% per annum simple interest on the amount(s) deposited up-to 27.09.2011, w.e.f. 27.09.2011 onwards up-to 11.06.2015.

(b) 12% per annum simple interest on the amount(s) deposited after 27.09.2011 from the date of their respective deposits till 11.06.2015.

(c) 8% per annum simple interest on the deposited amount(s) w.e.f. 12.06.2015 onwards.

30. The complainant did not make payment of installments in the sum of Rs.15,10,919.08, demand for which was raised by the Opposite Party vide demand notes dated 20.08.2014 and 16.10.2014 (Annexures OP-39 & 40). Under these circumstances, compensation for mental agony and physical harassment and deficiency in providing service, in the sum of Rs. 1,00,000/-, if granted, would be adequate to meet the ends of justice.

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

32. For the reasons, recorded above, the complaint is partly accepted, with costs. The Opposite Party is held liable and directed in the following manner:-

(i) To refund the amount of Rs.37,67,822/-, to the complainant, alongwith interest as under:-

(a) 12% per annum simple interest on the amount(s) deposited up-to 27.09.2011, w.e.f. 27.09.2011 onwards up-to 11.06.2015.

(b) 12% per annum simple interest on the amount(s) deposited after 27.09.2011 from the date of their respective deposits till 11.06.2015.

(c) 8% per annum simple interest on the deposited amount(s) w.e.f. 12.06.2015 onwards.

within a period of 45 days, from the date of receipt of a certified copy of this order, failing which, the Opposite Party, shall be liable to pay the above amount at (i)(a), (b) & (c),, with interest @15% p.a. (simple), 15% p.a. (simple) and 11% p.a (simple) respectively, from the date of default, till realization.

(ii) To pay an amount of Rs.1,00,000/-, as compensation for mental agony, physical harassment, deficiency in rendering service and unfair trade practices and Rs.35,000/- as cost of litigation, to the complainant, within a period of 45 days from the date of receipt of a certified copy of the order, failing which, the Opposite Party, shall be liable to pay the above amounts, with interest @12% p.a. (simple) from the date of filing the complaint till realization.

33. However, it is made clear that in case, the complainant has availed loan facility from any financial institution(s), such an institution shall have the first charge on the amount payable, to the extent, the same is due against the complainant.

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

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

Pronounced.

08.08.2017.

[JUSTICE JASBIR SINGH (RETD.)] PRESIDENT [DEV RAJ] MEMBER [PADMA PANDEY]
MEMBER Ad