

# Uc Mittal And Another vs Gaur Sons India Ltd. on 20 October, 2020

IN THE STATE COMMISSION: DELHI

(Constituted under section 9 of the Consumer Protection Act, 1986)

Date of Hearing: 09.10.2020

Date of Decision: 20.10.2020

Complaint No. 14/2010

IN THE MATTER OF

U.C. MITTAL  
S/o Late Sh. Murari Lal,  
346-D, Gaur Green Avenue, Abhay Khand Second,  
Indirapuram,  
Ghaziabad (U.P.)

MRS. REKHA MITTAL  
W/o Sh. U.C. Mittal,  
346-D, Gaur Green Avenue, Abhay Khand Second,  
Indirapuram,  
Ghaziabad (U.P.)

....Complainant

VERSUS

M/S GAUR SONS INDIA LTD.  
A Company incorporated under the Companies Act  
Having its registered office at  
305, Arunachal Building,  
19, Barakhamba Road,  
Connaught Place,  
New Delhi-01

....Opposite Party

HON'BLE SMT. JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)  
HON'BLE SH. ANIL SRIVASTAVA, MEMBER

1. Whether reporters of local newspaper be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes

(CC-14/2010)

Present:

U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD.

Sh. U.C. Mittal, Complainant no. 1 in person

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Sh. Himanshu Tyagi, Counsel for the OP

PER: ANIL SRIVASTAVA, MEMBER

JUDGEMENT

1. This complaint under Section 17 of the Consumer Protection Act 1986, the Act, has been filed by Sh. U.C. Mittal and another, for short complainants, against the M/s Gaur Sons India Ltd., hereinafter referred to as OPs, alleging deficiency of service and unfair trade practice, as against OPs, they having delayed handing over possession of the flat, booked by them despite agreed period for the purpose having elapsed and despite payment as per schedule having been made and praying for the relief as under:-

It is, therefore, most respectfully prayed that this Hon'ble Commission may be pleased to:-

a. Pass an order directing the OP to pay compensation towards interest accrued to the complainant amounting Rs. 9,55,273.00 alongwith pendente lite and future interest @ 12% p.a. until date of payment; b. Pass an order directing the OP to pay to the complainants an amount of Rs. 20,00,000/- towards mental agony and harassment and deficiency in service by OP and c. Pass an order issuing directions to the respondent or its nominated agency to grant access and use of all facilities of community centre including swimming pool with children pool and in-house club with Gymnasium steam and sauna bath, Jacuzzi, common room, table tennis, billiards and all other facilities in the society to the complainants and their family member; and d. Pass any other or further order(s) which this Hon'ble Commission deems fit and proper in the facts and circumstances of the case and in the interest of justice.

2. Facts of the case necessary for the adjudication of the complaint are these.

(CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 2 OF 16

3. The complainant no. 1 lured by the advertisements of the OP with respect to their residential project booked one flat/apartment no. 346 on 3rd floor having super covered area of 2205 sq. ft. alongwith 3- parking space in Residential Complex, Gaur Green Avenue situated at Abhay Khand-II, Indirapuram Ghaziabad for a total consideration of Rs. 65,25,000/-. The cost of parking space was agreed to be in addition to the cost of flat and as a consequence thereof the OP issued an allotment letter on 24.02.2006. The OP agreed to deliver the possession of the flat in question on 31.03.2007. OP agreed and ensured the following:

a. Raise construction of 'A' category;

b. Complete the project by 31.03.2007;

- c. Provide flooring, walls, ceiling, finish, modern kitchen, bath rooms, wood work, electrical fittings and gas supply etc as per specifications provided in the brochure;
- d. Give one year warranty of the apartment i.e. in manufacturing defect of the fittings installed in the apartment and construction defects in the apartment. OP also agreed to execute a separate warranty agreement to this effect at the time of possession of the flat/apartment.
- e. Complete township loaded with all amenities and facilities including shopping centre attached to the project.
- f. To provide 1 KVA power back up to each apartment without installation charges.
- g. To provide a swimming pool with children pool and in house club with Gymnasium steam and sauna bath, Jacuzzi Common Room, table tennis, billiards etc. in the residential complex. It is submitted that these facilities were in the form of community centre for and in the interest and welfare of residents only.

The complainants obtained a housing loan of Rs. 50,00,000.00 from Punjab National Bank, Branch Office: Vivek Vihar, Delhi. The OP also entered into a Tripartite Agreement with the complainants and PNB BO: Vivek vihar, Delhi agreeing inter alia to deliver the original sale deed directly to the bank as soon as the same is executed and registered in favour of the complainants in order to create mortgage of (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 3 OF 16 the said property in favour of the bank. The complainants have stated that the payment of each and every instalments were made on due date. Last instalment of Rs. 3,26,250.00 due to be paid on the delivery of possession of the said property remained.

4. However the complainant on personal visit to the site on or around 31.03.2007 found much to their shock that the project is not complete. Complainants sought clarification from Mr. Vipin Modi, Project Manager and other concerned officials, but no satisfactory reply was furnished by the OPs. The complainants had paid by 31.03.2007 an amount of Rs. 61,98,750.00 to the OP out of the total sale consideration of Rs. 65,25,000.00 and an amount of Rs. 3,26,250.00 was due to be paid on the date of possession.

5. Finally in view of continuous threats and apprehension to the complainants regarding cancellation of the allotment they made full and final payment also on 26.12.2007 despite the project being incomplete. Possession was also handed over and sale deed executed though number of discrepancies were found in the flat not ready for occupation. All the efforts done by the complainants to persuade the OPs to complete the incomplete work proved an exercise in futility.

6. In these circumstances the complainant has averred that OP is liable to pay interest and other charges accruing since 01.04.2007 upto the date of delivery of actual physical possession on the amount paid. But no response was found.

7. Finding no other option a legal notice was served upon the OP on 17.07.2008 demanding payment of:

a. Rs. 25,000 towards the expenses incurred in removal of discrepancies;

b. Rs. 8,57,009 interest accruing thereon @ 18% p.a. since 19.05.2008 till the date of payment; and c. Rs. 20,00,000.00 towards the deficiency in service, mental agony and harassment caused to the complainants.

8. The argument of the complainants is that OP is liable to make payment of amount of interest as per the details indicated below:

(CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD.  
PAGE 4 OF 16 Amount paid upto 31.03.2007 Rs.61,98,750.00 Interest accrued @ 12% p.a. with Rs. 5,50,245.00 monthly rests since 01.04.2007 to 26.12.2007 when balance payment of Rs. 3,26,250.00 was made (Total payment as on 26.12.2007 Rs.

65,25,000.00) Interest accrued on Rs. 65,25,000.00 Rs. 3,06,764.00 since 27.12.2007 to 18.05.2008 @ 12% p.a. Total amount due as on 18.05.2008 Rs. 8,57,009.00 Amount received on 07.11.2008 Rs. 66,150.00 Amount due as on 18.05.2008 Rs. 7,99,859.00 Interest accrued @ 12% p.a. since Rs. 1,55,414.00 18.05.2008 to 10.12.2009 i.e. Rs.

262.96 per day.

Total Rs. 9,55,273.00

9. But the OPs did not respond leading to filing of this complaint before this Commission for the redressal of his grievances. OPs were noticed and in response thereto they have filed reply resisting the complaint both on technical ground and on merit stating that the complainant has not approached this Commission with clean hands and have concealed the true and correct facts. The complainant at the time of entering into the agreement for purchase of the flat was well aware with all the terms mentioned in the agreement wherein a clause was specifically mentioned with regard to delay in possession @ of Rs. 5 per sq. ft. on the super area for the delayed period which builder has already paid by way of cheque. Thirdly, the respondent was regularly informing the complainant to take the possession and get the sale deed executed. Fourth, this Court has no jurisdiction to entertain and try the present complaint as both the parties are bound by the agreement and in case of any violation of terms of agreement the (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 5 OF 16 remedy available for the complainant is to file a civil suit before the civil court which have the original jurisdiction. Besides no cause of action has taken place at Delhi, the complainant being the resident of Ghaziabad and the property in question being

situated in Ghaziabad.

10. The complainant has thereafter filed rejoinder rebutting the contentions raised in the reply and reiterating the averments made in the complaint. Both sides have filed evidence in support of the pleadings. Written arguments are also on record.

11. This matter was listed before this Commission for final hearing on 09.10.2020 when both sides appeared and advanced their arguments in support of their pleadings, the complainants for the compensation owing to the delay done in handing over the possession despite the payment having been made as per schedule and the OPs for the dismissal of the complaint no case having been made out as against them. We have perused the records of the case and given due consideration to the subject matter.

12. Short question for adjudication is whether relying on the terms of agreement between the complainants and the OPs there has been delay in handing over possession of the flat booked by the complainants. If so whether the delay done is attributable to the OPs or there were factors beyond their control accounting for the delay. If the delay was attributable to the OPs, whether the complainants are entitled to the compensation as prayed for in the complaint and if so, the extent to which the order can be passed.

13. The fact that the complainant had booked a flat with the OPs is undisputed. Payment to the extent of requirement, has been made, is also not in dispute. Agreed period for handing over possession also stands over. But the possession was not been handed over on time. In that view of the matter the inevitable conclusion is that there was gross deficiency as defined in Section 2(1)(g) of the Act on the part of the OPs in its failure to deliver possession of the flat to the complainant in terms of the allotment letter. It is trite law that where possession of property in living condition is not delivered within the (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 6 OF 16 stipulated period, the delay so caused is not only deficiency of service, such deficiencies or omissions as per the law settled by their Lordships in the Apex Court in the matter of Lucknow Development Authority versus M.K. Gupta as reported in (1994) 1 SCC 243 tantamount to unfair trade practice as defined in Section 2(1)(r)(ii) of the Act as well.

14. Having arrived at the said conclusion we are of the considered opinion that this complaint deserves to be accepted. The core question for consideration now is as to how the complainants are to be compensated for the suffering caused to the complainant at the hands of the OPs. The provisions of the Act enable a consumer to claim and empower the commission to redress any injustice done to a consumer. The Commission is entitled to award compensation for the injustice suffered by him.

15. The Hon'ble NCDRC in the matter of Anil Raj and ors versus Unitech Ltd. and ors in CC-346/2013 decided on 02.05.2016 as reported in MANU/CF/0105/2016 is pleased to observe as under:

"The word compensation is of very wide connotation. It may constitute actual loss or expected loss and may extend the compensation for physical mental or even emotional suffering, insult or injury or loss. Therefore for the purpose of determining the amount of compensation, the commission/forum must determine the extent of sufferance by the consumer due to action or inaction on the part of the OPs".

16. In Ghaziabad Development Authority v. Balbir Singh- MANU/SC/0282/2004: (2004) 5 SCC 65, while observing that the power and duty to award compensation does not mean that irrespective of facts of the case, compensation can be awarded in all matters on a uniform basis, the Hon'ble Supreme Court gave certain instances and indicated the factors, which could be kept in view while determining adequate compensation. One of the illustrations given in the said decision was between the cases, where possession of a booked/allotted property was directed to be delivered and the cases (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 7 OF 16 where only monies paid as sale consideration, are directed to be refunded. The Hon'ble Court observed, in this behalf, that in cases where possession is directed to be delivered to the complainant, the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply refunded, then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is not only deprived of the flat/plot, he has been deprived of benefit of escalation of the price of the flat/plot. Additionally, in our view, in such a situation, he also suffers substantial monetary loss on account of payment of interest on the loans raised; depreciation in the money value and escalation in the cost of construction etc.

17. The Hon'ble NCDRC in the matter of Santosh S. Mayekar and ors vs. Rupji Construction and another as reported in IV [2019] CPJ 178 (NC) is pleased to observe in para 10 as under:-

Since the respondent has failed to justify the delay in delivery of possession of the allotted flats to the complainants/appellants, it must pay adequate compensation to them for the said delay. Considering all the facts and circumstances of the case, the respondents are directed to pay all inclusive compensation, in the form of simple interest @ 8% p.a. to the complaints/appellants till the date on which the possession was actually delivered. The compensation shall be paid w.e.f. the committed date of delivery of possession, on the amount which had been paid by that date. On the balance amount paid by the complainants/appellants to the respondent, the compensation in the form of simple interest 8% p.a. shall be paid w.e.f. the date of each payment till the date on which the possession was delivered. The possession is stated to have been delivered in October 2017.

18. Finally the objection of the OPs that this Commission has no jurisdiction to hear this case as according to them the issue is allegedly violation of the agreement in which case the appropriate forum for the redressal of the grievances would be Civil Court, cannot be accepted as the consumer forum in the event of deficiency of (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 8 OF 16 service can try and adjudicate the case. Secondly their objection that

this Commission does not enjoy the territorial jurisdiction to hear owing to the fact that the complainants are resident of Ghaziabad and the property is also at Ghaziabad cannot be accepted since, relying on the provisions of the Consumer Protection Act 1986, the jurisdiction is derived from the place where the Ops are working and the given the Head Office of the OP is at Delhi. Hence the preliminary objections of the OPs are sequentially rejected.

19. Having discussed the preliminary objections raised on behalf of the Opposite Party, the next issue which arises is whether the Opposite Party is actually deficient in providing its services to the complainants or not. The expression Deficiency of Service has been dealt with by the Hon'ble Apex Court in Arifur Rahman Khan and Ors.

vs. DLF Southern Homes Pvt. Ltd. and Ors. reported at 2020 (3) RCR (Civil) 544, wherein it has been discussed as follows:

"23. ....The expression deficiency of services is defined in Section 2 (1) (g) of the CP Act 1986 as: (g) "deficiency"

means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

24. A failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within a contractually stipulated period amounts to a deficiency. There is a fault, shortcoming or inadequacy in the nature and manner of performance which has been undertaken to be performed in pursuance of the contract in relation to the service. The expression 'service' in Section 2(1) (o) means a service of any description which is made available to potential users including the provision of facilities in connection with (among other things) housing construction. Under Section 14(1)(e), the jurisdiction of the consumer forum extends to directing the opposite party inter alia to remove the deficiency in the service in question. Intrinsic to the jurisdiction which has been conferred to direct the removal of a deficiency in service is the provision of compensation as a measure of restitution to a flat buyer for the delay which has been occasioned by (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 9 OF 16 the developer beyond the period within which possession was to be handed over to the purchaser. Flat purchasers suffer agony and harassment, as a result of the default of the developer. Flat purchasers make legitimate assessments in regard to CC 303/2019 Page 19 of 28 the future course of their lives based on the flat which has been purchased being available for use and occupation. These legitimate expectations are belied when the developer as in the present case is guilty of a delay of years in the fulfilment of a contractual obligation.

20. Consequently, we hold that the Opposite Party is deficient in providing its services to Complainants, due to its failure to handover the flat to the complainants within the stipulated time

period.

21. Having discussed the liability of the Opposite Party, the only question left to adjudicate is as to how the complainants are to be compensated for their deficient acts. The counsel appearing on behalf of the Opposite Party has argued that the complainants and the Opposite Party are contractually bound by way of stipulation of the Agreement and there is a limitation on liability of the Opposite Party to compensate the Complainants.

22. The perusal of the agreement reflects that the compensation payable by the Opposite Party shall be calculated @ Rs. 5/- per sq. ft. per month for the period of delay. The Hon'ble Supreme Court and the Hon'ble National Commission have time and again held that such stipulation in the Buyers Agreement is against the essence of the Consumer Protection Act, as the same is inclined more towards the builders/developers and the consumer commissions can go beyond the said stipulations to compensate the consumers. Our view is fortified by the recent pronouncement of the Hon'ble Apex Court in Arifur Rahman Khan and Ors. (supra), wherein it has been held as under:

"22. The only issue which then falls for determination is whether the flat buyers in these circumstances are constrained by the stipulation contained in Clause 14 of ABA providing compensation for delay at the rate of Rs. 5 per square feet per month. In assessing the legal position, (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 10 OF 16 it is necessary to record that the ABA is clearly one-sided. Where a flat purchaser pays the instalments that are due in terms of the agreement with a delay, Clause 39(a) stipulates that the developer would "at its sole option and discretion" waive a breach by the allottee of failing to make payments in accordance with the schedule, subject to the condition that the allottee would be charged interest at the rate of 15 per cent per month for the first ninety days and thereafter at an additional penal interest of 3 per cent per annum. In other words, a delay on the part of the flat buyer attracts interest at the rate of 18 per cent per annum beyond ninety days. On the other hand, where a developer delays in handing over possession the flat buyer is restricted to receiving interest at Rs. 5 per square foot per month under Clause 14 (which in the submission of Mr. Prashant CC 303/2019 Page 21 of 28 Bhushan works out to 1-1.5 per cent interest per annum). Would the condition which has been prescribed in Clause 14 continue to bind the flat purchaser indefinitely irrespective of the length of the delay? The agreement stipulates thirty-six months as the date for the handing over of possession. Evidently, the terms of the agreement have been drafted by the developer. They do not maintain a level platform as between the developer and purchaser. The stringency of the terms which bind the purchaser are not mirrored by the obligations for meeting times lines by the developer. The agreement does not reflect an even bargain. 23. On behalf of the flat purchasers it has been urged by Mr. R Balasubramanian (a submission which has not been controverted in rejoinder) that 95 per cent of the purchase price was paid during the course of the first two and a half to three years. The agreement did not stipulate that the developer would pay any interest on the amount which had already been received. A large chunk of the purchase price was thus available to the



developer to complete construction. The court must take a robust and commonsense based approach by taking judicial notice of the fact that flat purchasers obtain loans and are required to pay EMIs to financial institutions for servicing their debt. Delays on the part of the developer in handing over possession postpone the date on which purchasers will obtain a home. Besides servicing their loans, purchasers have to finance the expenses of living elsewhere. To postulate that a Clause in the agreement confining the right of the purchaser to receive compensation at the rate of Rs. 5 per square foot per month (Rs. 7,500 per month for a flat of 1500 square feet) precludes any other claim would be a manifestly unreasonable construction of the rights and obligations of the parties. Where there is a delay of the (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 11 OF 16 nature that has taken place in the present case ranging between periods of two years and four years, the jurisdiction of the consumer forum to award reasonable compensation cannot be foreclosed by a term of the agreement. The expression deficiency of services is defined in Section 2 (1) (g) of the CP Act 1986 as:-

g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and CC 303/2019 be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

24. A failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within a contractually stipulated period amounts to a deficiency. There is a fault, shortcoming or inadequacy in the nature and manner of performance which has been undertaken to be performed in pursuance of the contract in relation to the service. The expression 'service' in Section 2(1) (o) means a service of any description which is made available to potential users including the provision of facilities in connection with (among other things) housing construction. Under Section 14(1)(e), the jurisdiction of the consumer forum extends to directing the opposite party inter alia to remove the deficiency in the service in question. Intrinsic to the jurisdiction which has been conferred to direct the removal of a deficiency in service is the provision of compensation as a measure of restitution to a flat buyer for the delay which has been occasioned by the developer beyond the period within which possession was to be handed over to the purchaser. Flat purchasers suffer agony and harassment, as a result of the default of the developer. Flat purchasers make legitimate assessments in regard to the future course of their lives based on the flat which has been purchased being available for use and occupation. These legitimate expectations are belied when the developer as in the present case is guilty of a delay of years in the fulfilment of a contractual obligation. To uphold the contention of the developer that the flat buyer is constrained by the terms of the agreed rate irrespective of the nature or extent of delay would result in a miscarriage of justice. Undoubtedly, as this Court held in Dhanda, courts ordinarily would hold parties down to a contractual bargain. Equally the court cannot be oblivious to the one sided nature of ABAs which are drafted by and to protect the interest of the developer. Parliament consciously designed remedies in the CP Act 1986 to protect consumers. Where, as in the present case, (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 12 OF 16 there has been a gross delay in the handing over of possession beyond the contractually CC 303/2019 Page 23 of 28 stipulated debt,

we are clearly of the view that the jurisdiction of the consumer forum to award just and reasonable compensation as an incident of its power to direct the removal of a deficiency in service is not constrained by the terms of a rate which is prescribed in an unfair bargain. 25. Numerous judgments of this Court have elaborated on the nature and extent of the jurisdiction of the consumer forum to award just and reasonable compensation. Since the decision of this Court in Lucknow Development Authority v. M K Gupta (1994) 1 SCC 243, it has been a settled principle of law that the jurisdiction of the consumer forum extends to the award of compensation to alleviate the harassment and agony to a consumer. In Balbir Singh (2004) 5 SCC 65, a two judge Bench of this Court, while explaining the ambit of the jurisdiction of the adjudicatory fora under the CP Act 1986 observed: 6...The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enable a consumer to claim and empower the Commission to redress any injustice done.

26. The court observed that the award of compensation has to be based on a finding of loss or injury and must correlate to it. The court observed that no "hard and fast rule" could be prescribed: 8...No hard-and-fast Rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical. CC 303/2019 Page 24 of 28 Where possession has been given, one of the circumstances which must be factored in is that the purchaser has been compensated by the increase in the value of the property.

27. In R.V. Prasannakumaar v. Mantri Castles Pvt. Ltd. under the terms of the ABA, possession of the flats was to be handed over to the buyers on 31 January 2014. However, the developer received an occupation certificate only on 10 February 2016 and it was thereafter from May 2016 that the developer started issuing letters offering possession. Based on this, the NCDRC awarded (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 13 OF 16 compensation in the form of interest at the rate of 6 per cent per annum. The developer had pleaded that since the agreement provided compensation at the rate of Rs. 3 per square foot per month for delayed possession, the purchasers were not entitled to anything in addition. Dealing with the submission, this Court observed: 9. We are in agreement with the view of the NCDRC that the rate which has been stipulated by the developer, of compensation at the rate of 3 per sq. ft. per month does not provide just or reasonable recompense to a flat buyer who has invested money and has not been handed over possession as on the stipulated date of 31 January 2014. To take a simple illustration, a flat buyer with an agreement of a flat admeasuring a 1000 sq. ft. would receive, under the agreement, not more than Rs. 3000/- per month. This in a city such as Bangalore does not provide just or adequate compensation. The jurisdiction of the NCDRC to award just compensation under the provisions of the Consumer Protection Act, 1986 cannot in the circumstances be constrained by the terms of the agreement. The agreement in its view is one sided and does not provide sufficient recompense to the flat purchasers. The Court observed that there was a delay of

two years and hence the award of interest at the rate of 6 per cent was reasonable and justified. 28. In Pioneer Urban Land and Infrastructure Limited v. Govindan Raghavan (2019) 5 SCC 725, there was a delay of almost two years in obtaining an occupancy certificate after the date stipulated in the ABA. As a consequence, there CC 303/2019 Page 25 of 28 was a failure to provide possession of the flat to the purchaser within a reasonable period. This Court dwelt on the terms of the ABA under which the builder was entitled to charge interest at 18 per cent per annum for the delay in payment of instalments by the purchaser. On the other hand, the failure to provide possession on the part of the developer was subject to a grace period of twelve months followed by a termination notice of ninety days and a further period of ninety days to the developer to effect a refund. Adverting to these clauses, the court noted: 6.4. A perusal of the apartment buyer's agreement dated 8-5-2012 reveals stark incongruities between the remedies available to both the parties. For instance, Clause 6.4(ii) of the agreement entitles the Appellant builder to charge interest @18% p.a. on account of any delay in payment of instalments from the Respondent flat purchaser. Clause 6.4(iii) of the agreement entitles the Appellant builder to cancel the allotment and terminate the agreement, if any instalment remains in arrears for more than 30 days. On the other hand, as per (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS INDIA PVT. LTD. PAGE 14 OF 16 Clause 11.5 of the agreement, if the Appellant builder fails to deliver possession of the apartment within the stipulated period, the Respondent flat purchaser has to wait for a period of 12 months after the end of the grace period, before serving a termination notice of 90 days on the Appellant builder, and even thereafter, the Appellant builder gets 90 days to refund only the actual instalment paid by the Respondent flat purchaser, after adjusting the taxes paid, interest and penalty on delayed payments. In case of any delay thereafter, the Appellant builder is liable to pay interest @9% p.a. only. 6.5. Another instance is Clause 23.4 of the agreement which entitles the Appellant builder to serve a termination notice upon the Respondent flat purchaser for breach of any contractual obligation. If the Respondent flat purchaser fails to rectify the default within 30 days of the termination notice, then the agreement automatically stands cancelled, and the Appellant builder has the right to forfeit the entire amount of earnest money towards liquidated damages. On the other hand, as per Clause 11.5(v) of the CC 303/2019 fails to exercise his right of termination within the time limit provided in Clause 11.5, then he shall not be entitled to terminate the agreement thereafter, and shall be bound by the provisions of the agreement. Justice Indu Malhotra speaking for the Court noted: 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. The Court observed that in these circumstances, the flat purchasers could not be compelled to obtain possession which was offered almost two years after the grace period under the agreement had expired. Hence, the NCDRC was held to have correctly awarded interest at the rate of 10 percent per annum."

23. Having discussed the law as it stands today, the contention of the Opposite Party that the complainants are not entitled to compensation beyond what has been provided under the Agreement is unsustainable being a one sided clause, favouring the Opposite Party. Consequently, we hold that the Complainants are entitled to the (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S

GAUR SONS INDIA PVT. LTD. PAGE 15 OF 16 compensation for the delayed period with interest which would serve the ends justice along with cost for mental agony and harassment as well as litigation cost.

24. Keeping in view the facts and circumstances of the case and noting that the OPs had agreed to hand over the possession of the flat as also keeping the legal position as discussed above, particularly the point that awarding the interest or the compensation for the delayed period is left to the discretion of the court deliberating upon the issue, OPs are directed to Pay to the complainant compensation for the delayed period in the form of compensation at the rate of 9% for the period from the date of possession of the flat was due to be delivered till the delivery of the possession, which possession would mean the date from which the flat came to be in a living condition. Secondly they are also directed to pay Rs. 50,000/- as litigation charges.

25. The OPs are directed to comply with the directions contained in this order within two months from the date of receipt of this order failing which the complainants would be free to move this Commission under Section 25 and 27 of the Consumer Protection Act 1986.

26. A copy of this order be forwarded to the parties to the case free of cost as is statutorily required.

27. File be consigned to records.

(Dr. JUSTICE SANGITA DHINGRA SEHGAL) PRESIDENT (ANIL SRIVASTAVA) MEMBER  
PRONOUNCED ON 20.10.2020 sl (CC-14/2010) U.C. MITTAL & ORS. VERSUS M/S GAUR SONS  
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