Mr. Pandav Roy vs Merlin Projects Ltd. on 13 August, 2019

Cause Title/Judgement-Entry STATE CONSUMER DISPUTES REDRESSAL COMMISSION WEST BENGAL 11A, Mirza Ghalib Street, Kolkata - 700087 Complaint Case No. SC/07/O/2007 (Date of Filing : 01 Mar 2007) 1. MR. PANDAV ROY S/O MR. PARTHA ROY, 31/2A, SADANANDA ROAD, P.S. KALIGHAT, KOL- 700026 2. MR. PARTHA ROY S/O LATE PRAVAT SAMIR ROY, 31/2A, SADANANDA ROAD, P.S. KALIGHAT, KOL- 26 KOL-26 West Bengal .....Complainant(s) Versus 1. MERLIN PROJECTS LTD. 79, SAMBHUNATH PANDIT STREET, P.S. BHAWANIPUR, KOL-700020 2. MR. VIKAS MIMANI 79, SAMBHUNATH PANDIT STREET, P.S. BHAWANIPUR, KOL-700020 KOL- 700020 West Bengal 3. UNION BANK OF INDIA Sarat Bose Road Branch, Rashbehari Avenue, Kolkata - 700026, West Bengal through the Branch Manager. .....Opp.Party(s) BEFORE: HON'BLE MR. SAMARESH PRASAD CHOWDHURY PRESIDING MEMBER For the Complainant: For the Opp. Party: Mr. Saptarshi Datta, Ms. Sreemoyee Ghosh, Ms. Banani Upadhyay Bhattacharjee., Advocate Ms. Subhra Das, Advocate Dated : 13 Aug 2019 Final Order / Judgement The instant complaint under Section 17 (inadvertently mentioned under Section 12A) of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act') is at the instance of a son and father respectively against a development Company (Opposite Party No.1), its Manager (Opposite Party No.2) and also against the financer Bank (Opposite Party No.3) on the allegation of deficiency in services on the part of them in a consumer dispute of housing construction.

Briefly stated, Complainants' case is that they had entered into an Agreement for Sale on 01.05.2003 with the OP No.1 to purchase a Row House measuring 3 cottahs having total constructed area of 1380 sq. ft. being No.B-15 in the Complex christened 'The Terrace' at Merlin Greens lying and situated at Mouza-Kriparampur, P.S.- Bishnupur, Dist- South 24 Parganas at a total consideration of Rs.14,25,000/-. The complainants have stated that they paid a sum of Rs.50,000/- to OP No.1 towards the earnest money through a cheque being No.745541 dated 01.05.2003 drawn on Bank of Baroda. Thereafter, a supplementary Agreement was also executed between the parties on the same day i.e. on 01.05.2003 regarding maintaining of Corpus Fund. The complainants later on also paid the balance amount of earnest money to the tune of Rs.1,93,750/- and thus paid a total sum of Rs.2,43,750/- towards full and final settlement of earnest money which was duly reflected in the Tripartite Agreement between the parties executed on 21.01.2004. The complainants had approached OP No.1 Bank for obtaining a house building loan amounting to Rs.15,00,000/- which was duly sanctioned and OP No.3 released a sum of Rs.13,81,250/- to the OP No.1 out of the sanctioned loan amount of Rs.15,00,000/- keeping a sum of Rs.1,18,750/- for the purpose of registration of Deed of Conveyance. The complainants have also stated that the OP No.1 received a total sum of Rs.16,25,000/- out of which Rs.14,25,000/- was consideration money and Rs.2,00,000/- was towards contribution in the Corpus Fund. The OP No.1 delivered possession to the complainants on 20.04.2004 and provided facilities such as water supply, electricity, generator service and security. On 30.06.2004, complainant no.2 requested the OPs to get the Deed executed and registered in their favour but it remain unheeded. The complainants have alleged that despite receipt of entire consideration amount and also Rs.2,00,000/- towards contribution to the Corpus Fund, the OPs did not execute the Sale Deed. Subsequently, by a letter dated 23.10.2016 the OP No.2 informed the complainants that since they had failed to fulfil their financial obligations,

inasmuch as the cheque of Rs.1,93,750/- had been dishonoured twice and they had also defaulted in payment of instalment to the Bank, the Deed of Agreement dated 01.05.2003 had been cancelled and they were being treated as trespassers and the complainants were asked to vacate the premises in question. The complainants have alleged that as all the basic facilities had been withdrawn, they were compelled to shift from the said premises on 23.10.2006. The complainant no.1 replied by a letter dated 30.10.2006 to the effect that total consideration money had already been paid to the OPs and thereafter, they were given possession of the subject premises. The complainants have further alleged that the OP No.1 had taken the possession of the property in question with a malafide intention and transfer the same to a third party in collusion with OP No.3/Bank at Rs.20,51,000/- though it was officially valued at Rs.31,25,100/-. The complainants have stated that though they were ready and willing to repay their home loan in full but with their designed motive, they were not allowed to do the same. Hence, the complainants lodged the complaint with prayer for several reliefs, viz. - (a) Rs.56,25,000/- as compensation in lieu of their property; (b) Rs.16,25,000/- be paid to reimburse actual house rent paid by them after being unlawful evicted from their property; (c) Rs.10,00,000/- as damages for harassment and mental agony; (d) Rs.10,00,000/- as litigation cost etc. The Opposite Party Nos. 1 & 2 i.e. the developer/builder Company and its Manager by filing a written version resisted the claim of the complainants. The OP Nos. 1 & 2 have stated that the amount of Rs.193,750/- issued by the complainants as earnest money was dishonoured twice and the said amount was never paid. The OP Nos. 1 & 2 have also stated that the complainants were under obligation to pay Rs.10,00,000/- and Rs.3,00,000/- + Rs.2,00,000/- by 20.05.2003 and 30.052003 respectively besides they were liable to pay a further sum of Rs.75,0000/- at the time of delivery of possession of the property in question. The OP Nos. 1 & 2 have categorically stated that since the complainants were not willing to pay against the dishonoured cheque for Rs.1,93,750/-, Agreement dated 01.05.2003 was cancelled.

The Union Bank of India being Opposite Party No.3 by filing a separate written version has stated that due to non-payment of housing loan instalment, the housing loan of the complainants was classified as NPA in March, 2007. Thereafter, demand notice was issued to the complainants on 24.04.2007 under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and on expiry of 60 days, the possession notice under Section 13(4) of the said Act was issued on 24.08.2007. According to OP No.3, as there is no deficiency in rendering services to the complainants, the complaint should be dismissed.

The parties have filed evidence through affidavit in support of their respective cases. They have also filed replies against the questionnaires set forth by their adversaries. Besides the same, the parties have relied upon documentary evidence. At the time of final hearing, the respective parties i.e. complainants, opposite party nos. 1 & 2 and opposite party no.3 have filed their brief notes of arguments.

The instant dispute has a chequered career. The complainants have lodged the complaint in this Commission on 01.03.2007 and the said complaint was disposed of by this Commission in favour of the complainants by an order dated 24.02.2009. Challenging the said order, the OP Nos. 1 & 2 preferred an appeal in the Hon'ble National Commission being FA/128/2009 and the said

appeal was dismissed on 23.05.2014. Thereafter, the OP Nos. 1 & 2 filed one Special Leave Petition in the Hon'ble Supreme Court being SLP No.21217 of 2014 and by an order dated 01.09.2015 in Civil Appeal No.6849/2015, the Hon'ble Apex Court set aside the order passed by this Commission as well as Hon'ble National Commission and directed this Commission to proceed with the case afresh after impleading Union Bank of India (OP No.3) as a party. In view of the order of the Hon'ble Apex Court, the OP No.3 has been impleaded. Thereafter, this Commission by a final order/judgement dated 10.04.2017 once again allowed the complaint on contest with the direction upon OP Nos. 1 & 2 jointly and severally to make payment of Rs.50,00,000/- in lieu of the property, to pay compensation of rs.10,00,000/- and litigation cost of Rs.1,00,000/-. Challenging the aforesaid order, the OP Nos. 1 & 2 preferred an appeal under Section 19 of the Act in the Hon'ble National Commission being FA/840/2017 and by an order dated 19.02.2019 the order passed by this Commission has been set aside and remanded the case with a direction to dispose of the matter expeditiously preferably within three months from the date of first appearance of the parties before them i.e. 18.03.2019 and not later than six months. Therefore, it is a third round of litigation before this Commission.

In Paragraph-15 of the order, the Hon'ble National Commission has observed thus -

> "15. A brief perusal of the record shows that the allegations against the developers are four fold:
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> 1. That they failed to collect the correct stamp duty amount, which resulted in the non-execution of the Sale Deed;
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> 2. Withdrawal of essential services;
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> 3. Failure to pay membership fee to the club authorities;
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> 4. Appellant is not the sole owner of the subject property.

The allegations against the Bank are five-fold:

> 1. that the Bank had disbursed the loan amount without inspecting the subject property by a Bank appointed Architect;
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> 2. that the Bank did not ascertain whether the Builder transfer the title of the subject property to the Borrower by means of registered Sale Deed;
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> 3. that the Bank did not release the balance in the Home Loan account for meeting the Stamp Duty expenses;
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> 4. that the Bank did not follow up with the Builder for the completion of required formalities;

5. and as under SARFEASI Proceedings illegally sold the subject property to the third party.

It must not be out of place to mention here that the OP Nos. 1 & 2 filed one Review Application under Section 22(2) of the Act before the Hon'ble National Commission being RA/101/2019 and the said Review Application was dismissed.

Admittedly, on 01.05.2003 the complainants had entered into an Allotment Agreement and a Supplementary Agreement with the developer/OP No.1 to purchase of a Row House containing an area of land measuring about 3 cottahs more or less with total constructed area thereon 1300 sq. ft. more or less being No.B-15 in the Complex 'The Terrace' at Merlin Greens lying and situated at Mouza- Kriparampur, P.S.- Bishnupur, Dist- South 24 Parganas at a total consideration of Rs.14,25,000/-. The complainants had also agreed to make payment of Rs.2,00,000/- as Corpus Fund for provision of common and related services of the property. The complainants have paid a sum of Rs.50,000/- by way of cheque on that date as an earnest money. It also remains undisputed that on 15.10.2003 the complainants applied for a house building loan of Rs.15,00,000/- from OP No.3 Bank to meet the expenses for purchase of the property.

The evidence on record speaks that on 15.07.2003 the OP No.1/developer allotted the Row House in favour of the complainants on a consideration of Rs.16,25,000/- and it has been written on behalf of OP No.1 that upon payment of 15% of consideration, they shall execute the Sale Agreement in favour of the complainants. By a letter dated 25.08.2003 the OP No.1/developer confirmed receipt of Rs.50,000/- as booking advance. By another letter dated 24.09.2003 the OP No.1/developer has stated that in addition to consideration price of the Row House at Rs.16,25,000/-, the complainants have to bear registration charges/stamp duty etc. aggregating Rs.2,00,000/- approximately.

It is also transpired that by a letter dated 22.01.2004 the OP No.3 Bank wrote a letter to the complainants informing them about sanction of Home Loan application subject to a Tripartite Agreement among OP No.1, OP No.3 and the complainants. Accordingly, on 21.04.2004 a Tripartite Agreement was executed amongst OP No.1 Company, OP No.3 Bank and the complainants being borrowers. The inner Page-2 of the said Agreement speaks -

> "Whereas the builder agreed to sell a Row House to the Borrowers under an Agreement of Sale dated May 01, 2003, entered into between the builder and the borrowers, which contains the terms and condition for sell of the Row House in favour of the borrowers and in furtherance thereof has already paid the builder a sum of Rs.2,43,750/- as an by way of earnest money. The balance of sale consideration is payable by the borrowers based on stages of construction, which are detailed in the said agreements".

The above document clearly postulates that the complainants have paid 15% of the total consideration amount i.e. Rs.2,43,750/- by way of earnest money in favour of the developer. The developer took the plea that the cheques sent by the complainants were bounced and thereafter they

did not pay the amount of Rs.1,93,750/- which is still payable by the complainants.

Mr. Saptarshi Datta, Ld. Advocate appearing for OP Nos. 1 & 2 has forcefully submitted that when the complainants have failed to show any document that they ever paid a sum of Rs.1,93,750/- to OP No.1 Company, the complainants must be considered as defaulter. Such a submission does not appear to be acceptable because when the agreement towers above the rest and further the OP No.1 Company put their signatures in the Tripartite Agreement after knowing its pros and cons, the OP No.1 Company cannot be allowed to take such stand. In AIR 1996 SC 2508 [Bharthi Knitting Company - Vs. - DHL Worldwide Express Courier Division of Airfreight Ltd.] the Hon'ble Apex Court has observed that a person who signs a document contains certain contractual terms is normally bound by them even though he is ignorant of their precise legal effect. Therefore, when no contradictory evidence is forthcoming, keeping in view of the proposition of law, I have no other way but to hold that complainants have paid Rs.2,43,750/- as earnest money being 15% of the total consideration of Rs.16,25,000/-.

The evidence on record speaks that on 25.02.2004 OP No.3 Bank disbursed Rs.13,81,250/- in favour of OP No.1/developer as consideration amount. However, OP No.1 did not execute any Agreement for Sale and as such no equitable mortgage had been created on the property by deposit of a registered Agreement for Sale or Sale Deed in the Bank. It is also evident that by letter dated 30.06.2014, the OP No.3 Bank requested to OP No.1 Company to carry out the registration formalities of the Row House as early as possible in terms of Allotment Agreement. By a letter dated 03.05.2006 the complainants requested OP No.3 Bank to release the balance amount for the purpose of registration and execution of the Sale Deed. However, by a letter dated 23.10.2006 the OP No.1 Company cancelled the agreement on the ground that the complainants defaulted in payment of consideration amount.

The facts and circumstances and materials on record clearly indicate that the Bank sanctioned the loan without inspection and certification by an architect and the loan has been disbursed in full without any registered Agreement for Sale/Sale Deed in favour of the complainants in order to create equitable mortgage.

In any case, it is the OP No.1, who cancelled the agreement on 23.10.2006 treated the complainants as trespassers and instructed the security and management staff to desist from rendering any of the common services and/or facilities including disconnection of generator service etc. The question has to be adjudicated whether the developers have failed to collect the correct stamp duty amount which resulted in the non-execution of Sale Deed. In this regard, Ld. Advocate for the complainants has drawn my attention to Clause 8.1 for Agreement for Sale dated 01.05.2003 and has stated that as per the said Clause, it was the responsibility of the complainants to get the Deed registered and the developer will appear before the authorities for the registration of the Agreement and the purchaser shall have to make payment of the stamp duty and the registration charges. Evidently, out of Rs.15,00,000/- sanctioned as loan, the OP No.3 Bank disbursed a sum of Rs.13,81,250/- in favour of OP No.1 Company leaving the balance amount of Rs.1,18,750/- for the purpose of purchase of stamp duty and registration. The documents like letter dated 21.06.2004 indicates that the complainants requested the Manager of OP No.3 Bank for registration of the flat

to mortgage the same in favour of OP No.3 Bank. On 30.06.2004 the complainants also wrote a letter to OP No.2 requesting him to complete the formalities of registration of the Row House. However, the registration has not been done. The OP No.1 did not disclose to the complainants that the amount of Rs.1,93,750/- has not been paid by the complainants for which they are unable to execute the Sale Deed. The OP No.1 Company also did not ask the complainants to purchase the stamp duty or to bear registration cost or to fix any date wherein they will execute the Sale Deed in favour of the complainants. In fact, no registered Agreement for Sale has been executed and as such no equitable mortgage had been created on the property by deposit of a registered agreement for sale or sale deed. Therefore, it is palpably clear that on receiving the letters from the complainants and the bank with regard to execution of Sale Deed, the OP No.1 Company has shown masterly inactivity resulting in non-execution of the Sale Deed.

So far as withdrawal of essential services is concerned, the letter given by the OP No.1 Company dated 23.10.2006 appears to be a pointer. By the said letter, the OP No.1 Company treated the complainants as a trespasser and instructed the security and management staff to desist from rendering any of the services and any common facilities including disconnection of generator services etc. which compelled the complainants to vacate the house.

With regard to failure to pay membership fee to the club authorities, it appears to record that in Clause 1.17 of the Agreement it has been agreed -

> "1.17 The club shall mean, the club IBIZA developed by M/s. IRREFUTABE FINANCE AND LEASING PVT. LTD. within the project Merlin Greens for various recreational activities. The purchaser shall become an member of the club and shall obey the club and shall obey the rules, regulations, terms and conditions led down by the club authorities and as applicable from time to time".

By the notice dated 23.10.2006 the developer Company has recorded - "In view of the fact that you have failed to make payment to us, we have instructed the club, to terminate your membership with immediate effect". It implies that the club membership was including the consideration amount of the Row House of Rs.16,25,000/-. Evidently, complainants have paid the entire consideration amount of Rs.16,25,000/- and therefore, the developer/OP No.1 Company cannot take the plea of failure to pay membership fee of the club authorities.

The Row House was ultimately sold to in favour of a third party namely M/s. Murarka Advisory and Holding Pvt. Ltd. The Sale Deed executed in favour of the third party dated 19.11.2018 speaks that the ownership of the property was not under the exclusive control of OP No.1 Company and the documents speaks that an unknown firm named M/s. Best Property Consultancy Services Pvt. Ltd. was also the joint owner of the property. In other words, the OP No.1 Company is named as the secondary owner of the land in question. It indicates that the OP No.1 Company has adopted an unfair means in entering into an Agreement for Sale with the complainants claiming to be the sole owner of the property. It may so happen the OP No.1 Company out of fear of their malafide act or false claiming to be the sole owner did not come forward to execute the Sale Deed as it would be exposed at the time of registration before the Registering Authority. In any case, at the time of

presentation, the property was revalued to Rs.31,25,100/-. Therefore, it is quite clear that the OP No.1 Company/developer was not the sole owner of the property.

In course of advancing of his argument, Ld. Advocate for OP Nos. 1 & 2 has invited our attention to a decision of Hon'ble National Commission reported in II (2018) CPJ 171 [Dipak Das & Anr. - Vs. - Bengal Shristi Infrastructure Development Ltd. & Anr.]. However, on going through the referred decision, we find that it relates to a sale of plot of land simpliciter which is not covered under the Act. Ld. Advocate for OP Nos. 1 & 2 has also relied upon another decision of Hon'ble National Commission reported in IV (2018) CPJ 2016 [Sheelu Bhatnagar - Vs. - Rajasthan Board and Ors.]. The said decision speaks that one frivolous complaint filed by the complainant seeking compensation of her own wrong. It is not clear to us how those two decisions will help the OP Nos. 1 & 2 in any way, particularly, when the loophole on the part of OP Nos. 1 & 2 appears to be quite apparent from their acts and conduct.

Now, we shall proceed to discuss about the deficiencies on the part of OP No.3 Bank. The information given by one Sri R.K. Chowdhury, Deputy General Manager of Union Bank (as Central Public Information Officer) dated 01.03.2012 appears to be relevant in this regard. In the said information, it has been categorically mentioned that it is required for a bank to appoint an Architect to inspect and certify that the property is legally constructed and is confirming to the sanctioned building plan/bye-laws. Evidently, in the instant case no architect has been appointed. In a reply against the questionnaire set forth by the complainant in this regard, one Mr. Abhishek Kumar Alok, Branch Manager of the OP No.3 Bank has tried to evade the answer by stating that it is not the case of petitioner that there is defect in construction of the house or it is not per the approved plan and the loan was disbursed simply on the basis of Tripartite Agreement. This act on the part of the Bank was totally in violation of RBI Rules.

The OP No.3 Bank has sanctioned the loan without any equitable mortgage. In this regard, the CPIO has specifically mentioned that a loan cannot be disbursed in full without the Agreement for Sale/Sale Deed in favour of the borrower being deposited in the Bank in order to create an equitable mortgage. In reply to question no.8, the OP No.3 Bank has answered that Bank disbursed the loan on the basis of Tripartite Agreement. It means and indicates that the loan was sanctioned by the Bank at the behest of OP No.1 Company by violating the RBI Rules. It may be pertinent to record here that by a letter dated 17.10.2013 written by OP No.3 Bank to complainant no.2, it has been mentioned that the said loan had been sanctioned by one Sri S.C. Jain, the then Chief Manager at Regional Office, Kolkata. However, perhaps in order to shirk off the responsibility, it has been mentioned that the said S.C. Jain has retired from service and his present address is not available with the office. The facts and circumstances make it quite clear that the OP No.3 Bank danced with the tune of OP No.1 developer Company.

Ms. Banani Upadhyay Bhattacharjee, Ld. Advocate for OP No.3 Bank has submitted that when proceeding under SARFEASI Act has been initiated and notice under Section 13(2) and 13(4) of the said Act has already been issued, the complaint is not maintainable before this Forum. In support of her contention, she has placed reliance to Paragraph Nos. 16 & 27 of a decision of the Hon'ble Supreme Court in SLP(C) No.10145/2010 [United Bank of India - Vs. - Satyawati Tondon & Ors.].

In the said decision, it has been held that when a notice for recovery of dues under Section 13(2) and 13(4) had been issued, the High Court should not interfere by ignoring the availability of statutory remedies under the DRT Act and SARFEASI Act and exercise jurisdiction under Article 226 of the Constitution of India. The Ld. Advocate for the OP No.3 Bank has also referred a decision of the Hon'ble Supreme Court in Civil Appeal No.7213 of 2012 [M/s. Sri Anandhakumar Mills Ltd. - Vs. - M/s. Indian Overseas Bank & Ors.] where on the basis of decision laid down by the Hon'ble Apex Court in the case of Jagdish Singh - Vs. - Heeralal & Ors., it has been held that in view of the provisions of the SARFEASI Act, particularly Section 2(zf), 2(zc), 13(1), 17, 18 and 34, a suit for partition would not be maintainable in a situation where proceedings under SARFEASI Act had been initiated.

None of those two decisions have any manner of application in our case because no collateral security or equitable mortgage has been created by the Bank prior to granting or sanctioning loan of Rs.15,00,000/- to the borrower i.e. the complainants. Moreover, the Row House in question, for which the loan was sanctioned was not sold out by the Bank in auction rather it was sold out by the OP No.1 Company to a third party to which Bank was not a party. Moreover, the SARFEASI Act proceeding was initiated in the year 2007 much after vacating the Row House by the complainants. In other words, the SARFEASI proceeding or Sale out of the Row House was done by OP No.1 Company during the pendency of the instant proceeding.

When at the instance of OP No.3 Bank, the OP No.1 Company delivered possession to the complainants and the OP No.3 Bank has requested the OP No.1 Company to execute the Sale Deed , there was hardly any reason on the part of OP No.3 Bank not to release the balance of the Home Loan account for meeting the stamp duty expenses.

Therefore, it is quite apparent that there was apparent deficiency on the part of OP No.3 Bank in providing services to the complainants to complete the transaction. However, as there is no prayer in the Prayer Clause of the petition of complaint claiming relief against OP No.3 Bank, no relief can be granted. In this regard, it would be pertinent to refer a decision of the Hon'ble Supreme Court reported in (2015) 1 SCC429 [General Motors(India) Pvt. Ltd. - Vs.- Ashok Ramnik Lal Tolat & Anr.]. In Paragraph-17 of the said decision, the Hon'ble Apex Court has observed -

> "17. The Act is a piece of social legislation to provide a Forum to the consumers who are taken for a ride by suppliers of goods and services. The redress provided to a consumer against the deficiency in service as well as against any loss or injury arising out of 'unfair trade practice'. By later amendment, scope of a complaint can cover not only individual consumer but also consumer who are identifiable conveniently. However, the complainant has to make an averment and make a claim. Section 12 of the Act permits not only a complaint by a consumer to who goods are sold or delivered but also against any recognised consumer association or one or more consumers on behalf of and for the benefit of all consumers but still, a case has to be made out and the affected party heard on such issue. We are conscious that having regard to the laudable object of the social legislation to protect the interests of consumers, liberal and purposive interpretation has to be placed on the scheme of the

> Act avoiding hypertechnical approach at the same time, fair procedure is the hall mark of every legal proceeding and an affected party is entitled to be put to notice of the claim which such affected party has to meet".

On perusal of amended copy of petition of complaint, it appears to me that the complainants did not seek any relief against the OP No.3 Bank and as such I restrain myself from passing any order against OP No.3 Bank keeping in view the authority referred above.

On evaluation of materials on record, it is transpired that the total consideration amount of the Row House as per terms of unregistered Agreement for Sale dated 01.05.2003 was Rs.14,25,000/-. By a supplementary Agreement, complainants agreed to pay an additional amount of Rs.2,00,000/- to the OP No.1 Company for providing infrastructural maintenance etc. meaning thereby the OP No.1 Company was entitled to receive from the complainants a total sum of Rs.16,25,000/- besides stamp duty, registration of Sale Deed etc. The evidence on record goes to show that as per Tripartite Agreement dated 21.01.2004 the complainants have paid Rs.2,43,750/- to OP No.1 Company, OP No.3 Bank has sanctioned a loan of Rs.15,00,000/- in favour of the complainants and released a sum of Rs.13,81,250/- which signifies that the complainants have paid the entire consideration amount of Rs.16,25,000/- to the developer. Despite receipt of entire consideration amount, by a notice dated 23.10.2006 the OP No.1 Company asked the complainants to vacate the Row House treating them as trespassers with a further direction to the security and management staff of the complex to restrain themselves from providing any common services and/or facilities including disconnection of generator service, which compelled the complainants to leave the said Row House. It simply signifies deficiency of services on the part of OP No.1 in accordance with the definition of Section 2(1)(g) read with Section 2(1)(o) of the Act.

Since it has been proved beyond any shadow of doubt that the OP No.1 Company was negligent or deficient in rendering services to the complainants, the complainants are entitled to compensation. To assess the compensation, it would be worthwhile to reproduce the provision of Section 14(1)(d) of the Act which runs as follows -

> "14. Finding of the District Forum. - (1) if, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complaint against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely :
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> .....
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> (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party".

The sine qua non for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. Once the said conditions are satisfied, the

Consumer Forum would have to decide the quantum of compensation to which the consumer is entitled. There cannot be any dispute that the computation of compensation has to be fair, reasonable and commensurate to the loss or injury. There is a duty cast on the Consumer Forum to take into account all relevant factors for arriving at the compensation to be paid.

In a decision reported in II (2018) CPJ 1 (SC) [Fortune Infrastructure - Vs. - Trevor D'Lima] the Hon'ble Supreme Court while discussing about compensation has observed thus -

> " That compensation cannot be uniform and can be best be illustrated by considering cases where possession is being directed to be delivered and in cases where only monies are directed to be returned. In cases where possession being directed to be delivered, 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 returned, then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore, the compensation in such cases would necessary have to be higher .....".

Considering the proposition of law and taking into consideration of loss suffered by the complainants and the value of the subject Row House at present in the locality where it stood, it appears to me that a compensation of Rs.50,00,000/- in the facts and circumstances of the case would be just and proper. The complainants have been suffering for long 12 years due to arrogance and unethical attitude of the developer and as such the complainants are entitled to compensation which I asses at Rs.10,00,000/-. This is a third round litigation and the complainants had to run from this Commission to the Highest Court of the Land and the OP No.1 Company dragged the complainants to do the same and as such the complainants are entitled to litigation cost which I quantify at Rs.1,00,000/-.

In view of the above discussion, the complaint is allowed on contest with the following directions -

(i) The Opposite Party No. 1 is directed to make payment of Rs.50,00,000/- in lieu of the property subject to deduction of Rs.25,00,000/- which has already been deposited by OP No.1 Company, in default, the amount shall carry interest @9% p.a. from this date till its realisation;

(ii) The Opposite Party No. 1 is directed to make payment of Rs.10,00,000/- as compensation for harassment and mental agony of the complainants;

(iii) The Opposite Party No. 1 is directed to pay Rs.1,00,000/- as costs of litigation to the complainants;

(iv) The above payments must be paid within 60 days from date.

[HON'BLE MR. SAMARESH PRASAD CHOWDHURY] PRESIDING MEMBER