

Sohan Singh vs M/S Nitishree Infrastructures Ltd on 17 April, 2023

Cause Title/Judgement-Entry

STATE CONSUMER DISPUTES REDRESSAL

Reserved

State Consumer Disputes Redressal Commission

U.P. Lucknow.

Complaint Case No.187 of 2015

Sahota Seeds Ltd., through its Managing Director,

Sri Sohan Singh s/o Shri Trilok Singh, R/o Village,

Narainpur Jaspur, Udham Singh Nagar, Uttaranchal.

...Complainant.

Versus

1-M/s Nitishree Infrastructure Ltd. having

Registered office at G-55, East of Kailash,

New Delhi-110065 and Administrative

Office at A-1, Sector 4, Noida, Gautam Budh

Nagar, U.P.

2- ANS Apartments Private Ltd., B-111, Sector 5

Noida, Gautam Budh Nagar, U.P.-201301

Through its Managing Director.

...Opposite parties.

Present:--

1- Hon'ble Sri Rajendra Singh, Presiding Member.

2- Hon'ble Sri Sushil Kumar, Member.

Sri Purushottam Awasthi, Advocate for complainant.

None for opposite parties.

Date: 15.05.2023

JUDGMENT

Per Sri Rajendra Singh, Member-

This complaint has been filed by the complainant for following reliefs:

- I- To complete the construction and handover possession of the Flat no.D-801, measuring 1,725 square feet in Daffodil Tower, Alsonia Apartments, Plot no.10, Pi 1 & 2, Greater Noida to the complainant within a time to be fixed by the Hon'ble Commission and to receive sale consideration from the complainant as per provisions contained in the agreement.
- II- To pay damages at the rate of Rs.6,000.00 per month for the deprivation of enjoyment of the flat from December, 2009 till the respondents actually delivers possession of the flat to the complainant, and an amount of Rs.1,00,000.00 towards damages for harassment and mental agony caused to the complainant.
- III- To pay cost to the complainant incurred by it in filing the present complaint.
- IV- To pass any other order or direction which the Hon'ble Commission may deem fit in the facts of the case.

In short, the brief facts of the complaint case are that, that on 28.7.2007, the respondent no.1 had issued an allotment letter to the complainant whereby it allotted flat no.D-801, measuring 1725 square feet in Daffodil Tower, Alstonia Apartment, Pot no.10, Pi 1 & 2, Greater Noida. On the same date, the respondent no.1 had executed an agreement with the complainant for selling the aforesaid apartment for a total sale consideration of Rs.44,21,000.00. Clause 9 of the agreement provides that the company shall complete construction of the apartment and the residential complex and deliver possession of the apartment to the complainant by December, 2009. Annexure B2 to the agreement contained a construction link payment plan, according to which 11% of basic sale price was to be paid at the time of booking, 10% of BSP was to be paid after bhoomipoojan and the remaining consideration was payable in instalments as per the progress of construction.

On 28.7.2007 itself the respondent no.1 had executed three other similar agreements with the complainant and its managing director Sri Sohan Singh in respect of Flat no.701 in Daffodil Tower, Flat no.904, in Flame Lily tower and Flat no.801 in Globe Flower Tower, all in Alstonia Apartments. As against the requirement of paying only 11% of the basic sale price, which comes to Rs.4,41,168.00 the complainant paid a much higher sum of Rs.11,58,500.00 at the time of booking of the flat, receipt of which amount was acknowledged both in the allotment letter as well as the agreement dated 28.7.2007. Although the agreed time of completion of construction and handing over possession of the flat expired in December, 2009, the respondent no.1 did neither sent any communication to the complainant regarding progress of the construction nor did it communicate the dates of bhoomipoojan and the start of foundation etc. Meanwhile the respondent no.2 started sending letters regarding the other three flats, viz. Flat no.701 in Daffodil Tower, Flat no.904

in Flame Lily Tower and Flat no.801 in Globe Flower Tower, all in Alstonia Apartments raising several claims. However, no notice was served on the complainant regarding the flat in question, i.e. Flat no.D 801, Daffodil Tower, Alstonia Apartments. It is significant to clarify that the complainant had not entered into any agreement with the respondent no.2 and none of the respondents sent any communication to the complainant regarding any transfer or assignment of the rights and liabilities of the respondent no.1 under the agreement dated 28.7.2007 in favour of the respondent no.2. Surprised by the aforesaid letters sent by the respondent no.2 in respect of the flat regarding which the complainant had entered into an agreement with the respondent no.1, the complainant tried to contact the offices of both the respondent no.1 and 2 to know the correct factual position, but no response was given to it.

Left with no option, on 4.5.2015 the complainant sent a legal notice to the respondent no.1 with whom the complainant had entered into agreement in respect of the aforesaid flat, wherein it was mentioned that the respondent no.1 has committed a breach of the agreement as well as deficiency in service on account of its failure to complete the construction and handover possession of the aforesaid flat within the agreed period of December, 2009. It was further mentioned that the respondent no.2 is making offers in respect of the flats regarding which the complainant had entered into an agreement with the respondent no.1, and that the complainant has no contractual relation with the respondent no.2. The complainant, thereafter, called upon the respondent no.1 to inform the revised schedule of construction of the apartment agreed to be sold to it within thirty days and to complete the construction and hand over possession of the flat to him without any further unreasonable delay. The complainant further expressed its readiness and willingness to perform its part of the agreement by making payment in instalments as mentioned in Construction Linked Payment Plan upon information of the dates of Bhoomipoojan, start of foundation and other steps in the construction of the apartment.

The notice dated 4.5.2015 sent by registered post on both administrative and registered offices of the respondent no.1 were received back with endorsement "No such Firm Exists".

On 8.6.2015, after receiving back the notice sent to the respondent no.1, the complainant sent a registered legal notice to the respondent no.2, wherein the complainant asked the respondent no.2 to disclose its authority for demanding money in respect of the aforesaid flat. It was further mentioned that in case, the respondent no.1 has made assignment in favour of the respondent no.2 in respect of the aforesaid apartment, it should be informed to the complainant the revised schedule of construction of the apartment agreed to be sold to it and to complete the construction and hand over possession of the flat without any further unreasonable delay. Even after expiry of thirty days of time stipulated in the aforesaid notice, the

respondent no.2 has not sent any response to the complainant.

The complainant has entered into the agreement with the respondent no.1 under which possession of the flat was to be given by December, 2009. However, even after making payment of Rs.11,58,500.00 at the time of allotment, which far exceeds the amount of 11% of the basic sale price which the complainant was required to deposit as per the agreement and after delay of more than 6 years, the respondent no.1 has neither informed the stage of construction to enable the complainant to make construction linked payment as per the conditions mentioned in the Agreement nor it handed over the possession of the flat to the complainant or made any communication explaining the reason for such inordinate delay. The act of the respondent no.1, therefore, amounts not only to the breach of the agreement but also deficiency in service. In case the respondent no.2 has obtained an assignment of the rights and liabilities of the respondent no.1 under the agreement dated 28.7.2007, the respondent no.2 has become liable to suffer the consequences of breach of the agreement dated 28.7.2007 and for the deficiency in service. It is specifically stated that the complainant has always been and is still ready and willing to make construction linked payment as per the conditions of the agreement.

Further, the respondent no.2 has caused harassment and mental agony to the complainant by demanding money in respect of the aforesaid flats, without disclosing its authority to do so even after several communications made by the complainant. The complainant has no contractual relation with the respondent no.2 and, therefore, in absence of any communication regarding any assignment made by the respondent no.1 in favour of the respondent no.2 and without the respondent no.2 having constructed the flat and informed the progress of its construction as mentioned in the construction linked payment plan, it has no liability to take any payment to it.

The complainant is entitled to get the ownership and possession of the flat in question in terms of the agreement and it is further entitled to receive damages for the inconvenience caused by being deprived of the enjoyment of the flat which ought to have been delivered to him by December, 2009 which damages are being assessed at Rs.6,000.00 per month which is a fair rental value of the flat as per the market rates prevailing in Greater Noida, calculated for the period since January, 2010 till the time the respondents actually deliver possession of the flat to the complainant. The complainant is further entitled to receive a sum of Rs.1,00,000.00 towards damages for harassment and mental agony caused by the acts of the respondents.

The total valuation of the flat situated in Daffodil Tower, Alstonia Apartments, Plot no.10, Pi 1 & 2, Greater Noida is Rs.44,21,000.00 and the complainant has claimed damages at the rate of Rs.6,000.00 per month for the deprivation of enjoyment of the flat, amounting to Rs.4,02,000.00 till date and an amount of Rs.1,00,000.00 towards damages for harassment and mental agony caused by the acts of the respondents. Therefore, the Hon'ble Commission has both territorial and

pecuniary jurisdiction to entertain the present complaint.

In this case notice was served on the opposite party and their counsel appeared before this court but did not file the written statement in time. Hence vide order dated 04.08.2016, his written statement was not taken on record.

We have heard the learned counsel for the complainant Sri Purushottam Awasthi. Ld. counsel for the opposite parties Mr. Manu Dixit did not appear to place his arguments. We have seen the pleadings, evidences and documents on record.

The opposite parties raised objection that the agreement contains an arbitration clause so this court has no jurisdiction and the matter should have been referred to arbitrator. As for as Consumer Protection Act is concerned, it is in addition of an act and not in derogation of any act. It is better to see the objects of the Consumer Protection Act vis a vis Arbitration Act, the following article will be helpful.

What are the main objectives of consumer protection act?

The Consumer Protection Act, came into existence and implemented in 1986, provides Consumer Rights to prevent consumers from fraud or specified unfair practices. It safeguards and encourages and gives an opportunity to consumers to speak against insufficiency and flaws in goods and services. If traders, manufacturers and distributors follow any foul trade, this act protects their rights as a consumer.

On which products are these right applicable?

This Protection Act covers entire goods and services of all sectors that are public, private, or cooperative sectors, except those exempted by the central government. The act provides a floor for a consumer where one can file their complaint against the product and the forum takes an action against the concerned supplier and compensation is granted to the consumer for the inconvenience he/she has encountered.

Objectives of consumer protection act To Provide better and all round protection to consumer.

To Provide machinery for the speedy redressal of the grievances.

To Create framework for consumers to seek redressal.

To Provide rights to consumers.

To Safeguarde rights of Consumers.

Let us know more about the rights and responsibilities of consumer.

Consumer Rights Listed below are the Rights of the Consumer Right to Safety- Before buying, a consumer can examine on the quality and guarantee of the goods and opt for ISI or AGMARK products.

Right to Choose- Consumer must have the right to choose from a variety and number of goods and in a competitive price Right to be informed- The buyers must be provided with complete information with all the necessary and adequate details of the product, make her/him act wise, and change the buying decision.

Right to Consumer Education- The consumer must be aware of his/her rights and avoid exploitation.

Right to be heard- The consumer will get due attention to express their grievances at a suitable platform.

Right to seek compensation- The consumer has the right to seek or ask for redressal against unfair and inhumane practices or exploitation of the consumer.

Consumer Responsibilities Responsibility to be aware - A consumer has to be careful of the safety and quality of products and services before purchasing.

Responsibility to think independently- Consumer should be well bothered about what they want and need and hence make independent choices.

Responsibility to speak out- The buyer should be fearless to speak out their problems and tell to traders what they exactly want Responsibility to complain- It becomes the consumer's responsibility to express and file a complaint about their dissatisfaction with goods or services in a sincere and fair manner.

Responsibility to be an Ethical Consumer- Consumer must be fair and not engage themselves with any deceptive practice.

The Consumer Protection Act 1986 was enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of Consumers Councils and other authorities for the settlement of consumers' disputes and for matters connected therewith (Preamble).

The Act Inter alia, seeks to promote and protect the rights of consumers such as --

(1) right to be protected against marketing of goods which are hazardous to life and property;

(2) right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(3) right to be assured, wherever possible, access to variety of goods at competitive prices;

(4) right to be heard and to assured that customers' interests will receive due consideration at appropriate forums.

(5) Right to seek redressal against unfair practices or unscrupulous exploitation of consumers; and (6) Right to consumer education The objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State levels.

The Act applies to all goods and services, except if otherwise provided by the Central Government by Notification. To provide speedy and simple redressal of consumer disputes, a quasi judicial machinery is set up at the District, State and Central levels. The three tier system of quasi judicial bodies will observe the principle of natural justice and are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi judicial bodies have also been provided.

Thus the Consumer Protection Act is to serve the interests of the consumers. Consumer education and redressal of consumers' grievances are the two aspects of the Act. It makes good the loss a consumer suffers and increases the feeling of responsibility of the manufacturer, trader, supplier or businessman.

The provisions of the Act have to be construed in favor of the consumer to achieve the purpose of enactment as it is social benefit oriented legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and not contrary to attempted objective of the enactment.

Extent of Consumer Protection:

While other legislations may be either punitive or preventive, the Consumer Protection Act compensates the consumer. The provisions of the Act are in addition to and not in derogation of the provisions of any law at the time being in force (Sec 3). In *Maine Container Services South Pvt Ltd v Go Garments* 1998 (3) SCC 247 it has been held that the Contract Act applies to all litigants before the Commissioner under the Consumers Protection Act. Passengers traveling in train suffering injuries and loss of Jewelry as a result of assault by unruly crowd are eligible for filing of complaint before State Commission is maintainable notwithstanding the provisions of sections 100 and 103 of Railways Act, 1889. The Consumer Protection Act therefore gives the consumer an additional remedy besides those which may be available under other existing laws. Existence of an arbitration clause in the

agreement is no bar to the entertainment of complaint by the Redressal Agency as the remedy under the Act is in addition to the provisions of any other law. However, the Consumer Forums under the Act have not taken over the jurisdiction of civil Courts. If the dispute between the parties is pending in Civil Court no Consumer Forum will adjudicate the dispute. Similarly if evidence be laid by the parties to the dispute is voluminous or complicated the parties will be referred to the appropriate Civil Court.

Consumers Protection Act, thus enshrines the rights of a consumer to be informed about the quality, quantity, potency, price etc., of the goods to be protected against unfair trade practices, to seek inexpensive and expeditious redressal of grievances before the Consumer Forums. Consumer Protection Act is a benevolent piece of legislation to protect a large body of consumers from exploitation.

With the passage of time, the populace of the country is on hike and so are their opinions. Their opinion forms the basis for their interpretation, it may be a good or a bad interpretation. What would happen in the situation where people starting interpreting the laws? We might be flooded with several interpretations. The interpretations will be in such huge number that the laws will become unclear. This is the reason why lawmakers, while making the law, formulate it in accordance with the aim, set out by them, before penning down the legislations. The aim of any legislation defines the basis of the act. It becomes the ground norm of the act, based upon which the judiciary interprets the disputed texts.

The aim of any act forms the indispensable element, because it acts as the cord that delivers the real intention of the legislators behind the act. Whenever there is clash between two legislations, it is the aim of the legislation which makes the judges to derive at the endpoint in deciding which law has the superseding effect. It is through the doctrine of pith and substance that judges are able to derive at the major inclination towards one act over another act. This inclination is decided on the basis of the aim/goal of the act and the facts of that particular case.

Somewhat similar situation aroused in front of Supreme Court in the case of Aftab Singh and Others v. Emaar MGF Land Limited and Another (Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017)[1]. In this case the Supreme Court cleared out the battle between arbitration and the statutory remedy when it comes upon solving the consumer disputes, which also upheld the decision of the National Consumer Disputes Redressal Commission (NCDRC). In this case, the apex body for the consumer dispute in India (NCDRC) ruled in the favor of the statutory remedy over the arbitration.

CONSUMER PROTECTION ACT (CPA) The beneficial legislation of Consumer Protection Act aims at reducing the grievances of the all classes of customers by providing them the preferential treatment. According to the Consumer Protection Act, the consumer dispute is the entity where the consumer/ customers have been

given the convenient safeguards against ample exploitation like bad customer service, faulty goods or any unfair trade practices. The interest of the customers is protected by setting up, the three tier quasi-judicial consumer Redressal machinery which are at national, state and district levels as per section 9 of Consumer Protection Act. The Consumer Protection Act, 1986 (CPA) has been enacted in light of certain concerns related to public policy and the benefit of consumer.

RELATIONSHIP BETWEEN ARBITRATION ACT AND CPA In India, people are least aware with the consumer's rights and lags behind having low general understanding of arbitration as dispute resolution mechanism. The arbitration clause can curtail the grounds on which the consumers can raise the disputes, whereas on the other side the consumer protection act may grant the consumer various grounds on which he can file the complaint which may not be otherwise permitted in the standard form agreement having the arbitration clause.

Arbitration has equal bargaining powers and the resources at hand which makes it private, efficacious, and timely form of dispute resolution. Whereas in case of consumer disputes, the case is different, where they are exposed to the standard form agreements making them submit to the unfair or the repressive terms. They are several times made part of the one-sided arbitration clause, which is drafted keeping in mind the interest of one party only.

These days Indians are shifting to the online purchasing platform and being ignorant of not checking the agreements which makes them to be covered under the blanket provision and end up being the party to the arbitration. This makes less options opened for the consumer to resort to the statutory remedies which in turns endangers the interest of the consumers. This may also build the hostile market against the e-commerce in India. It may have the adverse effect not only on the Indian economy but also on the e-commerce giants who aims at invest in the growing market.

CONSUMER COURT AS A SPECIAL COURT It was held in the case of Aftab Singh v Emaar MGF Land Limited & Anr., that the provisions of the arbitration act does not apply to the consumer courts, as they are the special courts set up for the public purpose. In this case, the group of the home owners filed the complaint against Emaar MGF Land Private Limited (Builder) before NCDRC. The complaint was filed for the non-delivering the plots to the buyers as per the Buyers' Agreement. The builder filed the application under section 8 of the Arbitration and Conciliation Act, on the basis of the arbitration agreement made between the parties which was mentioned there in the Buyer's Agreement.

It was argued by the petitioner that the remedies provided under the Consumer Protection Act are not in exclusion of the existing laws, but are in addition to it, which has been sated in the case of National Seed Corporation Limited v M. Madhusudhan Reddy((2012) 2 SCC 506). It was also argued that the consumer protection act is

the piece of the legislation which intends to confer the benefits and it is the, for which the purpose should be advanced. Therefore, regardless of having entered into the arbitration clause, the consumer can invoke the section 3 of the Consumer Protection Act and bring the complaint to the consumer forum(Skypak Couriers Ltd. Vs. Tata Chemicals Ltd)[3].

The builder pleaded that the Consumer Courts act as the 'judicial authority' within the scope of section 8 of the Arbitration and Conciliation Act and therefore if there is any valid clause entered between the parties, then the consumer courts can refer the parties to the arbitration. And hence according to the act the consumer courts are obliged to bring the case for the arbitration, irrespective of the High Court and Supreme Court decisions. The NCRDC's full bench ruled that the arbitration act does not bars the consumer court's jurisdiction relying on the Supreme Court's judgement in the case of Booz Allen Hamilton Inc v. SBI Home Finance Ltd(2011) 5 SCC 532), which provided the country with the disputes that are not arbitrable. In this case, Supreme Court, came with the 7 categories of the disputes that are not arbitrable[5].

The commission also relied on the Supreme Court judgement in the case of A. Ayyasamy v. A Paramasivam(2016)10 SCC 386 ;N. Radhakrishnan v. Maestro Engineers) that the dispute will not be arbitrable if the civil court's jurisdiction has been exclusively given to a tribunal or the special court. The Consumer Courts were made to create an organized system for dispute between the people who possess the unequal power i.e. the consumer and the large corporations. The commission also pointed out the section 2(3) of the Arbitration and Conciliation Act which refers to the situations where the special categories of disputes are protected from being referred to the arbitration. Therefore this provision protects the Consumer disputes. The court concluded that if the court allows party to go for the arbitration and being in favor of the builder, it will defeat the goals and the main purpose of the Consumer Protection Act.

THE CONDITIONS PRIOR AND POST 2015 AMENDMENT TO SECTION 8 OF ARBITRATION AND CONCILIATION ACT Section 8 of the Arbitration and Conciliation Act states that the judicial authority can instruct the parties to go for arbitration in the case when there exists the arbitration clause in the arbitration agreement. It does not bars oust the jurisdiction of the Consumer Court, it will continue to hold and enjoy the jurisdiction irrespective of presence of an arbitration clause in the agreement.

The Supreme Court contented that there was no legislative intent of the amended provisions of the section 8(1) in the Arbitration and Conciliation Act, so as to override the other statutes which have the specific remedies. Neither it intends to make disputes related to trusts, criminal law, tenancy, telecom, family law, IPR, etc, as the arbitrable subject and to against the judgement of A Ayyasamy v A Parasivam& Ors(2016) 10 SCC 729) and Booz Allen Hamilton Inc. v SBI Home Finance Limited &

Ors.(2011) 5 SCC 532) Supreme Court analyzed the situations prior to 2015 Amendment, related to referring the consumer disputes to arbitration. Supreme Court referred to the judgments prior to 2015 which had the settled law in cases of Fair Air Engineering Pvt. Ltd & Anr V N K Modi (1996) 6 the SCC 385), National Seeds Corporation Limited v Madhusudhan Reddy & Anr (2012) 2 SCC 506) and Rosedale Developers Private Limited V Aghor Bhattacharya & Ors (2018) 11 SCC 337). These cases held that even if the dispute arise from the contract having the arbitration clause, it will not impede the parties to resort to file a complaint before the consumer forum under Consumer Protection Act. All of the judgements had the rationale that provision of section 3 of Consumer Protection Act states that "the provision is in addition to, and not in the derogation of any other law for the time being in force."

The Supreme Court acknowledged the 2015 amendment which restricted the power of any judicial authority to refuse to refer the dispute to arbitration under section 8(1) and appointment of arbitrator under section 11(6A) and also acknowledged the fact that it invalidated the earlier precedent in the case of Sukanya Holding (P) Ltd v Jayesh H Pandya & Anr.(2003) 5 SCC 531) Supreme Court considering section 2(3) of the arbitration act, states that the Part I of the arbitration act shall not affect any other law for the time being in force, by virtue of which certain disputes may not be submitted to the arbitration. Supreme Court stated that the legislative intent of 2015 Amendment was never to override section 2(3) of the Arbitration Act and other statute which offers the public remedy like that of CPA. The Supreme Court in 1994 already held that CPA is a beneficial legislation which provides the economical and expeditious remedies to the aggrieved consumer in the case of Lucknow Development Act V M K Gupta(1994) 1 SCC 243).

Referring to all of the above cases, the Supreme Court in this case affirmed that the decision given by NCDRC is valid and stated that the consumer dispute are the subject matter where the dispute cannot be referred to arbitration as it pertains to rights in rem (public rights). It comes under the ambit of the non-arbitrable dispute defined under Booz Allen and Ayyasamy case. The disputes are non-arbitrable in disputes related to criminal laws, tenancy, trusts, family law, telecom, IPR, insolvency and winding up, and in certain cases, fraud.

CONCLUSION AND CRITICS OF THE CASE It can be ensured with the judgement that consumers who have lesser bargaining power than that of the service providers shall not be pushed towards the relatively cumbersome process of the arbitration where there can be other more affordable and efficacious low public law remedies available. The CPA is a special legislation which has the public law remedies dealing with the rights under the umbrella of "right in rem" which has been espoused by Booz Allen. The case had many critics for it, as it was delivered during the course of time, when India has been continuously focusing upon the survival and the supremacy of the arbitration proceeding over litigation in the Indian dispute resolution. And it was the major reason that it appeared for some of the people as a diversion from the

object of Indian arbitration system to be an arbitration-friendly hub. This also draws our attention towards the fact that the arbitration shall be made a more consumer-friendly method of dispute resolution. It is because of this judgement that people were able to depict the heightened element of the public interest consumer dispute in India.

[1]Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017 [2](2012) 2 SCC 506 [3]Skypak Couriers Ltd. Vs. Tata Chemicals Ltd [4](2011) 5 SCC 532 [5]Vimal Kishore Shah v Jayesh Dinesh Shah (2016) 8 SCC 788 [6] (2016)10 SCC 386 ;N. Radhakrishnan v. Maestro Engineers [7](2016) 10 SCC 729 [8](2011) 5 SCC 532 [9](1996) 6 the SCC 385 [10] (2012) 2 SCC 506 [11](2018) 11 SCC 337 [12](2003) 5 SCC 531 [13](1994) 1 SCC 243 So it is clear that The Consumer Protection Act is a special Act and even if there is a clause of arbitrator in the agreement, it will not oust the jurisdiction of the consumer courts. So this court has jurisdiction to try the case.

The opposite party no.1 has stated in affidavit that complainant is not a consumer. The complainant, beside the flat, also booked to other flats in the opposite parties project. The complainant is having more than one booking in the project of the respondent company hence he is not a consumer. The purpose of purchasing the flats from the respondent cannot be considered as a residential but for commercial gain through investment. The present complaint is also time barred. The cause of action, if any, has arise in on 28.07.2007 when alleged booking of flat was done by the complainant and alleged consideration was tendered to opposite party. The complaint is filed in the year 2015 which is time barred.

There is nothing on record to show that the flat purchaser by the complainant was only for commercial use. No evidence has been given by the opposite parties which show that the flats were meant for resale or for any commercial activities. If any person possesses more than one flat, it does not automatically means that this only for the purpose of investment and investment only. The complainant sent a legal notice to the respondent no 2 on 08.06.2015 asking it to disclose its authority for demanding money in respect of the aforesaid flat. So as far as cause of action is concerned, it also arises on 08.06.2015. Before it, the complainant has also sent a notice on 4 May 2015, so that was also a date of cause of action. So this complaint case is not time barred.

The opposite party also pleaded that the matter should have been referred to the arbitrator because there is a arbitration clause in the agreement. But this matter has already been discussed in detail that in spite of the arbitration clause, one may file a case before the consumer fora. The opposite party also stated that the complainant is the defaulter in this case and various reminder notices were sent to the complainant and it is stated that after making initial payment the complainant has failed to make further payment hence the complaint is liable to be dismissed. The opposite party has

stated that the complainant deposited the money with the respondent no 1 company for availing the flat in project developed by the respondent company on the land allotted in the name of respondent no 2 i.e, ANS Apartment P Ltd situated at Greater Noida, Uttar Pradesh named as "The Alstonia Apartments" and the said project is duly approved project of the company and construction at site is going on and thereafter delay in completion of project on account of reasons well explained in present reply thus in present case on account of overall slump in real estate industry especially on account of slow recovery from investors in the said project and on account of force majeure reasons stated in the present reply, there is delay in completing the construction of project. The opposite party also stated that in the present case the delay in completion of the construction has been caused due to undue delay of tendering the payment by the various allottees including the complainant herein in the project and in view of such problem the respondents company wrote constantly letters to various allottees to make payment and further has gone even after the extent of making public notice in the newspapers by calling upon the allottees in the project to deposit their payment on time and to extend their cooperation to complete the project on time. So both the opposite parties have put the same version in their affidavits filed. They could not file their written statement in time and that was not taken on record. It shows that when the opposite parties failed to submit their written statement before the court of law, how can they say that the complainant was defaulter in the case?

In the present case flat no D-801 area 1725 square ft has been allotted to the complainant on 28.07.2007 and an agreement has been executed between the parties stating that that the complaint shall complete construction of the apartment and the residential complex and deliver the possession of the apartment to the complainant by December 2009. The component deposited Rs.1,158,500/- against Rs.441,168/- (11% of the basic sale price as required in the agreement). The total cost of the flat was Rs.4,421,000/-. It was duty of the opposite party no.1, who entered into an agreement with the complainant, to deliver the possession of the flat as promised by him. In the agreement three months grace period will be given to the opposite parties after the expected date of delivery of possession. So we have taken, after giving three months grace period, 01.04.2009 and the final date for delivery of possession. The date of the notice as published in the newspaper and copy of which has been filed by the opposite party shows July 14. This date is much beyond the date on which possession was to be delivered. So the opposite parties became defaulter when they did not deliver possession on or before 01.04.2009. They could not show the force majeure. Payment of instalments by the allottees is not a force majeure issue because the opposite parties have power to cancel the allotment in case of non-payment of instalments. So there was no reason which can genuinely be said as true for delay in the construction of the flats.

Whether the opposite parties have received the completion certificate and occupancy certificate? Both the certificates are necessary to obtain before offering delivery

opposition to the allottee. It is importance should be known by the following legal article.

COMPLETION / OCCUPANCY CERTIFICATE When buying a home, it is vital to obtain documents, such as the Occupancy Certificate (OC) and Completion Certificate (CC). These are essential documents that allow you to mortgage or sell your home. Hence, homebuyers are advised to take possession of their flat or property only after these documents have been issued.

According to Vikas Bhasin, CMD, Saya Group, "Completion Certificate and Occupancy Certificate are some of the most important documents for a home buyer. Civic authorities can evict the occupants in case of non-availability of the necessary approvals. Before investing in a property, people must be doubly assured that all the certificates and approvals are in place."

Let us dive a little deeper into the details of these documents and their importance before you make a move to buy your dream home.

Owning a home is the culmination of years of savings, research, and paperwork. After patiently waiting for the construction to be complete, you finally register the property and take possession of your flat. But what if your dream home is declared unauthorised, and you are evicted by the authorities? This is not as far-fetched as it sounds. This nightmare could turn into reality without a crucial link in the property sale process - the Occupancy Certificate (OC).

The majority of apartments in different Indian cities have been occupied by owners without any occupancy certificate. This oversight can turn into a costly mistake, jeopardising the legal status of your dream home. The importance of the occupancy certificate cannot be overstated as it seals the legal status of your property and protects your ownership rights.

Decoding legal documents To understand the importance of an occupancy certificate and other legal documents, let's decode the legal jargon and understand their meaning in simple terms. Here's a ready reckoner of the most important legal documents related to your property:

Occupancy Certificate An OC certifies that the construction of the building has complied with the approved plans. It is issued by local municipal authorities or the building proposal department once the building has been completed and is ready to be occupied. Simply put, without an OC, your building has not been awarded a 'pass certificate'.

Completion Certificate A Completion Certificate (CC) is issued only after the construction meets other building standards like distance from the road, the height of

the building, and rainwater harvesting system. A CC alone cannot legalise occupation; the OC is a must.

Commencement Certificate If you are buying an under construction property, make sure you check the Commencement Certificate before signing the agreement. Many builders do not wait for a Commencement Certificate. This is illegal and can create serious problems in obtaining an OC at a subsequent stage.

Why is it unsafe to buy a flat without OC?

In the absence of a valid OC, the local municipal body can initiate serious action against flat owners. In 2014, residents of a well-known building complex in Mumbai's upscale Worli area were hit with a bolt from the blue after their complex was declared unauthorised. At the time of possession, buyers overlooked the issuance of an OC from the builder. It was only after that they were forced to evacuate their flats that the writing on the wall became clear to them.

This is just one instance, and if buyers are not careful about getting the OC, they may face the following repercussions:

- In the absence of a valid OC, your building can be demolished as it can be classified as an unauthorised structure.
- The OC is crucial while applying for a home loan or loan to purchase a resale flat. If you wish to sell or hypothecate the property after a lapse of time, you will not be able to do so without a valid OC.
- The water connection, sanitary connection or electricity supply can be disconnected in the absence of an OC.

How to obtain an OC The OC is obtained from local municipal bodies by submitting an OC application form along with the following documents:

- Commencement Certificate
 - Completion Certificate
 - Built and Section plan
 - NOC for fire and pollution
 - Area calculation sheet of floor signed by an authorised architect
 - Photographs of the completed building
 - Tax assessment with tax paid receipt
 - Photographs of rain harvesting and solar panels
 - Copy of the sanctioned plan
- After submitting the form, authorities inspect the complex and confirm if it has conformed to the approved plan before issuing an OC. Legally and ideally, a builder should submit an application with the municipal commissioner for the OC within 30 days of completion of the property.

How you can apply for an OC As a flat owner, you can also apply for an OC by approaching the local corporation or municipality, and if all approvals are in place,

an OC is issued within 30 days of application. You will have to submit the same documents as the builder to procure an OC.

Know your rights If the builder refuses to provide an OC, you should consider exercising your legal rights. You can issue a notice against the builder asking him to apply and hand over the copy of the OC within a month. You can also approach consumer forums and file a writ petition demanding the OC.

Some canny builders simply present the receipt of the OC and dupe gullible customers. But you shouldn't accept anything less than the actual OC as the receipt may be dated.

Landmark legislations like the Real Estate Regulatory Act (RERA) have been passed to regulate the sector, promote transparency and protect consumer rights. However, consumers must be vigilant and understand their rights and responsibilities towards owning a property. Documents like OC are essential and ensure the security of your investment.

Going forward, real estate experts believe that the OC should be made mandatory for the registration of flats and essential services. Until then, buyers must ensure builders get all the necessary approvals before handing over a property.

A Completion Certificate (CC) is an important legal document that certifies that a building is constructed according to the laid down norms and master plan of the city. This document has all the information related to the project, such as the building materials used, building height, and building plan, among other things like provision for green belt.

In a nutshell, this document certifies that the building adheres to all the prevailing rules and has not violated any norms. In fact, this document is to be shown compulsorily to the authorities to obtain electricity and water connection.

Builders are allowed to obtain a provisional Completion Certificate when there are minor works left in the project. Authorities then provide a provisional certificate valid for six months. After the expiry of the six months, the developer is bound to get a final CC.

Who issues a Completion Certificate?

Local authorities issue the Completion Certificate after a thorough inspection of the premises. If the developer violates no rules, authority issues a Completion Certificate.

Why is Completion Certificate important?

Buyers must be aware of the fact that if they are buying or moving into a property that does not have a Completion Certificate, they might be making a risky investment choice. The civic authorities hold the power to slap heavy penalties on the developer, leading to stalling or cancellation of the registered layout of the project. In case the building is already occupied, residents may also have to face eviction in extreme cases.

Difference between Occupancy Certificate and Completion Certificate Occupancy Certificate examines and certifies a property for adherence to bye-laws, civic amenities, electricity, sanitation and other clearances. On the other hand, a Completion Certificate is a document that certifies that a property is fit for possession by the buyers.

Clarifying the difference, Deepak Kapoor, Director, Gulshan Homz, says, "Completion Certificate is just a reaffirmation that the building has been constructed as per the building byelaws and the layout plan has been approved by various concerned authorities. Occupation Certificate signals that there is no violation of building construction norms, and thus, the structure is safe for occupants.

Generally, these documents are not required at the time of registry, and hence, buyers tend to overlook or ignore these. But for their own benefit and peace of mind, it is warranted that buyers of both ready-to-move-in as well as under-construction properties check these documents before taking possession. This would help avoid any unnecessary dispute or confrontation in the future."

Not a single word has been said about these certificates by the opposite parties. Whether any offer has been given by the opposite party to pay penalty regarding delay in delivery of possession? No such averments made in the written statement.

The Hon'ble Supreme Court on occupancy certificate by the builders.

"Supreme Court: The bench of Dr. DY Chandrachud* and AS Bopanna, JJ has held that failure on the part of the builder to provide occupancy certificate is a continuing breach under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 and amounts to a continuing wrong.

Factual Background The appellant is a co-operative housing society. The respondent constructed Wings 'A' and 'B' and entered into agreements to sell flats with individual purchasers in accordance with the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (MOFA). The members of the appellant booked the flats in 1993 and were granted possession in 1997. According to the appellant, the respondent failed to take steps to obtain the occupation certificate from the municipal authorities.

There was an obligation on the respondent to provide the occupancy certificate and pay for the relevant charges till the certificate has been provided, however, the respondent time and again failed to provide the occupancy certificate to the appellant society. For this reason, a complaint was instituted in 1998 by the appellant against the respondent. The NCDRC on 20 August 2014 directed the respondent to obtain the certificate within a period of four months. Further, the NCDRC also imposed a penalty for any the delay in obtaining the occupancy certificate beyond these 4 months. Since 2014 till date, the respondent failed to provide the occupancy certificate.

In the absence of the occupation certificate, individual flat owners were not eligible for electricity and water connections. Due to the efforts of the appellant, temporary water and electricity connections were granted by the authorities. However, the members of the appellant had to pay property tax at a rate 25% higher than the normal rate and water charges at a rate which was 50% higher than the normal charge.

Analysis Obligations of Promoter under MOFA Section 3 of the MOFA imposes certain general obligations on a promoter. These obligations inter alia include making disclosures on the nature of title to the land, encumbrances on the land, fixtures, fittings and amenities to be provided, and to not grant possession of a flat until a completion certificate is given by the local authority. The responsibility to obtain the occupancy certificate from the local authority has also been imposed under the agreement to sell between the members of the appellant and the respondent on the latter.

Sections 3 and 6 of the MOFA indicate that the promoter has an obligation to provide the occupancy certificate to the flat owners. Apart from this, the promoter must make payments of outgoings such as ground rent, municipal taxes, water charges and electricity charges till the time the property is transferred to the flat-owners. Where the promoter fails to pay such charges, the promoter is liable even after the transfer of property.

Limitation In the instant case, the appellant submitted that since the cause of action is founded on a continuing wrong, the complaint is within limitation.

Section 24A of the Consumer Protection Act 1986 provides for the period of limitation period for lodging a complaint. A complaint to a consumer forum has to be filed within two years of the date on which the cause of action has arisen.

Section 22 of the Limitation Act 1963 provides for the computation of limitation in the case of a continuing breach of contract or tort. It provides that in case of a continuing breach of contract, a fresh period of limitation begins to run at every moment of time during which the breach continues A continuing wrong occurs when

a party continuously breaches an obligation imposed by law or agreement. The continuous failure to obtain an occupancy certificate is a breach of the obligations imposed on the respondent under the MOFA and amounts to a continuing wrong.

The appellants, therefore, were entitled to damages arising out of this continuing wrong and their complaint is not barred by limitation.

"Rejecting the complaint as being barred by limitation, when the demand for higher taxes is made repeatedly due to the lack of an occupancy certificate, is a narrow view which is not consonance with the welfare objective of the Consumer Protection Act 1986."

Consumer Section 2(1)(d) of the Consumer Protection Act defines a 'consumer' as a person that avails of any service for a consideration. A 'deficiency' is defined under Section 2(1)(g) as the shortcoming or inadequacy in the quality of service that is required to be maintained by law.

In the present case, the NCDRC had held that the appellant is not a 'consumer' under the provisions of the Consumer Protection Act as they have claimed the recovery of higher charges paid to the municipal authorities from the respondent. Extending this further, the NCDRC observed that the respondent is not the service provider for water or electricity and thus, the complaint is not maintainable.

The respondent was responsible for transferring the title to the flats to the society along with the occupancy certificate. The failure of the respondent to obtain the occupation certificate is a deficiency in service for which the respondent is liable. Thus, the members of the appellant society are well within their rights as 'consumers' to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate.

[Samruddhi Co-operative Housing Society Ltd v. Mumbai Mahalaxmi Construction Pvt. Ltd, 2022 SCC OnLine SC 35, decided on 11.01.2022]"

Regarding delay of possession the only Supreme Court has held in the following case law, "In Kolkata West International City Pvt. Ltd. Vs. Devasis RudraCitation : 2019 Latest Caselaw 299 SC Judgement Date : Mar/2019[Civil Appeal No. 3182 of 2019 @ SLP (C) No(S). 1795 of 2017], the Hon'ble Supreme Court has held regarding delay in giving possession.

"This appeal arises from the judgment dated 21 November 2016 of the National Consumer Disputes Redressal Commission¹. A Buyer's Agreement dated 2 July 2007 was entered into between the appellant and the respondent. The respondent paid an amount of Rs 39,29,280 in 2006 in terms of a letter of allotment dated 20 September

2006. The agreement between the parties envisaged that the appellant would hand over possession of a Row House to the respondent by 31 December 2008 with a grace period of a further six months ending on 30 June 2009.

The respondent filed a consumer complaint before the West Bengal State Consumer Disputes Redressal Commission² in 2011 ¹ "NCDRC" "SCDRC" ² praying for possession of the Row House and in the alternative for the refund of the amount paid to the developer together with interest at 12% per annum. Compensation of Rs 20 lakhs was also claimed. The SCDRC allowed the complaint by directing the appellant to refund the moneys paid by the respondent together with interest at 12% per annum and compensation of Rs 5 lakhs. The NCDRC has modified this order by reducing the compensation from Rs 5 lakhs to Rs 2 lakhs. Mr. Ravinder Narain, learned counsel appearing on behalf of the appellant submits that the primary relief which was sought in the consumer complaint was for delivery of possession. According to the appellant, the completion certificate was received on 29 March 2016, which was intimated to the respondent on 11 April 2016.

Moreover, before the SCDRC, in its written submissions, the appellant had offered possession of the Row House to the respondent. It has also been stated that in a complaint which was filed by an association representing the allottees of 161 Row houses, a settlement was arrived on 11 September 2018 before the NCDRC specifying the date on which possession would be handed over together with interest at 6% per annum instead of 4% as mentioned in the Buyers' Agreement. It was urged that the developer having made a substantial investment in terms of the agreement, a direction for refund is not warranted. It has also been urged that the SCDRC in the course of its decision erroneously observed that the developer was unable to fulfill its obligation to complete the construction within the agreed period and it was not certain when the Row house would be handed over. It was urged that this observation by the SCDRC is contrary to the record since before it, a specific offer of possession was made.

It has been urged on behalf of the respondent by Mr. Supriya Bose, learned senior counsel that a consumer complaint was filed in the year 2011. At that stage, the appellant was bonafide ready and willing to accept possession. However, nearly seven years have elapsed after the extended date for the delivery of possession which expired on 30 June 2009. In spite of this, no offer of possession was forthcoming. Learned senior counsel submitted that the letter dated 22 March 2016 of the developer was conditional and despite the subsequent letter dated 11 April 2016, no formal offer of possession was ever made by the appellant. Moreover, it was urged that the interest awarded by the NCDRC at the rate of 12% is just having regard to the economic loss and hardship suffered by the respondent. While considering the rival submissions, we must at the outset advert to the following clause which was contained in the Buyer's Agreement:

"Unless prevented by circumstances beyond the control of the company and subject to Force Majeure, KWIC shall ensure to complete the said unit in all respect within 31st December 2008 only for the Cluster D. Further there will be a grace period of 6 months (up to 30th June, 2009) from the date of completion. In case the possession is not transferred after expiry of the said grace period, KWIC will be liable to pay prevailing 4 saving Bank interest of the State Bank of India for each month of delay on the money given by the allottee as compensation but no compensation will be paid on account of force majeure reasons." It is the above clause which is pressed in aid by the developer. Under the aforesaid clause, any delay beyond 30 June 2009 would result in the developer being required to pay interest at the prevailing savings bank interest of the State Bank of India.

Interestingly, where the buyer is in default, the agreement stipulates that interest at the rate of 18 per cent from the date of default until the date of payment would be charged for a period of two months, failing which the allotment would be cancelled by deducting 5% of the entire value of the property. The agreement was evidently one sided. For a default on the part of the buyer, interest at the rate of 18% was liable to be charged. However, a default on the part of the developer in handing over possession would make him liable to pay interest only at the savings bank rate prescribed by the SBI. There is merit in the submission which has been urged by the buyer that the agreement was one sided.

The clause which has been extracted in the earlier part of this order will not preclude the right and remedy available to the buyer to claim reasonable interest or, as the case may be, compensation. The essential aspect of the case which is required to be analysed is whether the buyer was entitled to seek a refund or was estopped from doing so, having claimed compensation as the primary relief in the consumer complaint.

The Buyer's Agreement is dated 2 July 2007. In terms of the agreement, the date for handing over possession was 31 December 2008, with a grace period of six months. Even in 2011, when the buyer filed a consumer complaint, he was ready and willing to accept possession. It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period.

A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by the SCDRC and by the

NCDRC for refund of moneys were justified. Having regard to all the facts and circumstances of the case, we modify the order of the NCDRC by directing that the appellant shall pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. Save and except for the above modification, we affirm the directions of the NCDRC.

The amount outstanding in terms of the directions of this Court shall be released out of the moneys which have been deposited by the appellant. The balance, if any, that remains shall be refunded to the appellant. The appeal is, accordingly, disposed of. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of."

Now from all the given circumstances it has been clear that the opposite parties failed to deliver the possession of the unit within the promised time and they now sending different demand to extract the money from the complainant but did not disclose as how much penalty they had to pay to the complainant regarding delay in the delivery of possession to the complainant. The opposite parties have stated that there has been delay in payment of various instalments by the allottees. It cannot be raised because the actual date of handing over the possession of the flat has already been expired, the opposite parties are not in a position to demand extra money before adjusting the penalty in the balance amount to be deposited by the complainant. No new demand can be raised after the cut-off date because the possession was not handed over to the complainant. Now the defaulter is opposite parties and not the complainant.

Whether the opposite parties have paid any interest on the amount deposited by the complainant.? Regarding payment of interest on the deposited amount only Supreme Court has said in various judgment if you are being quoted here.

Ghaziabad Development Authority v. Balbir Singh In the Supreme Court of India
Name of the Case Ghaziabad Development Authority v. Balbir Singh Citation
(2004) 4 SCC 65 Year of the Case Petitioner Ghaziabad Development Authority
Respondent Balbir Singh Bench/Judges Justice H. K. Sema Justice S.N. Variava
Acts Involved Consumer Protection Act, 1986 Important Sections Section 14 of
the Consumer Protection Act, 1986 Section 22 of the Consumer Protection Act, 1986

The case of Ghaziabad Development Authority v Balbir Singh is a landmark decision that laid down certain judicial standards regarding the grounds on which compensation may be awarded, particularly, in matters of allotment of flats/plots by land development authorities. Compensation under consumer protection laws is required to recompense for loss or injury suffered by consumers, and therefore, the quantum of compensation to be awarded would necessarily have to be determined based on the facts and circumstances of each case. This decision set an established precedent on the issue of compensation to be awarded in consumer disputes, and its principles have been relied upon in numerous subsequent cases.

Introduction The consumer protection laws establish a redressal mechanism whereby consumers can claim monetary reliefs for defective goods, deficiency in service, and unfair trade practices. Sections 14 and 22 of the Consumer Protection Act, 1986 empower the District, State, and National Consumer Disputes Redressal Commission to "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". Such monetary reliefs i.e., compensation awarded would have to be based on the facts and circumstances of each case, since the loss and injury suffered would vary. Given the absence of a straight-jacket formula for the determination of the amount of compensation to be awarded in each case, it follows that there can be no uniformity in the award of compensation.

It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair, and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant can establish his charge.[1] These 'established judicial standards' have been laid down in a plethora of cases. The case of Ghaziabad Development Authority v Balbir Singh[2] is a landmark decision that discussed the grounds on which compensation may be awarded, particularly, in matters of allotment of flats/plots by land development authorities. It set an established precedent on the issue of compensation to be awarded in consumer disputes, and its principles have been relied upon in numerous subsequent cases.

Background and Facts of the Case The present case of Ghaziabad Development Authority v Balbir Singh arose out of an appeal directed against the judgment and award passed by the National Consumer Disputes Redressal Commission (NCDRC) awarding an interest @ 18% per annum. The Commission was considering a bunch of matters, the lead being the case of Haryana Urban Development Authority vs. Darsh Kumar, where it held that in cases of deficiency of service by development authorities, the rate of interest awarded must be 18% per annum. Following this, the Commission disposed of subsequent matters by its preceding award. Numerous appeals were filed before the Supreme Court against the decision of the Commission in various cases, primarily against its award of 18% interest.

Since the Supreme Court was considering a wide number of matters relating to allotment of land by development authorities, the facts of each case vary. In some cases, the scheme had gotten canceled after the payment of monies and allotment of flats/plots. Delivery of possession of the flats was therefore refused to the allottees. In some cases, either possession was offered at an increased rate at a much later date possession or was offered but not taken by the party. Possession was not delivered in some cases despite payment of monies and no refusal to deliver possession. In some cases, the construction was of sub-standard quality or it was incomplete, or the authority demanded extra amounts from the party which was paid only by some. In some cases, allotments were made and possession offered of flats/land which was encumbered or occupied by some other party.

The appeal in the Supreme Court was filed due to the Commission granting interest at the rate of 18% per annum irrespective of the type of case or amount of delay and without even going into the facts of the case. Complainants had asked for the refund of amounts wrongly collected and in other

cases, asked for a refund of the amounts paid.

Issues Involved Whether the grant of interest at the rate of 18% per annum by the National Consumer Disputes Redressal Commission in all cases is justifiable?

Related Provisions Section 14 of the Consumer Protection Act, 1986 Section 22 of the Consumer Protection Act, 1986 **Related Cases** The Supreme Court relied upon the case of Lucknow Development Authority v. M. K. Gupta[3] which firstly widened the scope of "service" defined under Section 2(1)(o) of the Consumer Protection Act, 1986 to include the housing construction or building activities carried on by private or statutory bodies.

The Court relied upon the English case *Geddis v. Proprietors of Bann Reservoir*[4] which gave a wide connotation to the word compensation, holding that "Compensation has not been defined in the Act. According to the dictionary, it means, 'compensating or being compensated; thing given as recompense;'. In a legal sense, it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss."

Judgment The Supreme Court, at the outset, reiterated the position taken in the case of Lucknow Development Authority v. M.K. Gupta, and held that "the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities". It further held that the power of the NCDRC extends to awarding compensation to consumers for misfeasance in the public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. Therefore, it upheld the appeals filed before it to the extent that it confirmed the jurisdiction of the NCDRC to award compensation in cases of service rendered by statutory & public authorities (the land development authorities in the present case).

As to the issue of whether the grant of interest at the rate of 18% per annum by the NCDRC in all cases is justifiable, the Supreme Court held in the negative. It stated that "the power to and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum." It held it to be unsustainable. The Court further stated that the "Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case." The purpose of awarding compensation is to recompense for a loss or injury suffered and such compensation would therefore be proportional to the amount of loss and injury.

While considering the compensation to be awarded to the consumers in cases of deficiency of service by Development Authorities, the Court laid down a range of principles for the determination of the amount of compensation, summarised below:

To award compensation, the Forum or the Commission must determine that service has been deficient and/or misfeasance in public office which has resulted in loss or injury. While no hard and fast rule can be laid down, the Court gave a few instances where the award of compensation would be justifiable, including where possession is

not handed over within the intimated period even though allotment is made and the price is paid. In such cases, the loss could be determined based on loss of rent which could have been earned if possession was given. Compensation could also be the scheme has been canceled without any justifiable cause, after the allotment.

Compensation cannot be uniform and to illustrate this, the Court lays down the principle to be followed for the determination of compensation in two cases- - (a) where the delivery of possession is being directed, and (b) where only the monies are directed to be returned or refunded by the Court. In case (a), the compensation for harassment will necessarily have to be less since in a way the aggrieved party is being compensated by an increase in the value of the property he is getting. In case (b) however, the party is suffering a greater loss since he has been deprived of the flat/plot, and his expectation of delivery of possession. He would also be denied the benefit of an increase in the value of land and the compensation thereof. Therefore, the compensation to be awarded in such cases would have to be higher than in case (a).

The Court held that "such compensation has to be worked out after looking into the facts of each case and after determining what is the amount of harassment/loss which has been caused to the consumer."

Compensation would include compensation for physical, mental, or even emotional suffering, insult, or injury or loss.

Awarding of Compensation in the Event of Deficiency in Service Rendered The consumer protection laws have a wide reach and the consumers are entitled to receive compensation for deficiency in services rendered by statutory and public authorities. The Consumer Commissions have been vested with the jurisdiction to award the value of goods or services and compensation. On being satisfied that a complainant is entitled to compensation for loss or injury or harassment or mental agony or oppression, it must direct the authority to pay compensation. A wide discretion has been given to determine the quantum of compensation for any loss or damage suffered by a consumer, to redress any injustice. However, it is a well-established principle that the computation of compensation has to be fair, reasonable, and must reconcile with the loss or injury suffered. The Consumer Forum is cast with the duty to take into account all relevant factors for arriving at the compensation to be paid.

This landmark decision has set a precedent on the matter of compensation to be awarded in matters relating to allotment of land by development authorities and has been relied upon in many subsequent cases of the Supreme Court. In the case of H. P. Housing Board v Varinder Kumar Garg[5] and Haryana Urban Development Authority vs Darsh Kumar[6], the Supreme Court directed the Commission to follow the principles laid down in the case of Ghaziabad Development Authority vs. Balbir

Singh in future cases.

Conclusion This landmark decision laid down rudimentary principles and set judicial standards concerning the awarding of compensation and the determination of the quantum of compensation to be awarded. It struck down the mechanical application of a fixed rate of interest at 18% per annum by the National Commission in numerous cases, asserting that there can be no hard and fast rule.

The principles enunciated go a long way in ensuring that consumers are compensated appropriately and proportionally for the loss and injury suffered. This decision has further strengthened the consumer protection laws by bringing clarity to how the consumer is required to award compensation.

References Indian Kanoon <https://indiankanoon.org/> Consumer Protection Act, 1986 http://legislative.gov.in/sites/default/files/A1986-68_o.pdf [1] Chief Administrator, H.U.D.A. & Anr. v. Shakuntla Devi, (2017) 2 SCC 301 [2] (2004) 5 SCC 65 [3] (1994) 1 SCC 243 [4] (1878) 3 AC 430 [5] (2005) 9 SCC 430 [6] (2005) 9 SCC 449 In a latest judgment the only Supreme Court has redefined the rate of interest.

In a latest case, on Supreme Court in Petition(s) for Special Leave to Appeal (C) No(s). 24059/2022 (Arising out of impugned final judgment and order dated 19-09-2022 in RP No. 1187/2022 passed by the National Consumers Disputes Redressal Commission, New Delhi) MEERUT DEVELOPMENT AUTHORITY Petitioner(s) VERSUS SURESH CHAND GARG Respondent(s) (FOR ADMISSION and IA No.202401/2022-EXEMPTION FROM FILING O.T.) Date: 05-01-2023 This petition was called on for hearing today.

Held "We have heard learned counsel for the petitioner and find that the order passed by the Consumer Commission was reasonable and there was no reason of filing appeal/revision against the substantive order passed on the consumer complaint by the District Consumer Commission dated 06.09.2019. Consequently, the present petition is disposed of with a direction, to sum up the litigation which is pending for a long time, that let the order of the District Consumer Commission dated 06.09.2019 shall be complied with and the respondent be refunded the entire deposit with simple interest at the rate of 12% per annum within a further period of 60 days from today, failing which it shall carry interest at the rate of 15% per annum until actual payment."

So the Hon'ble Supreme Court has specifically said that the rate of interest shall be 12% if paid within 60 days from the date of judgment otherwise the rate of interest will be 15% per annum until actual payment.

Regarding payment of compensation, damages, rent et cetera the following case laws of Hon'ble Supreme Court and Hon'ble NCDRC are worth mentioning.

In the case of H. P. Housing Board v. Varinder Kumar Garg[(2005) 9 SCC 430] and Haryana Urban Development Authority vs. Darsh Kumar[(2005) 9 SCC 449], the Supreme Court directed the Commission to follow the principles laid down in the case of Ghaziabad Development Authority vs. Balbir Singh in future cases."

Hon'ble Supreme Court in the case of Haryana Urban Development vs. Darsh Kumar, Etc., Civil Appeal no 5796 of 2002 decided on 28 July, 2004 has held ;

"This Court has, in the case of Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

We are informed that in spite of there being no stay, to payment of interest beyond 12% and in spite of clarification given by this Court's order (reported in (2004) 5 SCC 65), the amounts have still not been paid. We feel that for the lapse Appellants must pay interest at the rate of 15% from 17th March, 2004 till payment. Appellants shall also pay costs fixed at Rs.500/- in each case to the Legal Aid Society of the Supreme Court. TheAppellants must recover the amount paid towards costs personally from the officer/s, who were responsible for not paying even after clarification by this Court. We clarify that this Order shall not be taken as a precedent in any other matter as the order has been passed taking special features of the case into account. The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) in future cases. The Appeals are disposed off in above terms. There will be no order as to costs."

So it is clear that the compensation and rate of interest shall depend on the facts and circumstances of each case and no hard and fast rule can be framed. In this connection some of the judgment of the Supreme Court and Hon'ble NCDRC should be taken into account.

In the case of PRIYANKA MITTAL & ANR. V. PARSVNATH DEVELOPERS LTD. & ANR. (NCDRC).These appeals arise out of single order of State Commission, hence, decided by common order. These appeals have been filed against the order dated 25.2.2015 in Complaint Nos. 18 of

2013- Nalin Bhargava & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 34 of 2013- Jasleen Viswanathan & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 58 of 2011- Janmejai Mani Tiwari Vs. Parsvnath Developers Ltd. & Anr.; 68 of 2013- Indu Singh Vs. Parsvnath Developers Ltd. & Anr.; 69 of 2013- Poonam Sagar Vs. Parsvnath Developers Ltd. & Anr.; 86 of 2010- Priyanka Mittal & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 101 of 2011- Mohd. Aslam Khan & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 130 of 2012- Dr. Sunil Kr. Singh & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 49 of 2012- Neera Mittal & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 74 of 2011- Deepak Bhalla Vs. Parsvnath Developers Ltd. & Anr.; 87 of 2010- Syed Gufran Ali Alvi & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 96 of 2011- Uppasana Malik Vs. Parsvnath Developers Ltd. & Anr.; 175 of 2013- Umesh Chandra Dixit & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 97 of 2011- Pravin Kumar Goel & Anr. Vs. Parsvnath Developers Ltd. & Anr. which complaints were partly allowed.

The Hon'ble NCDRC held that:

"Brief facts of the cases are that opposite parties/respondents are engaged in the activity of housing construction and accordingly they have launched a project named as Parsvnath Planet situated in Gomti Nagar, Lucknow. The project was demonstrated to be very lucrative and made attractive to the vendees, in order to procure/collect money from the needy persons demonstrating themselves to be excellence in the field of construction activity as compared to other builders and assured the buyers/complainants that it has been duly approved by the Lucknow Development Authority and necessary permission has also been obtained from them. The emphasis was made by the opposite parties that the possession of the Unit shall be given within a scheduled period of $36+6=42$ months stipulated in agreements executed in between the parties for the project launched in the year 2006. The complainants/appellants attracted by the promise and assurance of the opposite parties, somehow managed and arranged the money from their personal sources as well as on loan at attractive rate of interest and the hard earned money was paid by them to the opposite parties in a hope that the possession of the units shall be provided to them in the year 2009 and they can leave peacefully in their own houses, since the complainants are living in rented houses.

The complainants visited the construction site of the opposite parties after depositing the entire amount, where it was revealed that the construction activities were on halt and the persons available on the site told the complainants that the apartments are likely to be completed till 2015. Even the partial construction done by the opposite parties was defective and did not match the specifications provided in the agreement. The complainants were shocked on hearing it and observing the site. The complainants immediately contacted the Area Manager, who told the complainants that there is some delay in the construction of the apartment and the apartments shall be ready till June, 2010. The complainants have to repay the amount taken on loan alongwith interest without getting the possession of the allotted units causing irreparable loss and injury to them. The complainants have come to know that the opposite parties have invested the funds earmarked for this project into their other

projects in other city due to which they have not been able to complete the project in time. Besides this, it has also come to the light that although the opposite parties had collected huge funds from the buyers but in spite of that the opposite parties have miserably failed to pay the dues of Lucknow Development Authority which forced the Lucknow Development Authority to issue coercive measures against the opposite parties for therecovery of their dues. Alleging deficiency on the part of opposite parties/ respondents, complainants filed separate complaints before State Commission. Aggrieved by the order of Hon'ble State Commission, these appeals preferred before Hon'ble National Consumer Disputes Redressal Commission.

Hon'ble NCDRC discussed various case laws and after hearing the parties held, "Learned Counsel for appellants submitted that as complainants have been deprived of possession for a long period beyond agreed period, it amounts to restrictive trade practice under Section 2 (nnn) of Consumer Protection Act and complainants are entitled to get compensation. Section 2 (nnn) runs as under:- means a trade practice which tends to bring about restrictive trade practice manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include- Delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price; Any trade practice which requires a consumer to buy, hire or avail of any goods, or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services; Perusal of aforesaid provision reveals that when opposite party delays in delivery of goods which leads to rise in the price of goods meaning thereby, more price is charged from complainant, it amounts to restrictive trade practice. In the case in hand, opposite party on account of delayed delivery of possession is not charging higher rate than the agreed rate for delivery of possession of flat, so, it does not fall within the purview of restrictive trade practice under Section 2(nnn) of Consumer Protection Act."

"Admittedly, agreements were executed in 2006 and as per agreements, possession of flats was to be delivered within 42 months, meaning thereby, possession was to be given in the year 2009-2010 and possession has not been handed over so far though year 2016 has started. No doubt, complainants are entitled to get penalty amount for delayed delivery of possession as per clause 10(c) of the agreement but opposite party cannot be permitted to avail benefit of aforesaid clause for indefinite period. This penalty clause should be allowed for the benefit of parties for a limited period and in the cases in hand, I deem it appropriate to extend applicability of aforesaid clause for a period of one year beyond 42 months and after that, complainants are certainly entitled to compensation. Opposite party cannot be allowed to avail huge funds of complainants by paying merely Rs. 5/- per sq. ft. for example, complainants who have purchased flat measuring 164.901 sq. mtr., they have made payment of about Rs. 31.00 to 32 lakhs and in the garb of clause 10 (c), opposite party is paying penalty @ approximately Rs. 9,000/- per month against enjoying funds more than Rs. 30.00

lakhs. As complainants have been deprived to shift to their flats for a long period which would not only have given them satisfaction of living in their own house but also have raised their social status and opposite party has enjoyed funds of complainants for a long period, I deem it appropriate to allow compensation @ Rs. 15,000/- p.m. to the complainants who have applied for flats upto 175 sq. mtr and Rs. 20,000/- per month to complainants who have applied for flats above 175 sq. after 54 months of execution of agreement till delivery of possession."

Against this judgment, parties went to Hon'ble Supreme Court. The judgment of Hon'ble Supreme Court is:-

In Nalin Bhargava vs. Parsvnath Developers Ltd. CA 6662/2018 @ SLP(C) 7596/2016 etc and other related civil appeals on 13 July, 2018, Hon'ble Supreme Court held:-

"Leave granted in all the special leave petitions. CA 6662/2018 @ SLP(C) 7596/2016 etc. It is submitted by Mr. M.L. Lahoty, learned counsel appearing for the appellants in all the appeals that the possession has been handed over and the deficiencies have been removed and, therefore, he has no grievance. However, Mr. Lahoty would insist that there should be imposition of costs as compensation.

Mr. Sachin Datta, learned senior counsel appearing for the developer has raised objections with regard to imposition of costs.

Having heard learned counsel for the parties, we are of the considered opinion that the cause of justice would be best subserved if each of the appellants in the present appeals are given Rs.1,50,000/- (Rupees one lakh fifty thousand only) per flat, towards costs. When we say "cost", we mean costs alone and nothing else."

In the case of Meerut Development Authority Vs. Suresh Chandra Garg, Special Leave to Appeal (C) No(s). 24059/2022, Judgment dated 05.01.2023 Hon'ble Supreme Court has held, "consequently, the present petition is disposed of with a direction, to sum up of the litigation which is pending for a long time. Let the order of the District Consumer Commission 06.09.2019 shall be complied with and the respondent be refunded the entire deposited amount with simple interest at the rate of 12% per annum within a further period of 60 days from today failing which it shall carry interest at the rate of 15% per annum until actual payment."

Therefore it is clear that the amount shall be refunded with simple interest at the rate of 12% within 60 days from the date of judgment otherwise the rate of interest shall be 15% simple interest per annum till the date of actual payment. In this case we take the cut-off date as October 2014, and the interest shall be computed from November 1, 2014 till the date of actual payment.

These builders are just earning money from the consumers to whom they issued allotment letters and got a huge amount. They keep this amount for a long time and earn interest on it.

Property dealing is that part of business where they never pay a penny to the consumers on their amounts deposited for a long-term or if they pay, they pay a meagre interest of about 5% or so but they charge 18 to 24% or more if the consumers default in depositing any instalment. It reminds us the story of "The Merchant of Venice" The Merchant of Venice is the story of a Jewish money lender Shylock who demands that an antisemitic Christian offer "a pound of flesh" as collateral against a loan. These acts of builders also remind us the age of Sahukari during ancient India and also during British Raj. Whether these builders have power to frame their own law? They put their terms and conditions in such a way that the sufferer will always be the consumer. The Consumer Protection Act 1986 has been enacted for the benefits of consumers, so the courts dealing with Consumer Protection Act 1986 should come forward for their rescue. The courts are not governed by the builders but they are governed by the law, Custom and Usages. Now in the background of all the facts and also the facts of the present case, we will also discuss something more.

Now we see the present case. There is no completion certificate. There is no occupancy certificate. Delivery of possession has not been given on the date as promised by the opposite parties. They have become defaulter in not providing the unit to the complainant within the time mentioned by them in the agreement. As per judgment of the Hon'ble NCDRC he is entitled for rental Rs.15,000.00 per month from the cut of date that is 01.04.2009 (actual date is DECEMBER 2009). He is liable to pay interest on the amount deposited by the complainant from their due date of deposits. As far as delivery of possession is concerned, the possession should have been handed over within three years because in cases where no such date has been mentioned by the builders, Hon'ble Supreme Court has said that the reasonable time to deliver the possession of the flat is three years.

Hon'ble Supreme Court in civil appeal number (S) 3533-3534 of 2017 , M/S Fortune infrastructure (NOW known as M/S Hicon Infrastructure) & Anr Vs Trevor D'Lima & Ors., Judgment 12.03.2018 has held:

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014.

Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to ?"

So there is no question to extend the period of delivery of possession because Hon'ble Supreme Court has made it clear that the possession should have been handed over within three years. There

is no record to show whether the opposite parties have applied and received NOCs Of Fire Department, Civil Aviation Department, Pollution Control Department Et cetera. These NOCs are also necessary in addition to completion certificate and occupancy certificate. The complainant has prayed for delivery of possession of the said flat within a time to be fixed by the Hon'ble commission. The complainant has also prayed for damages at the rate of Rs.6000.00 per month which is a meagre amount in comparison to the Hon'ble NCDRC judgment in which the Hon'ble NCDRC has awarded Rs.15,000/- per month.

Therefore it is clear in this case that the possession of the flat has not been handed over to the complainant as promised by the opposite parties. The cut of date for delivery of possession is 01.04.2010 so all the damages, compensation and other penalties shall be reckoned from the state. From all the facts and circumstances of the plaint case we are of the opinion that the complainant is entitled for the following reliefs.

The complainant is entitled to get the possession of flat number D-801 measuring 1725 square Ft in Dffodil Tower, Alstonia Apartment, plot number 10, Pi 1&2, Greater Noida within 60 days from the date of judgment of this complaint case along with Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc with execution of the sale deed and if not done within 60 days from the date of judgment of this complaint case the complainant will be entitled to get Rs.50,000.00 per month after 60 days till the date of actual delivery of possession/execution of sale deed along with the copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc. The complainant is entitled to damages at a rate of Rs.6000/- per month with interest at a rate of percent from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% payable from 01.04.2010 till the date of delivery of actual possession/execution of sale deed and handing over all the papers as mentioned.

The complainant shall be entitled to get interest at a rate of 12% on the amount deposited by him from the respective date of deposition if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from the respective date of deposits.

The complainant is entitled to get Rs.1.5 lakhs as damages in light of the Hon'ble Supreme Court judgment.

The complainant is also entitled to receive Rs.20 lakhs towards mental agony, harassment, deficiency in service under the relief clause IV of the complaint with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.04.2010 till the date of actual delivery of possession/execution of sale deed a company with copies of all the documents as mentioned earlier.

The complaint case is decided accordingly.

ORDER 1- The opposite parties are, jointly and severally, directed to hand over the possession of flat number D-801 measuring 1725 square Ft in Dffodil Tower, Alstonia Apartment , plot number 10, Pi 1&2, Greater Noida to the complainant within 60 days from the date of judgment of this complaint case along with Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc with execution of the sale deed and if not done within 60 days from the date of judgment of this complaint case the opposite parties shall pay damages @ Rs.50,000.00 per month after 60 days from the date of judgment of this complaint case till the date of actual delivery of possession/execution of sale deed along with the Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department, Fire Department, Civil Aviation Department etc. 2- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.6000/- per month with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% payable from 01.04.2010 till the date of delivery of actual possession/execution of sale deed accompanying with handing over all the papers as mentioned in clause 1 of the order.

3- The opposite parties are, jointly and severally, directed to pay to the complainant interest at a rate of 12% on the amount deposited by him from the respective date of deposition if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from the respective date of deposits.

4- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.1.5 lakhs as damages in light of the Hon'ble Supreme Court judgment.

5- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.20 lakhs towards mental agony, harassment, deficiency in service under the relief clause IV of the complaint with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.04.2010 till the date of actual delivery of possession/execution of sale deed accompanying with copies of all the documents as mentioned in clause 1 of the order of this complaint case.

If the order is not complied with, within 60 days from the date of judgment of this complaint case, the complainant shall be entitled to file execution case in this court at the cost of the opposite parties.

The stenographer is requested to upload this order on the Website of this Commission today itself.

Certified copy of this judgment be provided to the parties as per rules.

(Sushil Kumar)

(Rajendra Singh)

Member

Presiding Member

Judgment dated/typed signed by us and pronounced in the open court.

Consign to the Record-room.

(Sushil Kumar)

(Rajendra Singh)

Member

Presiding Member

Dated 15.5.2023

JafRi, PA I

C-2

Reserved

State Consumer Disputes Redressal Commission

U.P. Lucknow.

Sahota Seeds Ltd., through its Managing Director,

Sri Sohan Singh s/o Shri Trilok Singh, R/o Village,

Narainpur Jaspur, Udham Singh Nagar, Uttaranchal.

...Complainant.

Versus

1-M/s Nitishree Infrastructure Ltd. having

Registered office at G-55, East of Kailash,

New Delhi-110065 and Administrative

Office at A-1, Sector 4, Noida, Gautam Budh

Nagar, U.P.

2- ANS Apartments Private Ltd., B-111, Sector 5

Noida, Gautam Budh Nagar, U.P.-201301

Through its Managing Director.

...Opposite parties.

Present:--

1- Hon'ble Sri Rajendra Singh, Presiding Member.

2- Hon'ble Sri Sushil Kumar, Member.

Sri Purushottam Awasthi, Advocate for complainant.

None for opposite parties.

Date: 15.05.2023

JUDGMENT

Per Sri Rajendra Singh, Member-

This complaint has been filed by the complainant for following reliefs:

I- To complete the construction and handover possession of the Flat no.G-801, meas

II- To pay damages at the rate of Rs.6,000.00 per month for the deprivation of enjoy

III- To pay cost to the complainant incurred by it in filing the present complaint.

IV- To pass any other order or direction which the Hon'ble Commission may deem fit i

In short, the brief facts of the complaint case are that, that on 28.7.2007, the respondent no.1 had issued an allotment letter to the complainant whereby it allotted flat no.801, measuring 1725 square feet in Daffodil Tower, Alstonia Apartment, Pot no.10, Pi 1 & 2, Greater Noida. On the same date, the respondent no.1 had executed an agreement with the complainant for selling the aforesaid apartment for a total sale consideration of Rs.44,21,000.00. Clause 9 of the agreement provides that the company shall complete construction of the apartment and the residential complex and deliver possession of the apartment to the complainant by December, 2009. Annexure B2 to the agreement contained a construction link payment plan, according to which 11% of basic sale price was to be paid at the time of booking, 10% of BSP was to be paid after bhoomipoojan and the remaining consideration was payable in instalments as per the progress of construction.

As against the requirement of paying only 11% of the basic sale price, which comes to Rs.4,41,168.00 the complainant paid a much higher sum of Rs.11,58,500.00 at the time of booking of the flat, receipt of which amount was acknowledged both in the allotment letter as well as the agreement dated 28.7.2007. Although the agreed time of completion of construction and handing over possession of the flat expired in December, 2009, the respondent no.1 did neither sent any communication to the complainant regarding progress of the construction nor did it communicate the dates of bhoomipoojan and the start of foundation etc. Meanwhile, on 7.1.2013, the respondent no.2 sent a letter to the complainant allegedly cancelling the allotment of the flat in question regarding which the complainant had entered into an agreement with the respondent no.1. In the aforesaid letter the respondent no.2 did not disclose its authority for cancelling the allotment of the flat regarding which the complainant had entered into an agreement with the respondent no.1. It is significant to clarify that the complainant had not entered into any agreement with the respondent no.2 and none of the respondents sent any communication to the complainant regarding any transfer or assignment of the rights and liabilities of the respondent no.1 under the agreement dated 28.7.2007. The complainant surprised by the aforesaid letter dated 7.1.2013 sent by the respondent no.2, the complainant tried to contact the offices of both the respondents no.1 & 2 to know the correct factual position, but no response was given to it.

On 24.2.2014, the respondent no.2 sent another letter to the complainant offering to swap the aforesaid flat allotted to the complainant with flat no.G-0304 on payment of Rs.31,82,522.00. Even in this letter dated 24.2.2014, the respondent no.2 failed to disclose its authority for making offers in respect of the flat regarding which the complainant had entered in agreement with the respondent no.1.

Again on 1.3.2014, the respondent no.2 sent another letter vaguely mentioning construction of the aforesaid flat is going on and that an amount of Rs.30,76,153.00 is due against the complainant.

The attempts of the complainant to communicate with both the respondents no.1 & 2, to seek clarity on the authority of the respondent no.2 for making demands of payments from the complainant and also the status and stage of construction of the aforesaid flat allotted to it, were in vain.

Left with no option, on 4.5.2015 the complainant sent a legal notice to the respondent no.1 with whom the complainant had entered into agreement in respect of the aforesaid flat, wherein it was mentioned that the respondent no.1 has committed a breach of the agreement as well as deficiency in service on account of its failure to complete the construction and handover possession of the aforesaid flat within the agreed period of December, 2009. It was further mentioned that the respondent no.2 is making offers in respect of the flats regarding which the complainant had entered into an agreement with the respondent no.1, and that the complainant has no contractual relation with the respondent no.2. The complainant, thereafter, called upon the respondent no.1 to inform the revised schedule of construction of the apartment agreed to be sold to it within thirty days and to complete the construction and hand over possession of the flat to him without any further unreasonable delay. The complainant further expressed its readiness and willingness to perform its part of the agreement by making payment in instalments as mentioned in Construction Linked Payment Plan upon information of the dates of Bhoomipoojan, start of foundation and other steps in the construction of the apartment.

The notice dated 4.5.2015 sent by registered post on both administrative and registered offices of the respondent no.1 were received back with endorsement "No such Firm Exists".

On 8.6.2015, after receiving back the notice sent to the respondent no.1, the complainant sent a registered legal notice to the respondent no.2, wherein the complainant asked the respondent no.2 to disclose its authority for demanding money in respect of the aforesaid flat. It was further mentioned that in case, the respondent no.1 has made assignment in favour of the respondent no.2 in respect of the aforesaid apartment, it should be informed to the complainant the revised schedule of construction of the apartment agreed to be sold to it and to complete the construction and hand over possession of the flat without any further unreasonable delay. Even after expiry of thirty days of time stipulated in the aforesaid notice, the respondent no.2 has not sent any response to the complainant.

The complainant has entered into the agreement with the respondent no.1 under which possession of the flat was to be given by December, 2009. However, even after making payment of Rs.11,58,500.00 at the time of allotment, which far exceeds the amount of 11% of the basic sale price which the complainant was required to deposit as per the agreement and after delay of more than 6 years, the respondent no.1 has neither informed the stage of construction to enable the complainant to make construction linked payment as per the conditions mentioned in the Agreement nor it handed over the possession of the flat to the complainant or made any communication explaining the reason for such inordinate delay. The act of the respondent no.1, therefore, amounts not only to the breach of the agreement but also deficiency in service. In case the respondent no.2 has obtained an assignment of the rights and liabilities of the respondent no.1 under the agreement dated 28.7.2007, the respondent no.2 has become liable to suffer the consequences of breach of the

agreement dated 28.7.2007 and for the deficiency in service. It is specifically stated that the complainant has always been and is still ready and willing to make construction linked payment as per the conditions of the agreement.

Further, the respondent no.2 has caused harassment and mental agony to the complainant by demanding money in respect of the aforesaid flats, without disclosing its authority to do so even after several communications made by the complainant. The complainant has no contractual relation with the respondent no.2 and, therefore, in absence of any communication regarding any assignment made by the respondent no.1 in favour of the respondent no.2 and without the respondent no.2 having constructed the flat and informed the progress of its construction as mentioned in the construction linked payment plant, it has no liability to take any payment to it.

The complainant is entitled to get the ownership and possession of the flat in question in terms of the agreement and it is further entitled to receive damages for the inconvenience caused by being deprived of the enjoyment of the flat which ought to have been delivered to him by December, 2009 which damages are being assessed at Rs.6,000.00 per month which is a fair rental value of the flat as per the market rates prevailing in Greater Noida, calculated for the period since January, 2010 till the time the respondents actually deliver possession of the flat to the complainant. The complainant is further entitled to receive a sum of Rs.1,00,000.00 towards damages for harassment and mental agony caused by the acts of the respondents.

The total valuation of the flat situated in Daffodil Tower, Alstonia Apartments, Plot no.10, Pi 1 & 2, Greater Noida is Rs.44,21,000.00 and the complainant has claimed damages at the rate of Rs.6,000.00 per month for the deprivation of enjoyment of the flat, amounting to Rs.4,02,000.00 till date and an amount of Rs.1,00,000.00 towards damages for harassment and mental agony caused by the acts of the respondents. Therefore, the Hon'ble Commission has both territorial and pecuniary jurisdiction to entertain the present complaint.

In this case notice was served on the opposite party and their counsel appeared before this court but did not file the written statement in time. Hence vide order dated 04.08.2016, his written statement was not taken on record.

We have heard the learned counsel for the complainant Sri Purushottam Awasthi. Ld. counsel for the opposite parties Mr. Manu Dixit did not appear to place his arguments. We have seen the pleadings, evidences and documents on record.

The opposite parties raised objection that the agreement contains an arbitration clause so this court has no jurisdiction and the matter should have been referred to arbitrator. As for as Consumer Protection Act is concerned, it is in addition of an act and not in derogation of any act. It is better to see the objects of the Consumer Protection Act vis a vis Arbitration Act, the following article will be helpful.

What are the main objectives of consumer protection act?

The Consumer Protection Act, came into existence and implemented in 1986, provides Consumer Rights to prevent consumers from fraud or specified unfair practices. It safeguards and encourages and gives an opportunity to consumers to speak against insufficiency and flaws in goods and services. If traders, manufacturers and distributors follow any foul trade, this act protects their rights as a consumer.

On which products are these right applicable?

This Protection Act covers entire goods and services of all sectors that are public, private, or cooperative sectors, except those exempted by the central government. The act provides a floor for a consumer where one can file their complaint against the product and the forum takes an action against the concerned supplier and compensation is granted to the consumer for the inconvenience he/she has encountered.

Objectives of consumer protection act To Provide better and all round protection to consumer.

To Provide machinery for the speedy redressal of the grievances.

To Create framework for consumers to seek redressal.

To Provide rights to consumers.

To Safeguard rights of Consumers.

Let us know more about the rights and responsibilities of consumer.

Consumer Rights Listed below are the Rights of the Consumer Right to Safety- Before buying, a consumer can examine on the quality and guarantee of the goods and opt for ISI or AGMARK products.

Right to Choose- Consumer must have the right to choose from a variety and number of goods and in a competitive price Right to be informed- The buyers must be provided with complete information with all the necessary and adequate details of the product, make her/him act wise, and change the buying decision.

Right to Consumer Education- The consumer must be aware of his/her rights and avoid exploitation.

Right to be heard- The consumer will get due attention to express their grievances at a suitable platform.

Right to seek compensation- The consumer has the right to seek or ask for redressal against unfair and inhumane practices or exploitation of the consumer.

Consumer Responsibilities Responsibility to be aware - A consumer has to be careful of the safety and quality of products and services before purchasing.

Responsibility to think independently- Consumer should be well bothered about what they want and need and hence make independent choices.

Responsibility to speak out- The buyer should be fearless to speak out their problems and tell to traders what they exactly want **Responsibility to complain**- It becomes the consumer's responsibility to express and file a complaint about their dissatisfaction with goods or services in a sincere and fair manner.

Responsibility to be an Ethical Consumer- Consumer must be fair and not engage themselves with any deceptive practice.

The Consumer Protection Act 1986 was enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of Consumers Councils and other authorities for the settlement of consumers' disputes and for matters connected therewith (Preamble).

The Act Inter alia, seeks to promote and protect the rights of consumers such as --

- (1) right to be protected against marketing of goods which are hazardous to life and property;
 - (2) right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
 - (3) right to be assured, wherever possible, access to variety of goods at competitive prices;
 - (4) right to be heard and to assured that customers' interests will receive due consideration at appropriate forums.
 - (5) Right to seek redressal against unfair practices or unscrupulous exploitation of consumers; and
 - (6) Right to consumer education
- The objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State levels.

The Act applies to all goods and services, except if otherwise provided by the Central Government by Notification. To provide speedy and simple redressal of consumer disputes, a quasi judicial machinery is set up at the District, State and Central levels. The three tier system of quasi judicial bodies will observe the principle of natural justice and are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi judicial bodies have also been provided.

Thus the Consumer Protection Act is to serve the interests of the consumers. Consumer education and redressal of consumers' grievances are the two aspects of the Act. It makes good the loss a

consumer suffers and increases the feeling of responsibility of the manufacturer, trader, supplier or businessman.

The provisions of the Act have to be construed in favor of the consumer to achieve the purpose of enactment as it is social benefit oriented legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and not contrary to attempted objective of the enactment.

Extent of Consumer Protection:

While other legislations may be either punitive or preventive, the Consumer Protection Act compensates the consumer. The provisions of the Act are in addition to and not in derogation of the provisions of any law at the time being in force (Sec 3). In *Maine Container Services South Pvt Ltd v Go Garments* 1998 (3) SCC 247 it has been held that the Contract Act applies to all litigants before the Commissioner under the Consumers Protection Act. Passengers traveling in train suffering injuries and loss of Jewelry as a result of assault by unruly crowd are eligible for filing of complaint before State Commission is maintainable notwithstanding the provisions of sections 100 and 103 of Railways Act, 1889. The Consumer Protection Act therefore gives the consumer an additional remedy besides those which may be available under other existing laws. Existence of an arbitration clause in the agreement is no bar to the entertainment of complaint by the Redressal Agency as the remedy under the Act is in addition to the provisions of any other law. However, the Consumer Forums under the Act have not taken over the jurisdiction of civil Courts. If the dispute between the parties is pending in Civil Court no Consumer Forum will adjudicate the dispute. Similarly if evidence be laid by the parties to the dispute is voluminous or complicated the parties will be referred to the appropriate Civil Court.

Consumers Protection Act, thus enshrines the rights of a consumer to be informed about the quality, quantity, potency, price etc., of the goods to be protected against unfair trade practices, to seek inexpensive and expeditious redressal of grievances before the Consumer Forums. Consumer Protection Act is a benevolent piece of legislation to protect a large body of consumers from exploitation.

With the passage of time, the populace of the country is on hike and so are their opinions. Their opinion forms the basis for their interpretation, it may be a good or a bad interpretation. What would happen in the situation where people starting interpreting the laws? We might be flooded with several interpretations. The interpretations will be in such huge number that the laws will become unclear. This is the reason why lawmakers, while making the law, formulate it in accordance with the aim, set out by them, before penning down the legislations. The aim of any legislation defines the basis of the act. It becomes the ground norm of the act, based upon which the judiciary interprets the disputed texts.

The aim of any act forms the indispensable element, because it acts as the cord that delivers the real intention of the legislators behind the act. Whenever there is clash between two legislations, it is the aim of the legislation which makes the judges to derive at the endpoint in deciding which law has the superseding effect. It is through the doctrine of pith and substance that judges are able to derive at the major inclination towards one act over another act. This inclination is decided on the basis of the aim/goal of the act and the facts of that particular case.

Somewhat similar situation aroused in front of Supreme Court in the case of Aftab Singh and Others v. Emaar MGF Land Limited and Another (Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017)[1]. In this case the Supreme Court cleared out the battle between arbitration and the statutory remedy when it comes upon solving the consumer disputes, which also upheld the decision of the National Consumer Disputes Redressal Commission (NCDRC). In this case, the apex body for the consumer dispute in India (NCDRC) ruled in the favor of the statutory remedy over the arbitration.

CONSUMER PROTECTION ACT (CPA) The beneficial legislation of Consumer Protection Act aims at reducing the grievances of the all classes of customers by providing them the preferential treatment. According to the Consumer Protection Act, the consumer dispute is the entity where the consumer/ customers have been given the convenient safeguards against ample exploitation like bad customer service, faulty goods or any unfair trade practices. The interest of the customers is protected by setting up, the three tier quasi-judicial consumer Redressal machinery which are at national, state and district levels as per section 9 of Consumer Protection Act. The Consumer Protection Act, 1986 (CPA) has been enacted in light of certain concerns related to public policy and the benefit of consumer.

RELATIONSHIP BETWEEN ARBITRATION ACT AND CPA In India, people are least aware with the consumer's rights and lags behind having low general understanding of arbitration as dispute resolution mechanism. The arbitration clause can curtail the grounds on which the consumers can raise the disputes, whereas on the other side the consumer protection act may grant the consumer various grounds on which he can file the complaint which may not be otherwise permitted in the standard form agreement having the arbitration clause.

Arbitration has equal bargaining powers and the resources at hand which makes it private, efficacious, and timely form of dispute resolution. Whereas in case of consumer disputes, the case is different, where they are exposed to the standard form agreements making them submit to the unfair or the repressive terms. They are several times made part of the one-sided arbitration clause, which is drafted keeping in mind the interest of one party only.

These days Indians are shifting to the online purchasing platform and being ignorant of not checking the agreements which makes them to be covered under the blanket provision and end up being the party to the arbitration. This makes less options opened for the consumer to resort to the statutory remedies which in turns endangers the interest of the consumers. This may also build the hostile market against the e-commerce in India. It may have the adverse effect not only on the Indian economy but also on the e-commerce giants who aims at invest in the growing market.

CONSUMER COURT AS A SPECIAL COURT It was held in the case of Aftab Singh v Emaar MGF Land Limited & Anr., that the provisions of the arbitration act does not apply to the consumer courts, as they are the special courts set up for the public purpose. In this case, the group of the home owners filed the complaint against Emaar MGF Land Private Limited (Builder) before NCDRC. The complaint was filed for the non-delivering the plots to the buyers as per the Buyers' Agreement. The builder filed the application under section 8 of the Arbitration and Conciliation Act, on the basis of the arbitration agreement made between the parties which was mentioned there in the Buyer's Agreement.

It was argued by the petitioner that the remedies provided under the Consumer Protection Act are not in exclusion of the existing laws, but are in addition to it, which has been sated in the case of National Seed Corporation Limited v M. Madhusudhan Reddy((2012) 2 SCC 506) . It was also argued that the consumer protection act is the piece of the legislation which intends to confer the benefits and it is the, for which the purpose should be advanced. Therefore, regardless of having entered into the arbitration clause, the consumer can invoke the section 3 of the Consumer Protection Act and bring the complaint to the consumer forum(Skypak Couriers Ltd. Vs. Tata Chemicals Ltd)[3].

The builder pleaded that the Consumer Courts act as the 'judicial authority' within the scope of section 8 of the Arbitration and Conciliation Act and therefore if there is any valid clause entered between the parties, then the consumer courts can refer the parties to the arbitration. And hence according to the act the consumer courts are obliged to bring the case for the arbitration, irrespective of the High Court and Supreme Court decisions. The NCRDC's full bench ruled that the arbitration act does not bars the consumer court's jurisdiction relying on the Supreme Court's judgement in the case of Booz Allen Hamilton Inc v. SBI Home Finance Ltd(2011) 5 SCC 532), which provided the country with the disputes that are not arbitrable. In this case, Supreme Court, came with the 7 categories of the disputes that are not arbitrable[5].

The commission also relied on the Supreme Court judgement in the case of A. Ayyasamy v. A Paramasivam(2016)10 SCC 386 ;N. Radhakrishnan v. Maestro Engineers) that the dispute will not be arbitrable if the civil court's jurisdiction has been exclusively given to a tribunal or the special court. The Consumer Courts were made to create an organized system for dispute between the people who possess the

unequal power i.e. the consumer and the large corporations. The commission also pointed out the section 2(3) of the Arbitration and Conciliation Act which refers to the situations where the special categories of disputes are protected from being referred to the arbitration. Therefore this provision protects the Consumer disputes. The court concluded that if the court allows party to go for the arbitration and being in favor of the builder, it will defeat the goals and the main purpose of the Consumer Protection Act.

THE CONDITIONS PRIOR AND POST 2015 AMENDMENT TO SECTION 8 OF ARBITRATION AND CONCILIATION ACT Section 8 of the Arbitration and Conciliation Act states that the judicial authority can instruct the parties to go for arbitration in the case when there exists the arbitration clause in the arbitration agreement. It does not bars oust the jurisdiction of the Consumer Court, it will continue to hold and enjoy the jurisdiction irrespective of presence of an arbitration clause in the agreement.

The Supreme Court contented that there was no legislative intent of the amended provisions of the section 8(1) in the Arbitration and Conciliation Act, so as to override the other statutes which have the specific remedies. Neither it intends to make disputes related to trusts, criminal law, tenancy, telecom, family law, IPR, etc, as the arbitrable subject and to against the judgement of A Ayyasamy v A Parasivam & Ors (2016) 10 SCC 729) and Booz Allen Hamilton Inc. v SBI Home Finance Limited & Ors. (2011) 5 SCC 532) Supreme Court analyzed the situations prior to 2015 Amendment, related to referring the consumer disputes to arbitration. Supreme Court referred to the judgments prior 2015 which had the settled law in cases of Fair Air Engineering Pvt. Ltd & Anr V N K Modi (1996) 6 the SCC 385), National Seeds Corporation Limited v Madhusudhan Reddy & Anr (2012) 2 SCC 506) and Rosedale Developers Private Limited V Aghor Bhattacharya & Ors (2018) 11 SCC 337). These cases held that even if the dispute arise from the contract having the arbitration clause, it will not impede the parties to resort to file a complaint before the consumer forum under Consumer Protection Act. All of the judgements had the rationale that provision of section 3 of Consumer Protection Act states that "the provision is in addition to, and not in the derogation of any other law for the time being in force."

The Supreme Court acknowledged the 2015 amendment which restricted the power of any judicial authority to refuse to refer the dispute to arbitration under section 8(1) and appointment of arbitrator under section 11(6A) and also acknowledged the fact that it invalidated the earlier precedent in the case of Sukanya Holding (P) Ltd v Jayesh H Pandya & Anr. (2003) 5 SCC 531) Supreme Court considering section 2(3) of the arbitration act, states that the Part I of the arbitration act shall not affect any other law for the time being in force, by virtue of which certain disputes may not be submitted to the arbitration. Supreme Court stated that the legislative intent of 2015 Amendment was never to override section 2(3) of the Arbitration Act and other statute which offers the public remedy like that of CPA. The Supreme Court in 1994

already held that CPA is a beneficial legislation which provides the economical and expeditious remedies to the aggrieved consumer in the case of Lucknow Development Act V M K Gupta(1994) 1 SCC 243).

Referring to all of the above cases, the Supreme Court in this case affirmed that the decision given by NCDRC is valid and stated that the consumer dispute are the subject matter where the dispute cannot be referred to arbitration as it pertains to rights in rem (public rights). It comes under the ambit of the non-arbitrable dispute defined under Booz Allen and Ayyasamy case. The disputes are non-arbitrable in disputes related to criminal laws, tenancy, trusts, family law, telecom, IPR, insolvency and winding up, and in certain cases, fraud.

CONCLUSION AND CRITICS OF THE CASE It can be ensured with the judgement that consumers who have lesser bargaining power than that of the service providers shall not be pushed towards the relatively cumbersome process of the arbitration where there can be other more affordable and efficacious low public law remedies available. The CPA is a special legislation which has the public law remedies dealing with the rights under the umbrella of "right in rem" which has been espoused by Booz Allen. The case had many critics for it, as it was delivered during the course of time, when India has been continuously focusing upon the survival and the supremacy of the arbitration proceeding over litigation in the Indian dispute resolution. And it was the major reason that it appeared for some of the people as a diversion from the object of Indian arbitration system to be an arbitration-friendly hub. This also draws our attention towards the fact that the arbitration shall be made a more consumer-friendly method of dispute resolution. It is because of this judgement that people were able to depict the heightened element of the public interest consumer dispute in India.

[1]Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017 [2](2012) 2 SCC 506 [3]Skypak Couriers Ltd. Vs. Tata Chemicals Ltd [4](2011) 5 SCC 532 [5]Vimal Kishore Shah v Jayesh Dinesh Shah (2016) 8 SCC 788 [6] (2016)10 SCC 386 ;N. Radhakrishnan v. Maestro Engineers [7](2016) 10 SCC 729 [8](2011) 5 SCC 532 [9](1996) 6 the SCC 385 [10] (2012) 2 SCC 506 [11](2018) 11 SCC 337 [12](2003) 5 SCC 531 [13](1994) 1 SCC 243 So it is clear that The Consumer Protection Act is a special Act and even if there is a clause of arbitrator in the agreement, it will not oust the jurisdiction of the consumer courts. So this court has jurisdiction to try the case.

The opposite party no.1 has stated in affidavit that complainant is not a consumer. The complainant, beside the flat, also booked to other flats in the opposite parties project. The complainant is having more than one booking in the project of the respondent company hence he is not a consumer. The purpose of purchasing the flats from the respondent cannot be considered as a residential but for commercial gain through investment. The present complaint is also time barred. The cause of action, if

any, has arise in on 28.07.2007 when alleged booking of flat was done by the complainant and alleged consideration was tendered to opposite party. The complaint is filed in the year 2015 which is time barred.

There is nothing on record to show that the flat purchaser by the complainant was only for commercial use. No evidence has been given by the opposite parties which show that the flats were meant for resale or for any commercial activities. If any person possesses more than one flat, it does not automatically mean that this is only for the purpose of investment and investment only. The complainant sent a legal notice to the respondent no 2 on 08.06.2015 asking it to disclose its authority for demanding money in respect of the aforesaid flat. So as far as cause of action is concerned, it also arises on 08.06.2015. Before it the complainant has also sent a notice on 4 May 2015, so that was also a date of cause of action. So this complaint case is not time barred.

The opposite party also pleaded that the matter should have been referred to the arbitrator because there is an arbitration clause in the agreement. But this matter has already been discussed in detail that in spite of the arbitration clause, one may file a case before the consumer forum. The opposite party also stated that the complainant is the defaulter in this case and various reminder notices were sent to the complainant and it is stated that after making initial payment the complainant has failed to make further payment hence the complaint is liable to be dismissed. The opposite party has stated that the complainant deposited the money with the respondent no 1 company for availing the flat in project developed by the respondent company on the land allotted in the name of respondent no 2 i.e, ANS Apartment P Ltd situated at Greater Noida, Uttar Pradesh named as "The Alstonia Apartments" and the said project is duly approved project of the company and construction at site is going on and thereafter delay in completion of project on account of reasons well explained in present reply thus in present case on account of overall slump in real estate industry especially on account of slow recovery from investors in the said project and on account of force majeure reasons stated in the present reply, there is delay in completing the construction of project. The opposite party also stated that in the present case the delay in completion of the construction has been caused due to undue delay of tendering the payment by the various allottees including the complainant herein in the project and in view of such problem the respondents company wrote constantly letters to various allottees to make payment and further has gone even after the extent of making public notice in the newspapers by calling upon the allottees in the project to deposit their payment on time and to extend their cooperation to complete the project on time. So both the opposite parties have put the same version in their affidavits filed. They could not file their written statement in time and that was not taken on record. It shows that when the opposite parties failed to submit their written statement before the court of law, how can they say that the complainant was defaulter in the case?

In the present case flat no D-801 area 1725 square ft has been allotted to the complainant on 28.07.2007 and an agreement has been executed between the parties stating that that the complaint shall complete construction of the apartment and the residential complex and deliver the possession of the apartment to the complainant by December 2009. The component deposited Rs.1,158,500/- against Rs.441,168/- (11% of the basic sale price as required in the agreement). The total cost of the flat was Rs.4,421,000/-. It was duty of the opposite party no.1, who entered into an agreement with the complainant, to deliver the possession of the flat as promised by him. In the agreement three months grace period will be given to the opposite parties after the expected date of delivery of possession. So we have taken, after giving three months grace period, 01.04.2009 and the final date for delivery of possession. The date of the notice as published in the newspaper and copy of which has been filed by the opposite party shows July 14. This date is much beyond the date on which possession was to be delivered. So the opposite parties became defaulter when they did not deliver possession on or before 01.04.2009. They could not show the force majeure. Payment of instalments by the allottees is not a force majeure issue because the opposite parties have power to cancel the allotment in case of non-payment of instalments. So there was no reason which can genuinely be said as true for delay in the construction of the flats.

Whether the opposite parties have received the completion certificate and occupancy certificate? Both the certificates are necessary to obtain before offering delivery opposition to the allottee. It is importance should be known by the following legal article.

COMPLETION / OCCUPANCY CERTIFICATE When buying a home, it is vital to obtain documents, such as the Occupancy Certificate (OC) and Completion Certificate (CC). These are essential documents that allow you to mortgage or sell your home. Hence, homebuyers are advised to take possession of their flat or property only after these documents have been issued.

According to Vikas Bhasin, CMD, Saya Group, "Completion Certificate and Occupancy Certificate are some of the most important documents for a home buyer. Civic authorities can evict the occupants in case of non-availability of the necessary approvals. Before investing in a property, people must be doubly assured that all the certificates and approvals are in place."

Let us dive a little deeper into the details of these documents and their importance before you make a move to buy your dream home.

Owning a home is the culmination of years of savings, research, and paperwork. After patiently waiting for the construction to be complete, you finally register the property and take possession of your flat. But what if your dream home is declared unauthorised, and you are evicted by the authorities? This is not as far-fetched as it

sounds. This nightmare could turn into reality without a crucial link in the property sale process - the Occupancy Certificate (OC).

The majority of apartments in different Indian cities have been occupied by owners without any occupancy certificate. This oversight can turn into a costly mistake, jeopardising the legal status of your dream home. The importance of the occupancy certificate cannot be overstated as it seals the legal status of your property and protects your ownership rights.

Decoding legal documents To understand the importance of an occupancy certificate and other legal documents, let's decode the legal jargon and understand their meaning in simple terms. Here's a ready reckoner of the most important legal documents related to your property:

Occupancy Certificate An OC certifies that the construction of the building has complied with the approved plans. It is issued by local municipal authorities or the building proposal department once the building has been completed and is ready to be occupied. Simply put, without an OC, your building has not been awarded a 'pass certificate'.

Completion Certificate A Completion Certificate (CC) is issued only after the construction meets other building standards like distance from the road, the height of the building, and rainwater harvesting system. A CC alone cannot legalise occupation; the OC is a must.

Commencement Certificate If you are buying an under construction property, make sure you check the Commencement Certificate before signing the agreement. Many builders do not wait for a Commencement Certificate. This is illegal and can create serious problems in obtaining an OC at a subsequent stage.

Why is it unsafe to buy a flat without OC?

In the absence of a valid OC, the local municipal body can initiate serious action against flat owners. In 2014, residents of a well-known building complex in Mumbai's upscale Worli area were hit with a bolt from the blue after their complex was declared unauthorised. At the time of possession, buyers overlooked the issuance of an OC from the builder. It was only after that they were forced to evacuate their flats that the writing on the wall became clear to them.

This is just one instance, and if buyers are not careful about getting the OC, they may face the following repercussions:

- In the absence of a valid OC, your building can be demolished as it can be classified as an unauthorised structure.

- The OC is crucial while applying for a home loan or loan to purchase a resale flat. If you wish to sell or hypothecate the property after a lapse of time, you will not be able to do so without a valid OC.

- The water connection, sanitary connection or electricity supply can be disconnected in the absence of an OC.

How to obtain an OC The OC is obtained from local municipal bodies by submitting an OC application form along with the following documents:

- Commencement Certificate • Completion Certificate • Built and Section plan • NOC for fire and pollution • Area calculation sheet of floor signed by an authorised architect • Photographs of the completed building • Tax assessment with tax paid receipt • Photographs of rain harvesting and solar panels • Copy of the sanctioned plan

After submitting the form, authorities inspect the complex and confirm if it has conformed to the approved plan before issuing an OC. Legally and ideally, a builder should submit an application with the municipal commissioner for the OC within 30 days of completion of the property.

How you can apply for an OC As a flat owner, you can also apply for an OC by approaching the local corporation or municipality, and if all approvals are in place, an OC is issued within 30 days of application. You will have to submit the same documents as the builder to procure an OC.

Know your rights If the builder refuses to provide an OC, you should consider exercising your legal rights. You can issue a notice against the builder asking him to apply and hand over the copy of the OC within a month. You can also approach consumer forums and file a writ petition demanding the OC.

Some canny builders simply present the receipt of the OC and dupe gullible customers. But you shouldn't accept anything less than the actual OC as the receipt may be dated.

Landmark legislations like the Real Estate Regulatory Act (RERA) have been passed to regulate the sector, promote transparency and protect consumer rights. However, consumers must be vigilant and understand their rights and responsibilities towards owning a property. Documents like OC are essential and ensure the security of your investment.

Going forward, real estate experts believe that the OC should be made mandatory for the registration of flats and essential services. Until then, buyers must ensure builders get all the necessary approvals before handing over a property.

A Completion Certificate (CC) is an important legal document that certifies that a building is constructed according to the laid down norms and master plan of the city. This document has all the information related to the project, such as the building materials used, building height, and building plan, among other things like provision for green belt.

In a nutshell, this document certifies that the building adheres to all the prevailing rules and has not violated any norms. In fact, this document is to be shown compulsorily to the authorities to obtain electricity and water connection.

Builders are allowed to obtain a provisional Completion Certificate when there are minor works left in the project. Authorities then provide a provisional certificate valid for six months. After the expiry of the six months, the developer is bound to get a final CC.

Who issues a Completion Certificate?

Local authorities issue the Completion Certificate after a thorough inspection of the premises. If the developer violates no rules, authority issues a Completion Certificate.

Why is Completion Certificate important?

Buyers must be aware of the fact that if they are buying or moving into a property that does not have a Completion Certificate, they might be making a risky investment choice. The civic authorities hold the power to slap heavy penalties on the developer, leading to stalling or cancellation of the registered layout of the project. In case the building is already occupied, residents may also have to face eviction in extreme cases.

Difference between Occupancy Certificate and Completion Certificate Occupancy Certificate examines and certifies a property for adherence to bye-laws, civic amenities, electricity, sanitation and other clearances. On the other hand, a Completion Certificate is a document that certifies that a property is fit for possession by the buyers.

Clarifying the difference, Deepak Kapoor, Director, Gulshan Homz, says, "Completion Certificate is just a reaffirmation that the building has been constructed as per the building byelaws and the layout plan has been approved by various concerned authorities. Occupation Certificate signals that there is no violation of building construction norms, and thus, the structure is safe for occupants.

Generally, these documents are not required at the time of registry, and hence, buyers tend to overlook or ignore these. But for their own benefit and peace of mind, it is warranted that buyers of both ready-to-move-in as well as under-construction

properties check these documents before taking possession. This would help avoid any unnecessary dispute or confrontation in the future."

Not a single word has been said about these certificates by the opposite parties. Whether any offer has been given by the opposite party to pay penalty regarding delay in delivery of possession? No such averments made in the written statement.

The Hon'ble Supreme Court on occupancy certificate by the builders.

"Supreme Court: The bench of Dr. DY Chandrachud* and AS Bopanna, JJ has held that failure on the part of the builder to provide occupancy certificate is a continuing breach under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 and amounts to a continuing wrong.

Factual Background The appellant is a co-operative housing society. The respondent constructed Wings 'A' and 'B' and entered into agreements to sell flats with individual purchasers in accordance with the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (MOFA). The members of the appellant booked the flats in 1993 and were granted possession in 1997. According to the appellant, the respondent failed to take steps to obtain the occupation certificate from the municipal authorities.

There was an obligation on the respondent to provide the occupancy certificate and pay for the relevant charges till the certificate has been provided, however, the respondent time and again failed to provide the occupancy certificate to the appellant society. For this reason, a complaint was instituted in 1998 by the appellant against the respondent. The NCDRC on 20 August 2014 directed the respondent to obtain the certificate within a period of four months. Further, the NCDRC also imposed a penalty for any the delay in obtaining the occupancy certificate beyond these 4 months. Since 2014 till date, the respondent failed to provide the occupancy certificate.

In the absence of the occupation certificate, individual flat owners were not eligible for electricity and water connections. Due to the efforts of the appellant, temporary water and electricity connections were granted by the authorities. However, the members of the appellant had to pay property tax at a rate 25% higher than the normal rate and water charges at a rate which was 50% higher than the normal charge.

Analysis Obligations of Promoter under MOFA Section 3 of the MOFA imposes certain general obligations on a promoter. These obligations inter alia include making disclosures on the nature of title to the land, encumbrances on the land, fixtures, fittings and amenities to be provided, and to not grant possession of a flat

until a completion certificate is given by the local authority. The responsibility to obtain the occupancy certificate from the local authority has also been imposed under the agreement to sell between the members of the appellant and the respondent on the latter.

Sections 3 and 6 of the MOFA indicate that the promoter has an obligation to provide the occupancy certificate to the flat owners. Apart from this, the promoter must make payments of outgoings such as ground rent, municipal taxes, water charges and electricity charges till the time the property is transferred to the flat-owners. Where the promoter fails to pay such charges, the promoter is liable even after the transfer of property.

Limitation In the instant case, the appellant submitted that since the cause of action is founded on a continuing wrong, the complaint is within limitation.

Section 24A of the Consumer Protection Act 1986 provides for the period of limitation period for lodging a complaint. A complaint to a consumer forum has to be filed within two years of the date on which the cause of action has arisen.

Section 22 of the Limitation Act 1963 provides for the computation of limitation in the case of a continuing breach of contract or tort. It provides that in case of a continuing breach of contract, a fresh period of limitation begins to run at every moment of time during which the breach continues. A continuing wrong occurs when a party continuously breaches an obligation imposed by law or agreement. The continuous failure to obtain an occupancy certificate is a breach of the obligations imposed on the respondent under the MOFA and amounts to a continuing wrong.

The appellants, therefore, were entitled to damages arising out of this continuing wrong and their complaint is not barred by limitation.

"Rejecting the complaint as being barred by limitation, when the demand for higher taxes is made repeatedly due to the lack of an occupancy certificate, is a narrow view which is not consonance with the welfare objective of the Consumer Protection Act 1986."

Consumer Section 2(1)(d) of the Consumer Protection Act defines a 'consumer' as a person that avails of any service for a consideration. A 'deficiency' is defined under Section 2(1)(g) as the shortcoming or inadequacy in the quality of service that is required to be maintained by law.

In the present case, the NCDRC had held that the appellant is not a 'consumer' under the provisions of the Consumer Protection Act as they have claimed the recovery of higher charges paid to the municipal authorities from the respondent. Extending this further, the NCDRC observed that the respondent is not the service provider for

water or electricity and thus, the complaint is not maintainable.

The respondent was responsible for transferring the title to the flats to the society along with the occupancy certificate. The failure of the respondent to obtain the occupation certificate is a deficiency in service for which the respondent is liable. Thus, the members of the appellant society are well within their rights as 'consumers' to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate.

[Samruddhi Co-operative Housing Society Ltd v. Mumbai Mahalaxmi Construction Pvt. Ltd, 2022 SCC OnLine SC 35, decided on 11.01.2022]"

Regarding delay of possession the only Supreme Court has held in the following case law, "In Kolkata West International City Pvt. Ltd. Vs. Devasis RudraCitation : 2019 Latest Caselaw 299 SC Judgement Date : Mar/2019[Civil Appeal No. 3182 of 2019 @ SLP (C) No(S). 1795 of 2017], the Hon'ble Supreme Court has held regarding delay in giving possession.

"This appeal arises from the judgment dated 21 November 2016 of the National Consumer Disputes Redressal Commission¹. A Buyer's Agreement dated 2 July 2007 was entered into between the appellant and the respondent. The respondent paid an amount of Rs 39,29,280 in 2006 in terms of a letter of allotment dated 20 September 2006. The agreement between the parties envisaged that the appellant would hand over possession of a Row House to the respondent by 31 December 2008 with a grace period of a further six months ending on 30 June 2009.

The respondent filed a consumer complaint before the West Bengal State Consumer Disputes Redressal Commission² in 2011 1 "NCDRC" "SCDRC" 2 praying for possession of the Row House and in the alternative for the refund of the amount paid to the developer together with interest at 12% per annum. Compensation of Rs 20 lakhs was also claimed. The SCDRC allowed the complaint by directing the appellant to refund the moneys paid by the respondent together with interest at 12% per annum and compensation of Rs 5 lakhs. The NCDRC has modified this order by reducing the compensation from Rs 5 lakhs to Rs 2 lakhs. Mr. Ravinder Narain, learned counsel appearing on behalf of the appellant submits that the primary relief which was sought in the consumer complaint was for delivery of possession. According to the appellant, the completion certificate was received on 29 March 2016, which was intimated to the respondent on 11 April 2016.

Moreover, before the SCDRC, in its written submissions, the appellant had offered possession of the Row House to the respondent. It has also been stated that in a complaint which was filed by an association representing the allottees of 161 Row houses, a settlement was arrived on 11 September 2018 before the NCDRC specifying

the date on which possession would be handed over together with interest at 6% per annum instead of 4% as mentioned in the Buyers' Agreement. It was urged that the developer having made a substantial investment in terms of the agreement, a direction for refund is not warranted. It has also been urged that the SCDRC in the course of its decision erroneously observed that the developer was unable to fulfill its obligation to complete the construction within the agreed period and it was not certain when the Row house would be handed over. It was urged that this observation by the SCDRC is contrary to the record since before it, a specific offer of possession was made.

It has been urged on behalf of the respondent by Mr. Supriya Bose, learned senior counsel that a consumer complaint was filed in the year 2011. At that stage, the appellant was bonafide ready and willing to accept possession. However, nearly seven years have elapsed after the extended date for the delivery of possession which expired on 30 June 2009. In spite of this, no offer of possession was forthcoming. Learned senior counsel submitted that the letter dated 22 March 2016 of the developer was conditional and despite the subsequent letter dated 11 April 2016, no formal offer of possession was ever made by the appellant. Moreover, it was urged that the interest awarded by the NCDRC at the rate of 12% is just having regard to the economic loss and hardship suffered by the respondent. While considering the rival submissions, we must at the outset advert to the following clause which was contained in the Buyer's Agreement:

"Unless prevented by circumstances beyond the control of the company and subject to Force Majeure, KWIC shall ensure to complete the said unit in all respect within 31st December 2008 only for the Cluster D. Further there will be a grace period of 6 months (up to 30th June, 2009) from the date of completion. In case the possession is not transferred after expiry of the said grace period, KWIC will be liable to pay prevailing 4 saving Bank interest of the State Bank of India for each month of delay on the money given by the allottee as compensation but no compensation will be paid on account of force majeure reasons." It is the above clause which is pressed in aid by the developer. Under the aforesaid clause, any delay beyond 30 June 2009 would result in the developer being required to pay interest at the prevailing savings bank interest of the State Bank of India.

Interestingly, where the buyer is in default, the agreement stipulates that interest at the rate of 18 per cent from the date of default until the date of payment would be charged for a period of two months, failing which the allotment would be cancelled by deducting 5% of the entire value of the property. The agreement was evidently one sided. For a default on the part of the buyer, interest at the rate of 18% was liable to be charged. However, a default on the part of the developer in handing over possession would make him liable to pay interest only at the savings bank rate prescribed by the SBI. There is merit in the submission which has been urged by the buyer that the agreement was one sided.

The clause which has been extracted in the earlier part of this order will not preclude the right and remedy available to the buyer to claim reasonable interest or, as the case may be, compensation. The essential aspect of the case which is required to be analysed is whether the buyer was entitled to seek a refund or was estopped from doing so, having claimed compensation as the primary relief in the consumer complaint.

The Buyer's Agreement is dated 2 July 2007. In terms of the agreement, the date for handing over possession was 31 December 2008, with a grace period of six months. Even in 2011, when the buyer filed a consumer complaint, he was ready and willing to accept possession. It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period.

A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified. Having regard to all the facts and circumstances of the case, we modify the order of the NCDRC by directing that the appellant shall pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. Save and except for the above modification, we affirm the directions of the NCDRC.

The amount outstanding in terms of the directions of this Court shall be released out of the moneys which have been deposited by the appellant. The balance, if any, that remains shall be refunded to the appellant. The appeal is, accordingly, disposed of. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of."

Now from all the given circumstances it has been clear that the opposite parties failed to deliver the possession of the unit within the promised time and they now sending different demand to extract the money from the complainant but did not disclose as how much penalty they had to pay to the complainant regarding delay in the delivery of possession to the complainant. The opposite parties have stated that there has been delay in payment of various instalments by the allottees. It cannot be raised because the actual date of handing over the possession of the flat has already been expired, the opposite parties are not in a position to demand extra money before adjusting the penalty in the balance amount to be deposited by the complainant. No new demand can be raised after the cut-off date because the possession was not

handed over to the complainant. Now the defaulter is opposite parties and not the complainant.

Whether the opposite parties have paid any interest on the amount deposited by the complainant.? Regarding payment of interest on the deposited amount only Supreme Court has said in various judgment if you are being quoted here.

Ghaziabad Development Authority v. Balbir Singh In the Supreme Court of India
Name of the Case Ghaziabad Development Authority v. Balbir Singh Citation
(2004) 4 SCC 65 Year of the Case Petitioner Ghaziabad Development Authority
Respondent Balbir Singh Bench/Judges Justice H. K. Sema Justice S.N. Variava
Acts Involved Consumer Protection Act, 1986 Important Sections Section 14 of
the Consumer Protection Act, 1986 Section 22 of the Consumer Protection Act, 1986

The case of Ghaziabad Development Authority v Balbir Singh is a landmark decision that laid down certain judicial standards regarding the grounds on which compensation may be awarded, particularly, in matters of allotment of flats/plots by land development authorities. Compensation under consumer protection laws is required to recompense for loss or injury suffered by consumers, and therefore, the quantum of compensation to be awarded would necessarily have to be determined based on the facts and circumstances of each case. This decision set an established precedent on the issue of compensation to be awarded in consumer disputes, and its principles have been relied upon in numerous subsequent cases.

Introduction The consumer protection laws establish a redressal mechanism whereby consumers can claim monetary reliefs for defective goods, deficiency in service, and unfair trade practices. Sections 14 and 22 of the Consumer Protection Act, 1986 empower the District, State, and National Consumer Disputes Redressal Commission to "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". Such monetary reliefs i.e., compensation awarded would have to be based on the facts and circumstances of each case, since the loss and injury suffered would vary. Given the absence of a straight-jacket formula for the determination of the amount of compensation to be awarded in each case, it follows that there can be no uniformity in the award of compensation.

It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair, and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant can establish his charge.[1] These 'established judicial standards' have been laid down in a plethora of cases. The case of Ghaziabad Development Authority v Balbir Singh[2] is a landmark decision that discussed the grounds on which compensation may be awarded, particularly, in matters of allotment of flats/plots by land development authorities. It set an established precedent on the issue of compensation to be awarded in consumer disputes, and its principles have been relied upon in numerous subsequent cases.

Background and Facts of the Case The present case of Ghaziabad Development Authority v Balbir Singh arose out of an appeal directed against the judgment and award passed by the National Consumer Disputes Redressal Commission (NCDRC) awarding an interest @ 18% per annum. The Commission was considering a bunch of matters, the lead being the case of Haryana Urban Development Authority vs. Darsh Kumar, where it held that in cases of deficiency of service by development authorities, the rate of interest awarded must be 18% per annum. Following this, the Commission disposed of subsequent matters by its preceding award. Numerous appeals were filed before the Supreme Court against the decision of the Commission in various cases, primarily against its award of 18% interest.

Since the Supreme Court was considering a wide number of matters relating to allotment of land by development authorities, the facts of each case vary. In some cases, the scheme had gotten canceled after the payment of monies and allotment of flats/plots. Delivery of possession of the flats was therefore refused to the allottees. In some cases, either possession was offered at an increased rate at a much later date possession or was offered but not taken by the party. Possession was not delivered in some cases despite payment of monies and no refusal to deliver possession. In some cases, the construction was of sub-standard quality or it was incomplete, or the authority demanded extra amounts from the party which was paid only by some. In some cases, allotments were made and possession offered of flats/land which was encumbered or occupied by some other party.

The appeal in the Supreme Court was filed due to the Commission granting interest at the rate of 18% per annum irrespective of the type of case or amount of delay and without even going into the facts of the case. Complainants had asked for the refund of amounts wrongly collected and in other cases, asked for a refund of the amounts paid.

Issues Involved Whether the grant of interest at the rate of 18% per annum by the National Consumer Disputes Redressal Commission in all cases is justifiable?

Related Provisions Section 14 of the Consumer Protection Act, 1986 Section 22 of the Consumer Protection Act, 1986 **Related Cases** The Supreme Court relied upon the case of Lucknow Development Authority v. M. K. Gupta[3] which firstly widened the scope of "service" defined under Section 2(1)(o) of the Consumer Protection Act, 1986 to include the housing construction or building activities carried on by private or statutory bodies.

The Court relied upon the English case *Geddis v. Proprietors of Bann Reservoir*[4] which gave a wide connotation to the word compensation, holding that "Compensation has not been defined in the Act. According to the dictionary, it means, 'compensating or being compensated; thing given as recompense;'. In a legal sense, it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss."

Judgment The Supreme Court, at the outset, reiterated the position taken in the case of Lucknow Development Authority v. M.K. Gupta, and held that "the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities". It further held that the power of the NCDRC extends to awarding compensation to

consumers for misfeasance in the public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. Therefore, it upheld the appeals filed before it to the extent that it confirmed the jurisdiction of the NCDRC to award compensation in cases of service rendered by statutory & public authorities (the land development authorities in the present case).

As to the issue of whether the grant of interest at the rate of 18% per annum by the NCDRC in all cases is justifiable, the Supreme Court held in the negative. It stated that "the power to and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum." It held it to be unsustainable. The Court further stated that the "Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case." The purpose of awarding compensation is to recompense for a loss or injury suffered and such compensation would therefore be proportional to the amount of loss and injury.

While considering the compensation to be awarded to the consumers in cases of deficiency of service by Development Authorities, the Court laid down a range of principles for the determination of the amount of compensation, summarised below:

To award compensation, the Forum or the Commission must determine that service has been deficient and/or misfeasance in public office which has resulted in loss or injury. While no hard and fast rule can be laid down, the Court gave a few instances where the award of compensation would be justifiable, including where possession is not handed over within the intimated period even though allotment is made and the price is paid. In such cases, the loss could be determined based on loss of rent which could have been earned if possession was given. Compensation could also be the scheme has been canceled without any justifiable cause, after the allotment.

Compensation cannot be uniform and to illustrate this, the Court lays down the principle to be followed for the determination of compensation in two cases- (a) where the delivery of possession is being directed, and (b) where only the monies are directed to be returned or refunded by the Court. In case (a), the compensation for harassment will necessarily have to be less since in a way the aggrieved party is being compensated by an increase in the value of the property he is getting. In case (b) however, the party is suffering a greater loss since he has been deprived of the flat/plot, and his expectation of delivery of possession. He would also be denied the benefit of an increase in the value of land and the compensation thereof. Therefore, the compensation to be awarded in such cases would have to be higher than in case (a).

The Court held that "such compensation has to be worked out after looking into the facts of each case and after determining what is the amount of harassment/loss which has been caused to the consumer."

Compensation would include compensation for physical, mental, or even emotional suffering, insult, or injury or loss.

Awarding of Compensation in the Event of Deficiency in Service Rendered The consumer protection laws have a wide reach and the consumers are entitled to receive compensation for deficiency in services rendered by statutory and public authorities. The Consumer Commissions have been vested with the jurisdiction to award the value of goods or services and compensation. On being satisfied that a complainant is entitled to compensation for loss or injury or harassment or mental agony or oppression, it must direct the authority to pay compensation. A wide discretion has been given to determine the quantum of compensation for any loss or damage suffered by a consumer, to redress any injustice. However, it is a well-established principle that the computation of compensation has to be fair, reasonable, and must reconcile with the loss or injury suffered. The Consumer Forum is cast with the duty to take into account all relevant factors for arriving at the compensation to be paid.

This landmark decision has set a precedent on the matter of compensation to be awarded in matters relating to allotment of land by development authorities and has been relied upon in many subsequent cases of the Supreme Court. In the case of H. P. Housing Board v Varinder Kumar Garg[5] and Haryana Urban Development Authority vs Darsh Kumar[6], the Supreme Court directed the Commission to follow the principles laid down in the case of Ghaziabad Development Authority vs. Balbir Singh in future cases.

Conclusion This landmark decision laid down rudimentary principles and set judicial standards concerning the awarding of compensation and the determination of the quantum of compensation to be awarded. It struck down the mechanical application of a fixed rate of interest at 18% per annum by the National Commission in numerous cases, asserting that there can be no hard and fast rule.

The principles enunciated go a long way in ensuring that consumers are compensated appropriately and proportionally for the loss and injury suffered. This decision has further strengthened the consumer protection laws by bringing clarity to how the consumer is required to award compensation.

References Indian Kanoon <https://indiankanoon.org/> Consumer Protection Act, 1986 http://legislative.gov.in/sites/default/files/A1986-68_o.pdf [1] Chief Administrator, H.U.D.A. & Anr. v. Shakuntla Devi, (2017) 2 SCC 301 [2] (2004) 5 SCC 65 [3] (1994) 1 SCC 243 [4] (1878) 3 AC 430 [5] (2005) 9 SCC 430 [6] (2005) 9 SCC 449 In a latest judgment the only Supreme Court has redefined the rate of interest.

In a latest case, on Supreme Court in Petition(s) for Special Leave to Appeal (C) No(s). 24059/2022 (Arising out of impugned final judgment and order dated 19-09-2022 in RP No. 1187/2022 passed by the National Consumers Disputes Redressal Commission, New Delhi) MEERUT DEVELOPMENT AUTHORITY Petitioner(s) VERSUS SURESH CHAND GARG Respondent(s) (FOR ADMISSION and IA No.202401/2022-EXEMPTION FROM FILING O.T.) Date: 05-01-2023 This petition was called on for hearing today.

Held "We have heard learned counsel for the petitioner and find that the order passed by the Consumer Commission was reasonable and there was no reason of filing appeal/revision against the substantive order passed on the consumer complaint by the District Consumer Commission dated 06.09.2019. Consequently, the present petition is disposed of with a direction, to sum up the litigation which is pending for a long time, that let the order of the District Consumer Commission dated 06.09.2019 shall be complied with and the respondent be refunded the entire deposit with simple interest at the rate of 12% per annum within a further period of 60 days from today, failing which it shall carry interest at the rate of 15% per annum until actual payment."

So the Hon'ble Supreme Court has specifically said that the rate of interest shall be 12% if paid within 60 days from the date of judgment otherwise the rate of interest will be 15% per annum until actual payment.

Regarding payment of compensation, damages, rent et cetera the following case laws of Hon'ble Supreme Court and Hon'ble NCDRC are worth mentioning.

In the case of H. P. Housing Board v. Varinder Kumar Garg[(2005) 9 SCC 430] and Haryana Urban Development Authority vs. Darsh Kumar[(2005) 9 SCC 449], the Supreme Court directed the Commission to follow the principles laid down in the case of Ghaziabad Development Authority vs. Balbir Singh in future cases."

Hon'ble Supreme Court in the case of Haryana Urban Development vs. Darsh Kumar, Etc., Civil Appeal no 5796 of 2002 decided on 28 July, 2004 has held ;

"This Court has, in the case of Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has

also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

We are informed that in spite of there being no stay, to payment of interest beyond 12% and in spite of clarification given by this Court's order (reported in (2004) 5 SCC 65), the amounts have still not been paid. We feel that for the lapse Appellants must pay interest at the rate of 15% from 17th March, 2004 till payment. Appellants shall also pay costs fixed at Rs.500/- in each case to the Legal Aid Society of the Supreme Court. The Appellants must recover the amount paid towards costs personally from the officer/s, who were responsible for not paying even after clarification by this Court. We clarify that this Order shall not be taken as a precedent in any other matter as the order has been passed taking special features of the case into account. The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) in future cases. The Appeals are disposed off in above terms. There will be no order as to costs."

So it is clear that the compensation and rate of interest shall depend on the facts and circumstances of each case and no hard and fast rule can be framed. In this connection some of the judgment of the Supreme Court and Hon'ble NCDRC should be taken into account.

In the case of PRIYANKA MITTAL & ANR. V. PARSVNATH DEVELOPERS LTD. & ANR. (NCDRC). These appeals arise out of single order of State Commission, hence, decided by common order. These appeals have been filed against the order dated 25.2.2015 in Complaint Nos. 18 of 2013- Nalin Bhargava & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 34 of 2013- Jasleen Viswanathan & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 58 of 2011- Janmejai Mani Tiwari Vs. Parsvnath Developers Ltd. & Anr.; 68 of 2013- Indu Singh Vs. Parsvnath Developers Ltd. & Anr.; 69 of 2013- Poonam Sagar Vs. Parsvnath Developers Ltd. & Anr.; 86 of 2010- Priyanka Mittal & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 101 of 2011- Mohd. Aslam Khan & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 130 of 2012- Dr. Sunil Kr. Singh & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 49 of 2012- Neera Mittal & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 74 of 2011- Deepak Bhalla Vs. Parsvnath Developers Ltd. & Anr.; 87 of 2010- Syed Gufran Ali Alvi & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 96 of 2011- Uppasana Malik Vs. Parsvnath Developers Ltd. & Anr.; 175 of 2013- Umesh Chandra Dixit & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 97 of 2011- Pravin Kumar Goel & Anr. Vs. Parsvnath Developers Ltd. & Anr. which complaints were partly allowed.

The Hon'ble NCDRC held that:

"Brief facts of the cases are that opposite parties/respondents are engaged in the activity of housing construction and accordingly they have launched a project named as Parsvnath Planet situated in Gomti Nagar, Lucknow. The project was demonstrated to be very lucrative and made attractive to the vendees, in order to procure/collect money from the needy persons demonstrating themselves to be excellence in the field of construction activity as compared to other builders and assured the buyers/complainants that it has been duly approved by the Lucknow

Development Authority and necessary permission has also been obtained from them. The emphasis was made by the opposite parties that the possession of the Unit shall be given within a scheduled period of $36+6=42$ months stipulated in agreements executed in between the parties for the project launched in the year 2006. The complainants/appellants attracted by the promise and assurance of the opposite parties, somehow managed and arranged the money from their personal sources as well as on loan at attractive rate of interest and the hard earned money was paid by them to the opposite parties in a hope that the possession of the units shall be provided to them in the year 2009 and they can leave peacefully in their own houses, since the complainants are living in rented houses.

The complainants visited the construction site of the opposite parties after depositing the entire amount, where it was revealed that the construction activities were on halt and the persons available on the site told the complainants that the apartments are likely to be completed till 2015. Even the partial construction done by the opposite parties was defective and did not match the specifications provided in the agreement. The complainants were shocked on hearing it and observing the site. The complainants immediately contacted the Area Manager, who told the complainants that there is some delay in the construction of the apartment and the apartments shall be ready till June, 2010. The complainants have to repay the amount taken on loan alongwith interest without getting the possession of the allotted units causing irreparable loss and injury to them. The complainants have come to know that the opposite parties have invested the funds earmarked for this project into their other projects in other city due to which they have not been able to complete the project in time. Besides this, it has also come to the light that although the opposite parties had collected huge funds from the buyers but in spite of that the opposite parties have miserably failed to pay the dues of Lucknow Development Authority which forced the Lucknow Development Authority to issue coercive measures against the opposite parties for therecovery of their dues. Alleging deficiency on the part of opposite parties/ respondents, complainants filed separate complaints before State Commission. Aggrieved by the order of Hon'ble State Commission, these appeals preferred before Hon'ble National Consumer Disputes Redressal Commission.

Hon'ble NCDRC discussed various case laws and after hearing the parties held, "Learned Counsel for appellants submitted that as complainants have been deprived of possession for a long period beyond agreed period, it amounts to restrictive trade practice under Section 2 (nnn) of Consumer Protection Act and complainants are entitled to get compensation. Section 2 (nnn) runs as under:- means a trade practice which tends to bring about restrictive trade practice manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include- Delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price; Any trade practice which requires a consumer to buy, hire or avail of

any goods, or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services; Perusal of aforesaid provision reveals that when opposite party delays in delivery of goods which leads to rise in the price of goods meaning thereby, more price is charged from complainant, it amounts to restrictive trade practice. In the case in hand, opposite party on account of delayed delivery of possession is not charging higher rate than the agreed rate for delivery of possession of flat, so, it does not fall within the purview of restrictive trade practice under Section 2(nnn) of Consumer Protection Act."

"Admittedly, agreements were executed in 2006 and as per agreements, possession of flats was to be delivered within 42 months, meaning thereby, possession was to be given in the year 2009-2010 and possession has not been handed over so far though year 2016 has started. No doubt, complainants are entitled to get penalty amount for delayed delivery of possession as per clause 10(c) of the agreement but opposite party cannot be permitted to avail benefit of aforesaid clause for indefinite period. This penalty clause should be allowed for the benefit of parties for a limited period and in the cases in hand, I deem it appropriate to extend applicability of aforesaid clause for a period of one year beyond 42 months and after that, complainants are certainly entitled to compensation. Opposite party cannot be allowed to avail huge funds of complainants by paying merely Rs. 5/- per sq. ft. for example, complainants who have purchased flat measuring 164.901 sq. mtr., they have made payment of about Rs. 31.00 to 32 lakhs and in the garb of clause 10 (c), opposite party is paying penalty @ approximately Rs. 9,000/- per month against enjoying funds more than Rs. 30.00 lakhs. As complainants have been deprived to shift to their flats for a long period which would not only have given them satisfaction of living in their own house but also have raised their social status and opposite party has enjoyed funds of complainants for a long period, I deem it appropriate to allow compensation @ Rs. 15,000/- p.m. to the complainants who have applied for flats upto 175 sq. mtr and Rs. 20,000/- per month to complainants who have applied for flats above 175 sq. after 54 months of execution of agreement till delivery of possession."

Against this judgment, parties went to Hon'ble Supreme Court. The judgment of Hon'ble Supreme Court is:-

In Nalin Bhargava vs. Parsvnath Developers Ltd. CA 6662/2018 @ SLP(C) 7596/2016 etc and other related civil appeals on 13 July, 2018, Hon'ble Supreme Court held:-

"Leave granted in all the special leave petitions. CA 6662/2018 @ SLP(C) 7596/2016 etc. It is submitted by Mr. M.L. Lahoty, learned counsel appearing for the appellants in all the appeals that the possession has been handed over and the deficiencies have been removed and, therefore, he has no grievance. However, Mr. Lahoty would insist that there should be imposition of costs as compensation.

Mr. Sachin Datta, learned senior counsel appearing for the developer has raised objections with regard to imposition of costs.

Having heard learned counsel for the parties, we are of the considered opinion that the cause of justice would be best subserved if each of the appellants in the present appeals are given Rs.1,50,000/- (Rupees one lakh fifty thousand only) per flat, towards costs. When we say "cost", we mean costs alone and nothing else."

In the case of Meerut Development Authority Vs. Suresh Chandra Garg, Special Leave to Appeal (C) No(s). 24059/2022, Judgment dated 05.01.2023 Hon'ble Supreme Court has held, "consequently, the present petition is disposed of with a direction, to sum up of the litigation which is pending for a long time. Let the order of the District Consumer Commission 06.09.2019 shall be complied with and the respondent be refunded the entire deposited amount with simple interest at the rate of 12% per annum within a further period of 60 days from today failing which it shall carry interest at the rate of 15% per annum until actual payment."

Therefore it is clear that the amount shall be refunded with simple interest at the rate of 12% within 60 days from the date of judgment otherwise the rate of interest shall be 15% simple interest per annum till the date of actual payment. In this case we take the cut-off date as October 2014, and the interest shall be computed from November 1, 2014 till the date of actual payment.

These builders are just earning money from the consumers to whom they issued allotment letters and got a huge amount. They keep this amount for a long time and earn interest on it. Property dealing is that part of business where they never pay a penny to the consumers on their amounts deposited for a long-term or if they pay, they pay a meagre interest of about 5% or so but they charge 18 to 24% or more if the consumers default in depositing any instalment. It reminds us the story of "The Merchant of Venice" The Merchant of Venice is the story of a Jewish money lender Shylock who demands that an antisemitic Christian offer "a pound of flesh" as collateral against a loan. These acts of builders also remind us the age of Sahukari during ancient India and also during British Raj. Whether these builders have power to frame their own law? They put their terms and conditions in such a way that the sufferer will always be the consumer. The Consumer Protection Act 1986 has been enacted for the benefits of consumers, so the courts dealing with Consumer Protection Act 1986 should come forward for their rescue. The courts are not governed by the builders but they are governed by the law, Custom and Usages. Now in the background of all the facts and also the facts of the present case, we will also discuss something more.

Now we see the present case. There is no completion certificate. There is no occupancy certificate. Delivery of possession has not been given on the date as promised by the opposite parties. They have become defaulter in not providing the unit to the complainant within the time mentioned by them in the agreement. As per judgment of the Hon'ble NCDRC he is entitled for rental Rs.15,000.00 per month from the cut of date that is 01.04.2009 (actual date is DECEMBER 2009). He is liable to pay interest on the amount deposited by the complainant from their due date of deposits. As far as delivery of possession is concerned, the possession should have been handed over within three years because in cases where no such date has been mentioned by the builders, Hon'ble Supreme Court

has said that the reasonable time to deliver the possession of the flat is three years.

Hon'ble Supreme Court in civil appeal number (S) 3533-3534 of 2017 , M/S Fortune infrastructure (NOW known as M/S Hicon Infrastructure) & Anr Vs Trevor D'Lima & Ors., Judgment 12.03.2018 has held:

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014.

Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to ?"

So there is no question to extend the period of delivery of possession because Hon'ble Supreme Court has made it clear that the possession should have been handed over within three years. There is no record to show whether the opposite parties have applied and received NOCs Of Fire Department, Civil Aviation Department, Pollution Control Department Et cetera. These NOCs are also necessary in addition to completion certificate and occupancy certificate. The complainant has prayed for delivery of possession of the said flat within a time to be fixed by the Hon'ble commission. The complainant has also prayed for damages at the rate of Rs.6000.00 per month which is a meagre amount in comparison to the Hon'ble NCDRC judgment in which the Hon'ble NCDRC has awarded Rs.15,000/- per month.

Therefore it is clear in this case that the possession of the flat has not been handed over to the complainant as promised by the opposite parties. The cut of date for delivery of possession is 01.04.2010 so all the damages, compensation and other penalties shall be reckoned from the state. From all the facts and circumstances of the plaint case we are of the opinion that the complainant is entitled for the following reliefs.

The complainant is entitled to get the possession of flat number D-801 measuring 1725 square Ft in Dffodil Tower, Alstonia Apartment, plot number 10, Pi 1&2, Greater Noida within 60 days from the date of judgment of this complaint case along with Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc with execution of the sale deed and if not done within 60 days from the date of judgment of this complaint case the complainant will be entitled to get Rs.50,000.00 per month after 60 days till the date of actual delivery of possession/execution of sale deed along with the copies of Completion

Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc. The complainant is entitled to damages at a rate of Rs.6000/- per month with interest at a rate of percent from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% payable from 01.04.2010 till the date of delivery of actual possession/execution of sale deed and handing over all the papers as mentioned.

The complainant shall be entitled to get interest at a rate of 12% on the amount deposited by him from the respective date of deposition if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from the respective date of deposits.

The complainant is entitled to get Rs.1.5 lakhs as damages in light of the Hon'ble Supreme Court judgment.

The complainant is also entitled to receive Rs.20 lakhs towards mental agony, harassment, deficiency in service under the relief clause IV of the complaint with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.04.2010 till the date of actual delivery of possession/execution of sale deed a company with copies of all the documents as mentioned earlier.

The complaint case is decided accordingly.

ORDER 1- The opposite parties are, jointly and severally, directed to hand over the possession of flat no.G-801 measuring 1725 square Ft in Daffodil Tower, Alstonia Apartment, plot no.10, Pi 1&2, Greater Noida to the complainant within 60 days from the date of judgment of this complaint case along with Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department, Fire Department, Civil Aviation Department etc with execution of the sale deed and if not done within 60 days from the date of judgment of this complaint case the opposite parties shall pay damages @ Rs.50,000.00 per month after 60 days from the date of judgment of this complaint case till the date of actual delivery of possession/execution of sale deed along with the Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department, Fire Department, Civil Aviation Department etc. 2- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.6000/- per month with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% payable from 01.04.2010 till the date of delivery of actual possession/execution of sale deed accompanying with handing over all the papers as mentioned in clause 1 of the order.

3- The opposite parties are, jointly and severally, directed to pay to the complainant interest at a rate of 12% on the amount deposited by him from the respective date of deposition if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from the respective date of deposits.

4- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.1.5 lakhs as damages in light of the Hon'ble Supreme Court judgment.

5- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.20 lakhs towards mental agony, harassment, deficiency in service under the relief clause IV of the complaint with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.04.2010 till the date of actual delivery of possession/execution of sale deed accompanying with copies of all the documents as mentioned in clause 1 of the order of this complaint case.

If the order is not complied with, within 60 days from the date of judgment of this complaint case, the complainant shall be entitled to file execution case in this court at the cost of the opposite parties.

The stenographer is requested to upload this order on the Website of this Commission today itself.

Certified copy of this judgment be provided to the parties as per rules.

(Sushil Kumar)

(Rajendra Singh)

Member

Presiding Member

Judgment dated/typed signed by us and pronounced in the open court.

Consign to the Record-room.

(Sushil Kumar)

(Rajendra Singh)

Member

Presiding Member

Dated 15.5.2023

JafRi, PA I

C-2

Reserved

State Consumer Disputes Redressal Commission

U.P. Lucknow.

Sohan Singh, aged about 55 years,

S/o Shri Trilok Singh, R/o Village,

Narainpur Jaspur, Udham Singh Nagar,

Uttaranchal.

...Complainant.

Versus

1-M/s Nitishree Infrastructure Ltd. having

Registered office at G-55, East of Kailash,

New Delhi-110065 and Administrative

Office at A-1, Sector 4, Noida, Gautam Budh

Nagar, U.P.

2- ANS Apartments Private Ltd., B-111, Sector 5

Noida, Gautam Budh Nagar, U.P.-201301

Through its Managing Director.

...Opposite parties.

Present:--

1- Hon'ble Sri Rajendra Singh, Presiding Member.

2- Hon'ble Sri Sushil Kumar, Member.

Sri Purushottam Awasthi, Advocate for complainant.

None for opposite parties.

Date: 15.05.2023

JUDGMENT

Per Sri Rajendra Singh, Member-

This complaint has been filed by the complainant for following reliefs:

- I- To complete the construction and handover possession of the Flat no.D-701, meas
- II- To pay damages at the rate of Rs.6,000.00 per month for the deprivation of enjoy
- III- To pay cost to the complainant incurred by it in filing the present complaint.
- IV- To pass any other order or direction which the Hon'ble Commission may deem fit i

In short, the brief facts of the complaint case are that, that on 28.7.2007, the respondent no.1 had issued an allotment letter to the complainant whereby it allotted flat no.D-701, measuring 1725 square feet in Daffodil Tower, Alstonia Apartment, Pot no.10, Pi 1 & 2, Greater Noida. On the same date, the respondent no.1 had executed an agreement with the complainant for selling the aforesaid apartment for a total sale consideration of Rs.44,21,000.00. Clause 9 of the agreement provides that the company shall complete construction of the apartment and the residential complex and deliver possession of the apartment to the complainant by December, 2009. Annexure B2 to the agreement contained a construction link payment plan, according to which 11% of basic sale price was to be paid at the time of booking, 10% of BSP was to be paid after bhoomipoojan and the remaining consideration was payable in instalments as per the progress of construction.

As against the requirement of paying only 11% of the basic sale price, which comes to Rs.4,41,168.00 the complainant paid a much higher sum of Rs.11,58,500.00 at the time of booking of the flat, receipt of which amount was acknowledged both in the allotment letter as well as the agreement dated 28.7.2007. Although the agreed time of completion of construction and handing over possession of the flat expired in December, 2009, the respondent no.1 did neither send any communication to the complainant regarding progress of the construction nor did it communicate the dates of bhoomipoojan and the start of foundation etc. Meanwhile, on 01.03.2014, the respondent no.2 namely ANS Apartment Pvt. Ltd., sent a letter to the complainant, vaguely mentioning that the construction of the flat allotted to the complainant is going on and that an amount of Rs.10,28,534.00 is due on the complainant. In the aforesaid letter the respondent no.2 did not disclose its authority for demanding money in respect of the flat regarding which the complainant had entered into an agreement with the respondent no.1. It is significant to clarify that the complainant had not entered into any agreement with the respondent no.2 and none of the respondents sent any communication to the complainant regarding any transfer or assignment of the rights and liabilities of the respondent no.1 under the agreement dated 28.7.2007 in favour of the respondent no.2. Surprised by the aforesaid letter dated 1.3.2014 sent by the respondent no.2 in respect of the flat regarding which the complainant had entered into an agreement with the respondent no.1, the complainant tried to contact the offices of both the respondent no.1 and 2 to know the correct factual position, but no response was given to him.

Subsequently on 2.2.2015, the respondent no.2 sent another letter again vaguely mentioning that the construction of flat allotted to the complainant is going on and demanding an enhanced due amount of Rs.16,80,233.00. Even in this letter dated 2.2.2015, the respondent no.2 failed to disclose its authority for demanding money in respect of the flat regarding which the complainant had entered in agreement with the respondent no.1. The attempts of the complaint to communicate with both respondents no.1 & 2 to seek clarity on the authority of the respondent no.2 for demanding money from the complainant and also the status and stage of construction of the aforesaid flat allotted to him, were in vain.

Left with no option, on 4.5.2015 the complainant sent a legal notice to the respondent no.1 with whom the complainant had entered into agreement in respect of the aforesaid flat, wherein it was mentioned that the respondent no.1 has committed a breach of the agreement as well as deficiency in service on account of its failure to complete the construction and handover possession of the aforesaid flat within the agreed period of December, 2009. It was further mentioned that the respondent no.2 is making offers in respect of the flats regarding which the complainant had entered into an agreement with the respondent no.1, and that the complainant has no contractual relation with the respondent no.2. The complainant, thereafter, called upon the respondent no.1 to inform the revised schedule of construction of the apartment agreed to be sold to it within thirty days and to complete the construction and hand over possession of the flat to him without any further unreasonable delay. The complainant further expressed its readiness and willingness to perform its part of the agreement by making payment in instalments as mentioned in Construction Linked Payment Plan upon information of the dates of Bhoomipoojan, start of foundation and other steps in the construction of the apartment.

The notice dated 4.5.2015 sent by registered post on both administrative and registered offices of the respondent no.1 were received back with endorsement "No such Firm Exists".

On 8.6.2015, after receiving back the notice sent to the respondent no.1, the complainant sent a registered legal notice to the respondent no.2, wherein the complainant asked the respondent no.2 to disclose its authority for demanding money in respect of the aforesaid flat. It was further mentioned that in case, the respondent no.1 has made assignment in favour of the respondent no.2 in respect of the aforesaid apartment, it should be informed to the complainant the revised schedule of construction of the apartment agreed to be sold to it and to complete the construction and hand over possession of the flat without any further unreasonable delay. Even after expiry of thirty days of time stipulated in the aforesaid notice, the respondent no.2 has not sent any response to the complainant.

The complainant has entered into the agreement with the respondent no.1 under which possession of the flat was to be given by December, 2009. However, even after making payment of Rs.11,58,500.00 at the time of allotment and after delay of more than 6 years, the respondent no.1 has neither informed the stage of construction to enable the complainant to make construction linked payment as per the conditions mentioned in the Agreement nor it handed over the possession of the flat to the complainant or made any communication explaining the reason for such inordinate delay. The act of the respondent no.1, therefore, amounts not only to the breach of the agreement but also deficiency in service. In case the respondent no.2 has obtained an assignment of the rights and liabilities of the respondent no.1 under the agreement dated 28.7.2007, the respondent no.2 has become liable to suffer the consequences of breach of the agreement dated 28.7.2007 and for the deficiency in service. It is specifically stated that the complainant has always been and is still ready and willing to make construction linked payment as per the conditions of the agreement.

Further, the respondent no.2 has caused harassment and mental agony to the complainant by demanding money in respect of the aforesaid flats, without disclosing its authority to do so even after several communications made by the complainant. The complainant has no contractual relation with the respondent no.2 and, therefore, in absence of any communication regarding any assignment made by the respondent no.1 in favour of the respondent no.2 and without the respondent no.2 having constructed the flat and informed the progress of its construction as mentioned in the construction linked payment plant, it has no liability to take any payment to it.

The complainant is entitled to get the ownership and possession of the flat in question in terms of the agreement and it is further entitled to receive damages for the inconvenience caused by being deprived of the enjoyment of the flat which ought to have been delivered to him by December, 2009 which damages are being assessed at Rs.6,000.00 per month which is a fair rental value of the flat as per the market rates prevailing in Greater Noida, calculated for the period since January, 2010 till the time the respondents actually deliver possession of the flat to the complainant. The complainant is further entitled to receive a sum of Rs.1,00,000.00 towards damages for harassment and mental agony caused by the acts of the respondents.

The total valuation of the flat situated in Daffodil Tower, Alstonia Apartments, Plot no.10, Pi 1 & 2, Greater Noida is Rs.44,21,000.00 and the complainant has claimed damages at the rate of Rs.6,000.00 per month for the deprivation of enjoyment of the flat, amounting to Rs.4,02,000.00 till date and an amount of Rs.1,00,000.00 towards damages for harassment and mental agony caused by the acts of the respondents. Therefore, the Hon'ble Commission has both territorial and pecuniary jurisdiction to entertain the present complaint.

In this case notice was served on the opposite party and their counsel appeared before this court but did not file the written statement in time. Hence vide order dated 04.08.2016, his written statement was not taken on record.

We have heard the learned counsel for the complainant Sri Purushottam Awasthi. Ld. counsel for the opposite parties Mr. Manu Dixit did not appear to place his arguments. We have seen the pleadings, evidences and documents on record.

The opposite parties raised objection that the agreement contains an arbitration clause so this court has no jurisdiction and the matter should have been referred to arbitrator. As far as Consumer Protection Act is concerned, it is in addition of an act and not in derogation of any act. It is better to see the objects of the Consumer Protection Act vis a vis Arbitration Act, the following article will be helpful.

What are the main objectives of consumer protection act?

The Consumer Protection Act, came into existence and implemented in 1986, provides Consumer Rights to prevent consumers from fraud or specified unfair practices. It safeguards and encourages and gives an opportunity to consumers to speak against insufficiency and flaws in goods and services. If traders, manufacturers and distributors follow any foul trade, this act protects their rights as a consumer.

On which products are these rights applicable?

This Protection Act covers entire goods and services of all sectors that are public, private, or cooperative sectors, except those exempted by the central government. The act provides a floor for a consumer where one can file their complaint against the product and the forum takes an action against the concerned supplier and compensation is granted to the consumer for the inconvenience he/she has encountered.

Objectives of consumer protection act To Provide better and all round protection to consumer.

To Provide machinery for the speedy redressal of the grievances.

To Create framework for consumers to seek redressal.

To Provide rights to consumers.

To Safeguard rights of Consumers.

Let us know more about the rights and responsibilities of consumer.

Consumer Rights Listed below are the Rights of the Consumer Right to Safety- Before buying, a consumer can examine on the quality and guarantee of the goods and opt for ISI or AGMARK products.

Right to Choose- Consumer must have the right to choose from a variety and number of goods and in a competitive price Right to be informed- The buyers must be provided with complete information with all the necessary and adequate details of the product, make her/him act wise, and change the buying decision.

Right to Consumer Education- The consumer must be aware of his/her rights and avoid exploitation.

Right to be heard- The consumer will get due attention to express their grievances at a suitable platform.

Right to seek compensation- The consumer has the right to seek or ask for redressal against unfair and inhumane practices or exploitation of the consumer.

Consumer Responsibilities Responsibility to be aware - A consumer has to be careful of the safety and quality of products and services before purchasing.

Responsibility to think independently- Consumer should be well bothered about what they want and need and hence make independent choices.

Responsibility to speak out- The buyer should be fearless to speak out their problems and tell to traders what they exactly want Responsibility to complain- It becomes the consumer's responsibility to express and file a complaint about their dissatisfaction with goods or services in a sincere and fair manner.

Responsibility to be an Ethical Consumer- Consumer must be fair and not engage themselves with any deceptive practice.

The Consumer Protection Act 1986 was enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of Consumers Councils and other authorities for the settlement of consumers' disputes and for matters connected therewith (Preamble).

The Act Inter alia, seeks to promote and protect the rights of consumers such as --

(1) right to be protected against marketing of goods which are hazardous to life and property;

(2) right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(3) right to be assured, wherever possible, access to variety of goods at competitive prices;

(4) right to be heard and to assured that customers' interests will receive due consideration at appropriate forums.

(5) Right to seek redressal against unfair practices or unscrupulous exploitation of consumers; and

(6) Right to consumer education The objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State levels.

The Act applies to all goods and services, except if otherwise provided by the Central Government by Notification. To provide speedy and simple redressal of consumer disputes, a quasi judicial machinery is set up at the District, State and Central levels. The three tier system of quasi judicial bodies will observe the principle of natural justice and are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi judicial bodies have also been provided.

Thus the Consumer Protection Act is to serve the interests of the consumers. Consumer education and redressal of consumers' grievances are the two aspects of the Act. It makes good the loss a consumer suffers and increases the feeling of responsibility of the manufacturer, trader, supplier or businessman.

The provisions of the Act have to be construed in favor of the consumer to achieve the purpose of enactment as it is social benefit oriented legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and not contrary to attempted objective of the enactment.

Extent of Consumer Protection:

While other legislations may be either punitive or preventive, the Consumer Protection Act compensates the consumer. The provisions of the Act are in addition to and not in derogation of the provisions of any law at the time being in force (Sec 3). In *Maine Container Services South Pvt Ltd v Go Garments* 1998 (3) SCC 247 it has been held that the Contract Act applies to all litigants before the Commissioner under the Consumers Protection Act. Passengers traveling in train suffering injuries and loss of Jewelry as a result of assault by unruly crowd are eligible for filing of complaint before State Commission is maintainable notwithstanding the provisions of sections 100 and 103 of Railways Act, 1889. The Consumer Protection Act therefore gives the consumer an additional remedy besides those which may be available under other existing laws. Existence of an arbitration clause in the agreement is no bar to the entertainment of complaint by the Redressal Agency as the remedy under the Act is in addition to the provisions of any other law. However, the

Consumer Forums under the Act have not taken over the jurisdiction of civil Courts. If the dispute between the parties is pending in Civil Court no Consumer Forum will adjudicate the dispute. Similarly if evidence be laid by the parties to the dispute is voluminous or complicated the parties will be referred to the appropriate Civil Court.

Consumers Protection Act, thus enshrines the rights of a consumer to be informed about the quality, quantity, potency, price etc., of the goods to be protected against unfair trade practices, to seek inexpensive and expeditious redressal of grievances before the Consumer Forums. Consumer Protection Act is a benevolent piece of legislation to protect a large body of consumers from exploitation.

With the passage of time, the populace of the country is on hike and so are their opinions. Their opinion forms the basis for their interpretation, it may be a good or a bad interpretation. What would happen in the situation where people starting interpreting the laws? We might be flooded with several interpretations. The interpretations will be in such huge number that the laws will become unclear. This is the reason why lawmakers, while making the law, formulate it in accordance with the aim, set out by them, before penning down the legislations. The aim of any legislation defines the basis of the act. It becomes the ground norm of the act, based upon which the judiciary interprets the disputed texts.

The aim of any act forms the indispensable element, because it acts as the cord that delivers the real intention of the legislators behind the act. Whenever there is clash between two legislations, it is the aim of the legislation which makes the judges to derive at the endpoint in deciding which law has the superseding effect. It is through the doctrine of pith and substance that judges are able to derive at the major inclination towards one act over another act. This inclination is decided on the basis of the aim/goal of the act and the facts of that particular case.

Somewhat similar situation aroused in front of Supreme Court in the case of Aftab Singh and Others v. Emaar MGF Land Limited and Another (Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017)[1]. In this case the Supreme Court cleared out the battle between arbitration and the statutory remedy when it comes upon solving the consumer disputes, which also upheld the decision of the National Consumer Disputes Redressal Commission (NCDRC). In this case, the apex body for the consumer dispute in India (NCDRC) ruled in the favor of the statutory remedy over the arbitration.

CONSUMER PROTECTION ACT (CPA) The beneficial legislation of Consumer Protection Act aims at reducing the grievances of the all classes of customers by providing them the preferential treatment. According to the Consumer Protection Act, the consumer dispute is the entity where the consumer/ customers have been given the convenient safeguards against ample exploitation like bad customer service, faulty goods or any unfair trade practices. The interest of the customers is protected

by setting up, the three tier quasi-judicial consumer Redressal machinery which are at national, state and district levels as per section 9 of Consumer Protection Act. The Consumer Protection Act, 1986 (CPA) has been enacted in light of certain concerns related to public policy and the benefit of consumer.

RELATIONSHIP BETWEEN ARBITRATION ACT AND CPA In India, people are least aware with the consumer's rights and lags behind having low general understanding of arbitration as dispute resolution mechanism. The arbitration clause can curtail the grounds on which the consumers can raise the disputes, whereas on the other side the consumer protection act may grant the consumer various grounds on which he can file the complaint which may not be otherwise permitted in the standard form agreement having the arbitration clause.

Arbitration has equal bargaining powers and the resources at hand which makes it private, efficacious, and timely form of dispute resolution. Whereas in case of consumer disputes, the case is different, where they are exposed to the standard form agreements making them submit to the unfair or the repressive terms. They are several times made part of the one-sided arbitration clause, which is drafted keeping in mind the interest of one party only.

These days Indians are shifting to the online purchasing platform and being ignorant of not checking the agreements which makes them to be covered under the blanket provision and end up being the party to the arbitration. This makes less options opened for the consumer to resort to the statutory remedies which in turns endangers the interest of the consumers. This may also build the hostile market against the e-commerce in India. It may have the adverse effect not only on the Indian economy but also on the e-commerce giants who aims at invest in the growing market.

CONSUMER COURT AS A SPECIAL COURT It was held in the case of Aftab Singh v Emaar MGF Land Limited & Anr., that the provisions of the arbitration act does not apply to the consumer courts, as they are the special courts set up for the public purpose. In this case, the group of the home owners filed the complaint against Emaar MGF Land Private Limited (Builder) before NCDRC. The complaint was filed for the non-delivering the plots to the buyers as per the Buyers' Agreement. The builder filed the application under section 8 of the Arbitration and Conciliation Act, on the basis of the arbitration agreement made between the parties which was mentioned there in the Buyer's Agreement.

It was argued by the petitioner that the remedies provided under the Consumer Protection Act are not in exclusion of the existing laws, but are in addition to it, which has been sated in the case of National Seed Corporation Limited v M. Madhusudhan Reddy((2012) 2 SCC 506) . It was also argued that the consumer protection act is the piece of the legislation which intends to confer the benefits and it is the, for which the purpose should be advanced. Therefore, regardless of having entered into the

arbitration clause, the consumer can invoke the section 3 of the Consumer Protection Act and bring the complaint to the consumer forum(Skypak Couriers Ltd. Vs. Tata Chemicals Ltd)[3].

The builder pleaded that the Consumer Courts act as the 'judicial authority' within the scope of section 8 of the Arbitration and Conciliation Act and therefore if there is any valid clause entered between the parties, then the consumer courts can refer the parties to the arbitration. And hence according to the act the consumer courts are obliged to bring the case for the arbitration, irrespective of the High Court and Supreme Court decisions. The NCRDC's full bench ruled that the arbitration act does not bars the consumer court's jurisdiction relying on the Supreme Court's judgement in the case of Booz Allen Hamilton Inc v. SBI Home Finance Ltd(2011) 5 SCC 532), which provided the country with the disputes that are not arbitrable. In this case, Supreme Court, came with the 7 categories of the disputes that are not arbitrable[5].

The commission also relied on the Supreme Court judgement in the case of A. Ayyasamy v. A Paramasivam(2016)10 SCC 386 ;N. Radhakrishnan v. Maestro Engineers) that the dispute will not be arbitrable if the civil court's jurisdiction has been exclusively given to a tribunal or the special court. The Consumer Courts were made to create an organized system for dispute between the people who possess the unequal power i.e. the consumer and the large corporations. The commission also pointed out the section 2(3) of the Arbitration and Conciliation Act which refers to the situations where the special categories of disputes are protected from being referred to the arbitration. Therefore this provision protects the Consumer disputes. The court concluded that if the court allows party to go for the arbitration and being in favor of the builder, it will defeat the goals and the main purpose of the Consumer Protection Act.

THE CONDITIONS PRIOR AND POST 2015 AMENDMENT TO SECTION 8 OF ARBITRATION AND CONCILIATION ACT Section 8 of the Arbitration and Conciliation Act states that the judicial authority can instruct the parties to go for arbitration in the case when there exists the arbitration clause in the arbitration agreement. It does not bars oust the jurisdiction of the Consumer Court, it will continue to hold and enjoy the jurisdiction irrespective of presence of an arbitration clause in the agreement.

The Supreme Court contented that there was no legislative intent of the amended provisions of the section 8(1) in the Arbitration and Conciliation Act, so as to override the other statutes which have the specific remedies. Neither it intends to make disputes related to trusts, criminal law, tenancy, telecom, family law, IPR, etc, as the arbitrable subject and to against the judgement of A Ayyasamy v A Parasivam& Ors(2016) 10 SCC 729) and Booz Allen Hamilton Inc. v SBI Home Finance Limited & Ors.(2011) 5 SCC 532) Supreme Court analyzed the situations prior to 2015 Amendment, related to referring the consumer disputes to arbitration. Supreme

Court referred to the judgments prior 2015 which had the settled law in cases of Fair Air Engineering Pvt. Ltd & Anr V N K Modi (1996) 6 the SCC 385), National Seeds Corporation Limited v Madhusudhan Reddy & Anr (2012) 2 SCC 506) and Rosedale Developers Private Limited V Aghor Bhattacharya & Ors (2018) 11 SCC 337). These cases held that even if the dispute arise from the contract having the arbitration clause, it will not impede the parties to resort to file a complaint before the consumer forum under Consumer Protection Act. All of the judgements had the rationale that provision of section 3 of Consumer Protection Act states that "the provision is in addition to, and not in the derogation of any other law for the time being in force."

The Supreme Court acknowledged the 2015 amendment which restricted the power of any judicial authority to refuse to refer the dispute to arbitration under section 8(1) and appointment of arbitrator under section 11(6A) and also acknowledged the fact that it invalidated the earlier precedent in the case of Sukanya Holding (P) Ltd v Jayesh H Pandya & Anr. (2003) 5 SCC 531) Supreme Court considering section 2(3) of the arbitration act, states that the Part I of the arbitration act shall not affect any other law for the time being in force, by virtue of which certain disputes may not be submitted to the arbitration. Supreme Court stated that the legislative intent of 2015 Amendment was never to override section 2(3) of the Arbitration Act and other statute which offers the public remedy like that of CPA. The Supreme Court in 1994 already held that CPA is a beneficial legislation which provides the economical and expeditious remedies to the aggrieved consumer in the case of Lucknow Development Act V M K Gupta (1994) 1 SCC 243).

Referring to all of the above cases, the Supreme Court in this case affirmed that the decision given by NCDRC is valid and stated that the consumer dispute are the subject matter where the dispute cannot be referred to arbitration as it pertains to rights in rem (public rights). It comes under the ambit of the non-arbitrable dispute defined under Booz Allen and Ayyasamy case. The disputes are non-arbitrable in disputes related to criminal laws, tenancy, trusts, family law, telecom, IPR, insolvency and winding up, and in certain cases, fraud.

CONCLUSION AND CRITICS OF THE CASE It can be ensured with the judgement that consumers who have lesser bargaining power than that of the service providers shall not be pushed towards the relatively cumbersome process of the arbitration where there can be other more affordable and efficacious low public law remedies available. The CPA is a special legislation which has the public law remedies dealing with the rights under the umbrella of "right in rem" which has been espoused by Booz Allen. The case had many critics for it, as it was delivered during the course of time, when India has been continuously focusing upon the survival and the supremacy of the arbitration proceeding over litigation in the Indian dispute resolution. And it was the major reason that it appeared for some of the people as a diversion from the object of Indian arbitration system to be an arbitration-friendly hub. This also draws our attention towards the fact that the arbitration shall be made a more

consumer-friendly method of dispute resolution. It is because of this judgement that people were able to depict the heightened element of the public interest consumer dispute in India.

[1]Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017 [2](2012) 2 SCC 506 [3]Skypak Couriers Ltd. Vs. Tata Chemicals Ltd [4](2011) 5 SCC 532 [5]Vimal Kishore Shah v Jayesh Dinesh Shah (2016) 8 SCC 788 [6] (2016)10 SCC 386 ;N. Radhakrishnan v. Maestro Engineers [7](2016) 10 SCC 729 [8](2011) 5 SCC 532 [9](1996) 6 the SCC 385 [10] (2012) 2 SCC 506 [11](2018) 11 SCC 337 [12](2003) 5 SCC 531 [13](1994) 1 SCC 243 So it is clear that The Consumer Protection Act is a special Act and even if there is a clause of arbitrator in the agreement, it will not oust the jurisdiction of the consumer courts. So this court has jurisdiction to try the case.

The opposite party no.1 has stated in affidavit that complainant is not a consumer. The complainant, beside the flat, also booked to other flats in the opposite parties project. The complainant is having more than one booking in the project of the respondent company hence he is not a consumer. The purpose of purchasing the flats from the respondent cannot be considered as a residential but for commercial gain through investment. The present complaint is also time barred. The cause of action, if any, has arise in on 28.07.2007 when alleged booking of flat was done by the complainant and alleged consideration was tendered to opposite party. The complaint is filed in the year 2015 which is time barred.

There is nothing on record to show that the flat purchaser by the complainant was only for commercial use. No evidence has been given by the opposite parties which show that the flats were meant for resale or for any commercial activities. If any person possesses more than one flat, it does not automatically means that this only for the purpose of investment and investment only. The complainant sent a legal notice to the respondent no.2 on 08.06.2015 asking it to disclose its authority for demanding money in respect of the aforesaid flat. So as far as cause of action is concerned, it also arises on 08.06.2015. Before it the complainant has also sent a notice on 4 May 2015, so that was also a date of cause of action. So this complaint case is not time barred.

The opposite party also pleaded that the matter should have been referred to the arbitrator because there is a arbitration clause in the agreement. But this matter has already been discussed in detail that in spite of the arbitration clause, one may file a case before the consumer fora. The opposite party also stated that the complainant is the defaulter in this case and various reminder notices were sent to the complainant and it is stated that after making initial payment the complainant has failed to make further payment hence the complaint is liable to be dismissed. The opposite party has stated that the complainant deposited the money with the respondent no.1 company for availing the flat in project developed by the respondent company on the land

allotted in the name of respondent no.2 i.e. ANS Apartment P. Ltd situated at Greater Noida, Uttar Pradesh named as "The Alstonia Apartments" and the said project is duly approved project of the company and construction at site is going on and thereafter delay in completion of project on account of reasons well explained in present reply thus in present case on account of overall slump in real estate industry especially on account of slow recovery from investors in the said project and on account of force majeure reasons stated in the present reply, there is delay in completing the construction of project. The opposite party also stated that in the present case the delay in completion of the construction has been caused due to undue delay of tendering the payment by the various allottees including the complainant herein, in the project and in view of such problem the respondents company wrote constantly letters to various allottees to make payment and further has gone even after the extent of making public notice in the newspapers by calling upon the allottees in the project to deposit their payment on time and to extend their cooperation to complete the project on time. So both the opposite parties have put the same version in their affidavits filed. They could not file their written statement in time and that was not taken on record. It shows that when the opposite parties failed to submit their written statement before the court of law, how can they say that the complainant was defaulter in the case?

In the present case flat no D-801 area 1725 square ft has been allotted to the complainant on 28.07.2007 and an agreement has been executed between the parties stating that that the complaint shall complete construction of the apartment and the residential complex and deliver the possession of the apartment to the complainant by December 2009. The component deposited Rs.1,158,500/- against Rs.441,168/- (11% of the basic sale price as required in the agreement). The total cost of the flat was Rs.4,421,000/-. It was duty of the opposite party no.1, who entered into an agreement with the complainant, to deliver the possession of the flat as promised by him. In the agreement three months grace period will be given to the opposite parties after the expected date of delivery of possession. So we have taken, after giving three months grace period, 01.04.2009 and the final date for delivery of possession. The date of the notice as published in the newspaper and copy of which has been filed by the opposite party shows July 14. This date is much beyond the date on which possession was to be delivered. So the opposite parties became defaulter when they did not deliver possession on or before 01.04.2009. They could not show the force majeure. Payment of instalments by the allottees is not a force majeure issue because the opposite parties have power to cancel the allotment in case of non-payment of instalments. So there was no reason which can genuinely be said as true for delay in the construction of the flats.

Whether the opposite parties have received the completion certificate and occupancy certificate? Both the certificates are necessary to obtain before offering delivery opposition to the allottee. It is importance should be known by the following legal article.

COMPLETION / OCCUPANCY CERTIFICATE When buying a home, it is vital to obtain documents, such as the Occupancy Certificate (OC) and Completion Certificate (CC). These are essential documents that allow you to mortgage or sell your home. Hence, homebuyers are advised to take possession of their flat or property only after these documents have been issued.

According to Vikas Bhasin, CMD, Saya Group, "Completion Certificate and Occupancy Certificate are some of the most important documents for a home buyer. Civic authorities can evict the occupants in case of non-availability of the necessary approvals. Before investing in a property, people must be doubly assured that all the certificates and approvals are in place."

Let us dive a little deeper into the details of these documents and their importance before you make a move to buy your dream home.

Owning a home is the culmination of years of savings, research, and paperwork. After patiently waiting for the construction to be complete, you finally register the property and take possession of your flat. But what if your dream home is declared unauthorised, and you are evicted by the authorities? This is not as far-fetched as it sounds. This nightmare could turn into reality without a crucial link in the property sale process - the Occupancy Certificate (OC).

The majority of apartments in different Indian cities have been occupied by owners without any occupancy certificate. This oversight can turn into a costly mistake, jeopardising the legal status of your dream home. The importance of the occupancy certificate cannot be overstated as it seals the legal status of your property and protects your ownership rights.

Decoding legal documents To understand the importance of an occupancy certificate and other legal documents, let's decode the legal jargon and understand their meaning in simple terms. Here's a ready reckoner of the most important legal documents related to your property:

Occupancy Certificate An OC certifies that the construction of the building has complied with the approved plans. It is issued by local municipal authorities or the building proposal department once the building has been completed and is ready to be occupied. Simply put, without an OC, your building has not been awarded a 'pass certificate'.

Completion Certificate A Completion Certificate (CC) is issued only after the construction meets other building standards like distance from the road, the height of the building, and rainwater harvesting system. A CC alone cannot legalise occupation; the OC is a must.

Commencement Certificate If you are buying an under construction property, make sure you check the Commencement Certificate before signing the agreement. Many builders do not wait for a Commencement Certificate. This is illegal and can create serious problems in obtaining an OC at a subsequent stage.

Why is it unsafe to buy a flat without OC?

In the absence of a valid OC, the local municipal body can initiate serious action against flat owners. In 2014, residents of a well-known building complex in Mumbai's upscale Worli area were hit with a bolt from the blue after their complex was declared unauthorised. At the time of possession, buyers overlooked the issuance of an OC from the builder. It was only after that they were forced to evacuate their flats that the writing on the wall became clear to them.

This is just one instance, and if buyers are not careful about getting the OC, they may face the following repercussions:

- In the absence of a valid OC, your building can be demolished as it can be classified as an unauthorised structure.
- The OC is crucial while applying for a home loan or loan to purchase a resale flat. If you wish to sell or hypothecate the property after a lapse of time, you will not be able to do so without a valid OC.
- The water connection, sanitary connection or electricity supply can be disconnected in the absence of an OC.

How to obtain an OC The OC is obtained from local municipal bodies by submitting an OC application form along with the following documents:

- Commencement Certificate
 - Completion Certificate
 - Built and Section plan
 - NOC for fire and pollution
 - Area calculation sheet of floor signed by an authorised architect
 - Photographs of the completed building
 - Tax assessment with tax paid receipt
 - Photographs of rain harvesting and solar panels
 - Copy of the sanctioned plan
- After submitting the form, authorities inspect the complex and confirm if it has conformed to the approved plan before issuing an OC. Legally and ideally, a builder should submit an application with the municipal commissioner for the OC within 30 days of completion of the property.

How you can apply for an OC As a flat owner, you can also apply for an OC by approaching the local corporation or municipality, and if all approvals are in place, an OC is issued within 30 days of application. You will have to submit the same documents as the builder to procure an OC.

Know your rights If the builder refuses to provide an OC, you should consider exercising your legal rights. You can issue a notice against the builder asking him to apply and hand over the copy of the OC within a month. You can also approach consumer forums and file a writ petition demanding the OC.

Some canny builders simply present the receipt of the OC and dupe gullible customers. But you shouldn't accept anything less than the actual OC as the receipt may be dated.

Landmark legislations like the Real Estate Regulatory Act (RERA) have been passed to regulate the sector, promote transparency and protect consumer rights. However, consumers must be vigilant and understand their rights and responsibilities towards owning a property. Documents like OC are essential and ensure the security of your investment.

Going forward, real estate experts believe that the OC should be made mandatory for the registration of flats and essential services. Until then, buyers must ensure builders get all the necessary approvals before handing over a property.

A Completion Certificate (CC) is an important legal document that certifies that a building is constructed according to the laid down norms and master plan of the city. This document has all the information related to the project, such as the building materials used, building height, and building plan, among other things like provision for green belt.

In a nutshell, this document certifies that the building adheres to all the prevailing rules and has not violated any norms. In fact, this document is to be shown compulsorily to the authorities to obtain electricity and water connection.

Builders are allowed to obtain a provisional Completion Certificate when there are minor works left in the project. Authorities then provide a provisional certificate valid for six months. After the expiry of the six months, the developer is bound to get a final CC.

Who issues a Completion Certificate?

Local authorities issue the Completion Certificate after a thorough inspection of the premises. If the developer violates no rules, authority issues a Completion Certificate.

Why is Completion Certificate important?

Buyers must be aware of the fact that if they are buying or moving into a property that does not have a Completion Certificate, they might be making a risky investment choice. The civic authorities hold the power to slap heavy penalties on the developer,

leading to stalling or cancellation of the registered layout of the project. In case the building is already occupied, residents may also have to face eviction in extreme cases.

Difference between Occupancy Certificate and Completion Certificate Occupancy Certificate examines and certifies a property for adherence to bye-laws, civic amenities, electricity, sanitation and other clearances. On the other hand, a Completion Certificate is a document that certifies that a property is fit for possession by the buyers.

Clarifying the difference, Deepak Kapoor, Director, Gulshan Homz, says, "Completion Certificate is just a reaffirmation that the building has been constructed as per the building byelaws and the layout plan has been approved by various concerned authorities. Occupation Certificate signals that there is no violation of building construction norms, and thus, the structure is safe for occupants.

Generally, these documents are not required at the time of registry, and hence, buyers tend to overlook or ignore these. But for their own benefit and peace of mind, it is warranted that buyers of both ready-to-move-in as well as under-construction properties check these documents before taking possession. This would help avoid any unnecessary dispute or confrontation in the future."

Not a single word has been said about these certificates by the opposite parties. Whether any offer has been given by the opposite party to pay penalty regarding delay in delivery of possession? No such averments made in the written statement.

The Hon'ble Supreme Court on occupancy certificate by the builders.

"Supreme Court: The bench of Dr. DY Chandrachud* and AS Bopanna, JJ has held that failure on the part of the builder to provide occupancy certificate is a continuing breach under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 and amounts to a continuing wrong.

Factual Background The appellant is a co-operative housing society. The respondent constructed Wings 'A' and 'B' and entered into agreements to sell flats with individual purchasers in accordance with the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (MOFA). The members of the appellant booked the flats in 1993 and were granted possession in 1997. According to the appellant, the respondent failed to take steps to obtain the occupation certificate from the municipal authorities.

There was an obligation on the respondent to provide the occupancy certificate and pay for the relevant charges till the certificate has been provided, however, the

respondent time and again failed to provide the occupancy certificate to the appellant society. For this reason, a complaint was instituted in 1998 by the appellant against the respondent. The NCDRC on 20 August 2014 directed the respondent to obtain the certificate within a period of four months. Further, the NCDRC also imposed a penalty for any the delay in obtaining the occupancy certificate beyond these 4 months. Since 2014 till date, the respondent failed to provide the occupancy certificate.

In the absence of the occupation certificate, individual flat owners were not eligible for electricity and water connections. Due to the efforts of the appellant, temporary water and electricity connections were granted by the authorities. However, the members of the appellant had to pay property tax at a rate 25% higher than the normal rate and water charges at a rate which was 50% higher than the normal charge.

Analysis Obligations of Promoter under MOFA Section 3 of the MOFA imposes certain general obligations on a promoter. These obligations inter alia include making disclosures on the nature of title to the land, encumbrances on the land, fixtures, fittings and amenities to be provided, and to not grant possession of a flat until a completion certificate is given by the local authority. The responsibility to obtain the occupancy certificate from the local authority has also been imposed under the agreement to sell between the members of the appellant and the respondent on the latter.

Sections 3 and 6 of the MOFA indicate that the promoter has an obligation to provide the occupancy certificate to the flat owners. Apart from this, the promoter must make payments of outgoings such as ground rent, municipal taxes, water charges and electricity charges till the time the property is transferred to the flat-owners. Where the promoter fails to pay such charges, the promoter is liable even after the transfer of property.

Limitation In the instant case, the appellant submitted that since the cause of action is founded on a continuing wrong, the complaint is within limitation.

Section 24A of the Consumer Protection Act 1986 provides for the period of limitation period for lodging a complaint. A complaint to a consumer forum has to be filed within two years of the date on which the cause of action has arisen.

Section 22 of the Limitation Act 1963 provides for the computation of limitation in the case of a continuing breach of contract or tort. It provides that in case of a continuing breach of contract, a fresh period of limitation begins to run at every moment of time during which the breach continues A continuing wrong occurs when a party continuously breaches an obligation imposed by law or agreement. The continuous failure to obtain an occupancy certificate is a breach of the obligations

imposed on the respondent under the MOFA and amounts to a continuing wrong.

The appellants, therefore, were entitled to damages arising out of this continuing wrong and their complaint is not barred by limitation.

"Rejecting the complaint as being barred by limitation, when the demand for higher taxes is made repeatedly due to the lack of an occupancy certificate, is a narrow view which is not consonance with the welfare objective of the Consumer Protection Act 1986."

Consumer Section 2(1)(d) of the Consumer Protection Act defines a 'consumer' as a person that avails of any service for a consideration. A 'deficiency' is defined under Section 2(1)(g) as the shortcoming or inadequacy in the quality of service that is required to be maintained by law.

In the present case, the NCDRC had held that the appellant is not a 'consumer' under the provisions of the Consumer Protection Act as they have claimed the recovery of higher charges paid to the municipal authorities from the respondent. Extending this further, the NCDRC observed that the respondent is not the service provider for water or electricity and thus, the complaint is not maintainable.

The respondent was responsible for transferring the title to the flats to the society along with the occupancy certificate. The failure of the respondent to obtain the occupation certificate is a deficiency in service for which the respondent is liable. Thus, the members of the appellant society are well within their rights as 'consumers' to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate.

[Samruddhi Co-operative Housing Society Ltd v. Mumbai Mahalaxmi Construction Pvt. Ltd, 2022 SCC OnLine SC 35, decided on 11.01.2022]"

Regarding delay of possession the only Supreme Court has held in the following case law, "In Kolkata West International City Pvt. Ltd. Vs. Devasis RudraCitation : 2019 Latest Caselaw 299 SC Judgement Date : Mar/2019[Civil Appeal No. 3182 of 2019 @ SLP (C) No(S). 1795 of 2017], the Hon'ble Supreme Court has held regarding delay in giving possession.

"This appeal arises from the judgment dated 21 November 2016 of the National Consumer Disputes Redressal Commission¹. A Buyer's Agreement dated 2 July 2007 was entered into between the appellant and the respondent. The respondent paid an amount of Rs 39,29,280 in 2006 in terms of a letter of allotment dated 20 September 2006. The agreement between the parties envisaged that the appellant would hand over possession of a Row House to the respondent by 31 December 2008 with a grace

period of a further six months ending on 30 June 2009.

The respondent filed a consumer complaint before the West Bengal State Consumer Disputes Redressal Commission² in 2011 ¹ "NCDRC" "SCDRC" ² praying for possession of the Row House and in the alternative for the refund of the amount paid to the developer together with interest at 12% per annum. Compensation of Rs 20 lakhs was also claimed. The SCDRC allowed the complaint by directing the appellant to refund the moneys paid by the respondent together with interest at 12% per annum and compensation of Rs 5 lakhs. The NCDRC has modified this order by reducing the compensation from Rs 5 lakhs to Rs 2 lakhs. Mr. Ravinder Narain, learned counsel appearing on behalf of the appellant submits that the primary relief which was sought in the consumer complaint was for delivery of possession. According to the appellant, the completion certificate was received on 29 March 2016, which was intimated to the respondent on 11 April 2016.

Moreover, before the SCDRC, in its written submissions, the appellant had offered possession of the Row House to the respondent. It has also been stated that in a complaint which was filed by an association representing the allottees of 161 Row houses, a settlement was arrived on 11 September 2018 before the NCDRC specifying the date on which possession would be handed over together with interest at 6% per annum instead of 4% as mentioned in the Buyers' Agreement. It was urged that the developer having made a substantial investment in terms of the agreement, a direction for refund is not warranted. It has also been urged that the SCDRC in the course of its decision erroneously observed that the developer was unable to fulfill its obligation to complete the construction within the agreed period and it was not certain when the Row house would be handed over. It was urged that this observation by the SCDRC is contrary to the record since before it, a specific offer of possession was made.

It has been urged on behalf of the respondent by Mr. Supriya Bose, learned senior counsel that a consumer complaint was filed in the year 2011. At that stage, the appellant was bonafide ready and willing to accept possession. However, nearly seven years have elapsed after the extended date for the delivery of possession which expired on 30 June 2009. In spite of this, no offer of possession was forthcoming. Learned senior counsel submitted that the letter dated 22 March 2016 of the developer was conditional and despite the subsequent letter dated 11 April 2016, no formal offer of possession was ever made by the appellant. Moreover, it was urged that the interest awarded by the NCDRC at the rate of 12% is just having regard to the economic loss and hardship suffered by the respondent. While considering the rival submissions, we must at the outset advert to the following clause which was contained in the Buyer's Agreement:

"Unless prevented by circumstances beyond the control of the company and subject to Force Majeure, KWIC shall ensure to complete the said unit in all respect within

31st December 2008 only for the Cluster D. Further there will be a grace period of 6 months (up to 30th June, 2009) from the date of completion. In case the possession is not transferred after expiry of the said grace period, KWIC will be liable to pay prevailing 4 saving Bank interest of the State Bank of India for each month of delay on the money given by the allottee as compensation but no compensation will be paid on account of force majeure reasons." It is the above clause which is pressed in aid by the developer. Under the aforesaid clause, any delay beyond 30 June 2009 would result in the developer being required to pay interest at the prevailing savings bank interest of the State Bank of India.

Interestingly, where the buyer is in default, the agreement stipulates that interest at the rate of 18 per cent from the date of default until the date of payment would be charged for a period of two months, failing which the allotment would be cancelled by deducting 5% of the entire value of the property. The agreement was evidently one sided. For a default on the part of the buyer, interest at the rate of 18% was liable to be charged. However, a default on the part of the developer in handing over possession would make him liable to pay interest only at the savings bank rate prescribed by the SBI. There is merit in the submission which has been urged by the buyer that the agreement was one sided.

The clause which has been extracted in the earlier part of this order will not preclude the right and remedy available to the buyer to claim reasonable interest or, as the case may be, compensation. The essential aspect of the case which is required to be analysed is whether the buyer was entitled to seek a refund or was estopped from doing so, having claimed compensation as the primary relief in the consumer complaint.

The Buyer's Agreement is dated 2 July 2007. In terms of the agreement, the date for handing over possession was 31 December 2008, with a grace period of six months. Even in 2011, when the buyer filed a consumer complaint, he was ready and willing to accept possession. It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period.

A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified. Having regard to all the facts and circumstances of the case, we modify the order of the NCDRC by directing that the

appellant shall pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. Save and except for the above modification, we affirm the directions of the NCDRC.

The amount outstanding in terms of the directions of this Court shall be released out of the moneys which have been deposited by the appellant. The balance, if any, that remains shall be refunded to the appellant. The appeal is, accordingly, disposed of. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of."

Now from all the given circumstances it has been clear that the opposite parties failed to deliver the possession of the unit within the promised time and they now sending different demand to extract the money from the complainant but did not disclose as how much penalty they had to pay to the complainant regarding delay in the delivery of possession to the complainant. The opposite parties have stated that there has been delay in payment of various instalments by the allottees. It cannot be raised because the actual date of handing over the possession of the flat has already been expired, the opposite parties are not in a position to demand extra money before adjusting the penalty in the balance amount to be deposited by the complainant. No new demand can be raised after the cut-off date because the possession was not handed over to the complainant. Now the defaulter is opposite parties and not the complainant.

Whether the opposite parties have paid any interest on the amount deposited by the complainant.? Regarding payment of interest on the deposited amount only Supreme Court has said in various judgment if you are being quoted here.

Ghaziabad Development Authority v. Balbir Singh In the Supreme Court of India
Name of the Case Ghaziabad Development Authority v. Balbir Singh Citation
(2004) 4 SCC 65 Year of the Case Petitioner Ghaziabad Development Authority
Respondent Balbir Singh Bench/Judges Justice H. K. Sema Justice S.N. Variava
Acts Involved Consumer Protection Act, 1986 Important Sections Section 14 of
the Consumer Protection Act, 1986 Section 22 of the Consumer Protection Act, 1986

The case of Ghaziabad Development Authority v Balbir Singh is a landmark decision that laid down certain judicial standards regarding the grounds on which compensation may be awarded, particularly, in matters of allotment of flats/plots by land development authorities. Compensation under consumer protection laws is required to recompense for loss or injury suffered by consumers, and therefore, the quantum of compensation to be awarded would necessarily have to be determined based on the facts and circumstances of each case. This decision set an established precedent on the issue of compensation to be awarded in consumer disputes, and its principles have been relied upon in numerous subsequent cases.

Introduction The consumer protection laws establish a redressal mechanism whereby consumers can claim monetary reliefs for defective goods, deficiency in service, and unfair trade practices. Sections 14 and 22 of the Consumer Protection Act, 1986 empower the District, State, and National Consumer Disputes Redressal Commission to "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". Such monetary reliefs i.e., compensation awarded would have to be based on the facts and circumstances of each case, since the loss and injury suffered would vary. Given the absence of a straight-jacket formula for the determination of the amount of compensation to be awarded in each case, it follows that there can be no uniformity in the award of compensation.

It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair, and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant can establish his charge.[1] These 'established judicial standards' have been laid down in a plethora of cases. The case of Ghaziabad Development Authority v Balbir Singh[2] is a landmark decision that discussed the grounds on which compensation may be awarded, particularly, in matters of allotment of flats/plots by land development authorities. It set an established precedent on the issue of compensation to be awarded in consumer disputes, and its principles have been relied upon in numerous subsequent cases.

Background and Facts of the Case The present case of Ghaziabad Development Authority v Balbir Singh arose out of an appeal directed against the judgment and award passed by the National Consumer Disputes Redressal Commission (NCDRC) awarding an interest @ 18% per annum. The Commission was considering a bunch of matters, the lead being the case of Haryana Urban Development Authority vs. Darsh Kumar, where it held that in cases of deficiency of service by development authorities, the rate of interest awarded must be 18% per annum. Following this, the Commission disposed of subsequent matters by its preceding award. Numerous appeals were filed before the Supreme Court against the decision of the Commission in various cases, primarily against its award of 18% interest.

Since the Supreme Court was considering a wide number of matters relating to allotment of land by development authorities, the facts of each case vary. In some cases, the scheme had gotten canceled after the payment of monies and allotment of flats/plots. Delivery of possession of the flats was therefore refused to the allottees. In some cases, either possession was offered at an increased rate at a much later date possession or was offered but not taken by the party. Possession was not delivered in some cases despite payment of monies and no refusal to deliver possession. In some cases, the construction was of sub-standard quality or it was incomplete, or the authority demanded extra amounts from the party which was paid only by some. In some cases, allotments were made and possession offered of flats/land which was encumbered or occupied by some other party.

The appeal in the Supreme Court was filed due to the Commission granting interest at the rate of 18% per annum irrespective of the type of case or amount of delay and without even going into the facts of the case. Complainants had asked for the refund of amounts wrongly collected and in other cases, asked for a refund of the amounts paid.

Issues Involved Whether the grant of interest at the rate of 18% per annum by the National Consumer Disputes Redressal Commission in all cases is justifiable?

Related Provisions Section 14 of the Consumer Protection Act, 1986 Section 22 of the Consumer Protection Act, 1986 **Related Cases** The Supreme Court relied upon the case of Lucknow Development Authority v. M. K. Gupta[3] which firstly widened the scope of "service" defined under Section 2(1)(o) of the Consumer Protection Act, 1986 to include the housing construction or building activities carried on by private or statutory bodies.

The Court relied upon the English case *Geddis v. Proprietors of Bann Reservoir*[4] which gave a wide connotation to the word compensation, holding that "Compensation has not been defined in the Act. According to the dictionary, it means, 'compensating or being compensated; thing given as recompense;'. In a legal sense, it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss."

Judgment The Supreme Court, at the outset, reiterated the position taken in the case of Lucknow Development Authority v. M.K. Gupta, and held that "the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities". It further held that the power of the NCDRC extends to awarding compensation to consumers for misfeasance in the public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. Therefore, it upheld the appeals filed before it to the extent that it confirmed the jurisdiction of the NCDRC to award compensation in cases of service rendered by statutory & public authorities (the land development authorities in the present case).

As to the issue of whether the grant of interest at the rate of 18% per annum by the NCDRC in all cases is justifiable, the Supreme Court held in the negative. It stated that "the power to and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum." It held it to be unsustainable. The Court further stated that the "Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case." The purpose of awarding compensation is to recompense for a loss or injury suffered and such compensation would therefore be proportional to the amount of loss and injury.

While considering the compensation to be awarded to the consumers in cases of deficiency of service by Development Authorities, the Court laid down a range of principles for the determination of the amount of compensation, summarised below:

To award compensation, the Forum or the Commission must determine that service has been deficient and/or misfeasance in public office which has resulted in loss or injury. While no hard and fast rule can be laid down, the Court gave a few instances where the award of compensation would be justifiable, including where possession is not handed over within the intimated period even though allotment is made and the price is paid. In such cases, the loss could be determined based on loss of rent which

could have been earned if possession was given. Compensation could also be the scheme has been canceled without any justifiable cause, after the allotment.

Compensation cannot be uniform and to illustrate this, the Court lays down the principle to be followed for the determination of compensation in two cases- (a) where the delivery of possession is being directed, and (b) where only the monies are directed to be returned or refunded by the Court. In case (a), the compensation for harassment will necessarily have to be less since in a way the aggrieved party is being compensated by an increase in the value of the property he is getting. In case (b) however, the party is suffering a greater loss since he has been deprived of the flat/plot, and his expectation of delivery of possession. He would also be denied the benefit of an increase in the value of land and the compensation thereof. Therefore, the compensation to be awarded in such cases would have to be higher than in case (a).

The Court held that "such compensation has to be worked out after looking into the facts of each case and after determining what is the amount of harassment/loss which has been caused to the consumer."

Compensation would include compensation for physical, mental, or even emotional suffering, insult, or injury or loss.

Awarding of Compensation in the Event of Deficiency in Service Rendered The consumer protection laws have a wide reach and the consumers are entitled to receive compensation for deficiency in services rendered by statutory and public authorities. The Consumer Commissions have been vested with the jurisdiction to award the value of goods or services and compensation. On being satisfied that a complainant is entitled to compensation for loss or injury or harassment or mental agony or oppression, it must direct the authority to pay compensation. A wide discretion has been given to determine the quantum of compensation for any loss or damage suffered by a consumer, to redress any injustice. However, it is a well-established principle that the computation of compensation has to be fair, reasonable, and must reconcile with the loss or injury suffered. The Consumer Forum is cast with the duty to take into account all relevant factors for arriving at the compensation to be paid.

This landmark decision has set a precedent on the matter of compensation to be awarded in matters relating to allotment of land by development authorities and has been relied upon in many subsequent cases of the Supreme Court. In the case of H. P. Housing Board v Varinder Kumar Garg[5] and Haryana Urban Development Authority vs Darsh Kumar[6], the Supreme Court directed the Commission to follow the principles laid down in the case of Ghaziabad Development Authority vs. Balbir Singh in future cases.

Conclusion This landmark decision laid down rudimentary principles and set judicial standards concerning the awarding of compensation and the determination of the quantum of compensation to be awarded. It struck down the mechanical application of a fixed rate of interest at 18% per annum by the National Commission in numerous cases, asserting that there can be no hard and fast rule.

The principles enunciated go a long way in ensuring that consumers are compensated appropriately and proportionally for the loss and injury suffered. This decision has further strengthened the consumer protection laws by bringing clarity to how the consumer is required to award compensation.

References Indian Kanoon <https://indiankanoon.org/> Consumer Protection Act, 1986 http://legislative.gov.in/sites/default/files/A1986-68_o.pdf [1] Chief Administrator, H.U.D.A. & Anr. v. Shakuntla Devi, (2017) 2 SCC 301 [2] (2004) 5 SCC 65 [3] (1994) 1 SCC 243 [4] (1878) 3 AC 430 [5] (2005) 9 SCC 430 [6] (2005) 9 SCC 449 In a latest judgment the only Supreme Court has redefined the rate of interest.

In a latest case, on Supreme Court in Petition(s) for Special Leave to Appeal (C) No(s). 24059/2022 (Arising out of impugned final judgment and order dated 19-09-2022 in RP No. 1187/2022 passed by the National Consumers Disputes Redressal Commission, New Delhi) MEERUT DEVELOPMENT AUTHORITY Petitioner(s) VERSUS SURESH CHAND GARG Respondent(s) (FOR ADMISSION and IA No.202401/2022-EXEMPTION FROM FILING O.T.) Date: 05-01-2023 This petition was called on for hearing today.

Held "We have heard learned counsel for the petitioner and find that the order passed by the Consumer Commission was reasonable and there was no reason of filing appeal/revision against the substantive order passed on the consumer complaint by the District Consumer Commission dated 06.09.2019. Consequently, the present petition is disposed of with a direction, to sum up the litigation which is pending for a long time, that let the order of the District Consumer Commission dated 06.09.2019 shall be complied with and the respondent be refunded the entire deposit with simple interest at the rate of 12% per annum within a further period of 60 days from today, failing which it shall carry interest at the rate of 15% per annum until actual payment."

So the Hon'ble Supreme Court has specifically said that the rate of interest shall be 12% if paid within 60 days from the date of judgment otherwise the rate of interest will be 15% per annum until actual payment.

Regarding payment of compensation, damages, rent et cetera the following case laws of Hon'ble Supreme Court and Hon'ble NCDRC are worth mentioning.

In the case of H. P. Housing Board v. Varinder Kumar Garg[(2005) 9 SCC 430] and Haryana Urban Development Authority vs. Darsh Kumar[(2005) 9 SCC 449], the Supreme Court directed the Commission to follow the principles laid down in the case of Ghaziabad Development Authority vs. Balbir Singh in future cases."

Hon'ble Supreme Court in the case of Haryana Urban Development vs. Darsh Kumar, Etc., Civil Appeal no 5796 of 2002 decided on 28 July, 2004 has held ;

"This Court has, in the case of Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

We are informed that in spite of there being no stay, to payment of interest beyond 12% and in spite of clarification given by this Court's order (reported in (2004) 5 SCC 65), the amounts have still not been paid. We feel that for the lapse Appellants must pay interest at the rate of 15% from 17th March, 2004 till payment. Appellants shall also pay costs fixed at Rs.500/- in each case to the Legal Aid Society of the Supreme Court. TheAppellants must recover the amount paid towards costs personally from the officer/s, who were responsible for not paying even after clarification by this Court. We clarify that this Order shall not be taken as a precedent in any other matter as the order has been passed taking special features of the case into account. The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) in future cases. The Appeals are disposed off in above terms. There will be no order as to costs."

So it is clear that the compensation and rate of interest shall depend on the facts and circumstances of each case and no hard and fast rule can be framed. In this connection some of the judgment of the Supreme Court and Hon'ble NCDRC should be taken into account.

In the case of PRIYANKA MITTAL & ANR. V. PARSVNATH DEVELOPERS LTD. & ANR. (NCDRC).These appeals arise out of single order of State Commission, hence, decided by common order. These appeals have been filed against the order dated 25.2.2015 in Complaint Nos. 18 of 2013- Nalin Bhargava & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 34 of 2013- Jasleen Viswanathan & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 58 of 2011- Janmejai Mani Tiwari Vs. Parsvnath Developers Ltd. & Anr.; 68 of 2013- Indu Singh Vs. Parsvnath Developers Ltd. & Anr.; 69

of 2013- Poonam Sagar Vs. Parsvnath Developers Ltd. & Anr.; 86 of 2010- Priyanka Mittal & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 101 of 2011- Mohd. Aslam Khan & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 130 of 2012- Dr. Sunil Kr. Singh & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 49 of 2012- Neera Mittal & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 74 of 2011- Deepak Bhalla Vs. Parsvnath Developers Ltd. & Anr.; 87 of 2010- Syed Gufran Ali Alvi & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 96 of 2011- Uppasana Malik Vs. Parsvnath Developers Ltd. & Anr.; 175 of 2013- Umesh Chandra Dixit & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 97 of 2011- Pravin Kumar Goel & Anr. Vs. Parsvnath Developers Ltd. & Anr. which complaints were partly allowed.

The Hon'ble NCDRC held that:

"Brief facts of the cases are that opposite parties/respondents are engaged in the activity of housing construction and accordingly they have launched a project named as Parsvnath Planet situated in Gomti Nagar, Lucknow. The project was demonstrated to be very lucrative and made attractive to the vendees, in order to procure/collect money from the needy persons demonstrating themselves to be excellence in the field of construction activity as compared to other builders and assured the buyers/complainants that it has been duly approved by the Lucknow Development Authority and necessary permission has also been obtained from them. The emphasis was made by the opposite parties that the possession of the Unit shall be given within a scheduled period of 36+6=42 months stipulated in agreements executed in between the parties for the project launched in the year 2006. The complainants/appellants attracted by the promise and assurance of the opposite parties, somehow managed and arranged the money from their personal sources as well as on loan at attractive rate of interest and the hard earned money was paid by them to the opposite parties in a hope that the possession of the units shall be provided to them in the year 2009 and they can leave peacefully in their own houses, since the complainants are living in rented houses.

The complainants visited the construction site of the opposite parties after depositing the entire amount, where it was revealed that the construction activities were on halt and the persons available on the site told the complainants that the apartments are likely to be completed till 2015. Even the partial construction done by the opposite parties was defective and did not match the specifications provided in the agreement. The complainants were shocked on hearing it and observing the site. The complainants immediately contacted the Area Manager, who told the complainants that there is some delay in the construction of the apartment and the apartments shall be ready till June, 2010. The complainants have to repay the amount taken on loan alongwith interest without getting the possession of the allotted units causing irreparable loss and injury to them. The complainants have come to know that the opposite parties have invested the funds earmarked for this project into their other projects in other city due to which they have not been able to complete the project in time. Besides this, it has also come to the light that although the opposite parties had collected huge funds from the buyers but in spite of that the opposite parties have

miserably failed to pay the dues of Lucknow Development Authority which forced the Lucknow Development Authority to issue coercive measures against the opposite parties for therecovery of their dues. Alleging deficiency on the part of opposite parties/ respondents, complainants filed separate complaints before State Commission. Aggrieved by the order of Hon'ble State Commission, these appeals preferred before Hon'ble National Consumer Disputes Redressal Commission.

Hon'ble NCDRC discussed various case laws and after hearing the parties held, "Learned Counsel for appellants submitted that as complainants have been deprived of possession for a long period beyond agreed period, it amounts to restrictive trade practice under Section 2 (nnn) of Consumer Protection Act and complainants are entitled to get compensation. Section 2 (nnn) runs as under:- means a trade practice which tends to bring about restrictive trade practice manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include- Delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price; Any trade practice which requires a consumer to buy, hire or avail of any goods, or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services; Perusal of aforesaid provision reveals that when opposite party delays in delivery of goods which leads to rise in the price of goods meaning thereby, more price is charged from complainant, it amounts to restrictive trade practice. In the case in hand, opposite party on account of delayed delivery of possession is not charging higher rate than the agreed rate for delivery of possession of flat, so, it does not fall within the purview of restrictive trade practice under Section 2(nnn) of Consumer Protection Act."

"Admittedly, agreements were executed in 2006 and as per agreements, possession of flats was to be delivered within 42 months, meaning thereby, possession was to be given in the year 2009-2010 and possession has not been handed over so far though year 2016 has started. No doubt, complainants are entitled to get penalty amount for delayed delivery of possession as per clause 10(c) of the agreement but opposite party cannot be permitted to avail benefit of aforesaid clause for indefinite period. This penalty clause should be allowed for the benefit of parties for a limited period and in the cases in hand, I deem it appropriate to extend applicability of aforesaid clause for a period of one year beyond 42 months and after that, complainants are certainly entitled to compensation. Opposite party cannot be allowed to avail huge funds of complainants by paying merely Rs. 5/- per sq. ft. for example, complainants who have purchased flat measuring 164.901 sq. mtr., they have made payment of about Rs. 31.00 to 32 lakhs and in the garb of clause 10 (c), opposite party is paying penalty @ approximately Rs. 9,000/- per month against enjoying funds more than Rs. 30.00 lakhs. As complainants have been deprived to shift to their flats for a long period which would not only have given them satisfaction of living in their own house but also have raised their social status and opposite party has enjoyed funds of

complainants for a long period, I deem it appropriate to allow compensation @ Rs. 15,000/- p.m. to the complainants who have applied for flats upto 175 sq. mtr and Rs. 20,000/- per month to complainants who have applied for flats above 175 sq. after 54 months of execution of agreement till delivery of possession."

Against this judgment, parties went to Hon'ble Supreme Court. The judgment of Hon'ble Supreme Court is:-

In Nalin Bhargava vs. Parsvnath Developers Ltd. CA 6662/2018 @ SLP(C) 7596/2016 etc and other related civil appeals on 13 July, 2018, Hon'ble Supreme Court held:-

"Leave granted in all the special leave petitions. CA 6662/2018 @ SLP(C) 7596/2016 etc. It is submitted by Mr. M.L. Lahoty, learned counsel appearing for the appellants in all the appeals that the possession has been handed over and the deficiencies have been removed and, therefore, he has no grievance. However, Mr. Lahoty would insist that there should be imposition of costs as compensation.

Mr. Sachin Datta, learned senior counsel appearing for the developer has raised objections with regard to imposition of costs.

Having heard learned counsel for the parties, we are of the considered opinion that the cause of justice would be best subserved if each of the appellants in the present appeals are given Rs.1,50,000/- (Rupees one lakh fifty thousand only) per flat, towards costs. When we say "cost", we mean costs alone and nothing else."

In the case of Meerut Development Authority Vs. Suresh Chandra Garg, Special Leave to Appeal (C) No(s). 24059/2022, Judgment dated 05.01.2023 Hon'ble Supreme Court has held, "consequently, the present petition is disposed of with a direction, to sum up of the litigation which is pending for a long time. Let the order of the District Consumer Commission 06.09.2019 shall be complied with and the respondent be refunded the entire deposited amount with simple interest at the rate of 12% per annum within a further period of 60 days from today failing which it shall carry interest at the rate of 15% per annum until actual payment."

Therefore it is clear that the amount shall be refunded with simple interest at the rate of 12% within 60 days from the date of judgment otherwise the rate of interest shall be 15% simple interest per annum till the date of actual payment. In this case we take the cut-off date as October 2014, and the interest shall be computed from November 1, 2014 till the date of actual payment.

These builders are just earning money from the consumers to whom they issued allotment letters and got a huge amount. They keep this amount for a long time and earn interest on it. Property dealing is that part of business where they never pay a penny to the consumers on their amounts deposited for a long-term or if they pay, they pay a meagre interest of about 5% or so but they charge 18 to 24% or more if the consumers default in depositing any instalment. It reminds us

the story of "The Merchant of Venice" The Merchant of Venice is the story of a Jewish money lender Shylock who demands that an antisemitic Christian offer "a pound of flesh" as collateral against a loan. These acts of builders also remind us the age of Sahukari during ancient India and also during British Raj. Whether these builders have power to frame their own law? They put their terms and conditions in such a way that the sufferer will always be the consumer. The Consumer Protection Act 1986 has been enacted for the benefits of consumers, so the courts dealing with Consumer Protection Act 1986 should come forward for their rescue. The courts are not governed by the builders but they are governed by the law, Custom and Usages. Now in the background of all the facts and also the facts of the present case, we will also discuss something more.

Now we see the present case. There is no completion certificate. There is no occupancy certificate. Delivery of possession has not been given on the date as promised by the opposite parties. They have become defaulter in not providing the unit to the complainant within the time mentioned by them in the agreement. As per judgment of the Hon'ble NCDRC he is entitled for rental Rs.15,000.00 per month from the cut of date that is 01.04.2009 (actual date is DECEMBER 2009). He is liable to pay interest on the amount deposited by the complainant from their due date of deposits. As far as delivery of possession is concerned, the possession should have been handed over within three years because in cases where no such date has been mentioned by the builders, Hon'ble Supreme Court has said that the reasonable time to deliver the possession of the flat is three years.

Hon'ble Supreme Court in civil appeal number (S) 3533-3534 of 2017 , M/S Fortune infrastructure (NOW known as M/S Hicon Infrastructure) & Anr Vs Trevor D'Lima & Ors., Judgment 12.03.2018 has held:

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014.

Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to ?"

So there is no question to extend the period of delivery of possession because Hon'ble Supreme Court has made it clear that the possession should have been handed over within three years. There is no record to show whether the opposite parties have applied and received NOCs Of Fire Department, Civil Aviation Department, Pollution Control Department Et cetera. These NOCs are also necessary in addition to completion certificate and occupancy certificate. The complainant has

prayed for delivery of possession of the said flat within a time to be fixed by the Hon'ble commission. The complainant has also prayed for damages at the rate of Rs.6000.00 per month which is a meagre amount in comparison to the Hon'ble NCDRC judgment in which the Hon'ble NCDRC has awarded Rs.15,000/- per month.

Therefore it is clear in this case that the possession of the flat has not been handed over to the complainant as promised by the opposite parties. The cut of date for delivery of possession is 01.04.2010 so all the damages, compensation and other penalties shall be reckoned from the state. From all the facts and circumstances of the plaint case we are of the opinion that the complainant is entitled for the following reliefs.

The complainant is entitled to get the possession of flat number D-801 measuring 1725 square Ft in Daffodil Tower, Alstonia Apartment , plot number 10, Pi 1&2, Greater Noida within 60 days from the date of judgment of this complaint case along with Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc with execution of the sale deed and if not done within 60 days from the date of judgment of this complaint case the complainant will be entitled to get Rs.50,000.00 per month after 60 days till the date of actual delivery of possession/execution of sale deed along with the copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc. The complainant is entitled to damages at a rate of Rs.6000/- per month with interest at a rate of percent from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% payable from 01.04.2010 till the date of delivery of actual possession/execution of sale deed and handing over all the papers as mentioned.

The complainant shall be entitled to get interest at a rate of 12% on the amount deposited by him from the respective date of deposition if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from the respective date of deposits.

The complainant is entitled to get Rs.1.5 lakhs as damages in light of the Hon'ble Supreme Court judgment.

The complainant is also entitled to receive Rs.20 lakhs towards mental agony, harassment, deficiency in service under the relief clause IV of the complaint with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.04.2010 till the date of actual delivery of possession/execution of sale deed a company with copies of all the documents as mentioned earlier.

The complaint case is decided accordingly.

ORDER 1- The opposite parties are, jointly and severally, directed to hand over the possession of flat number D-701 measuring 1725 square Ft in Daffodil Tower, Alstonia Apartment , plot number 10, Pi 1&2, Greater Noida to the complainant within 60 days from the date of judgment of this

complaint case along with Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc with execution of the sale deed and if not done within 60 days from the date of judgment of this complaint case the opposite parties shall pay damages @ Rs.50,000.00 per month after 60 days from the date of judgment of this complaint case till the date of actual delivery of possession/execution of sale deed along with the Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department, Fire Department, Civil Aviation Department etc. 2- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.6000/- per month with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% payable from 01.04.2010 till the date of delivery of actual possession/execution of sale deed accompanying with handing over all the papers as mentioned in clause 1 of the order.

3- The opposite parties are, jointly and severally, directed to pay to the complainant interest at a rate of 12% on the amount deposited by him from the respective date of deposition if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from the respective date of deposits.

4- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.1.5 lakhs as damages in light of the Hon'ble Supreme Court judgment.

5- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.20 lakhs towards mental agony, harassment, deficiency in service under the relief clause IV of the complaint with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.04.2010 till the date of actual delivery of possession/execution of sale deed accompanying with copies of all the documents as mentioned in clause 1 of the order of this complaint case.

If the order is not complied with, within 60 days from the date of judgment of this complaint case, the complainant shall be entitled to file execution case in this court at the cost of the opposite parties.

The stenographer is requested to upload this order on the Website of this Commission today itself.

Certified copy of this judgment be provided to the parties as per rules.

(Sushil Kumar)

(Rajendra Singh)

Member

Presiding Member

Judgment dated/typed signed by us and pronounced in the open court.

Consign to the Record-room.

(Sushil Kumar)

(Rajendra Singh)

Member

Presiding Member

Dated 15.5.2023

JafRi, PA I

C-2

Reserved

State Consumer Disputes Redressal Commission

U.P. Lucknow.

Sohan Singh, aged about 55 years,

S/o Shri Trilok Singh, R/o Village,

Narainpur Jaspur, Udham Singh Nagar,

Uttaranchal.

...Complainant.

Versus

1-M/s Nitishree Infrastructure Ltd. having

Registered office at G-55, East of Kailash,

New Delhi-110065 and Administrative

Office at A-1, Sector 4, Noida, Gautam Budh

Nagar, U.P.

2- ANS Apartments Private Ltd., B-111, Sector 5

Noida, Gautam Budh Nagar, U.P.-201301

Through its Managing Director.

...Opposite parties.

Present:--

1- Hon'ble Sri Rajendra Singh, Presiding Member.

2- Hon'ble Sri Sushil Kumar, Member.

Sri Purushottam Awasthi, Advocate for complainant.

None for opposite parties.

Date: 15.05.2023

JUDGMENT

Per Sri Rajendra Singh, Member-

This complaint has been filed by the complainant for following reliefs:

- I- To complete the construction and handover possession of the Flat no.F-904, meas
- II- To pay damages at the rate of Rs.6,000.00 per month for the deprivation of enjoy
- III- To pay cost to the complainant incurred by it in filing the present complaint.

IV- To pass any other order or direction which the Hon'ble Commission may deem fit i

In short, the brief facts of the complaint case are that, that on 28.7.2007, the respondent no.1 had issued an allotment letter to the complainant whereby it allotted flat no.904, measuring 1725 square feet in Flame Lily Tower, Alstonia Apartment, Pot no.10, Pi 1 & 2, Greater Noida. On the same date, the respondent no.1 had executed an agreement with the complainant for selling the aforesaid apartment for a total sale consideration of Rs.44,21,000.00. Clause 9 of the agreement provides that the company shall complete construction of the apartment and the residential complex and deliver possession of the apartment to the complainant by December, 2009. Annexure B2 to the agreement contained a construction link payment plan, according to which 11% of basic sale price was to be paid at the time of booking, 10% of BSP was to be paid after bhoomipoojan and the remaining consideration was payable in instalments as per the progress of construction.

As against the requirement of paying only 11% of the basic sale price, which comes to Rs.4,41,168.00 the complainant paid a much higher sum of Rs.11,58,500.00 at the time of booking of the flat, receipt of which amount was acknowledged both in the allotment letter as well as the agreement dated 28.7.2007. Although the agreed time of completion of construction and handing over possession of the flat expired in December, 2009, the respondent no.1 did neither sent any communication to the complainant regarding progress of the construction nor did it communicate the dates of bhoomipoojan and the start of foundation etc. Meanwhile, on 24.2.2014, the respondent no.2 sent another letter asking complainant to agree to swap his allotted flat no.904 with flat no.1304. In the aforesaid letter, the respondent no.2 failed to disclose its authority for making offers in respect of the flat regarding which the complainant had entered in an agreement with the respondent no.1.

Subsequently, on 1.3.2014, the respondent no.2 namely ANS Apartment Pvt. Ltd., sent a demand letter to the complainant, vaguely mentioning that the construction of the flat allotted to the complainant is going on and that an amount of Rs.23,31,933.00 is due on the complainant. In the aforesaid letter the respondent no.2 did not disclose its authority for demanding money in respect of the flat regarding which the complainant had entered into an agreement with the respondent no.1. It is significant to clarify that the complainant had not entered into any agreement with the respondent no.2 and none of the respondents sent any communication to the complainant regarding any transfer or assignment of the rights and liabilities of the respondent no.1 under the agreement dated 28.7.2007 in favour of the respondent no.2. Surprised by the aforesaid letter dated 1.3.2014 sent by the respondent no.2 in respect of the flat regarding which the complainant had entered into an agreement with the respondent no.1, the complainant tried to contact the offices of both the respondent no.1 and 2 to know the correct factual position, but no response was given to him.

Left with no option, on 4.5.2015 the complainant sent a legal notice to the respondent no.1 with whom the complainant had entered into agreement in respect of the aforesaid flat, wherein it was mentioned that the respondent no.1 has committed a breach of the agreement as well as deficiency in service on account of its failure to complete the construction and handover possession of the aforesaid flat within the agreed period of December, 2009. It was further mentioned that the respondent no.2 is making offers in respect of the flats regarding which the complainant had entered into an agreement with the respondent no.1, and that the complainant has no contractual relation with the respondent no.2. The complainant, thereafter, called upon the respondent no.1 to inform the revised schedule of construction of the apartment agreed to be sold to it within thirty days and to complete the construction and hand over possession of the flat to him without any further unreasonable delay. The complainant further expressed its readiness and willingness to perform its part of the agreement by making payment in instalments as mentioned in Construction Linked Payment Plan upon information of the dates of Bhoomipoojan, start of foundation and other steps in the construction of the apartment.

The notice dated 4.5.2015 sent by registered post on both administrative and registered offices of the respondent no.1 were received back with endorsement "No such Firm Exists".

On 8.6.2015, after receiving back the notice sent to the respondent no.1, the complainant sent a registered legal notice to the respondent no.2, wherein the complainant asked the respondent no.2 to disclose its authority for demanding money in respect of the aforesaid flat. It was further mentioned that in case, the respondent no.1 has made assignment in favour of the respondent no.2 in respect of the aforesaid apartment, it should be informed to the complainant the revised schedule of construction of the apartment agreed to be sold to it and to complete the construction and hand over possession of the flat without any further unreasonable delay. Even after expiry of thirty days of time stipulated in the aforesaid notice, the respondent no.2 has not sent any response to the complainant.

The complainant has entered into the agreement with the respondent no.1 under which possession of the flat was to be given by December, 2009. However, even after making payment of Rs.11,58,500.00 at the time of allotment, which far exceeds the amount of 11% of the basic sale price which the complainant was required to deposit as per the agreement and after delay of more than 6 years, the respondent no.1 has neither informed the stage of construction to enable the complainant to make construction linked payment as per the conditions mentioned in the agreement nor it handed over the possession of the flat to the complainant or made any communication explaining the reason for such inordinate delay. The act of the respondent no.1, therefore, amounts not only to the breach of the agreement but also deficiency in service. In case the respondent no.2 has obtained an assignment of the rights and liabilities of the respondent no.1 under the agreement dated 28.7.2007, the respondent no.2 has become liable to suffer the consequences of breach of the agreement dated 28.7.2007 and for the deficiency in service. It is specifically stated that the complainant has always been and is still ready and willing to make construction linked payment as per the conditions of the agreement.

Further, the respondent no.2 has caused harassment and mental agony to the complainant by demanding money in respect of the aforesaid flats, without disclosing its authority to do so even after several communications made by the complainant. The complainant has no contractual relation with the respondent no.2 and, therefore, in absence of any communication regarding any assignment made by the respondent no.1 in favour of the respondent no.2 and without the respondent no.2 having constructed the flat and informed the progress of its construction as mentioned in the construction linked payment plant, it has no liability to take any payment to it.

The complainant is entitled to get the ownership and possession of the flat in question in terms of the agreement and it is further entitled to receive damages for the inconvenience caused by being deprived of the enjoyment of the flat which ought to have been delivered to him by December, 2009 which damages are being assessed at Rs.6,000.00 per month which is a fair rental value of the flat as per the market rates prevailing in Greater Noida, calculated for the period since January, 2010 till the time the respondents actually deliver possession of the flat to the complainant. The complainant is further entitled to receive a sum of Rs.1,00,000.00 towards damages for harassment and mental agony caused by the acts of the respondents.

The total valuation of the flat situated in Flame Lily Tower, Alstonia Apartments, Plot no.10, Pi 1 & 2, Greater Noida is Rs.44,21,000.00 and the complainant has claimed damages at the rate of Rs.6,000.00 per month for the deprivation of enjoyment of the flat, amounting to Rs.4,02,000.00 till date and an amount of Rs.1,00,000.00 towards damages for harassment and mental agony caused by the acts of the respondents. Therefore, the Hon'ble Commission has both territorial and pecuniary jurisdiction to entertain the present complaint.

In this case notice was served on the opposite party and their counsel appeared before this court but did not file the written statement in time. Hence vide order dated 04.08.2016, his written statement was not taken on record.

We have heard the learned counsel for the complainant Sri Purushottam Awasthi. Ld. counsel for the opposite parties Mr. Manu Dixit did not appear to place his arguments. We have seen the pleadings, evidences and documents on record.

The opposite parties raised objection that the agreement contains an arbitration clause so this court has no jurisdiction and the matter should have been referred to arbitrator. As for as Consumer Protection Act is concerned, it is in addition of an act and not in derogation of any act. It is better to see the objects of the Consumer Protection Act vis a vis Arbitration Act, the following article will be helpful.

What are the main objectives of consumer protection act?

The Consumer Protection Act, came into existence and implemented in 1986, provides Consumer Rights to prevent consumers from fraud or specified unfair practices. It safeguards and encourages and gives an opportunity to consumers to speak against insufficiency and flaws in goods and services. If traders, manufacturers and distributors follow any foul trade, this act protects their

rights as a consumer.

On which products are these right applicable?

This Protection Act covers entire goods and services of all sectors that are public, private, or cooperative sectors, except those exempted by the central government. The act provides a floor for a consumer where one can file their complaint against the product and the forum takes an action against the concerned supplier and compensation is granted to the consumer for the inconvenience he/she has encountered.

Objectives of consumer protection act To Provide better and all round protection to consumer.

To Provide machinery for the speedy redressal of the grievances.

To Create framework for consumers to seek redressal.

To Provide rights to consumers.

To Safeguard rights of Consumers.

Let us know more about the rights and responsibilities of consumer.

Consumer Rights Listed below are the Rights of the Consumer Right to Safety- Before buying, a consumer can examine on the quality and guarantee of the goods and opt for ISI or AGMARK products.

Right to Choose- Consumer must have the right to choose from a variety and number of goods and in a competitive price Right to be informed- The buyers must be provided with complete information with all the necessary and adequate details of the product, make her/him act wise, and change the buying decision.

Right to Consumer Education- The consumer must be aware of his/her rights and avoid exploitation.

Right to be heard- The consumer will get due attention to express their grievances at a suitable platform.

Right to seek compensation- The consumer has the right to seek or ask for redressal against unfair and inhumane practices or exploitation of the consumer.

Consumer Responsibilities Responsibility to be aware - A consumer has to be careful of the safety and quality of products and services before purchasing.

Responsibility to think independently- Consumer should be well bothered about what they want and need and hence make independent choices.

Responsibility to speak out- The buyer should be fearless to speak out their problems and tell to traders what they exactly want
Responsibility to complain- It becomes the consumer's responsibility to express and file a complaint about their dissatisfaction with goods or services in a sincere and fair manner.

Responsibility to be an Ethical Consumer- Consumer must be fair and not engage themselves with any deceptive practice.

The Consumer Protection Act 1986 was enacted to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of Consumers Councils and other authorities for the settlement of consumers' disputes and for matters connected therewith (Preamble).

The Act Inter alia, seeks to promote and protect the rights of consumers such as --

- (1) right to be protected against marketing of goods which are hazardous to life and property;
 - (2) right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
 - (3) right to be assured, wherever possible, access to variety of goods at competitive prices;
 - (4) right to be heard and to assured that customers' interests will receive due consideration at appropriate forums.
 - (5) Right to seek redressal against unfair practices or unscrupulous exploitation of consumers; and
 - (6) Right to consumer education
- The objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State levels.

The Act applies to all goods and services, except if otherwise provided by the Central Government by Notification. To provide speedy and simple redressal of consumer disputes, a quasi judicial machinery is set up at the District, State and Central levels. The three tier system of quasi judicial bodies will observe the principle of natural justice and are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi judicial bodies have also been provided.

Thus the Consumer Protection Act is to serve the interests of the consumers. Consumer education and redressal of consumers' grievances are the two aspects of the Act. It makes good the loss a consumer suffers and increases the feeling of responsibility of the manufacturer, trader, supplier or businessman.

The provisions of the Act have to be construed in favor of the consumer to achieve the purpose of enactment as it is social benefit oriented legislation. The primary duty of the Court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and not contrary to attempted objective of the enactment.

Extent of Consumer Protection:

While other legislations may be either punitive or preventive, the Consumer Protection Act compensates the consumer. The provisions of the Act are in addition to and not in derogation of the provisions of any law at the time being in force (Sec 3). In *Maine Container Services South Pvt Ltd v Go Garments* 1998 (3) SCC 247 it has been held that the Contract Act applies to all litigants before the Commissioner under the Consumers Protection Act. Passengers traveling in train suffering injuries and loss of Jewelry as a result of assault by unruly crowd are eligible for filing of complaint before State Commission is maintainable notwithstanding the provisions of sections 100 and 103 of Railways Act, 1889. The Consumer Protection Act therefore gives the consumer an additional remedy besides those which may be available under other existing laws. Existence of an arbitration clause in the agreement is no bar to the entertainment of complaint by the Redressal Agency as the remedy under the Act is in addition to the provisions of any other law. However, the Consumer Forums under the Act have not taken over the jurisdiction of civil Courts. If the dispute between the parties is pending in Civil Court no Consumer Forum will adjudicate the dispute. Similarly if evidence be laid by the parties to the dispute is voluminous or complicated the parties will be referred to the appropriate Civil Court.

Consumers Protection Act, thus enshrines the rights of a consumer to be informed about the quality, quantity, potency, price etc., of the goods to be protected against unfair trade practices, to seek inexpensive and expeditious redressal of grievances before the Consumer Forums. Consumer Protection Act is a benevolent piece of legislation to protect a large body of consumers from exploitation.

With the passage of time, the populace of the country is on hike and so are their opinions. Their opinion forms the basis for their interpretation, it may be a good or a bad interpretation. What would happen in the situation where people starting interpreting the laws? We might be flooded with several interpretations. The interpretations will be in such huge number that the laws will become unclear. This is the reason why lawmakers, while making the law, formulate it in accordance with the aim, set out by them, before penning down the legislations. The aim of any legislation defines the basis of the act. It becomes the ground norm of the act, based upon which the judiciary interprets the disputed texts.

The aim of any act forms the indispensable element, because it acts as the cord that delivers the real intention of the legislators behind the act. Whenever there is clash between two legislations, it is the aim of the legislation which makes the judges to

derive at the endpoint in deciding which law has the superseding effect. It is through the doctrine of pith and substance that judges are able to derive at the major inclination towards one act over another act. This inclination is decided on the basis of the aim/goal of the act and the facts of that particular case.

Somewhat similar situation aroused in front of Supreme Court in the case of Aftab Singh and Others v. Emaar MGF Land Limited and Another (Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017)[1]. In this case the Supreme Court cleared out the battle between arbitration and the statutory remedy when it comes upon solving the consumer disputes, which also upheld the decision of the National Consumer Disputes Redressal Commission (NCDRC). In this case, the apex body for the consumer dispute in India (NCDRC) ruled in the favor of the statutory remedy over the arbitration.

CONSUMER PROTECTION ACT (CPA) The beneficial legislation of Consumer Protection Act aims at reducing the grievances of the all classes of customers by providing them the preferential treatment. According to the Consumer Protection Act, the consumer dispute is the entity where the consumer/ customers have been given the convenient safeguards against ample exploitation like bad customer service, faulty goods or any unfair trade practices. The interest of the customers is protected by setting up, the three tier quasi-judicial consumer Redressal machinery which are at national, state and district levels as per section 9 of Consumer Protection Act. The Consumer Protection Act, 1986 (CPA) has been enacted in light of certain concerns related to public policy and the benefit of consumer.

RELATIONSHIP BETWEEN ARBITRATION ACT AND CPA In India, people are least aware with the consumer's rights and lags behind having low general understanding of arbitration as dispute resolution mechanism. The arbitration clause can curtail the grounds on which the consumers can raise the disputes, whereas on the other side the consumer protection act may grant the consumer various grounds on which he can file the complaint which may not be otherwise permitted in the standard form agreement having the arbitration clause.

Arbitration has equal bargaining powers and the resources at hand which makes it private, efficacious, and timely form of dispute resolution. Whereas in case of consumer disputes, the case is different, where they are exposed to the standard form agreements making them submit to the unfair or the repressive terms. They are several times made part of the one-sided arbitration clause, which is drafted keeping in mind the interest of one party only.

These days Indians are shifting to the online purchasing platform and being ignorant of not checking the agreements which makes them to be covered under the blanket provision and end up being the party to the arbitration. This makes less options opened for the consumer to resort to the statutory remedies which in turns endangers

the interest of the consumers. This may also build the hostile market against the e-commerce in India. It may have the adverse effect not only on the Indian economy but also on the e-commerce giants who aims at invest in the growing market.

CONSUMER COURT AS A SPECIAL COURT It was held in the case of *Aftab Singh v Emaar MGF Land Limited & Anr.*, that the provisions of the arbitration act does not apply to the consumer courts, as they are the special courts set up for the public purpose. In this case, the group of the home owners filed the complaint against Emaar MGF Land Private Limited (Builder) before NCDRC. The complaint was filed for the non-delivering the plots to the buyers as per the Buyers' Agreement. The builder filed the application under section 8 of the Arbitration and Conciliation Act, on the basis of the arbitration agreement made between the parties which was mentioned there in the Buyer's Agreement.

It was argued by the petitioner that the remedies provided under the Consumer Protection Act are not in exclusion of the existing laws, but are in addition to it, which has been sated in the case of *National Seed Corporation Limited v M. Madhusudhan Reddy*((2012) 2 SCC 506). It was also argued that the consumer protection act is the piece of the legislation which intends to confer the benefits and it is the, for which the purpose should be advanced. Therefore, regardless of having entered into the arbitration clause, the consumer can invoke the section 3 of the Consumer Protection Act and bring the complaint to the consumer forum(*Skypak Couriers Ltd. Vs. Tata Chemicals Ltd*)[3].

The builder pleaded that the Consumer Courts act as the 'judicial authority' within the scope of section 8 of the Arbitration and Conciliation Act and therefore if there is any valid clause entered between the parties, then the consumer courts can refer the parties to the arbitration. And hence according to the act the consumer courts are obliged to bring the case for the arbitration, irrespective of the High Court and Supreme Court decisions. The NCRDC's full bench ruled that the arbitration act does not bars the consumer court's jurisdiction relying on the Supreme Court's judgement in the case of *Booz Allen Hamilton Inc v. SBI Home Finance Ltd*(2011) 5 SCC 532), which provided the country with the disputes that are not arbitrable. In this case, Supreme Court, came with the 7 categories of the disputes that are not arbitrable[5].

The commission also relied on the Supreme Court judgement in the case of *A. Ayyasamy v. A Paramasivam*(2016)10 SCC 386 ;*N. Radhakrishnan v. Maestro Engineers*) that the dispute will not be arbitrable if the civil court's jurisdiction has been exclusively given to a tribunal or the special court. The Consumer Courts were made to create an organized system for dispute between the people who possess the unequal power i.e. the consumer and the large corporations. The commission also pointed out the section 2(3) of the Arbitration and Conciliation Act which refers to the situations where the special categories of disputes are protected from being referred to the arbitration. Therefore this provision protects the Consumer disputes.

The court concluded that if the court allows party to go for the arbitration and being in favor of the builder, it will defeat the goals and the main purpose of the Consumer Protection Act.

THE CONDITIONS PRIOR AND POST 2015 AMENDMENT TO SECTION 8 OF ARBITRATION AND CONCILIATION ACT Section 8 of the Arbitration and Conciliation Act states that the judicial authority can instruct the parties to go for arbitration in the case when there exists the arbitration clause in the arbitration agreement. It does not bars oust the jurisdiction of the Consumer Court, it will continue to hold and enjoy the jurisdiction irrespective of presence of an arbitration clause in the agreement.

The Supreme Court contented that there was no legislative intent of the amended provisions of the section 8(1) in the Arbitration and Conciliation Act, so as to override the other statutes which have the specific remedies. Neither it intends to make disputes related to trusts, criminal law, tenancy, telecom, family law, IPR, etc, as the arbitrable subject and to against the judgement of A Ayyasamy v A Parasivam & Ors (2016) 10 SCC 729) and Booz Allen Hamilton Inc. v SBI Home Finance Limited & Ors. (2011) 5 SCC 532) Supreme Court analyzed the situations prior to 2015 Amendment, related to referring the consumer disputes to arbitration. Supreme Court referred to the judgments prior 2015 which had the settled law in cases of Fair Air Engineering Pvt. Ltd & Anr V N K Modi (1996) 6 the SCC 385), National Seeds Corporation Limited v Madhusudhan Reddy & Anr (2012) 2 SCC 506) and Rosedale Developers Private Limited V Aghor Bhattacharya & Ors (2018) 11 SCC 337). These cases held that even if the dispute arise from the contract having the arbitration clause, it will not impede the parties to resort to file a complaint before the consumer forum under Consumer Protection Act. All of the judgements had the rationale that provision of section 3 of Consumer Protection Act states that "the provision is in addition to, and not in the derogation of any other law for the time being in force."

The Supreme Court acknowledged the 2015 amendment which restricted the power of any judicial authority to refuse to refer the dispute to arbitration under section 8(1) and appointment of arbitrator under section 11(6A) and also acknowledged the fact that it invalidated the earlier precedent in the case of Sukanya Holding (P) Ltd v Jayesh H Pandya & Anr. (2003) 5 SCC 531) Supreme Court considering section 2(3) of the arbitration act, states that the Part I of the arbitration act shall not affect any other law for the time being in force, by virtue of which certain disputes may not be submitted to the arbitration. Supreme Court stated that the legislative intent of 2015 Amendment was never to override section 2(3) of the Arbitration Act and other statute which offers the public remedy like that of CPA. The Supreme Court in 1994 already held that CPA is a beneficial legislation which provides the economical and expeditious remedies to the aggrieved consumer in the case of Lucknow Development Act V M K Gupta (1994) 1 SCC 243).

Referring to all of the above cases, the Supreme Court in this case affirmed that the decision given by NCDRC is valid and stated that the consumer dispute are the subject matter where the dispute cannot be referred to arbitration as it pertains to rights in rem (public rights). It comes under the ambit of the non-arbitrable dispute defined under Booz Allen and Ayyasamy case. The disputes are non-arbitrable in disputes related to criminal laws, tenancy, trusts, family law, telecom, IPR, insolvency and winding up, and in certain cases, fraud.

CONCLUSION AND CRITICS OF THE CASE It can be ensured with the judgement that consumers who have lesser bargaining power than that of the service providers shall not be pushed towards the relatively cumbersome process of the arbitration where there can be other more affordable and efficacious low public law remedies available. The CPA is a special legislation which has the public law remedies dealing with the rights under the umbrella of "right in rem" which has been espoused by Booz Allen. The case had many critics for it, as it was delivered during the course of time, when India has been continuously focusing upon the survival and the supremacy of the arbitration proceeding over litigation in the Indian dispute resolution. And it was the major reason that it appeared for some of the people as a diversion from the object of Indian arbitration system to be an arbitration-friendly hub. This also draws our attention towards the fact that the arbitration shall be made a more consumer-friendly method of dispute resolution. It is because of this judgement that people were able to depict the heightened element of the public interest consumer dispute in India.

[1]Review Petition (C) Nos. 2629-2630 of 2018 in Civil Appeal Nos. 23512-23513 of 2017 [2](2012) 2 SCC 506 [3]Skypak Couriers Ltd. Vs. Tata Chemicals Ltd [4](2011) 5 SCC 532 [5]Vimal Kishore Shah v Jayesh Dinesh Shah (2016) 8 SCC 788 [6] (2016)10 SCC 386 ;N. Radhakrishnan v. Maestro Engineers [7](2016) 10 SCC 729 [8](2011) 5 SCC 532 [9](1996) 6 the SCC 385 [10] (2012) 2 SCC 506 [11](2018) 11 SCC 337 [12](2003) 5 SCC 531 [13](1994) 1 SCC 243 So it is clear that The Consumer Protection Act is a special Act and even if there is a clause of arbitrator in the agreement, it will not oust the jurisdiction of the consumer courts. So this court has jurisdiction to try the case.

The opposite party no.1 has stated in affidavit that complainant is not a consumer. The complainant, beside the flat, also booked to other flats in the opposite parties project. The complainant is having more than one booking in the project of the respondent company hence he is not a consumer. The purpose of purchasing the flats from the respondent cannot be considered as a residential but for commercial gain through investment. The present complaint is also time barred. The cause of action, if any, has arise in on 28.07.2007 when alleged booking of flat was done by the complainant and alleged consideration was tendered to opposite party. The complaint is filed in the year 2015 which is time barred.

There is nothing on record to show that the flat purchaser by the complainant was only for commercial use. No evidence has been given by the opposite parties which show that the flats were meant for resale or for any commercial activities. If any person possesses more than one flat, it does not automatically mean that this is only for the purpose of investment and investment only. The complainant sent a legal notice to the respondent no 2 on 08.06.2015 asking it to disclose its authority for demanding money in respect of the aforesaid flat. So as far as cause of action is concerned, it also arises on 08.06.2015. Before it the complainant has also sent a notice on 4 May 2015, so that was also a date of cause of action. So this complaint case is not time barred.

The opposite party also pleaded that the matter should have been referred to the arbitrator because there is an arbitration clause in the agreement. But this matter has already been discussed in detail that in spite of the arbitration clause, one may file a case before the consumer forum. The opposite party also stated that the complainant is the defaulter in this case and various reminder notices were sent to the complainant and it is stated that after making initial payment the complainant has failed to make further payment hence the complaint is liable to be dismissed. The opposite party has stated that the complainant deposited the money with the respondent no.1 company for availing the flat in project developed by the respondent company on the land allotted in the name of respondent no.2 i.e. ANS Apartment P Ltd situated at Greater Noida, Uttar Pradesh named as "The Alstonia Apartments" and the said project is duly approved project of the company and construction at site is going on and thereafter delay in completion of project on account of reasons well explained in present reply thus in present case on account of overall slump in real estate industry especially on account of slow recovery from investors in the said project and on account of force majeure reasons stated in the present reply, there is delay in completing the construction of project. The opposite party also stated that in the present case the delay in completion of the construction has been caused due to undue delay of tendering the payment by the various allottees including the complainant herein in the project and in view of such problem the respondents are company wrote constantly letters to various allottees to make payment and further has gone even after the extent of making public notice in the newspapers by calling upon the allottees in the project to deposit their payment on time and to extend their cooperation to complete the project on time. So both the opposite parties have put the same version in their affidavits filed that they could not file their written statement in time and that was not taken on record. It shows that when the opposite parties failed to submit their written statement before the court of law, how can they say that the complainant was defaulter in the case?

In the present case flat no D-904 area 1725 square ft has been allotted to the complainant on 28.07.2007 and an agreement has been executed between the parties stating that that the complaint shall complete construction of the apartment and the residential complex and deliver the possession of the apartment to the complainant

by December 2009. The component deposited Rs.1,158,500/- against Rs.441,168/- (11% of the basic sale price as required in the agreement). The total cost of the flat was Rs.4,421,000/-. It was duty of the opposite party no.1, who entered into an agreement with the complainant, to deliver the possession of the flat as promised by him. In the agreement three months grace period will be given to the opposite parties after the expected date of delivery of possession. So we have taken, after giving three months grace period, 01.04.2009 and the final date for delivery of possession. The date of the notice as published in the newspaper and copy of which has been filed by the opposite party shows July 14. This date is much beyond the date on which possession was to be delivered. So the opposite parties became defaulter when they did not deliver possession on or before 01.04.2009. They could not show the force majeure. Payment of instalments by the allottees is not a force majeure issue because the opposite parties have power to cancel the allotment in case of non-payment of instalments. So there was no reason which can genuinely be said as true for delay in the construction of the flats.

Whether the opposite parties have received the completion certificate and occupancy certificate? Both the certificates are necessary to obtain before offering delivery opposition to the allottee. It is importance should be known by the following legal article.

COMPLETION / OCCUPANCY CERTIFICATE When buying a home, it is vital to obtain documents, such as the Occupancy Certificate (OC) and Completion Certificate (CC). These are essential documents that allow you to mortgage or sell your home. Hence, homebuyers are advised to take possession of their flat or property only after these documents have been issued.

According to Vikas Bhasin, CMD, Saya Group, "Completion Certificate and Occupancy Certificate are some of the most important documents for a home buyer. Civic authorities can evict the occupants in case of non-availability of the necessary approvals. Before investing in a property, people must be doubly assured that all the certificates and approvals are in place."

Let us dive a little deeper into the details of these documents and their importance before you make a move to buy your dream home.

Owning a home is the culmination of years of savings, research, and paperwork. After patiently waiting for the construction to be complete, you finally register the property and take possession of your flat. But what if your dream home is declared unauthorised, and you are evicted by the authorities? This is not as far-fetched as it sounds. This nightmare could turn into reality without a crucial link in the property sale process - the Occupancy Certificate (OC).

The majority of apartments in different Indian cities have been occupied by owners without any occupancy certificate. This oversight can turn into a costly mistake, jeopardising the legal status of your dream home. The importance of the occupancy certificate cannot be overstated as it seals the legal status of your property and protects your ownership rights.

Decoding legal documents To understand the importance of an occupancy certificate and other legal documents, let's decode the legal jargon and understand their meaning in simple terms. Here's a ready reckoner of the most important legal documents related to your property:

Occupancy Certificate An OC certifies that the construction of the building has complied with the approved plans. It is issued by local municipal authorities or the building proposal department once the building has been completed and is ready to be occupied. Simply put, without an OC, your building has not been awarded a 'pass certificate'.

Completion Certificate A Completion Certificate (CC) is issued only after the construction meets other building standards like distance from the road, the height of the building, and rainwater harvesting system. A CC alone cannot legalise occupation; the OC is a must.

Commencement Certificate If you are buying an under construction property, make sure you check the Commencement Certificate before signing the agreement. Many builders do not wait for a Commencement Certificate. This is illegal and can create serious problems in obtaining an OC at a subsequent stage.

Why is it unsafe to buy a flat without OC?

In the absence of a valid OC, the local municipal body can initiate serious action against flat owners. In 2014, residents of a well-known building complex in Mumbai's upscale Worli area were hit with a bolt from the blue after their complex was declared unauthorised. At the time of possession, buyers overlooked the issuance of an OC from the builder. It was only after that they were forced to evacuate their flats that the writing on the wall became clear to them.

This is just one instance, and if buyers are not careful about getting the OC, they may face the following repercussions:

- In the absence of a valid OC, your building can be demolished as it can be classified as an unauthorised structure.
- The OC is crucial while applying for a home loan or loan to purchase a resale flat. If you wish to sell or hypothecate the property after a lapse of time, you will not be able

to do so without a valid OC.

- The water connection, sanitary connection or electricity supply can be disconnected in the absence of an OC.

How to obtain an OC The OC is obtained from local municipal bodies by submitting an OC application form along with the following documents:

- Commencement Certificate
 - Completion Certificate
 - Built and Section plan
 - NOC for fire and pollution
 - Area calculation sheet of floor signed by an authorised architect
 - Photographs of the completed building
 - Tax assessment with tax paid receipt
 - Photographs of rain harvesting and solar panels
 - Copy of the sanctioned plan
- After submitting the form, authorities inspect the complex and confirm if it has conformed to the approved plan before issuing an OC. Legally and ideally, a builder should submit an application with the municipal commissioner for the OC within 30 days of completion of the property.

How you can apply for an OC As a flat owner, you can also apply for an OC by approaching the local corporation or municipality, and if all approvals are in place, an OC is issued within 30 days of application. You will have to submit the same documents as the builder to procure an OC.

Know your rights If the builder refuses to provide an OC, you should consider exercising your legal rights. You can issue a notice against the builder asking him to apply and hand over the copy of the OC within a month. You can also approach consumer forums and file a writ petition demanding the OC.

Some canny builders simply present the receipt of the OC and dupe gullible customers. But you shouldn't accept anything less than the actual OC as the receipt may be dated.

Landmark legislations like the Real Estate Regulatory Act (RERA) have been passed to regulate the sector, promote transparency and protect consumer rights. However, consumers must be vigilant and understand their rights and responsibilities towards owning a property. Documents like OC are essential and ensure the security of your investment.

Going forward, real estate experts believe that the OC should be made mandatory for the registration of flats and essential services. Until then, buyers must ensure builders get all the necessary approvals before handing over a property.

A Completion Certificate (CC) is an important legal document that certifies that a building is constructed according to the laid down norms and master plan of the city. This document has all the information related to the project, such as the building

materials used, building height, and building plan, among other things like provision for green belt.

In a nutshell, this document certifies that the building adheres to all the prevailing rules and has not violated any norms. In fact, this document is to be shown compulsorily to the authorities to obtain electricity and water connection.

Builders are allowed to obtain a provisional Completion Certificate when there are minor works left in the project. Authorities then provide a provisional certificate valid for six months. After the expiry of the six months, the developer is bound to get a final CC.

Who issues a Completion Certificate?

Local authorities issue the Completion Certificate after a thorough inspection of the premises. If the developer violates no rules, authority issues a Completion Certificate.

Why is Completion Certificate important?

Buyers must be aware of the fact that if they are buying or moving into a property that does not have a Completion Certificate, they might be making a risky investment choice. The civic authorities hold the power to slap heavy penalties on the developer, leading to stalling or cancellation of the registered layout of the project. In case the building is already occupied, residents may also have to face eviction in extreme cases.

Difference between Occupancy Certificate and Completion Certificate Occupancy Certificate examines and certifies a property for adherence to bye-laws, civic amenities, electricity, sanitation and other clearances. On the other hand, a Completion Certificate is a document that certifies that a property is fit for possession by the buyers.

Clarifying the difference, Deepak Kapoor, Director, Gulshan Homz, says, "Completion Certificate is just a reaffirmation that the building has been constructed as per the building byelaws and the layout plan has been approved by various concerned authorities. Occupation Certificate signals that there is no violation of building construction norms, and thus, the structure is safe for occupants.

Generally, these documents are not required at the time of registry, and hence, buyers tend to overlook or ignore these. But for their own benefit and peace of mind, it is warranted that buyers of both ready-to-move-in as well as under-construction properties check these documents before taking possession. This would help avoid any unnecessary dispute or confrontation in the future."

Not a single word has been said about these certificates by the opposite parties. Whether any offer has been given by the opposite party to pay penalty regarding delay in delivery of possession? No such averments made in the written statement.

The Hon'ble Supreme Court on occupancy certificate by the builders.

"Supreme Court: The bench of Dr. DY Chandrachud* and AS Bopanna, JJ has held that failure on the part of the builder to provide occupancy certificate is a continuing breach under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 and amounts to a continuing wrong.

Factual Background The appellant is a co-operative housing society. The respondent constructed Wings 'A' and 'B' and entered into agreements to sell flats with individual purchasers in accordance with the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (MOFA). The members of the appellant booked the flats in 1993 and were granted possession in 1997. According to the appellant, the respondent failed to take steps to obtain the occupation certificate from the municipal authorities.

There was an obligation on the respondent to provide the occupancy certificate and pay for the relevant charges till the certificate has been provided, however, the respondent time and again failed to provide the occupancy certificate to the appellant society. For this reason, a complaint was instituted in 1998 by the appellant against the respondent. The NCDRC on 20 August 2014 directed the respondent to obtain the certificate within a period of four months. Further, the NCDRC also imposed a penalty for any the delay in obtaining the occupancy certificate beyond these 4 months. Since 2014 till date, the respondent failed to provide the occupancy certificate.

In the absence of the occupation certificate, individual flat owners were not eligible for electricity and water connections. Due to the efforts of the appellant, temporary water and electricity connections were granted by the authorities. However, the members of the appellant had to pay property tax at a rate 25% higher than the normal rate and water charges at a rate which was 50% higher than the normal charge.

Analysis Obligations of Promoter under MOFA Section 3 of the MOFA imposes certain general obligations on a promoter. These obligations inter alia include making disclosures on the nature of title to the land, encumbrances on the land, fixtures, fittings and amenities to be provided, and to not grant possession of a flat until a completion certificate is given by the local authority. The responsibility to obtain the occupancy certificate from the local authority has also been imposed under the agreement to sell between the members of the appellant and the respondent on

the latter.

Sections 3 and 6 of the MOFA indicate that the promoter has an obligation to provide the occupancy certificate to the flat owners. Apart from this, the promoter must make payments of outgoings such as ground rent, municipal taxes, water charges and electricity charges till the time the property is transferred to the flat-owners. Where the promoter fails to pay such charges, the promoter is liable even after the transfer of property.

Limitation In the instant case, the appellant submitted that since the cause of action is founded on a continuing wrong, the complaint is within limitation.

Section 24A of the Consumer Protection Act 1986 provides for the period of limitation period for lodging a complaint. A complaint to a consumer forum has to be filed within two years of the date on which the cause of action has arisen.

Section 22 of the Limitation Act 1963 provides for the computation of limitation in the case of a continuing breach of contract or tort. It provides that in case of a continuing breach of contract, a fresh period of limitation begins to run at every moment of time during which the breach continues. A continuing wrong occurs when a party continuously breaches an obligation imposed by law or agreement. The continuous failure to obtain an occupancy certificate is a breach of the obligations imposed on the respondent under the MOFA and amounts to a continuing wrong.

The appellants, therefore, were entitled to damages arising out of this continuing wrong and their complaint is not barred by limitation.

"Rejecting the complaint as being barred by limitation, when the demand for higher taxes is made repeatedly due to the lack of an occupancy certificate, is a narrow view which is not consonance with the welfare objective of the Consumer Protection Act 1986."

Consumer Section 2(1)(d) of the Consumer Protection Act defines a 'consumer' as a person that avails of any service for a consideration. A 'deficiency' is defined under Section 2(1)(g) as the shortcoming or inadequacy in the quality of service that is required to be maintained by law.

In the present case, the NCDRC had held that the appellant is not a 'consumer' under the provisions of the Consumer Protection Act as they have claimed the recovery of higher charges paid to the municipal authorities from the respondent. Extending this further, the NCDRC observed that the respondent is not the service provider for water or electricity and thus, the complaint is not maintainable.

The respondent was responsible for transferring the title to the flats to the society along with the occupancy certificate. The failure of the respondent to obtain the occupation certificate is a deficiency in service for which the respondent is liable. Thus, the members of the appellant society are well within their rights as 'consumers' to pray for compensation as a recompense for the consequent liability (such as payment of higher taxes and water charges by the owners) arising from the lack of an occupancy certificate.

[Samruddhi Co-operative Housing Society Ltd v. Mumbai Mahalaxmi Construction Pvt. Ltd, 2022 SCC OnLine SC 35, decided on 11.01.2022]"

Regarding delay of possession the only Supreme Court has held in the following case law, "In Kolkata West International City Pvt. Ltd. Vs. Devasis RudraCitation : 2019 Latest Caselaw 299 SC Judgement Date : Mar/2019[Civil Appeal No. 3182 of 2019 @ SLP (C) No(S). 1795 of 2017], the Hon'ble Supreme Court has held regarding delay in giving possession.

"This appeal arises from the judgment dated 21 November 2016 of the National Consumer Disputes Redressal Commission¹. A Buyer's Agreement dated 2 July 2007 was entered into between the appellant and the respondent. The respondent paid an amount of Rs 39,29,280 in 2006 in terms of a letter of allotment dated 20 September 2006. The agreement between the parties envisaged that the appellant would hand over possession of a Row House to the respondent by 31 December 2008 with a grace period of a further six months ending on 30 June 2009.

The respondent filed a consumer complaint before the West Bengal State Consumer Disputes Redressal Commission² in 2011 1 "NCDRC" "SCDRC" 2 praying for possession of the Row House and in the alternative for the refund of the amount paid to the developer together with interest at 12% per annum. Compensation of Rs 20 lakhs was also claimed. The SCDRC allowed the complaint by directing the appellant to refund the moneys paid by the respondent together with interest at 12% per annum and compensation of Rs 5 lakhs. The NCDRC has modified this order by reducing the compensation from Rs 5 lakhs to Rs 2 lakhs. Mr. Ravinder Narain, learned counsel appearing on behalf of the appellant submits that the primary relief which was sought in the consumer complaint was for delivery of possession. According to the appellant, the completion certificate was received on 29 March 2016, which was intimated to the respondent on 11 April 2016.

Moreover, before the SCDRC, in its written submissions, the appellant had offered possession of the Row House to the respondent. It has also been stated that in a complaint which was filed by an association representing the allottees of 161 Row houses, a settlement was arrived on 11 September 2018 before the NCDRC specifying the date on which possession would be handed over together with interest at 6% per annum instead of 4% as mentioned in the Buyers' Agreement. It was urged that the

developer having made a substantial investment in terms of the agreement, a direction for refund is not warranted. It has also been urged that the SCDRC in the course of its decision erroneously observed that the developer was unable to fulfill its obligation to complete the construction within the agreed period and it was not certain when the Row house would be handed over. It was urged that this observation by the SCDRC is contrary to the record since before it, a specific offer of possession was made.

It has been urged on behalf of the respondent by Mr. Supriya Bose, learned senior counsel that a consumer complaint was filed in the year 2011. At that stage, the appellant was bonafide ready and willing to accept possession. However, nearly seven years have elapsed after the extended date for the delivery of possession which expired on 30 June 2009. In spite of this, no offer of possession was forthcoming. Learned senior counsel submitted that the letter dated 22 March 2016 of the developer was conditional and despite the subsequent letter dated 11 April 2016, no formal offer of possession was ever made by the appellant. Moreover, it was urged that the interest awarded by the NCDRC at the rate of 12% is just having regard to the economic loss and hardship suffered by the respondent. While considering the rival submissions, we must at the outset advert to the following clause which was contained in the Buyer's Agreement:

"Unless prevented by circumstances beyond the control of the company and subject to Force Majeure, KWIC shall ensure to complete the said unit in all respect within 31st December 2008 only for the Cluster D. Further there will be a grace period of 6 months (up to 30th June, 2009) from the date of completion. In case the possession is not transferred after expiry of the said grace period, KWIC will be liable to pay prevailing 4 saving Bank interest of the State Bank of India for each month of delay on the money given by the allottee as compensation but no compensation will be paid on account of force majeure reasons." It is the above clause which is pressed in aid by the developer. Under the aforesaid clause, any delay beyond 30 June 2009 would result in the developer being required to pay interest at the prevailing savings bank interest of the State Bank of India.

Interestingly, where the buyer is in default, the agreement stipulates that interest at the rate of 18 per cent from the date of default until the date of payment would be charged for a period of two months, failing which the allotment would be cancelled by deducting 5% of the entire value of the property. The agreement was evidently one sided. For a default on the part of the buyer, interest at the rate of 18% was liable to be charged. However, a default on the part of the developer in handing over possession would make him liable to pay interest only at the savings bank rate prescribed by the SBI. There is merit in the submission which has been urged by the buyer that the agreement was one sided.

The clause which has been extracted in the earlier part of this order will not preclude the right and remedy available to the buyer to claim reasonable interest or, as the case may be, compensation. The essential aspect of the case which is required to be analysed is whether the buyer was entitled to seek a refund or was estopped from doing so, having claimed compensation as the primary relief in the consumer complaint.

The Buyer's Agreement is dated 2 July 2007. In terms of the agreement, the date for handing over possession was 31 December 2008, with a grace period of six months. Even in 2011, when the buyer filed a consumer complaint, he was ready and willing to accept possession. It would be manifestly unreasonable to construe the contract between the parties as requiring the buyer to wait indefinitely for possession. By 2016, nearly seven years had elapsed from the date of the agreement. Even according to the developer, the completion certificate was received on 29 March 2016. This was nearly seven years after the extended date for the handing over of possession prescribed by the agreement. A buyer can be expected to wait for possession for a reasonable period.

A period of seven years is beyond what is reasonable. Hence, it would have been manifestly unfair to non-suit the buyer merely on the basis of the first prayer in the reliefs sought before the SCDRC. There was in any event a prayer for refund. In the circumstances, we are of the view that the orders passed by the SCDRC and by the NCDRC for refund of moneys were justified. Having regard to all the facts and circumstances of the case, we modify the order of the NCDRC by directing that the appellant shall pay interest at the rate of 9% per annum to the respondent instead and in place of 12% as directed by the NCDRC. Save and except for the above modification, we affirm the directions of the NCDRC.

The amount outstanding in terms of the directions of this Court shall be released out of the moneys which have been deposited by the appellant. The balance, if any, that remains shall be refunded to the appellant. The appeal is, accordingly, disposed of. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of."

Now from all the given circumstances it has been clear that the opposite parties failed to deliver the possession of the unit within the promised time and they now sending different demand to extract the money from the complainant but did not disclose as how much penalty they had to pay to the complainant regarding delay in the delivery of possession to the complainant. The opposite parties have stated that there has been delay in payment of various instalments by the allottees. It cannot be raised because the actual date of handing over the possession of the flat has already been expired, the opposite parties are not in a position to demand extra money before adjusting the penalty in the balance amount to be deposited by the complainant. No new demand can be raised after the cut-off date because the possession was not

handed over to the complainant. Now the defaulter is opposite parties and not the complainant.

Whether the opposite parties have paid any interest on the amount deposited by the complainant.? Regarding payment of interest on the deposited amount only Supreme Court has said in various judgment if you are being quoted here.

Ghaziabad Development Authority v. Balbir Singh In the Supreme Court of India
Name of the Case Ghaziabad Development Authority v. Balbir Singh Citation
(2004) 4 SCC 65 Year of the Case Petitioner Ghaziabad Development Authority
Respondent Balbir Singh Bench/Judges Justice H. K. Sema Justice S.N. Variava
Acts Involved Consumer Protection Act, 1986 Important Sections Section 14 of
the Consumer Protection Act, 1986 Section 22 of the Consumer Protection Act, 1986

The case of Ghaziabad Development Authority v Balbir Singh is a landmark decision that laid down certain judicial standards regarding the grounds on which compensation may be awarded, particularly, in matters of allotment of flats/plots by land development authorities. Compensation under consumer protection laws is required to recompense for loss or injury suffered by consumers, and therefore, the quantum of compensation to be awarded would necessarily have to be determined based on the facts and circumstances of each case. This decision set an established precedent on the issue of compensation to be awarded in consumer disputes, and its principles have been relied upon in numerous subsequent cases.

Introduction The consumer protection laws establish a redressal mechanism whereby consumers can claim monetary reliefs for defective goods, deficiency in service, and unfair trade practices. Sections 14 and 22 of the Consumer Protection Act, 1986 empower the District, State, and National Consumer Disputes Redressal Commission to "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". Such monetary reliefs i.e., compensation awarded would have to be based on the facts and circumstances of each case, since the loss and injury suffered would vary. Given the absence of a straight-jacket formula for the determination of the amount of compensation to be awarded in each case, it follows that there can be no uniformity in the award of compensation.

It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair, and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant can establish his charge.[1] These 'established judicial standards' have been laid down in a plethora of cases. The case of Ghaziabad Development Authority v Balbir Singh[2] is a landmark decision that discussed the grounds on which compensation may be awarded, particularly, in matters of allotment of flats/plots by land development authorities. It set an established precedent on the issue of compensation to be awarded in consumer disputes, and its principles have been relied upon in numerous subsequent cases.

Background and Facts of the Case The present case of Ghaziabad Development Authority v Balbir Singh arose out of an appeal directed against the judgment and award passed by the National

Consumer Disputes Redressal Commission (NCDRC) awarding an interest @ 18% per annum. The Commission was considering a bunch of matters, the lead being the case of Haryana Urban Development Authority vs. Darsh Kumar, where it held that in cases of deficiency of service by development authorities, the rate of interest awarded must be 18% per annum. Following this, the Commission disposed of subsequent matters by its preceding award. Numerous appeals were filed before the Supreme Court against the decision of the Commission in various cases, primarily against its award of 18% interest.

Since the Supreme Court was considering a wide number of matters relating to allotment of land by development authorities, the facts of each case vary. In some cases, the scheme had gotten canceled after the payment of monies and allotment of flats/plots. Delivery of possession of the flats was therefore refused to the allottees. In some cases, either possession was offered at an increased rate at a much later date possession or was offered but not taken by the party. Possession was not delivered in some cases despite payment of monies and no refusal to deliver possession. In some cases, the construction was of sub-standard quality or it was incomplete, or the authority demanded extra amounts from the party which was paid only by some. In some cases, allotments were made and possession offered of flats/land which was encumbered or occupied by some other party.

The appeal in the Supreme Court was filed due to the Commission granting interest at the rate of 18% per annum irrespective of the type of case or amount of delay and without even going into the facts of the case. Complainants had asked for the refund of amounts wrongly collected and in other cases, asked for a refund of the amounts paid.

Issues Involved Whether the grant of interest at the rate of 18% per annum by the National Consumer Disputes Redressal Commission in all cases is justifiable?

Related Provisions Section 14 of the Consumer Protection Act, 1986 Section 22 of the Consumer Protection Act, 1986 **Related Cases** The Supreme Court relied upon the case of Lucknow Development Authority v. M. K. Gupta[3] which firstly widened the scope of "service" defined under Section 2(1)(o) of the Consumer Protection Act, 1986 to include the housing construction or building activities carried on by private or statutory bodies.

The Court relied upon the English case *Geddis v. Proprietors of Bann Reservoir*[4] which gave a wide connotation to the word compensation, holding that "Compensation has not been defined in the Act. According to the dictionary, it means, 'compensating or being compensated; thing given as recompense;'. In a legal sense, it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss."

Judgment The Supreme Court, at the outset, reiterated the position taken in the case of Lucknow Development Authority v. M.K. Gupta, and held that "the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities". It further held that the power of the NCDRC extends to awarding compensation to consumers for misfeasance in the public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. Therefore, it upheld the appeals

filed before it to the extent that it confirmed the jurisdiction of the NCDRC to award compensation in cases of service rendered by statutory & public authorities (the land development authorities in the present case).

As to the issue of whether the grant of interest at the rate of 18% per annum by the NCDRC in all cases is justifiable, the Supreme Court held in the negative. It stated that "the power to and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum." It held it to be unsustainable. The Court further stated that the "Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case." The purpose of awarding compensation is to recompense for a loss or injury suffered and such compensation would therefore be proportional to the amount of loss and injury.

While considering the compensation to be awarded to the consumers in cases of deficiency of service by Development Authorities, the Court laid down a range of principles for the determination of the amount of compensation, summarised below:

To award compensation, the Forum or the Commission must determine that service has been deficient and/or misfeasance in public office which has resulted in loss or injury. While no hard and fast rule can be laid down, the Court gave a few instances where the award of compensation would be justifiable, including where possession is not handed over within the intimated period even though allotment is made and the price is paid. In such cases, the loss could be determined based on loss of rent which could have been earned if possession was given. Compensation could also be the scheme has been canceled without any justifiable cause, after the allotment.

Compensation cannot be uniform and to illustrate this, the Court lays down the principle to be followed for the determination of compensation in two cases- - (a) where the delivery of possession is being directed, and (b) where only the monies are directed to be returned or refunded by the Court. In case (a), the compensation for harassment will necessarily have to be less since in a way the aggrieved party is being compensated by an increase in the value of the property he is getting. In case (b) however, the party is suffering a greater loss since he has been deprived of the flat/plot, and his expectation of delivery of possession. He would also be denied the benefit of an increase in the value of land and the compensation thereof. Therefore, the compensation to be awarded in such cases would have to be higher than in case (a).

The Court held that "such compensation has to be worked out after looking into the facts of each case and after determining what is the amount of harassment/loss which has been caused to the consumer."

Compensation would include compensation for physical, mental, or even emotional suffering, insult, or injury or loss.

Awarding of Compensation in the Event of Deficiency in Service Rendered The consumer protection laws have a wide reach and the consumers are entitled to receive compensation for deficiency in services rendered by statutory and public authorities. The Consumer Commissions have been vested with the jurisdiction to award the value of goods or services and compensation. On being satisfied that a complainant is entitled to compensation for loss or injury or harassment or mental agony or oppression, it must direct the authority to pay compensation. A wide discretion has been given to determine the quantum of compensation for any loss or damage suffered by a consumer, to redress any injustice. However, it is a well-established principle that the computation of compensation has to be fair, reasonable, and must reconcile with the loss or injury suffered. The Consumer Forum is cast with the duty to take into account all relevant factors for arriving at the compensation to be paid.

This landmark decision has set a precedent on the matter of compensation to be awarded in matters relating to allotment of land by development authorities and has been relied upon in many subsequent cases of the Supreme Court. In the case of H. P. Housing Board v Varinder Kumar Garg[5] and Haryana Urban Development Authority vs Darsh Kumar[6], the Supreme Court directed the Commission to follow the principles laid down in the case of Ghaziabad Development Authority vs. Balbir Singh in future cases.

Conclusion This landmark decision laid down rudimentary principles and set judicial standards concerning the awarding of compensation and the determination of the quantum of compensation to be awarded. It struck down the mechanical application of a fixed rate of interest at 18% per annum by the National Commission in numerous cases, asserting that there can be no hard and fast rule.

The principles enunciated go a long way in ensuring that consumers are compensated appropriately and proportionally for the loss and injury suffered. This decision has further strengthened the consumer protection laws by bringing clarity to how the consumer is required to award compensation.

References Indian Kanoon <https://indiankanoon.org/> Consumer Protection Act, 1986 http://legislative.gov.in/sites/default/files/A1986-68_o.pdf [1] Chief Administrator, H.U.D.A. & Anr. v. Shakuntla Devi, (2017) 2 SCC 301 [2] (2004) 5 SCC 65 [3] (1994) 1 SCC 243 [4] (1878) 3 AC 430 [5] (2005) 9 SCC 430 [6] (2005) 9 SCC 449 In a latest judgment the only Supreme Court has redefined the rate of interest.

In a latest case, on Supreme Court in Petition(s) for Special Leave to Appeal (C) No(s). 24059/2022 (Arising out of impugned final judgment and order dated 19-09-2022 in RP No. 1187/2022 passed by the National Consumers Disputes Redressal Commission, New Delhi) MEERUT DEVELOPMENT AUTHORITY

Petitioner(s) VERSUS SURESH CHAND GARG Respondent(s) (FOR ADMISSION and IA No.202401/2022-EXEMPTION FROM FILING O.T.) Date: 05-01-2023 This petition was called on for hearing today.

Held "We have heard learned counsel for the petitioner and find that the order passed by the Consumer Commission was reasonable and there was no reason of filing appeal/revision against the substantive order passed on the consumer complaint by the District Consumer Commission dated 06.09.2019. Consequently, the present petition is disposed of with a direction, to sum up the litigation which is pending for a long time, that let the order of the District Consumer Commission dated 06.09.2019 shall be complied with and the respondent be refunded the entire deposit with simple interest at the rate of 12% per annum within a further period of 60 days from today, failing which it shall carry interest at the rate of 15% per annum until actual payment."

So the Hon'ble Supreme Court has specifically said that the rate of interest shall be 12% if paid within 60 days from the date of judgment otherwise the rate of interest will be 15% per annum until actual payment.

Regarding payment of compensation, damages, rent et cetera the following case laws of Hon'ble Supreme Court and Hon'ble NCDRC are worth mentioning.

In the case of H. P. Housing Board v. Varinder Kumar Garg[(2005) 9 SCC 430] and Haryana Urban Development Authority vs. Darsh Kumar[(2005) 9 SCC 449], the Supreme Court directed the Commission to follow the principles laid down in the case of Ghaziabad Development Authority vs. Balbir Singh in future cases."

Hon'ble Supreme Court in the case of Haryana Urban Development vs. Darsh Kumar, Etc., Civil Appeal no 5796 of 2002 decided on 28 July, 2004 has held ;

"This Court has, in the case of Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

We are informed that in spite of there being no stay, to payment of interest beyond 12% and in spite of clarification given by this Court's order (reported in (2004) 5 SCC 65), the amounts have still not been paid. We feel that for the lapse Appellants must pay interest at the rate of 15% from 17th March, 2004 till payment. Appellants shall also pay costs fixed at Rs.500/- in each case to the Legal Aid Society of the Supreme Court. The Appellants must recover the amount paid towards costs personally from the officer/s, who were responsible for not paying even after clarification by this Court. We clarify that this Order shall not be taken as a precedent in any other matter as the order has been passed taking special features of the case into account. The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) in future cases. The Appeals are disposed off in above terms. There will be no order as to costs."

So it is clear that the compensation and rate of interest shall depend on the facts and circumstances of each case and no hard and fast rule can be framed. In this connection some of the judgment of the Supreme Court and Hon'ble NCDRC should be taken into account.

In the case of PRIYANKA MITTAL & ANR. V. PARSVNATH DEVELOPERS LTD. & ANR. (NCDRC). These appeals arise out of single order of State Commission, hence, decided by common order. These appeals have been filed against the order dated 25.2.2015 in Complaint Nos. 18 of 2013- Nalin Bhargava & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 34 of 2013- Jasleen Viswanathan & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 58 of 2011- Janmejai Mani Tiwari Vs. Parsvnath Developers Ltd. & Anr.; 68 of 2013- Indu Singh Vs. Parsvnath Developers Ltd. & Anr.; 69 of 2013- Poonam Sagar Vs. Parsvnath Developers Ltd. & Anr.; 86 of 2010- Priyanka Mittal & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 101 of 2011- Mohd. Aslam Khan & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 130 of 2012- Dr. Sunil Kr. Singh & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 49 of 2012- Neera Mittal & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 74 of 2011- Deepak Bhalla Vs. Parsvnath Developers Ltd. & Anr.; 87 of 2010- Syed Gufran Ali Alvi & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 96 of 2011- Uppasana Malik Vs. Parsvnath Developers Ltd. & Anr.; 175 of 2013- Umesh Chandra Dixit & Anr. Vs. Parsvnath Developers Ltd. & Anr.; 97 of 2011- Pravin Kumar Goel & Anr. Vs. Parsvnath Developers Ltd. & Anr. which complaints were partly allowed.

The Hon'ble NCDRC held that:

"Brief facts of the cases are that opposite parties/respondents are engaged in the activity of housing construction and accordingly they have launched a project named as Parsvnath Planet situated in Gomti Nagar, Lucknow. The project was demonstrated to be very lucrative and made attractive to the vendees, in order to procure/collect money from the needy persons demonstrating themselves to be excellence in the field of construction activity as compared to other builders and assured the buyers/complainants that it has been duly approved by the Lucknow Development Authority and necessary permission has also been obtained from them. The emphasis was made by the opposite parties that the possession of the Unit shall be given within a scheduled period of 36+6=42 months stipulated in agreements

executed in between the parties for the project launched in the year 2006. The complainants/appellants attracted by the promise and assurance of the opposite parties, somehow managed and arranged the money from their personal sources as well as on loan at attractive rate of interest and the hard earned money was paid by them to the opposite parties in a hope that the possession of the units shall be provided to them in the year 2009 and they can leave peacefully in their own houses, since the complainants are living in rented houses.

The complainants visited the construction site of the opposite parties after depositing the entire amount, where it was revealed that the construction activities were on halt and the persons available on the site told the complainants that the apartments are likely to be completed till 2015. Even the partial construction done by the opposite parties was defective and did not match the specifications provided in the agreement. The complainants were shocked on hearing it and observing the site. The complainants immediately contacted the Area Manager, who told the complainants that there is some delay in the construction of the apartment and the apartments shall be ready till June, 2010. The complainants have to repay the amount taken on loan alongwith interest without getting the possession of the allotted units causing irreparable loss and injury to them. The complainants have come to know that the opposite parties have invested the funds earmarked for this project into their other projects in other city due to which they have not been able to complete the project in time. Besides this, it has also come to the light that although the opposite parties had collected huge funds from the buyers but in spite of that the opposite parties have miserably failed to pay the dues of Lucknow Development Authority which forced the Lucknow Development Authority to issue coercive measures against the opposite parties for therecovery of their dues. Alleging deficiency on the part of opposite parties/ respondents, complainants filed separate complaints before State Commission. Aggrieved by the order of Hon'ble State Commission, these appeals preferred before Hon'ble National Consumer Disputes Redressal Commission.

Hon'ble NCDRC discussed various case laws and after hearing the parties held, "Learned Counsel for appellants submitted that as complainants have been deprived of possession for a long period beyond agreed period, it amounts to restrictive trade practice under Section 2 (nnn) of Consumer Protection Act and complainants are entitled to get compensation. Section 2 (nnn) runs as under:- means a trade practice which tends to bring about restrictive trade practice manipulation of price or its conditions of delivery or to affect flow of supplies in the market relating to goods or services in such a manner as to impose on the consumers unjustified costs or restrictions and shall include- Delay beyond the period agreed to by a trader in supply of such goods or in providing the services which has led or is likely to lead to rise in the price; Any trade practice which requires a consumer to buy, hire or avail of any goods, or, as the case may be, services as condition precedent to buying, hiring or availing of other goods or services; Perusal of aforesaid provision reveals that when opposite party delays in delivery of goods which leads to rise in the price of goods

meaning thereby, more price is charged from complainant, it amounts to restrictive trade practice. In the case in hand, opposite party on account of delayed delivery of possession is not charging higher rate than the agreed rate for delivery of possession of flat, so, it does not fall within the purview of restrictive trade practice under Section 2(nnn) of Consumer Protection Act."

"Admittedly, agreements were executed in 2006 and as per agreements, possession of flats was to be delivered within 42 months, meaning thereby, possession was to be given in the year 2009-2010 and possession has not been handed over so far though year 2016 has started. No doubt, complainants are entitled to get penalty amount for delayed delivery of possession as per clause 10(c) of the agreement but opposite party cannot be permitted to avail benefit of aforesaid clause for indefinite period. This penalty clause should be allowed for the benefit of parties for a limited period and in the cases in hand, I deem it appropriate to extend applicability of aforesaid clause for a period of one year beyond 42 months and after that, complainants are certainly entitled to compensation. Opposite party cannot be allowed to avail huge funds of complainants by paying merely Rs. 5/- per sq. ft. for example, complainants who have purchased flat measuring 164.901 sq. mtr., they have made payment of about Rs. 31.00 to 32 lakhs and in the garb of clause 10 (c), opposite party is paying penalty @ approximately Rs. 9,000/- per month against enjoying funds more than Rs. 30.00 lakhs. As complainants have been deprived to shift to their flats for a long period which would not only have given them satisfaction of living in their own house but also have raised their social status and opposite party has enjoyed funds of complainants for a long period, I deem it appropriate to allow compensation @ Rs. 15,000/- p.m. to the complainants who have applied for flats upto 175 sq. mtr and Rs. 20,000/- per month to complainants who have applied for flats above 175 sq. after 54 months of execution of agreement till delivery of possession."

Against this judgment, parties went to Hon'ble Supreme Court. The judgment of Hon'ble Supreme Court is:-

In Nalin Bhargava vs. Parsvnath Developers Ltd. CA 6662/2018 @ SLP(C) 7596/2016 etc and other related civil appeals on 13 July, 2018, Hon'ble Supreme Court held:-

"Leave granted in all the special leave petitions. CA 6662/2018 @ SLP(C) 7596/2016 etc. It is submitted by Mr. M.L. Lahoty, learned counsel appearing for the appellants in all the appeals that the possession has been handed over and the deficiencies have been removed and, therefore, he has no grievance. However, Mr. Lahoty would insist that there should be imposition of costs as compensation.

Mr. Sachin Datta, learned senior counsel appearing for the developer has raised objections with regard to imposition of costs.

Having heard learned counsel for the parties, we are of the considered opinion that the cause of justice would be best subserved if each of the appellants in the present appeals are given Rs.1,50,000/- (Rupees one lakh fifty thousand only) per flat, towards costs. When we say "cost", we mean costs alone and nothing else."

In the case of Meerut Development Authority Vs. Suresh Chandra Garg, Special Leave to Appeal (C) No(s). 24059/2022, Judgment dated 05.01.2023 Hon'ble Supreme Court has held, "consequently, the present petition is disposed of with a direction, to sum up of the litigation which is pending for a long time. Let the order of the District Consumer Commission 06.09.2019 shall be complied with and the respondent be refunded the entire deposited amount with simple interest at the rate of 12% per annum within a further period of 60 days from today failing which it shall carry interest at the rate of 15% per annum until actual payment."

Therefore it is clear that the amount shall be refunded with simple interest at the rate of 12% within 60 days from the date of judgment otherwise the rate of interest shall be 15% simple interest per annum till the date of actual payment. In this case we take the cut-off date as October 2014, and the interest shall be computed from November 1, 2014 till the date of actual payment.

These builders are just earning money from the consumers to whom they issued allotment letters and got a huge amount. They keep this amount for a long time and earn interest on it. Property dealing is that part of business where they never pay a penny to the consumers on their amounts deposited for a long-term or if they pay, they pay a meagre interest of about 5% or so but they charge 18 to 24% or more if the consumers default in depositing any instalment. It reminds us the story of "The Merchant of Venice" The Merchant of Venice is the story of a Jewish money lender Shylock who demands that an antisemitic Christian offer "a pound of flesh" as collateral against a loan. These acts of builders also remind us the age of Sahukari during ancient India and also during British Raj. Whether these builders have power to frame their own law? They put their terms and conditions in such a way that the sufferer will always be the consumer. The Consumer Protection Act 1986 has been enacted for the benefits of consumers, so the courts dealing with Consumer Protection Act 1986 should come forward for their rescue. The courts are not governed by the builders but they are governed by the law, Custom and Usages. Now in the background of all the facts and also the facts of the present case, we will also discuss something more.

Now we see the present case. There is no completion certificate. There is no occupancy certificate. Delivery of possession has not been given on the date as promised by the opposite parties. They have become defaulter in and not providing the unit to the complainant within the time mentioned by them in the agreement. As per judgement of the Hon'ble NCDRC he is entitled for rental 15,000 per month from the cut of date that is 01.04.2009 (actual date is DECEMBER 2009). He is liable to pay interest on the amount deposited by the complainant from their due date of deposits. As far as delivery of possession is concerned, the possession should have been handed over within three years because in cases where no such date has been mentioned by the builders, Hon'ble Supreme Court has said that the reasonable time to deliver the possession of the flat is three years.

Hon'ble Supreme Court in civil appeal number (S) 3533-3534 of 2017 , M/S Fortune infrastructure (NOW known as M/S Hicon Infrastructure) & Anr Vs Trevor D'Lima & Ors., Judgment 12.03.2018 has held:

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014.

Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered. When once this Court comes to the conclusion that, there is deficiency of services, then the question is what compensation the respondents/complainants is entitled to ?"

So there is no question to extend the period of delivery of possession because Hon'ble Supreme Court has made it clear that the possession should have been handed over within three years. There is no record to show whether the opposite parties have applied and received NOCs Of Fire Department, Civil Aviation Department, Pollution Control Department Et cetera. These NOCs are also necessary in addition to completion certificate and occupancy certificate. The complainant has prayed for delivery of possession of the said flat within a time to be fixed by the Hon'ble commission. The complainant has also prayed for damages at the rate of Rs.6000.00 per month which is a meagre amount in comparison to the Hon'ble NCDRC judgment in which the Hon'ble NCDRC has awarded Rs.15,000/- per month.

Therefore it is clear in this case that the possession of the flat has not been handed over to the complainant as promised by the opposite parties. The cut of date for delivery of possession is 01.04.2010 so all the damages, compensation and other penalties shall be reckoned from the state. From all the facts and circumstances of the plaint case we are of the opinion that the complainant is entitled for the following reliefs.

The complainant is entitled to get the possession of flat number D-801 measuring 1725 square Ft in Dffodil Tower, Alstonia Apartment , plot number 10, Pi 1&2, Greater Noida within 60 days from the date of judgment of this complaint case along with Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc with execution of the sale deed and if not done within 60 days from the date of judgment of this complaint case the complainant will be entitled to get Rs.50,000.00 per month after 60 days till the date of actual delivery of possession/execution of sale deed along with the copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department , Fire Department, Civil Aviation Department etc. The complainant is entitled to damages at a rate of Rs.6000/- per month

with interest at a rate of percent from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% payable from 01.04.2010 till the date of delivery of actual possession/execution of sale deed and handing over all the papers as mentioned.

The complainant shall be entitled to get interest at a rate of 12% on the amount deposited by him from the respective date of deposition if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from the respective date of deposits.

The complainant is entitled to get Rs.1.5 lakhs as damages in light of the Hon'ble Supreme Court judgment.

The complainant is also entitled to receive Rs.20 lakhs towards mental agony, harassment, deficiency in service under the relief clause IV of the complaint with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.04.2010 till the date of actual delivery of possession/execution of sale deed a company with copies of all the documents as mentioned earlier.

The complaint case is decided accordingly.

ORDER 1- The opposite parties are, jointly and severally, directed to hand over the possession of flat no.F-904 measuring 1725 square Ft in Flame Lily Tower, Alstonia Apartment, plot number 10, Pi 1&2, Greater Noida to the complainant within 60 days from the date of judgment of this complaint case along with Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department, Fire Department, Civil Aviation Department etc with execution of the sale deed and if not done within 60 days from the date of judgment of this complaint case the opposite parties shall pay damages @ Rs.50,000.00 per month after 60 days from the date of judgment of this complaint case till the date of actual delivery of possession/execution of sale deed along with the Copies of Completion Certificate, Occupancy Certificate, NOCs of Pollution Control Department, Fire Department, Civil Aviation Department etc. 2- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.6000/- per month with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% payable from 01.04.2010 till the date of delivery of actual possession/execution of sale deed accompanying with handing over all the papers as mentioned in clause 1 of the order.

3- The opposite parties are, jointly and severally, directed to pay to the complainant interest at a rate of 12% on the amount deposited by him from the respective date of deposition if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from the respective date of deposits.

4- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.1.5 lakhs as damages in light of the Hon'ble Supreme Court judgment.

5- The opposite parties are, jointly and severally, directed to pay to the complainant Rs.20 lakhs towards mental agony, harassment, deficiency in service under the relief clause IV of the complaint with interest at a rate of 12% from 01.04.2010 if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.04.2010 till the date of actual delivery of possession/execution of sale deed accompanying with copies of all the documents as mentioned in clause 1 of the order of this complaint case.

If the order is not complied with, within 60 days from the date of judgment of this complaint case, the complainant shall be entitled to file execution case in this court at the cost of the opposite parties.

The stenographer is requested to upload this order on the Website of this Commission today itself.

Certified copy of this judgment be provided to the parties as per rules.

(Sushil Kumar)

(Rajendra Singh)

Member

Presiding Member

Judgment dated/typed signed by us and pronounced in the open court.

Consign to the Record-room.

(Sushil Kumar)

(Rajendra Singh)

Member

Presiding Member

Dated 15.5.2023

JafRi, PA I

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[HON'BLE MR. Rajendra Singh] PRESIDING MEMBER
[HON'BLE MR. SUSHIL KUMAR] JUDICIAL MEMBER