

Krishan Chadra Kesarwani vs M/S Shipra Estaates Ltd on 7 July, 2022

Cause Title/Judgement-Entry

STATE CONSUMER DISPUTES REDRESSAL

REERVED

State Consumer Disputes Redressal Commission

U.P. Lucknow.

Complaint no. 229 of 2019

1- Krishan Chandra Kesarwani aged about 77 years,

S/o Late R.G. Kesarwani, R/o 2-A, Sarvapalli,

Mall Avenue, Lucknow.

2- Sanjay Kesarwani aged about 46 years,

S/o Krishan Chandra Kesarwani, R/o 2-A, Sarvapalli,

Mall Avenue, Lucknow.

....Complainants.

Versus

1- M/s Shipra Estates Ltd., Registered Office,

D-32, Laxmi Nagar, Main Vikas Marg,

New Delhi PIN 110092 through its Authorized

Signatory Ajay Gupta

2- Mohit Singh, Managing Director, M/s Shipra

Estates Ltd., Shipra Mall, Plot No.-9, Vaibhav

Khand, Indirapuram, Ghaziabad PIN 201014

.... Opposite parties.

Present:-

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

2- Hon'ble Mr. Vikas Saxena, Member.

Sri Vikas Agarwal, Advocate for the Complainant.

None appeared for the opposite parties.

Date . 7 . 2022

JUDGMENT

Per Mr. Rajendra Singh, Member: This complaint has been filed by Sri Krishan Chandra Kesarwani and another against M/s Shipra Estates Ltd.&anr. for the following reliefs.

To direct the opposite parties to refund a sum of Rs.31,62,500.00 to the complainants.

To direct the opposite parties to pay interest @18% from 11.7.2014 upto the date of actual payment which comes to Rs.4,45,500.00 per years. Total interest from 11.7.2014 to 11.7.2019 i.e. for 5 years comes to Rs.22,27,500.00.

To direct the opposite parties to pay a sum of Rs.1,00,000.00 as damages for committing unfair trade practice.

To direct the opposite parties to pay a sum of Rs.1,00,000.00 as compensation for committing unfair trade practice.

Allow the complaint and direct the opposite parties to pay a sum of Rs.50,000.00 towards cost of the case.

Any other order which this Hon'ble State Commission may deem fit and proper in the circumstances of the case may also be passed.

The brief facts of the complaints' case are that, that the opposite parties are the builder/contractors/promoter and carrying on the business of developing the plots and construction of houses/flats in the different sized. The opposite parties floated a project at village- Maste Mau & Bakkas, Lucknow where in the opposite party offered for allotment of plots and flats of different sizes.

On 11.7.2012, an agreement was executed between the parties and as per clause 5 of the said agreement of the opposite parties agreed to allot a plot having approximate areas of 275 sq. yds. of developed plot for allotment in favour of the complainants. As per clause 9 of the agreement dated 11.7.2012 the opposite parties allot developed plots in the said project within a period of 24 months from the date of agreement meaning there by that the opposite parties shall allot a developed plot area 275 sq. yds. by 11.7.2014 after development of the projects in question. As per clause 13 of the

agreement dated 11.7.2012 following options will be offered to the complainants on expiry of the period of 24 months from the date of this agreement.

In the event of the opposite party fails to allot the plot in the said colony as contemplated above within a period of 24 months or such extended period as may be mutually agreed upon; or is unable to allot the plot in terms of this agreement for any reason whatsoever, then the complainant shall be entitled to the refund of an amount of Rs.9,000.00 per sq. yd. agreed to be allotted to the complainant.

In the event the opposite party allots the plot to the complainant within the time period as aforesaid or mutually extended period as per clause 9 above, the complainant shall have to the option either to accept the allotment or sell the plot back to the opposite party at the rate of Rs.9,000.00 per sq. yd.

This option is available to the complainants only on expiry of the period of 24 months from the date of agreement.

As total sum of Rs.8,50,000.00 were deposited against the plot in question by the complainants on 30.6.2012 which is duly mentioned in clause no.2 of the agreement dated 11.7.2012. The project was not developed within a period of 24 months from the date of agreement dated 11.7.2012.

As per clause 9 of the agreement dated 11.7.2012 within a period of 24 months the complainant shall be entitled to get the plot allotted in the project in question but the opposite parties never allotted any plot area of 275 sq. yds. in their project in question since the land of the project in question is not developed till date which amounts to deficiency of service and the project in question is lying undeveloped and despite fact that almost seven years has been passed for execution of the agreement dated 11.7.2012 and the allotment as well as possession of the plot in question is not offered by the opposite parties while as per agreement dated 11.7.2012 the opposite parties shall allot the plot within 24 months after developing their project and handover the plot in question but till date neither the development work is completed nor the opposite party refunded the deposited amount along with accrued interest.

The project in question is lying undeveloped condition and the opposite parties are not in a position to give the possession of the plots in question as such the complainants are entitled for refund as per terms of the clause 13(i) of the agreement dated 11.7.2012 along with interest.

The complainant wanted a plot in Lucknow for their family but due to delay in handing over possession of the plot in question the basic purpose is frustrate and the complainants and their family members are deprive for their own plot in Lucknow as such the opposite parties committed gross deficiency in service for which they are liable to be punished under the provision of the Consumer Protection Act. The complainant time to time requested to the opposite parties to hand over the possession of the plot in question after developing their project in question but the opposite parties not completed their project in question and the project in question is lying in undeveloped condition. The complainant also demanded the ownership documents of the land on which the project was launched along with the sanctioned map of the Lucknow Development Authority and the clearance certificates of the various Government Authorities like RERA certificate, water, fire etc. but no such documents were provided by the opposite party while as per the Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010 these informations are mandatory to provide by the Builder/Contractors/Promoters to their customers as such the opposite parties violated the provisions of the Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010 which amounts to deficiency in services.

The employees of the opposite parties are threatening to the complainant for cancelation of the allotment of the plots in question and forfeited the deposited amount of Rs.8,50,000.00 as such feeling aggrieved by the illegal action of the opposite parties, the complainants knocked the doors of this Hon'ble Commission. As per clause 13(i) of the agreement dated 11.7.2012 the complainants are entitled for refund after 24 months from the date of agreement @ Rs.9,000.00 per sq. yd. which comes to Rs.24,75,000.00. As such as on 11.7.2014 the complainants were entitled for refund of sum of Rs.24,75,000.00 and thereafter, the complainants are entitled for interest @ 18% upon the amount of Rs.24,75,000.00 which comes to Rs.4,45,500.00 per years and upto 11.7.2019 i.e. 5 years the total interest comes to Rs.22,27,500.00. Principal amount of Rs.24,75,000.00 + interest amount of Rs.22,27,500.00 = 47,02,500.00. As such total valuation of the case is Rs.49,52,500.00 which is above Rs.20,00,000.00 and below Rs.50,00,000.00. During the pendency of the complaint, in the first week of April, 2021, it was came to the knowledge of the complainants that the opposite parties offered their allottees to refund their amount @Rs.11,500.00 per sq. yds. for the booking of 2012 allottees and issued letters to their partners and allottees. Since the opposite parties allotted the land area of 275 sq. yds. as per agreement dated 11.7.2012 as such now the complainant is entitled for refund of Rs.31,62,500.00 with interest. Copy of one of the letter dated 16.5.2019 which was issued by the opposite parties to (Real Estate Dealers) RED Welfare Association is enclosed herewith. After the knowledge of the above information complainant also demanded/claimed their refund @ Rs.11,500.00 per sq. yd. from the opposite parties as per their letter dated 16.5.2019. Copy of the letter dated 6.4.2021 along with cancellation & Refund request as per the format provided by the office of the respondents with its postal receipt are enclosed herewith. As such, now the complainant is claiming parity from the respondents and as per own subsequent commitments to their allottees and after acceptance of the refund @ Rs.11,500.00 per sq. yds. it supersedes the terms and conditions of the agreement dated 11.7.2012 and accordingly now the respondents are

liable to pay sum of Rs.11,500.00 X 275 sq. yds.= Rs.31,62,500.00 + interest to the complainant.

The opposite parties no.1 & 2 have filed their written statement and stated that they deny every allegation and contention made by the complainant. The complaint is not maintainable because there is only an agreement entered between the parties which contains arbitration clause and in case of any dispute the same has to be referred to arbitration only under clause 19 of the agreement dated 11.7.2012. The complainant is not a consumer.

The complainants entered into agreement dated 11.7.2012 with opposite parties solely for the purposes of earning profit and gains out of the commercial activity. The intent and purpose of entering into an agreement dated 11.7.2012 can easily be gathered from the recitals made in and terms and conditions of the agreement itself which provided that:-

Recitals:-

The Government of Uttar Pradesh has in May 2005 initiated a proposal to allow developers in development of land under the Integrated Township Policy of the State. Under this policy, developers have been permitted by Lucknow Development Authority to aggregate land for the purpose of development of residential townships.

The First Party, which is registered "A-Class Developer" as per Integrated Township Policy is contemplating development of an Integrated Township in accordance with the said Integrated Township Policy (hereinafter referred to as the 'Said Colony') after purchase of raw undeveloped land in its own name;

The Second Party has approached the First Party and has expressed its desired to invest funds for the purchase of such raw undeveloped land, which is being purchased by the First Party for development of the Said Colony to be developed by the First Party after obtaining all permissions and approvals from the concerned regulatory and statutory authorities.

The Second Party has also requested the First Party that in lieu of the aforesaid contribution by the Second Party for the purchase of raw land as aforesaid, developed plot of land in the proposed colony shall be reserved for allotment to the Second Party after the licenses/LOI/requisite permissions for the Said Colony are granted by the concerned authorities.

The First Party has accepted the request of the Second Party and has agreed to accept the contribution of funds by the Second Party for the aforesaid purpose.

In the light of the above representations, the Parties have agreed to enter into this arrangement subject to the terms and conditions contained hereafter.

Clause 1.

The second party has agreed to provide funds to the first party for the purpose/acquisition of undeveloped/raw land for the purpose of development of the said colony. The first party shall be entitled to purchase land for the said colony.

Clause 5.

The first party, in lieu of the aforesaid contribution of the second party towards purchase of the said land has agreed to allot a plot having an approximate area of 275 sq. yds. in favour of the second party in the said colony developed by the first party (hereinafter referred to as plot/s). The plots shall be allotted after grant of license/LOI/other requisite permissions for the said colony are granted by the concerned authorities and determination of the category of sizes, preferential location and the plotted component of the said colony by the second party.

The aforesaid provisions in agreement dated 11.7.2012 categorically states that it is basically an agreement between the parties for investment of assembly of land to enable opposite parties to launch a Integrated Township in future as per the then applicable relevant provisions of bye laws and policies, governing launch and development of an Integrated Township/colony. There is no transaction between the parties which contemplates sale of goods, hiring or availing of any services, therefore, instant complaint is liable to be dismissed in limine. It is further submitted that the agreement dated 11.7.2012 do not provide for instant launch of any real estate project and also do not provide for booking any plot or flat in the project. And the said agreement only provide for investment of funds and allotment of plot, once the colony or integrated township is formally launched by opposite parties. Therefore, there exist no project and plot to be allotted to complainants.

It has been categorically mentioned in the agreement dated 11.7.2012 that the opposite parties are only contemplating development of integrated township, it is nowhere mentioned or agreed that the opposite parties are launching or is about to launch any real estate project or complainants have allotted any plot. Launch of project is agreed to be a future probability dependent of the assembly of required land, approvals, sanctions to launch an integrated township.

The clause 15 of the agreement dated 11.7.2012, do not treat the transaction as agreed as even a pre-launch of the project, as such launch or existence of project cannot be assumed. As per clause 3 of the agreement dated 11.7.2012, all terms and conditions of the agreement are fully dependent on the future fact that opposite parties obtains a license, approvals and sanctions for colony (integrated township). The launch of the project can only be assumed, when these regulatory prerequisites are complied with. Presently parties to the agreement has not assembled required quantum of land to get said approvals and launch a project. On this count as well complainants cannot be said to a consumer as per law. It is noteworthy to mention here in pursuant the agreement dated 11.7.2012, opposite parties have already obtained a license dated 9.7.2013, duly validated on 18.9.2015 from Lucknow Development Authority for development of integrated township on 372 acres of land and is in process to obtain other legal approvals, sanctions to launch the project/integrated township. Opposite parties is just short of acquiring 50% land of proposed project/integrated township and as soon as it acquitted the required land it shall get DPR approval, execute development agreement with Lucknow Development Authority under the integrated township policy, 2014 and get the layout plans sanctioned and only thereafter launch the project and plot as claimed by complainants shall be allotted to them and only thereafter they can assumed to be a consumer under the Act. As per clause 9 of integrated township policy, 2014 (latest policy on the subject) for approval of DPR and start of development of the project, 50% area of licensed land is required. The said policy of 2014 also provides for extension of time for assembly of land.

Without prejudice to above, it is submitted that the present complaint is time barred under section 24(A)(1) of the Consumer Protection Act. The complainant is claiming refund under clause 13(1) of the agreement dated 11.7.2012. The clause contemplates that, "in the event of the first party fails to allot the plot in the said project as contemplated above within a period of 24 months or such extended period as may be mutually agreed upon; or is unable to allot the plot in terms of this agreement for any reason whatsoever, then the second party shall be entitled to the refund of an amount of Rs.9,000.00 per sq. yd. agreed to be allotted to the second party, which the parties agree shall be the approximate value of the said land to the allotted to the second party. Further, the second party hereby agrees that upon receipt of such refund, it shall have no further claims against the first party in any manner and under any circumstances whatsoever". Therefore if any cause of action or dispute assumed to have arisen for the relief of refund as per clause 13(1) of the agreement dated 11.7.2012, it should have arisen after lapse of 24 months from the date of the agreement i.e. on 10.07.2014, when right to claim refund has accrued in favour of the complainants and complaint ought to have file complaint for refund within two years from 10.7.2014 i.e. till 10.7.2016 but complainant has filed instant complaint on 13.8.2019 after lapse of more than 3 years that too without any delay condonation application explaining and establishing delay in filing the complaint. Noteworthy to

pint out here that complainant has not come up with the case for allotment of the plot and is exclusively claiming refund with interest which is a dispute which can be resolved only in the terms of agreement particularly clause 19 the arbitration clause. Hence, the complaint filed by the complainant is time barred and deserves to be dismissed on this ground alone.

In regard to limitation the law is well settled by the Hon'ble Supreme Court in the case of Haryana Urban Development Authority vs. B.K. Sood 2006(1) CPR 121 (SC) "Section 24A of the Consumer Protection Act expressly cast a duty on Consumer Fora to dismiss complaint if filed after two years of cause of action for the complaint and there is no application for condonation of delay, unless complainant satisfied for that by sufficient cause he was prevented from filing complaint in time. In the case of K.g. Kumaran vs. Dr. Santram Shetty and others 2003(2) CPR 81 (NC) the Hon'ble National Commission held that if the complaint was filed after two years of cause of action, every days delay is to be explained.

M/s Shipra Estate Limited, the opposite parties is a company duly incorporated under the provisions of the Companies Act, 1956 having its registered office at Flat no.502, 502A, 5th Floor 23, Barakhamba Road, NarainManzil, New Delhi. The opposite parties herein is one of he leading real estate developer in National Capital Region and is engaged in the business of construction of residential and commercial spaces and as such they are doing the same to the satisfaction of the its consumers/customers since several years. It has completed many projects over a period of time. Opposite parties have set new trends of architectural finesse in the contemporary global scenario touching the horizons of excellence. The opposite parties have no floated any project/ flats and the agreement between the opposite parties and the complainant is for assembly of land for purpose of launching upcoming integrated township at village Mastemau and Bakkas in Lucknow.

The agreement between the parties is for assembly of the raw land for prospective launch of colony i.e. integrated township and opposite parties herein have made substantive development for integrated township, it has already got the license, submitted DPR and about to launch to the project once the project is launched, opposite parties will certainly allot the plot to the complainant in very near future. It is submitted that clause 13 of the agreement is in shape of compensation/interest on invested amount in lieu of failure to allot the plot within stipulated time. It enunciates almost three times interest against the invested amount within two years, complainant cannot claim any interest upon the amount invested as the clause 13 of

the agreement which may amount to interest on interest. Further, clause 13 of the agreement whereupon complainant is relying for interest itself provides that, "further, the second party hereby agrees that upon receipt of such refund, it shall have no further claims against the first party in any manner and under any circumstances whatsoever". Further, the contents of the aforesaid paras, more specifically, those stated in the preliminary objections are reiterated and the contents thereof may kindly be read as the part of para under reply.

It is submitted that complainants have never made any request for ownership documents, however all the documents regarding right, title interest of opposite parties to develop integrated township/colony viz. license etc. has already been produced with this reply. The other documents and statutory compliances viz. RERA, Fire, Water, Sanctioned map and compliance under UP Apartment (Promotion of Construction, Ownership and Maintenance Act), 2010 shall only come into effect once the land assembly upto 50% of the entire licensed area is complete and as per said policy 2014 DPR and Map is approved and opposite parties formally launch the project. These things are premature at this stage. Complainant has not entered into any service or sale agreement; rather they have advanced money for land assembly to get return in an upcoming future project. The claim of the complainant to refund the money only and no claim for allotment of plot, even in alternate establish the intention of the complainant that he is only and exclusively an investor.

Therefore, it is most humbly prayed that the present complaint be dismissed as same was filed without jurisdiction and there has been no deficiency of service on the part of the answering opposite parties. It is also prayed that complaint may be dismissed without awarding any of the reliefs sought therein and award heavy cost in favour of the answering opposite parties under the provisions of Section 26 of the Consumer Protection Act, 1986.

We have heard the learned counsel for the complainant Mr. Vikas Agarwal. None appeared for the opposite parties though as per order sheet dated 18.04.2022, the counsel of the opposite party Mr. Manvendra Pratap Singh appeared and sought one month time. The other counsels of the parties, Mr. Mukut Behari Tripathi and Mr. Amit Jaiswal were also present on the said date and they also demanded adjournment which was granted to them. We perused the pleadings, evidence and documents on record.

The first objection of the opposite parties is that, that the matter should be referred to the Arbitrator. According to the opposite parties, clause 19 of the agreement dated 11.07.2012 runs as follows :-

" In case of any dispute between the parties arising out of or in connection with this agreement, the same shall be resolved through Arbitration and Conciliation Act, 1996 by a mutually appointed arbitrator. In case of difference in choice of an arbitrator, then the party shall appoint one arbitrator and such appointed to arbitrator shall appoint third arbitrator who will be the Presiding Arbitrator That. The cost of the arbitration shall be borne equally by the parties. The venue of arbitration shall be Delhi and the Courts at Delhi/New Delhi shall have exclusive jurisdiction in the matter."

Now the question arises whether arbitration is necessary or whether the provisions of Consumer Protection Act are subject to Arbitration Act.

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 the 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.

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.

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.

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. MadhusudhanReddy((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.

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) Hon'ble 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 Hon'ble 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 Hon'ble 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.

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.

Thus it has become clear that the special act of Consumer Protection Act is not in derogation of any act but it is in addition of another act. So this court has jurisdiction to decide the consumer cases even if there is any clause of the matter to the arbitrator.

The Consumer Protection Act is a special statute to protect the interest of the consumers. 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.

This Consumer 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. The main objects of the consumer protection act are ;

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 . 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.

Listed below the responsibilities of the consumers 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 --

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). 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.

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.

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."

In the present case, the opposite parties have stated that complainant is not a consumer but is our investors. Now the agreement dated 11 July 2012 has also been filed by the opposite parties as well as by the complainant. It shows that both the parties admit this agreement which has been executed between the parties on the said date. Clause 5 of the agreement says that the first party, in lieu of the aforesaid contribution of the second party towards purchase of the said land, has agreed to allot a plot having an approximate area of two 275 yd² in favour of the second party in the said colony developed by the first party ("hereinafter referred as plot/s"). The plot shall be allotted after grant of license/LOI/other requisites permissions for the said colony if granted by the concerned authorities and determination of the category of sizes, preferential location and the plotted component of the said colony by the second party.

Clause 8 of the said agreement says that it is further agreed by and between the parties that the approximate area of 275 yd² agreed to be reserved and sold to the second party may comprise of more than one plot of land in the said colony. In the event the area of the plot (s) reserved is in excess of 275 yd², the second party shall pay for the excess area as may be prescribed by the first party at the relevant time, which shall not be more than the price at which the plots are sold by the first party in the open market.

Clause 9 of the agreement says that the second party shall be entitled to get the plot allotted in its own name or its nominees, in view of its contribution towards purchase of raw land for the said colony in the integrated township. The first party contemplates that it shall allot the plot to the second party within a period of 24

months from the date of this agreement or such extended period as may be mutually agreed upon by the parties. However if for any reason beyond the control of the first party, there is any delay, the first party shall be entitled to a grace period as may be mutually agreed upon by both the parties beyond the said period of 24 months.

If for the sake of argument it is presumed that complainant contributed towards the purchase of land for the said integrated township, there should be an agreement showing the profit in percent to be given to the complainant. There is no partnership deed in this case which can show that the amount given by the complainant was towards during the land for the integrated township. This agreement clearly shows that in view of the payment made by the complainant, he was allotted a plot of 275 yd², the possession of which was promised to deliver within 24 months or some grace period beyond this deputed time if mutually agreed by the parties. No such agreement had been filed by the parties. This agreement clearly shows that an amount of 850,000/- has been tendered to the opposite party by way of a cheque dated 30 June 2012. In view of this payment, the opposite parties promised to allot a plot of 275 yd² within 24 months from the date of the agreement that is after 24 months of 11 July 2012. It means that the plot should have been handed over by 11 July 2014. So the contention of the opposite party that the money was given to him for commercial transaction and it was a part of the money for procurement of the land does not stand good. If the complainant should have paid the money for the procurement of the land jointly with opposite parties there must be a partnership deed showing the responsibilities and liabilities of both the parties. But the copy of the agreement filed by both the parties clearly establishes the fact that in view of the money paid by the complainant, the opposite parties promised him to allot a plot of 275 yd² within 24 months from the date of the agreement. Now in this light we have to see the facts of the present case regarding delivery of possession of the plot to the complainant within stipulated time and if it has not been done so, what will be the liability of the opposite parties towards complainant. So in this case the cut-off date is 11 July 2014 and for the sake of convenience we fix the cut of date as 1 August 2014.

the Hon'ble Supreme Court in CIVIL APPEAL NO(S). 3533-3534 OF 2017 M/S. FORTUNE INFRASTRUCTURE (NOW KNOWN AS M/S. HICON INFRASTRUCTURE) & ANR. VS TREVOR D'LIMA & ORS. (Judgement March 12 , 2018) has held:

In the above-mentioned case Hon'ble Supreme Court also held regarding payment of compensation or quantum of compensation as follows:

"18. This Court in Ghaziabad Development Authority v. Balbir Singh, (2004) 5 SCC 65, has observed that there is no fixed formula for fixing damages in the following manner '8. However, the power 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. As seen above, what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore necessarily has to be based on finding of loss or injury and has to correlate with the amount of loss or injury. Thus, the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause. That compensation cannot be uniform and can best be illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore, the compensation in such cases would necessarily have to be higher. ... We clarify that the above are mere examples. They are not exhaustive. The above shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer." (emphasis supplied) In this case the opposite parties have not committed any layout plan or any letter showing that they did any work towards acquiring the said land for the construction of the project. The cause of action in this case is continuing cause of action because the plot has not been allotted to the complainant within stipulated time and the complainant has requested many times to the opposite parties to allot the plot. After a period of two years, everyday cause of action is arising. On one side the opposite party says that the complainant is not a consumer and he has deposited money for the procurement of the land and on the other side he says that the complaint is time barred. If the complainant is a party of the project as said by the opposite party, he may be consumer if any land has been allotted to him for consideration and it has also been promised by the opposite party to deliver the possession of the land within 24 months from the date of the

agreement. The present case witnesses the fact that the plot has not been allotted to the complainant till date. This is a clear case of deficiency of service and unfair trade practice.

Clause 13 (i) of the agreement says that in the event the first party fails to allot the plot in the said colony as contemplated above within a period of 24 months or such extended period as may be mutually agreed upon; or is unable to allot the plot in terms of this agreement for any reason whatsoever, then the second party shall be entitled to the refund of an amount of 9000 per square yard agreed to be allotted to the second party, which the parties agree shall be the approximate value of the said land to be allotted to the second party. Further, the second party hereby agrees that upon receipt of such refund, it shall have no further claims against the first party in any manner and under any circumstances whatsoever.

The complainant has filed a letter of the opposite parties dated 16 May 2019 in which the opposite parties have said that as discussed between us, we hereby communicate to you that refund requests received from November 2019 onwards will be refunded at 16,500 per square yard (for 2014 bookings) and 11,500 per square yard (for 2012 bookings). The complainant in response of this letter, has written a letter to the opposite party on 06.04.2021 putting his claim in view of the opposite party's letter dated 16 May 2019. The booking of the complainant in this case is of 2012 meaning thereby that opposite parties agreed to pay a refund of 11,500 per square yard.

As in this case it is clearly contemplated by the opposite parties that he shall pay an amount of 11,500 per square yard for the bookings of 2012 and the complainant's case comes in this purview so the complainant is liable to get this amount. Nothing has been said about the original amount deposited by the complainant or other allottees with the opposite parties. Nothing has been said about the interest to be paid by the opposite parties.

In *Pioneer Urban Land and Infrastructure Limited v. Govindan Raghavan*, (2019) 5 SCC 725, there was a delay of almost two years in obtaining an occupancy certificate after the date stipulated in the ABA. As a consequence, there was a failure to provide possession of the flat to the purchaser within a reasonable period. This Court dwelt on the terms of the ABA under which the builder was entitled to charge interest at 18 per cent per annum for the delay in payment of instalments by the purchaser. On the other hand, the failure to provide possession on the part of the developer was subject to a grace period of twelve months followed by a termination notice of ninety days and a further period of ninety days to the developer to effect a refund. Adverting to these clauses, the court noted:

"6.4. A perusal of the apartment buyer's agreement dated 8-5- 2012 reveals stark incongruities between the remedies available to both the parties. For instance, Clause

6.4(ii) of the agreement entitles the appellant builder to charge interest @18% p.a. on account of any delay in payment of instalments from the respondent flat purchaser. Clause 6.4(iii) of the agreement entitles the appellant builder to cancel the allotment and terminate the agreement, if any instalment remains in arrears for more than 30 days. On the other hand, as per Clause 11.5 of the agreement, if the appellant builder fails to deliver possession of the apartment within the stipulated period, the respondent flat purchaser has to wait for a period of 12 months after the end of the grace period, before serving a termination notice of 90 days on the appellant builder, and even thereafter, the appellant builder gets 90 days to refund only the actual instalment paid by the respondent flat purchaser, after adjusting the taxes paid, interest and penalty on delayed payments. In case of any delay thereafter, the appellant builder is liable to pay interest @9% p.a. only. Another instance is Clause 23.4 of the agreement which entitles the appellant builder to serve a termination notice upon the respondent flat purchaser for breach of any contractual obligation. If the respondent flat purchaser fails to rectify the default within 30 days of the termination notice, then the agreement automatically stands cancelled, and the appellant builder has the right to forfeit the entire amount of earnest money towards liquidated damages. On the other hand, as per Clause 11.5(v) of the agreement, if the respondent flat purchaser fails to exercise his right of termination within the time limit provided in Clause 11.5, then he shall not be entitled to terminate the agreement thereafter, and shall be bound by the provisions of the agreement."

Hon'ble Justice Indu Malhotra speaking for the Court noted:

"6.8. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5-2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(1)(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder." The Court observed that in these circumstances, the flat purchasers could not be compelled to obtain possession which was offered almost two years after the grace period under the agreement had expired. Hence, the NCDRC was held to have correctly awarded interest at the rate of 10 percent per annum.

The decision of this Court in Dhanda Case, 2019 SCC On Line SC 689 has been relied upon by learned Senior Counsel appearing on behalf of the developer as elucidating the principle that where a flat buyers agreement stipulates a consequence for delayed possession, exceptional and strong reasons must be established before the forum constituted under the Act of 1986 awards compensation in addition to what has been contractually agreed. In Dhanda's case, the SCDRC issued a direction for handing

over physical possession of the residential unit to the complainant and for execution of a sale deed. In addition, compensation was awarded by way of interest at the rate of 12 per cent per annum with effect from twelve months after the stipulated date under the agreement. In an appeal by the developer, the NCDRC directed that the rate of interest for a house building loan for the corresponding period in a scheduled nationalised bank would be appropriate and if a floating rate of interest was prescribed, the higher rate of interest should be taken for the computation. A sum of Rs.1 lac per annum from the date for handing over possession to the actual date of possession was regarded as appropriate in the facts of the case. In that case under the terms of the buyer's agreements, possession was to be delivered within twenty-four months of the execution of the agreement i.e. 10 February 2013 - failing which the developer was liable to pay compensation at the rate of Rs.10 per square foot per month for the delay. The developer contended that construction activities were delayed as a result of an injunction granted by this Court over a period of eight months and consequently sought an extension of the period for handing over possession by one year. Alternatively, the developer offered to refund the money deposited with interest at 9 per cent per annum. Construction of 258 independent floors was completed while about 1,500 units were nearing completion. In two sets of Civil Appeals which came up before this Court earlier, agreed terms were arrived at providing for the award of interest at 9 per cent per annum from the date of deposit till refund. While considering the order of the NCDRC, this Court observed:

"16. The District Forum under the Consumer Protection Act, 1986 is empowered inter-alia to order the opposite party to pay such amount as may be awarded as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party including to grant punitive damages. But the forums under the Act cannot award interest and/or compensation by applying rule of thumb. The order to grant interest at the maximum of rate of interest charged by nationalised bank for advancing home loan is arbitrary and no nexus with the default committed. The appellant has agreed to deliver constructed flats. For delay in handing over possession, the consumer is entitled to the consequences agreed at the time of executing buyer's agreement. There cannot be multiple heads to grant of damages and interest when the parties have agreed for payment of damages at the rate of Rs. 10/- per sq. ft. per month. Once the parties agreed for a particular consequence of delay in handing over of possession then, there has to be exceptional and strong reasons for the SCDRC/NCDRC to award compensation at more than the agreed rate."

Now the interest may be 6% to 10% in favour of the allottees if they have not been given possession of the flat/plot within promised or within a reasonable time. The complainant has deposited the

entire agreed cost of the flat before June 2009. Now it is the duty and obligation of the opposite party to deliver the possession within stipulated time but they failed to do so.

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 the recovery 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."

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 it is clear in the present case that the opposite party has voluntarily offered to refund at the rate of 11,500 per square yards for the bookings of 2012 under which category the case of the complainant falls. As far as interest is concerned, in the light of Hon'ble Supreme Court's judgement (supra) the rate of interest shall be 10% per annum. The Hon'ble Supreme Court has awarded costs and the rate of 150,000 (supra) and hear the complainant has demanded 1 lakh as damages which is genuine. The complainant demanded a cost of the 50,000 towards cost of the case which is also genuine. Now the question is regarding mental harassment, torture, agony for which it is to be decided as what cost can be awarded to the complainant. In the relief clause vi of the complainant, the complainant has prayed that any other order which this Hon'ble State Commission may deem fit and proper in the circumstances of the case may also be passed. In a number of cases decided by this Hon'ble state Consumer Commission, lump sum amount of 20 to 30 lakhs has been awarded. In this perspective we considered the facts and circumstances of the present case in which the opposite parties promised to deliver the possession of the plot to the complainant within a period of 24 months from the date of agreement. 10 years have already passed and there is no sign of giving possession of the plot to the complainant, so in this case proper compensation towards mental harassment, agony and torture will be 30 lakhs. So as discussed above, we are of the opinion that the complainant is entitled for the following reliefs:-

The opposite parties are directed to pay the complainant, a sum of 11,500 yd² from 01.07.2014 till the date of actual payment , within 60 days from the date of judgement of this complaint case with interest at a rate of 10% per annum. If the amount is not paid within 60 days from the date of judgement, the rate of interest will be 15% per annum.

The opposite parties are directed to refund 850,000/-deposited by the complainant vide cheque no 275968 / 30.06.2012 with interest at a rate of 10% per annum from 01.07.2014 till the date of actual payment , within 60 days from the date of judgement of this complaint case. If the amount is not paid within 60 days from the date of judgement, the rate of interest will be 15% per annum.

The opposite party is directed to pay 100,000/ as cost without any interest.

The opposite parties are directed to pay 30 lakhs to the complainant towards all the harassment and mental agony, depression, cost of the suit within 60 days from the date of judgement of this complaint case without any interest but If the amount is not paid within 60 days from the date of judgement, the rate of interest will be 15% per annum.

No amount shall be adjusted by the opposite party to these amounts whatsoever it may be.

The present complaint is decided accordingly.

ORDER The opposite parties are directed to pay complainant, a sum of 11,500 yd² for 275 square yards from 01.08.2014 till the date of actual payment , within 60 days from the date of judgement of this complaint case with interest at a rate of 10% per annum. If the amount is not paid within 60 days from the date of judgement, the rate of interest will be 15% per annum.

The opposite parties are directed to refund 850,000/-deposited by the complainant vide cheque no. 275968 / 30.06.2012 with interest at a rate of 10% per annum from 01.08.2014 till the date of actual payment , within 60 days from the date of

judgement of this complaint case. If the amount is not paid within 60 days from the date of judgement, the rate of interest will be 15% per annum.

The opposite party is directed to pay 100,000/ as cost without any interest.

The opposite parties are directed to pay 30 lakhs to the complainant towards all the harassment and mental agony, depression, cost of the suit within 60 days from the date of judgement of this complaint case without any interest but If the amount is not paid within 60 days from the date of judgement, the rate of interest will be 15% per annum.

No amount shall be adjusted by the opposite party to these amounts whatsoever it may be.

All the decretal amount shall be paid within 60 days from the date of judgment of this complaint case, otherwise the opposite parties shall pay interest at a rate of 15% per annum on all the decretal amount. If it is not paid within 60 days from the date of judgment of this appeal, the complainant shall be entitled to present Execution proceedings before 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.

(Vikas Saxena)

(Rajendra Singh)

Member

Presiding Member

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

Consign to the Record Room.

(Vikas Saxena)

(Rajendra Singh)

Member

Presiding Member

Dated July 18, 2022

Jafri, PA II

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[HON'BLE MR. Rajendra Singh] PRESIDING MEMBER
[HON'BLE MR. Vikas Saxena] JUDICIAL MEMBER