

Sadanand Chaudhary vs Amrapali Castel , Amrapali Group on 22 March, 2023

Cause Title/Judgement-Entry

STATE CONSUMER DISPUTES REDRESSAL

Reserved

State Consumer Disputes Redressal Commission

U.P. Lucknow.

Complaint No. 337 of 2016

1- Sadanand Choudhary, aged about 40 years,

S/o Babue Lal Chaudhary, R/o (presently

Residing)-1608, Solook Dr. Parlin, New Jersey-

08856, United States of America.

Permanent Address, JAC 06.10, Shipra Sun

City, Indirapuram, Ghaziabad, UP 201014

2- Mrs. Sulekha Choudhary, aged about 37 years,

W/o Sadanand Chaudhary, R/o (presently

Residing)-1608, Solook Dr. Parlin, New Jersey-

08856, United States of America.

Permanent Address, JAC 06.10, Shipra Sun

City, Indirapuram, Ghaziabad, UP 201014

3- Through their Authorized Agent/Representative

Sachidanand Choudhary (Brother) aged about 32 years,

S/o Babue Lal Choudhary, R/o F-2/835,

Sector-5, Vaishali, Ghaziabad-201010

...Complainants.

Versus

1- Amrapali Castle, Amrapali Group, M/s Ultra

Home Construction Pvt. Ltd., Regd. Off. 307,

3rd Floor, Nipun Towers, Karkardooma

2- Amrapali Castle, Amrapali Group, M/s Ultra

Home Construction Pvt. Ltd., Corporate Office,

at C-56/40, Sec-62, Noida U.P.

....Opposite Parties.

Present:-

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

2- Hon'ble Sri Sushil Kumar, Member.

Sri Kumar Sambhav, Advocate for complainants.

None for Opposite Parties.

Date 26.04.2023

JUDGMENT

Per Mr. Rajendra Singh, Member: This complaint has been filed under section 17 of the Consumer Protection Act 1986.

The brief facts of the complaint case are that, that the complainants were looking for a flat for their personal use as residence. They came to know about the project of above mentioned opposite party in Greater Noida namely "Amrapali Castle" and believing in high claims made by the

opposite party about their project, the complainant decided to purchase a flat for their residence. On 14.06.2010 they booked a flat by paying booking amount of Rs.1 85,000/- bearing receipt number 3058 and got the allotment letter.

After getting satisfied from the claims of opposite party, the complainant entered into agreement on 01.07.2010 with opposite party for "Amrapali Castle" Tower/Block - A, unit no A-1304, floor 13th, type II BHK (1075), Super Area-1075 square ft on basic sale price of Rs.1,854,375/- with amount of Rs.295,625/- as other charges including one covered car parking, lease rent (one-time) EEC , FFC , power backup (two KVA) club membership charges. Total other charges were Rs.317,125/-, and total cost of the flat/unit was Rs.2,171,500/- and the project was situated at GH-04A, sector CHI-V, Greater Noida. As per the agreement (para-19-a) the opposite party has to complete the development/ construction of the complainant for flat by 31 July 2012 and within an extended period of 03 months thereof. But till date opposite party is not in a position to handover the possession.

Till 23.07.2016 an amount of Rs.1,709,063/- has been paid which is shown in the demand letter dated 23.07.2016 of the opposite party. After receiving the demand letter which shows outstanding payment of Rs.544,827/- which includes the amount of Rs.185,438/- at the time of finishing work and an amount of Rs.317,121/- at the time of possession. An email was received by the opposite party on 29.07.2016 through some Sonia Gupta in which an amount of Rs.200,000/- asked for finishing of flat and the same was deposited in the account of opposite party without any delay on 30.07.2016.

Till 30.06.2014, there was already delay of 23 months in completing the house and the total penalty was due on the opposite party was Rs.247,250/- which is more than the amount of Rs.185,438/- which was due at the start of finishing of the house. Total amount of Rs.1,709,063/- plus Rs.2 lakh total Rs.1,909,063/- has been paid by the complainants and the rest amount of Rs.262,437/- is only due to be paid at the time of possession. The complainant has paid all the payments as per the payment schedule provided by the opposite parties and complainant has paid more than eighth schedule of finishing work and the complainants are ready to pay all the outstanding dues as per the payment schedule on possession. But the opposite party is asking for full and final payment before they finish the apartment and asking for an additional 60 days to finish the flat, which is beyond the payment schedule as well as beyond the terms and conditions of the agreement between the parties.

It has been specifically mentioned by the opposite party in para-19 (c) of the agreement that, "in case of delay in construction of the flat for reasons other than force majeure conditions, the developer shall pay a sum of Rs.10/- per square ft. of super area per month for the delayed period, which shall include of any/all damages, compensation, claims for delayed possession". As per agreement super area of the flat is 1075 square ft therefore the amount will come Rs.10,050/- per month and from July 31, 2012 till date, 50 months have passed so the amount of damages comes Rs.5,37,500/- ($10,750 \times 50 = 5,37,500$). The complainant and opposite party has exchanged many emails but opposite party is silent on paying the delay charges which is payable by them to the complainants and asking for undue full and final payment before the possession which is violation of terms and condition of agreement in which it has been specifically mentioned that other charges

amounting Rs.317,121/- is only due once the house is finished and ready for possession.

As per the agreement/calculation of the outstanding delay payment which has to be paid by the opposite parties to the complainant comes to Rs.537,500/- and the amount which has repaid by the complainants to opposite party is Rs.262,437/- which clearly shows that an amount of Rs.275,063/- is due on the opposite parties as per their agreement which has to be paid to the complainants. Asking for full and final payment before possession is illegal because as per calculation no outstanding dues rest on the complainant and instead of complainant's dues comes on opposite parties. There is apprehension that after paying the full and final payment, the complainant will not get the complete finished flat as per the agreement as well as the opposite parties will not pay the delay charges due on them. The agreement made by the opposite parties is also not on similar footing for both the parties as per the agreement if delay is made by the complainant in payment, complainants had to pay 25% interest on amount to opposite party and if delay is on the part of the opposite party, they will pay Rs.10/- per square feet per month which is equal to approximately 6% to per annum interest. It shows that the agreement is made only in the interest of opposite party which is gross restrictive trade practice as well as unfair trade practice and deficiency in service.

After payment of 90% of the consideration amount, opposite parties cancelled the allotment so that they don't have to pay their delay charges amounting to Rs.537,500/- and can sell it at higher price through unfair means. The opposite parties are enjoying the complainant's hard earned money and making his profit of his total amount paid Rs.1,909,063/-. Therefore it is most humbly prayed that this Hon'ble commission may be pleased to pass order directing the opposite party to hand over the physical possession of flat by registered sale deed along with delay payment as due from 31.07.2012 until delivery of physical possession of the flat in question with interest at a rate of 18% per annum. It is further prayed that a sum of Rs.5 Lacs may also be awarded to the complainant on account of gross unfair trade practices and deficiency in services, mental agony, physical harassment. A sum of Rs.550,00/- may also be awarded to the complainant towards cost of the case. Any relief which may deem fit and appropriate under the facts and circumstances of the case may also be awarded to the complainant.

The opposite parties have filed their written statement stating that the complainants approached the opposite party for purchase of a flat in the project "Amrapali Castle" and after satisfying themselves in all respect applied for booking of a flat and accordingly the complainants on 14.06.2010 booked a two BHK flat bearing number A-1304 on floor 13th for a total sale consideration of Rs.2,171,500/-. The complainants assigned and executed the flat buyer agreement with the opposite party on 01.07.2010 specifically agreeing for the payment schedule, specifications, date of possession, force majeure conditions, penalty in case of delay in construction of the flat et cetera in respect of the booked flat. In the terms of clause 19 (a) of FBA (Flat Buyer Agreement), the opposite party is required to complete the development of the construction of the flat by 31 July 2012 with an extended period of three months thereof, however such completion date is subject to force majeure conditions and/or subject to any other reasons beyond the control of the opposite party. The clause 19 (a) is reproduced below:

Clause 19 (a)-"that the developer shall complete the development/construction of the flat by 31 July 2012 and within an extended period of three months thereof. The completion date was subject to force majeure conditions. No claim by way of damages/compensation shall lie against the developer in case of delay in handing over the possession on account of force majeure and the developer shall be entitled to a reasonable extension of time for the delivery of possession of the flat to the allottee.

Clause 19 (c) of the FBA "In case of delay in construction of the said flat for reasons other than force majeure conditions, the developer shall pay a sum at the rate of Rs.10 per square ft of super area per month for delayed period, which shall include of any/all damages, compensation, claims for delayed possession"

The present complaint is frivolous, vague, vexatious, incorrect and baseless and the complainants have failed to disclose any tenable cause of action. This complaint is not maintainable as it has filed with ulterior motive and malafide intention to make a wrongful gain themselves and wrongful loss to the opposite party. The complainants have claimed compensation in terms of clause 19 (a) of the FBA, however such payment of compensation subject to force majeure conditions and the delay in completion of the project cannot and shall not be attributed on the opposite party. The labourers and staffs employed by the opposite party in the construction of the said project went on strike many times during the last five years and the project remained affected on account of such frequent strikes by the labourers and staffs.

The construction work of the said project remained halted completely every year during the rainy seasons due to heavy rains which is also resulted into delay in the completion of the project. The delay has further occasioned in the completion of the construction of the said flat due to the agitations of farmers of different villages in Gautam Budh Nagar. The farmers have persistently obstructed and disturbed construction of different projects in Gautam Budh Nagar District. A large number of writ petitions were also filed by the farmers/tenure holders before the Hon'ble High Court of Allahabad challenging acquisition of their lands of different villages By State Government. The land allotted to the opposite party by GNIDA was part of the village Chuharpur Khadar and the said village was emotional villages whose acquisition was challenged by the farmers/tenure holders in different writ petitions. Most of the farmers/tenure holders filed their writ petitions in 2011 much after the allotment of land to the opposite party. The opposite party is entitled for extension of period in completion of construction of from April 2011 to 21.10.2011.

The Hon'ble High Court, Allahabad had decided the batch of writ petitions vide its final order and judgment dated 21.10.2011 directing the payment of enhanced compensation and more developed land for the acquired land of the farmers/tenure holders. So the project was severally affected during the pendency of these writ

petitions. The Hon'ble Allahabad High Court vide its order dated 21.10.2011 also directed "Greater NOIDA and its allottees not to carry on development and not to implement the master plan to 2021 till the Observations and Directions of the National Capital Regional Planning Board are incorporated in Marshall Plan 2021 to the satisfaction of the National Capital Regional Planning Board".

In compliance to the direction of the Hon'ble Allahabad High Court, no development/construction work took place on the said project from 21.10.2011. In compliance of the order of the Hon'ble Allahabad High Court, the GNIDA vide its letter dated 28.5.2012 also informed that no construction work on the said project could be done till the approval of Greater Noida Master Plan-2021 by National Capital Regional Planning Board. The GNIDA vide its letter dated 21.9.2012 informed the opposite party that the construction work on the said project could be resumed in terms of letter dated 27.8.2012. The opposite party had resumed the construction work on the said project only after 21.9.2012. The construction work remained stopped for 11 months from 21.10.2011 till 21.9.2012 due to aforesaid reasons which are force majeure circumstances and cannot and shall not be attributed on the opposite party. The opposite party is entitled for extension of period in completion of construction of flat from 21.10.2011 till 21.9.2012.

The farmers/tenure holders pursuant to order dated 21.10.2011 protested against GNIDA for giving of enhanced compensation and not allotting the additional developed land as per the judgment dated 21.10.2011 and construction work at the project site was again halted by the farmers/tenure holders for months. These circumstances were beyond the control of the opposite party and the project was delayed. The delay occasioned is covered under force majeure circumstances as agreed by the complainants under clause 19(c) of FBA and the opposite party is not liable to pay the delayed compensation on account of such delay.

The construction of project was also slowed down due to restriction of extraction of ground water for construction purposes, which restriction was imposed by the Hon'ble National Green Tribunal, New Delhi (hereinafter referred to as "NGT") in an application bearing OA no.59 of 2012 titled Vikrant Kumar Tongad vs. Union of India & ors. wherein the Tribunal has directed to all developers in Noida and Greater Noida not to extract any ground water for the construction purposes vide its order dated 11.1.2013. due to such order, the Developers in Noida and Greater Noida were even barred from removing ground water which was seeped into the basement area due to excavation for laying foundation of buildings. The development/construction work in the said project was also affected by such order.

The Noida authority also filed Civil Appeal (D) no.17991 of 2013 filed before the Hon'ble Supreme Court challenging the order dated 8.1.2013 passed by the NGT. The Hon'ble Supreme Court in its order dated 14.6.2013 modified the order dated 8.1.2013 passed by the NGT and allowed the affected developers to remove the water which has seeped into the basement or enclosing the foundation of the building under construction and after such order the construction could be resumed. The Hon'ble Supreme Court disposed off the civil appeal no.4798 of 2013 (civil appeal (D) no.17991 of 2013) on 18.10.2013 and confirmed its order dated 14.6.2013.

The construction/development of the project has already been completed and the opposite party has issued possession intimation letter to the complainant and requested to make the balance sale consideration payable by the complainants at the time of possession intimation and accordingly to obtain NOC so that the finishing work can be completed. The complainants have not paid the balance sale consideration till date and failed to comply the terms of the FBA. The opposite party has also sent a reminder on possession intimation letter dated 6.8.2015 requesting the complainants to collect the NOC after due formalities so that the finishing work is initiated and unit is made ready for their occupation in reasonable time.

The complainants despite of the several requests made by the opposite party showed their lethargic attitude for compliance of the formalities. The opposite party seeing the continuous failure of the complainants towards completing the dues and other formalities also sent a cancellation letter dated 31.8.2015 due to non-payment of the dues to the complainants. The opposite party vide this letter again requested the complainants to make good the due payment within 10 days of which is hampering the construction work and resulting in delayed completion of the project.

The complainant has not paid the installment against the cost of the allotted flat as per the agreed schedule and an interest of Rs.3,28,749.00 is accumulated on account of such delay which has not been paid by the complainants till date. The opposite party is not liable for any deficiency of services on account of delay in handling over of possession of the flat caused due to force majeure circumstances as mentioned above rather it is the complainants who have delayed the payment of due installments against consideration of the said flat. The complainants have failed to comply the terms and conditions under the FBA and are not entitled for any relief much less claimed under the captioned complaint. Therefore, the complaint of complainants does not hold any merit and liable to be dismissed on this ground alone.

It is submitted that the complainants are NRI are presently residing at New Jersey, United States of America. In reply to the contents that believing in high claims made by the opposite party about their project it is submitted that the opposite party is well known for its commitment towards its valuable customers for the timely delivery of quality products and for providing the highest level of satisfaction to its customers. The rest of the contents of the para under reply are matter of record.

It is submitted that complainants have delayed the payment as per agreed payment schedule and an interest of Rs.3,28,749.00 has accumulated on account of such delay which has not been paid by the complainants till date for which they are liable to pay before handing over of the possession of the said flat. It is further submitted that an amount of Rs.3,09,260.00 excluding applicable taxes against the balance sale consideration of the said flat is still pending payment by the complainants to the opposite party.

It is submitted that the paid amount of Rs.19,09,063.00 includes the applicable tax component. It is further submitted that an amount of Rs.3,09,260.00 excluding applicable taxes against the balance sale consideration of the said flat is still pending payment by the complainants to the opposite party.

It is submitted that the opposite party has issued the possession intimation letter and demand letter to make he payment against balance sale consideration so that the process for possession can be initiated. The said flat of the complainants is also ready for possession and only some internal work such as painting, texture work, kitchen work etc. has been left which shall only be completed in consultation with the complainants when the complainants shall make the balance payment as per agreement.

It is submitted that the complainants are not taking possession of the said flat with malafide intention to delay the payment due at the time of possession intimation. It is submitted that the opposite party has been developing the project in time bound manner and if any delay in construction has been caused, the same has been caused due to the force majeure conditions beyond the control of the opposite party as explained in the preceding paras of this reply. The rest of the contents are legal averments and hence, needs no reply.

It is submitted that whatever delay has been caused in handing the possession of the said flat to the complainants, the same has been caused due to force majeure conditions and/or the reasons beyond the control of the opposite party as explained in the preceding paras of this reply and the same are not repeated herein for the sake of brevity. It is further submitted that the complainants have deliberately not taking possession of the said flat after making payment of the balance amount to the opposite party and cannot and shall not claim deficiency in service and gross unfair trade practice, restrictive trade practice for their own default. It is submitted that in the garb of the captioned complaint, the complainants are delaying the balance payment and delaying the process of handing over the said flat for which the complainants are themselves responsible.

We have heard the learned counsel for the complainants Sri Kumar Sambhav. None appeared for the opposite parties. Sri Rajesh Chaddha. We have perused the pleadings, documents and evidence on the record.

In this case the complainant has booked a flat in the opposite parties project to on 14.06.2010. The parties entered into an agreement dated 01.07.2010. As per the para 19a of the agreement the opposite party has to complete the development/construction of the flat by 31 July 2012 and within an extended period of three months thereof. In the same agreement it has been specifically mentioned in clause 19 (c) that in case of delay in the construction of the flat for reasons other than force majeure conditions, the development pay a sum of Rs.10 per square ft of super area and the super area of the flat is 1025 square ft, so by calculating the delay in terms of money, it comes Rs.10,050/- per month from July 31, 2012. Till the date of filing of the complaint case, 50 month have been passed so the amount of damages Rs.537,500/- but the opposite parties remained silent on this issue and did not answer about the delay payment.

Before going further we have to see the main objects of the Consumer Protection Act 1986. This act has been promulgated for the benefit of the consumers.

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. So it is clear that this act to is in favour of the consumers and it has overriding effect on the arbitration act because this act is not in derogation of any act but in addition of another act.

Thus it is clear that this act is not in derogation of any act but it is in addition to any other active and it will prevail over the Arbitration Act.

Now in this case as promised by the opposite party that the delivery opposition shall be handed over to the complainant shall on our before 31.10.2012. So we have taken the cut of date as 01.11.2012 for the purpose of calculation regarding the reliefs claimed by the complainant. The opposite party has stated that due to farmer's unrest, Hon'ble High Court to stay order, provision of extraction of groundwater by NGT et cetera et cetera, delayed the project and therefore the benefit should be given to the opposite parties. As far as groundwater extraction is concerned it should have been done by taking the prior permission of the concerned department and nobody can extract under groundwater at its own. The opposite parties had full knowledge regarding the acquisition of the land and the new that there might be farmer's agitation and in spite of it the booked plots and flats. As stated by the opposite parties, they paid enhanced compensation to the farmers/tenure holders in the light of the judgement of Hon'ble High Court. So this was a routine order of the High Court and if the proper payment has not been given to the landowner shall, the

Hon'ble High Court might come to the rescue.

The opposite party has stated that the construction/ development of the project has already been completed and the opposite party has issued possession into letter to the complainant and requested to make the balance sale consideration payable by the complainants at the time of possession intimation and accordingly to obtained an OC so that the finishing work and the completed. The complainant has his facts specifically stated the opposite party had to pay Rs.5 37,500/- as damages due to delay on the part so this amount should have been directed from the amount which the complainant had to pay. But the opposite parties did not mention or adjust this amount. So the opposite parties are at fault because if there is provision in the agreement, he should have been paid to the complainant.

Now the next question arises as to the completion and occupancy certificate and also NOCs of different departments such as Fire Department, Civil Aviation Department, Pollution Control Department etc. the opposite party has stated that he has sent a letter for taking possession but he did not mention about these certificates. First we should know what are the completion certificate and occupancy certificate?

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.

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] The opposite parties have stated that the construction of the project has already been completed and the opposite party has issued possession intimation letter to the complainants and requested to make the balance sale consideration payable by the complainants at the time of possession intimation and accordingly to obtain NOC so that the finishing work can be completed. Before giving possession, there should be completion certificate and occupancy certificate. In absence of the occupancy certificate, delivery of possession is no possession in the eye of law. The opposite parties have not filed the copy of the completion certificate or occupancy certificate. During argument nothing has been revealed in this respect as to whether completion certificate has been issued by the concerned government authority or not. So it will be presumed that there is neither completion certificate nor occupancy certificate issued by the competent authority. Possession has not been given to the complainants therefore the opposite parties are liable to pay compensation and damages as per the different case laws of Hon'ble Supreme Court and Hon'ble NCDRC.

Hon'ble Supreme Court has held in Ghaziabad Development Authority Vs. Balbir Singh (2004) 4 SCC 65-"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."

"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[(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 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."

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. We should also see the objects of the Consumer Protection Act 1986.

Now in the present case, copies of completion certificate or occupancy certificate has not been filed. There is no of NOCs of various departments as required under the law. So in the circumstances we are of the opinion that the complainants are entitled for the following reliefs with interest as mentioned in the above mentioned judgment of the Hon'ble Supreme Court. The opposite parties cannot cancel the allotment when they are at fault and they have not obtained the completion and occupancy certificate from the concerned authorities.

The complainants are entitled to get the possession of the unit no A-1304, floor 13th, type II BHK (1075), Super Area-1075 square ft in "Amrapali Castle" Tower/Block-A, within 60 days from the date of judgment of this complaint case otherwise the opposite parties shall jointly and severally shall liable to pay Rs.50,000.00 per month with interest at a rate of 12 percent from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate, occupancy certificate and NOCs of various departments as discussed above.

The complainants are entitled to get interest at a rate of 12% per annum from the opposite parties, jointly and severally, on the amount deposited by him from their respective date of deposits if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum on the amount deposited by complainant from their respective date of deposits till the date of actual delivery of possession of the said unit and registration of sale deed along with certificates as mentioned above.

The complainants are entitled to get Rs.537,500/- from the opposite parties, jointly and severally towards delay charges with interest at a rate of 12% from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate , occupancy certificate and NOCs of various departments as discussed above.

The complainants are entitled to get Rs.550,000/- from the opposite parties, jointly and severally, towards cost of the case with interest at a rate of 12% from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate, occupancy certificate and NOCs of various departments as discussed above.

The complainants are entitled to get Rs.5,00,000/- from the opposite parties, jointly and severally, towards gross unfair trade practice and deficiency in services with interest at a rate of 12% from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate , occupancy certificate and NOCs of various departments as discussed above.

As far as the relief clause of the complaint case regarding "any other relief deemed fit and appropriate under the facts and circumstances of the case may also be awarded to the complainant against the opposite party", the complainants are entitled to get Rs.20 lakhs from the opposite parties jointly and severally towards mental agony, harassment, depression with interest at a rate of 12% from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate, occupancy certificate and NOCs of various departments as discussed above.

The complaint case is decided accordingly.

ORDER 1- The opposite parties are directed to hand over the possession of the unit no A-1304, floor 13th, type II BHK (1075), Super Area-1075 square ft in "Amrapali Castle" Tower/Block-A, within 60 days from the date of judgment of this complaint case otherwise the opposite parties shall jointly and severally shall liable to pay Rs.50,000.00 per month with interest at a rate of 12% percent from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of

completion certificate, occupancy certificate and NOCs of various departments as discussed above.

2- The opposite parties are directed to pay interest at a rate of 12% per annum, jointly and severally, on the amount deposited by him from their respective date of deposits if paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum on the amount deposited by complainant from their respective date of deposits till the date of actual delivery of possession of the said unit and registration of sale deed along with certificates as mentioned above.

3- The opposite parties are directed to pay Rs.537,500/-, jointly and severally towards delay charges with interest at a rate of 12% from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate, occupancy certificate and NOCs of various departments as discussed above.

4- The opposite parties are directed to pay Rs.550,000/-, jointly and severally, towards cost of the case with interest at a rate of 12% from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate, occupancy certificate and NOCs of various departments as discussed above.

5- The opposite parties are directed to pay Rs.5,00,000/-, jointly and severally, towards gross unfair trade practice and deficiency in services with interest at a rate of 12% from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate, occupancy certificate and NOCs of various departments as discussed above.

6- As far as the relief clause of the complaint case regarding "any other relief deemed fit and appropriate under the facts and circumstances of the case may also be awarded to the complainant against the opposite party", the opposite parties are directed to pay Rs.20 lakhs jointly and severally towards mental agony, harassment, depression with interest at a rate of 12% from 01.11.2012 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 01.11.2012 till the delivery of actual possession and registration of sale deed of the said unit along with copy of completion certificate, occupancy certificate and NOCs of various departments as discussed above.

All the decretal amount shall be paid within 60 days from the date of judgment of this complaint case, 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.

(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 26.04.2013

JafRi, PA I

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[HON'BLE MR. Rajendra Singh] PRESIDING MEMBER
[HON'BLE MR. SUSHIL KUMAR] JUDICIAL MEMBER