

## Dr. Nanu Sharma vs New Mount Trading And Investment Co. Ltd on 17 March, 2023

Cause Title/Judgement-Entry

STATE CONSUMER DISPUTES REDRESSAL

Reserved

State Consumer Disputes Redressal Commission

U.P. Lucknow.

Complaint Case No.346 of 2016

Dr. Nanu Sharma, adult, aged about 70 years,

D/o Late Mr. Babu Ram Sharma, 36, Grantham

Avenue, Grimsby, DN, 33 2 HJ, NE Lincolnshire

(U.K.) and R/o 865, Block-B, Panki Kanpur-

208020 U.P. through her constituted attorney,

Mr. Robby Sharma, adult, s/o Late Mr. Babu

Ram Sharma, R/o 865, Block-B, Panki Kanpur-

208020

...Complainant.

Versus

New Mount Trading & Investment Co. Limited,

having its registered office at 26, Jawaharlal

Nehru Road, Suite no.22, Second Floor, Kolkata-

700087 and Head Office at Shyam House, 44,

Thornhill road, Allahabad-211002 through its

Director, Mr. VidupAgrahari. ...Opposite party.

Present:--

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

2- Hon'ble Sri Sushil Kumar, Member.

Sri Pratul Tripathi, Advocate for complainant.

Sri Piyush Mani Tripathi, Advocate for the opposite party.

Date: 26.4.2023

JUDGMENT

Per Sri Rajendra Singh, Member- This complaint has been filed by the complainant for following reliefs:

- (i) To deliver possession of composite flat no.10-A + 10-B, Block-C, Tower Aditya on floor 10 having tentative super built up area 2309 sq. feet after removing connective wall along with two parkings with transformer, I+1=2 KVA power back up, Club and piped gas connectivity and register the sale deed of the flats after receipt of balance payment.
- (ii) To deliver and provide the complainant with duly attested true copies of No Objection Certificates/Completion Certificate/Earthquake resistant/Fire NOC certificate from various government departments as well as a Declaration Certificate as filed by the opposite party in Kanpur Development Authority under the obligatory Rule 4 of Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011.
- (iii) To pay a sum of Rs.16,36,650.00 being the compensation for delay in delivery of flat to the complainant calculated at the rate of 15% p.a., w.e.f. 1.1.2015 to 30.9.2016.
- (iv) To pay a sum of Rs.5,00,000.00 towards damages/losses suffered by the complainant on five unnecessary trips she was forced to undertake from U.K. to India for possession of the flat.
- (v) To pay a sum of Rs.2,00,000.00 towards damages/ Compensation for mental/physical torture etc.
- (vi) To pay future compensation from 1.10.2019 till the date of actual delivery of possession @15% p.a. on the deposited amount.
- (vii) Cost of the complaint.

The brief fact of the complaint case is that, that the complainant is unmarried and a person of Indian Origin, being born in Kanpur, Uttar Pradesh, India. The complainant is holding the "person of Indian Origin Card (PIO Card) no. P.0105832 issued to the complainant on 24.8.2006 by the High Commission of India Grimsby U.K. The complainant is holding U.K. passport and she is filing a true photocopy of the passport with relevant immigration entries to India since October, 2014 to 31st August, 2016. The complainant is a general medical practitioner leading a retired life in Grimsby U.K., wishing and having a desire to live in India with her relatives, came to Kanpur and expressed her desire and with to her brother.

The opposite party is a Company having its registered office at 26, Jawaharlal Nehru Road, Suite no.22, Second Floor, Kolkata-700087 and Head Office at Shyam House, 44, Thornhill road,

Allahabad-211002 (U.P.) and VidupAgrahari held out to be its Director. The opposite party held out that he was absolute owner of plot of land measuring 16190 sq. meters having purchased it from Kanpur Development Authority, Kanpur, by registered sale deed and assured that the said property was free hold and the building plans have been duly sanctioned by the Kanpur Development Authority vide permit no.230200610 dated 5.10.2010. The opposite party assured and held out that their project "Kanha Shyam Residency", a unit of the opposite party was being and is under construction at Indira Nagar, Kanpur (Bhukhand Sankhya/AraziSankhya 1281 Bairi Akbarpur Bangar Chhetra Indira Nagar, Group Housing Kanpur).

The house no.865, Block-B, Panki Kanpur-208020 is the Bungalow of the complainant and whenever she comes to India she lives with her brothers and sisters, although it is spacious but is not very safe and secure for the complainant and her family members and as this house cannot be locked and she and her family members living there cannot lock it and go together anywhere, on holidays or family functions of relatives. Since the petitioner retired long back, the petitioner cannot afford to hire security personnel for this individual house. So the petitioner thought of moving to a flat, where she and her family members could enjoy better safety and security, at economical cost, such economical security nowadays is available only in group housing buildings (where security expenses are shared by all flat owners).

In October, 2012 the complainant started looking for a flat, where she could enjoy better secure and safer living conditions and during her search she saw "Kanha Shyam Residency" under construction in Indira Nagar Area of Kanpur, a unit of the owner builder opposite party. He visited their site office at Kanpur. The complainant showed her interest in buying a 4 bedrooms, drawing, dining hall flat in the said construction but as the opposite party was only constructing 2/3 bedroom flats, the opposite party agreed and offered the complainant 2 adjoining flats 10-A and 10-B on the 10th floor of the "Aditya Tower" in their project and agreed to remove the connecting wall in between the said two flats to make it into a composite flat of 4 bedrooms.

During October/November, 2012 the complainant made payment of Rs.1,00,000.00, Rs.90,000.00 and Rs.5,56,250.00 and Rs.1,25,000.00 on 8.10.2012 and 11.11.2012 vide cheque nos.462607, 724355, 460931 and 462609 respectively to the opposite party and the said opposite party issued allotment letter/agreement letter dated 18.11.2012 which was duly executed and signed by the complainant and opposite party, allotting flat no.10-A and 10-B of the Block-C, tower Aditya, Floor no.10th, each having tentative super built up area of flat 1154.5 sq. feet + 1154.5 sq. feet (total 2309 sq. feet). The price of each flat was Rs.34,62,059.00 plus Rs.34,62,059.00 (Total price agreed to be paid was Rs.69,24,118.00). Under the aforesaid allotment/agreement letter dated 18.11.2012, the opposite party agreed and contracted to deliver the possession of the said flats by 1st October, 2014 subject to a grace period of 90 days, that is to say that finally after taking benefit of the grace period also the opposite party was to give possession of the flats by 30.12.2014. The price indicated of the flat allotted to the complainant was firm and the above cost of the flat included the cost of two parking, transformer, 1 KVA power back up each, club, piped gas connectivity. Moreover, any escalation in the construction will be borne by the opposite party.

In pursuance of the above mentioned allotment/ agreement letters dated 18.11.2012, the complainant has made payment of all installment of money as detailed therein and was entitled to possession of flat nos.10-A and 10-B in Block-C, Aditya tower, 10th Floor, "Kanha Shyam Residency" in Indira Nagar, Kanpur, hereafter referred to as the said flats by 1.10.2014. The details of payment receipts of Rs.62,34,858.00 towards price of the flats made by the complainant to the opposite party are given in schedule. Moreover, at the time of delivery of the possession of the said flats to the complainant by the opposite party, the complainant was to pay merely 5% of the cost of flats and 5% at the time of registration of the sale deeds of the flats.

As per above scheduled date the complainant planned to wind up her establishment and come to India in October, 2014 to take delivery /physical possession of the said flats from the opposite party on 1.10.2014 after paying the opposite party the balance payment and get the sale deed registered. So she came to Kanpur/India on 17th October, 2014 and stayed till 30th December, 2014. The complainant to her utter surprise found that the opposite party has not completed the construction of the building/project and make the flats habitable and ready for delivery of possession to the complainant on the agreed date 1.10.2014 as promised nor the opposite party has obtained and got completion/ occupancy certificate from the Kanpur Development Authority, nor the NOC of the Fire Department nor Earthquake proof certificate as per law.

Since October, 2014 the complainant has been on a regular basis coming to Kanpur India from Grimsby U.K. (10th February 2015 to 8th April, 2015, 4th July, 2015 to 31st August, 2015, 2nd November, 2015 to 30th December, 2015, 18th February, 2016 to 15th April, 2016, 2nd July, 2016 to 31st August, 2016) to know the fate of the flats as to when the opposite party will deliver the flats to her and she has become a laughing stock amongst her friends in Grimsby U.K. where she could only tell stories of her Woes and lack of character of Indian Builders like the opposite party. The non-delivery of the flats has caused undue mental and physical harassment to the complainant. Moreover, it has caused undue financial strain and loss to the complainant as she has been deprived to live with her dear ones/relatives in Kanpur instead of which the complainant is forced to stay in Grimsby U.K. The dates of six visits of the complainant since October, 2014 to 31st August, 2016 may be verified from the immigration entries which have already been filed along with the passport.

Since October, 2014, the complainant has been visiting the opposite party's building site and making demands for delivery of possession of flats and delivery of N.O.C's from the Government Departments but these have fallen on the deaf ears of the opposite party and in order to cover up its deficiency in service in so far not delivering the flats on the due date and providing No Objection Certificates and completion certificate, the opposite party sent unwarranted letters dated 1.7.2014 based on false and incorrect facts making illegal and unauthorized demands and alleging that the complainant had not paid her dues as per the terms of the agreement within the time schedule provided therein. They also threatened to cancel her allotment due to the default, while the facts are to the contrary, the complainant had paid all her dues that is about 90% of the cost of the flat well within the time schedule in accordance with terms and conditions of the allotment letter/agreement and thus, Rs.62,34,858.00 stood paid against total cost of Rs.69,24,118.00. As per the allotment letter/agreement only Rs.1,72,330.00 +Rs.1,72,330.00 i.e. total Rs.3,44,660.000 or about 5% of cost was to be paid at the time of possession and Rs.1,72,300.00 + Rs.1,72,300.00 i.e. total

Rs.3,44,600.00 or about 5% balance cost was to be paid at the time of registry. The complainant sent reply to the said illegal unauthorized and unwarranted letter of opposite party, claiming delivery of possession and damages for delay in delivery of possession.

The opposite party in order to wriggle out of the agreement and to cheat and deprive the complainant from delivery and physical possession of the said flats issued notice dated 12.7.2016 on behalf of "Shyam Constructions" alleging itself to be a unit of the opposite party based on false and incorrect facts though there never was any privity of contract or binding agreement between the complainant and "Shyam Constructions". The alleged notice was issued to call a meeting of "residents of Kanha Shyam Residency, Kanpur on 24th July, 2016 to transact some business. The complainant is not a resident of Kanha Shyam Residency as the flats allotted to the complainant have not been delivered to her. The complainant sent a reply dated 24.7.2016 to the said notice. The complainant is filing the true photocopies of the notice dated 12.7.2016 signed by Shyam Constructions and her reply letter dated 24.7.2016.

Due to diversion of funds by the opposite party received from the complainant for construction of the flats, deficiency and negligence in performance of the terms and conditions of the allotment letter and agreement letters dated 18.11.2012, the opposite party has miserably failed in complying and delivering the said flats to the complainant on the due date that is 1.10.2014, due to which the complainant has suffered physically, mentally and financially as she has to still stay in Grimsby U.K. at an old age and at heavy cost of living and is being deprived of the company of her brothers and sisters, who are living in Kanpur.

The complainant in terms of the aforesaid allotment/ agreement letters dated 18.11.2012 is entitled to delivery of possession of flat no.10A/10Bas detailed in paragraph 8 of this complaint, by the opposite party and the complainant is ready and willing to pay the balance price Rs.6,68,603.00 (Rs.3,34,302.00 (Aditya 10-A) +Rs.3,34,301.00 (Aditya 10-B) as demanded by the opposite party by its letters dated 1 July, 2016 to the opposite party as soon as it provides all No Objection/Completion Certificate/Non Encumbrance from various Government offices and the bank and executes the sale deed of the flats.

Paragraph 7 of the said allotment letter/agreement letters dated 18.11.2012 reads as under:

"In the event of any delay in payment of any of the above instalments, you will be liable to pay interest @15% p.a. on the unpaid amount for the period of delay. If any instalment remains in arrears for 2 months or more, then it will be assumed that you are not interested in making payment and we shall be entitled to cancel the allotment by sending a registered intimation to you. Thereafter, we shall be at liberty to allot the aforesaid plot to any of the person as we may think fit. In the event of cancellation of allotment, the deposits made by you will be refunded without interest after deducting 10% of the total price towards liquidated damages, within 30 days from the date you surrender this allotment letter."

The complainant is entitled to compensation/damages for deficiency in service and delay in delivery of possession by opposite party at the rate of 15% per annum on the sum of Rs.62,34,858.00 from the date of payment of the said amount till date of delivery of the possession of flat to the complainant. The accrued damages from 1st January, 2015 (date of delivery of possession promised being 1.10.2014 with grace period of 90 days as per condition no.3 of the allotment letter/agreement dated 18.11.2012) till 1.10.2016 is Rs.16,36,650.00.

The complainant claims a sum of Rs.5,00,000.00 for expenses incurred on five unnecessary trips from U.K. to India forced on her after October, 2014 when the possession was promised to be delivered but not actually delivered. She also claims Rs.2,00,000.00 towards mental, physical harassment and torture in running around from pillar to post and dancing to the tune of the opposite party to take delivery of the flats.

The opposite party has filed its written statement stating that the complaint is not maintainable due to existence of the arbitration clause, which has been acted upon and arbitral proceeding have been commenced under section 21 of the Arbitration and Conciliation Act, 1996. These flats are subject matter of the valid agreement executed on 18.11.2012 between the parties as per clause 16 of said agreement in case of any dispute arising under the agreement between the parties, the matter shall be referred to arbitration. For ready reference of Hon'ble Forum the relevant clause is quoted below:

16- In the event of any disputes or difference arising in respect of this allotment or any matter connected with or pertaining thereto, the same shall be referred to arbitration. The Managing Director of SBW Udyog Ltd., 44, Thronhill Road, Allahabad-211002 shall act as the Sole Arbitrator. The place of arbitration shall be Kanpur and arbitration proceedings shall be governed by the Arbitrator & Conciliation Act, 1996. The award given by the above arbitrator shall be final and binding on both the parties.

The complainant under her own signature vide letter dated 19.7.2016 shown her willingness to refer the matter, to the arbitral tribunal for redressal of her alleged grievances. In view of the provisions contained in Section 21 of the Arbitration and conciliation Act, 1996 (Amended 2015), the intention to submit the reference to the arbitrator will be deemed to be the commencement of the arbitration proceedings as such the present complaint is not maintainable, because the parallel proceedings of the same relief between two tribunals is not permissible under law and it will create conflict in the decision and multiplicity of the proceedings, hence now he complainant cannot take U turn. The relevant section 21 of the Arbitration and Conciliation Act, 1996 is quoted below:-

"21. Commencement of arbitral proceedings:- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

The complainant with malafide and oblique motives concealed the pendency of the present complaint before the Hon'ble High Court, Allahabad and on 22.4.2017 also invoke the jurisdiction of Hon'ble High Court, Allahabad, by filing a writ petition no.17831 of 201, Dr. Nanu Sharma vs. State of U.P., regarding the same subject matter of the identical reliefs and have impleaded to the complainant as respondent no.4. The said writ petition has been filed without any genuine grievance but showed the negative and sadistic approach of the complainant because the said writ the complainant has prayed for cancellation of the completion certificate fire NOC and compounding map etc. in which the Hon'ble High vide its order dated 27.4.2017 directed to the complainant/petitioner to approach to the Awas Bandhu, Lucknow as per provisions contained in section 41 of the Urban Development Planning Act, 1973.

In pursuance of the order passed by the Hon'ble High Court, the State Government has issued the notice to the opposite party to put in the appearance because the parallel proceedings of the same relief between to tribunals is not permissible under law and it will create it conflict in the decision and multiplicity of the proceedings, thus the case required to be dismissed.

Admittedly the complainant is unmarried, issueless and is holding PIO Card, residing in UK and also owns a big parental house at Kanpur. The complainant has not purchased the aforesaid flats for her residential use, but it is for the investment purpose, as such the complainant does not fall within the purview of the definitions of consumer as defined in Section 2(1)(d) of the Consumer Protection Act, 1986. The complaint has no locus to file the present complaint before this Hon'ble Forum.

The complainant was/is not interested in taking the possession of the flat and are to get the sale deed registered in her favour but the complainant want to prolonged the matter and to built up a unnecessary pressure upon the opposite party. The complainant on her own freewill and reasons best known to her, has not taken possession of the flat, because the allottees, who were in the actual need of the residence had requested with the opposite party to allow them for carrying on the interiors of the flat and for carrying out the same they have applied pre-possession confirmation for the electric meters of their respective flats allotted to them. The process for permitting the allottee to carry out the interiors and applying for pre-possession electric meter started from 20.2.2014 and in the year of 2014, forty two, end of December, 2015 further 52 and upto April, 2016 eight numbers of allottees total amounting of 102 allottees were benefited for the said cooperation extended by the promoter opposite party and almost in due course of time they have got respective sale deed executed in their favour and enjoying the flats as perfect owners without any obstruction and hindrances and lawful and valid RWA society has been framed by them for maintenance and upkeep of the residential apartments in the name of Kanha Shyam Residency Flat Owners and Welfare Association.

The construction of flats was completed as scheduled but the complainant was never shown her willingness or approached to the opposite party for getting the possession which is evident from her conduct that till more than 100 allottees have been allowed for carrying on the interiors and



subsequently got the sale deeds executed in their favour and in routine business of opposite party's company on average 10 to 15 sale deed are executed per month. The completion of construction was completed around the time scheduled given in the agreement and subject to unforeseen circumstances and slide/minor variation. Taking into consideration of unforeseen circumstances such slight variation does not come within the purview of deficiency or unfair trade practice. As the aforesaid slight variation also coupled with the reason for enforcement of subsequent legislation, which was beyond the control of the opposite party.

From the perusal of the complaint, it reveals that the relief with regard to furnish of completion certificate, fire, NOC etc. does not fall within the ambit of the consumer protection act, because the complainant never asked and demanded to the complainant and even otherwise has alternative and effective remedy provided under the RTI Act by the Central Government, which can be obtained from the KDA and Fire Department situated in the Kanpur Nagar, but the complainant had not made any efforts and has directly filed the present litigation, which is blatant misuse of the process of law.

The complainant on one-pretext of the other, in the garb of unwanted and uncalled litigation is avoiding to make the balance payment of sale consideration, other miscellaneous charges statutory taxes due to willful pre-calculated game not to take the possession and to initiate unwanted and uncalled litigation, the opposite party is entitled to charge the holding charges of the flat @ Rs.10,000.00 per month and a sum of Rs.3,000.00 per month towards maintenance charges from the complainant w.e.f. July, 2016 upto date of registration of sale deed in her favour.

The mala-file of the complainant is established that she has filed the present complaint in 28.10.2016, whereas building has been completed in all respect in 2015, which is evident from the list of the allottees mentioned above, who had approached to the builder for allowing them to carry over the interiors of their flat but the complainant did not approach to the opposite party and directly filed the present complaint, which is totally based on false and incorrect facts.

The complainant Dr. Nanu Sharma is already owns a residential house in Kanpur for fulfilling her residential needs in case of random visit at Kanpur and at present she is permanently residing in UK having no intention to shift in India and those flats has been booked for the purposes of investment i.e. investment of money in Real Estate Sector. It is settled law, that property intended to purchase as investment purposes is a commercial venture and person is not a consumer nor any complaint filed by him/her false within the purview of the complaint at defined in sub-section C of section 2 of the Consumer Protection Act.

The opposite party has purchased plot of land 16190 sq. meter from KDA and after obtaining statutory permissions got the multi storied residential buildings/towers completed in 2015, however the minor finishing of common areas, community centers and other part of the building was the continuous process, which does not debar to the consumers to take the possession of their flats for carrying out the interiors that too takes a long time. The promoter has also obtained completion certificate in June, 2016. The complainant had no intention to reside in the flats booked by her in the project nor has proved the facts through any documentary evidence the fact of matter is that the

flat have been booked by her only for investment purposes.

After exclusion of unforeseen circumstances for the delivery of possession is very much link with the adherence of payment schedule as per payment schedule entire payment was to be made upto 15.9.2014 but till date the complainant is withholding the outstanding payment. It is settled preposition of interpretation that agreement to be read as whole. Para 3 clearly demonstrate that word expect denotes possibility and that too subject to unforeseen circumstances to implement the legislation prior to handing over the possession completion of building was mandatory, hence despite of hectic effects the opposite party could obtain completion from KDA in June, 2016 which is unforeseen circumstances the building was completed. After obtaining all permission, the complainant was asked to get the sale deed executed, but instead of proceeding for registration, the complainant is unnecessary indulging the opposite party into unwanted and uncalled litigation and even is not paying maintenance charges to the opposite party. Completion certificates, FIR NOC and all other permission were obtained properly, as such the same can not called for.

As stated above that constructions of project after obtaining requisite permission have been obtained and much prior to filing of the complainant company was offered by opposite party by letter dated 1.7.2014 and the complainant ought to have deposited the outstanding amount and to get sale deed executed. Simultaneously to take the possession of flat. The letter dated 1.7.2014 was sent to all allottees to proceed for registration and pay balance amount without interest, it shows courtesy and liberal attitude of the opposite party.

The opposite party is not under obligation to provide the NOC, but only procurement of NOC is valid, discharge of contractual obligations which has been completed, rest averment are incorrect, wrong and denied. The complainant has no right to check the validity of NOC as all NOC were issued by the competent authority, hence to challenge the procedure proves litigant mentality of the complainant.

It is submitted that this complaint relates to the flats which are booked for commercial purposes and are subject matter of the agreement dated 18.11.2012, which arbitration clause, which has already been acted upon by the complainant as per the letter dated 19.7.2016, as such for all purposes and intent as per section 21 of the arbitral proceeding has been deemed to have been commenced. Apart from above, in view of the orders passed by Hon'ble High Court in writ petition no.17831 of 2017 in the same matter, the jurisdiction of this Hon'ble Court has been seized on both account. The matter is dispute of both proceeding are one and the same.

We have heard the learned counsel for the complainant Sri Pratul Srivastava and ld. counsel for the opposite party Sri Piyush Mani Tripathi and perused the evidence and documents filed by the complainant.

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 -

- (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. GoGo 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.

The 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.

The opposite party, in his written statement has stated that there is arbitration clause in the agreement has the matter should have been referred to an arbitrator. The opposite party has also stated that the complainant has shown her willingness to refer the matter to the arbitrator. The arbitration proceeding has been started

therefore parallel proceeding cannot be carried on. It is clear that there is no bar passed by the arbitrator till now. In this respect we should understand the relation between Arbitration Act and Consumer Protection Act. The following article and case laws are worth reading.

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

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

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

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

It was argued by the petitioner that the remedies provided under the Consumer Protection Act are not in exclusion of the existing laws, but are in addition to it, which has been sated in the case of National Seed Corporation Limited v M. 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.

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

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

Supreme Court analyzed the situations prior to 2015 Amendment, related to referring the consumer disputes to arbitration. Supreme Court referred to the judgments prior to 2015 which had the settled law in cases of Fair Air Engineering Pvt. Ltd & Anr. V. N K Modi (1996) 6 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 arises from the contract having the arbitration clause, it will not impede the parties to resort to file a complaint before the consumer forum under Consumer Protection Act. All of the judgements had the rationale that provision of section 3 of Consumer Protection Act states that "the provision is in addition to, and not in the derogation of any other law for the time being in force."

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

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

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



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

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

The opposite party has stated that complainant has not purchased the aforesaid flat for her residential use, but it is for the investment purpose, as such the complainant does not fall within the purview of the definition of consumer Under Consumer Petition Act 1986. There is no proof on the Record filed by the opposite party which can show that the flats were purchased or booked with a purpose of investment. The complainant has stated that she was looking a flat where she could enjoy a better security and safer living condition and then he came to see the advertisement of the opposite party and she applied for a flat after depositing the required money. She has also stated that she has planned to wind of her establishment and come to India in October 2014 take the delivery of possession of her flat. She found that the opposite party has not completed the construction of the concerned flat. There is no completion certificate/occupancy certificate, NOC's of different departments which are necessary for giving possession of a flat of the allottee. She also stated that she came to India so many times in 2014, 2015 and 2016 with a hope to get the delivery of possession of flat but the opposite party failed to give her the possession of the flat. She is living in Grimsby, UK. She also stated that she had deposited Rs.6,234,858/- against the total cost of Rs.6,924,118/-. Rest cost about 5% of the cost was to be paid at the time of delivery of possession. But no offer of delivery of possession has been given to her.

The opposite party issued a notice dated 12.07.2016 on behalf of "Shyam Constructions" alleging it shall to be unit of the opposite party based on false and incorrect facts though there never was any privity of contract between the complainant and "shyam Constructions". It was duty of the opposite party to clear all these things are as to who is the builder and who is the promoter. The opposite party has said that the complainant never asked the and demanded the completion certificate, NOC of fire department et cetera. It is not the duty of complainant to demand the certificate but it is duty of the builder/promoter to provide completion

certificate/occupancy certificate and NOC's of fire department, civil official department, pollution control Department et cetera et cetera.

The opposite party has stated that the promoter has also obtained completion certificate in June 2016. What about occupancy certificate and NOC's of different departments?

So it is clear that the possession has not been handed over to the complainant within stipulated time as promised by the opposite party. Completion certificate/occupancy certificate are important document, copy of which shall be provided to the allottee before offering possession of the concerned flat. The following article is about the certificate so it is reproduced here 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."

No such document has been filed by the opposite party. At this juncture now we have to decide about the compensation, damages, rent et cetera. We have to see the judgements of Hon'ble Supreme Court and Hon'ble NCDRC in this respect.

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 therecovery of their dues. Alleging deficiency on the part of opposite parties/ respondents, complainants filed separate complaints before State Commission. Aggrieved by the order of Hon'ble State Commission, these appeals preferred before Hon'ble National Consumer Disputes Redressal Commission.

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

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

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

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

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

"Leave granted in all the special leave petitions. CA 6662/2018 @ SLP(C) 7596/2016 etc. It is submitted by Mr. M.L. Lahoty, learned counsel appearing

for the appellants in all the appeals that the possession has been handed over and the deficiencies have been removed and, therefore, he has no grievance. However, Mr. Lahoty would insist that there should be imposition of costs as compensation.

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

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

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

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

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

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] In this case the opposite party did not file the as stated in the written statement. The important documents are completion certificate, occupancy certificate and NOCs of Fire Department, Pollution Control Department, Civil Aviation Department, et cetera. If possession has been given in the absence of occupancy certificate, the delivery of possession is no delivery in the eye of law. The complainant has booked two flats and wanted to make it connected by demolishing the middle wall. So it is duty of the builder to provide it after demolishing the wall between the two flats or that these two flats can be connected as desired by the complainant. After going through the various decisions of the Hon'ble Supreme Court and Hon'ble NCDRC in this regard, we are of the view that the complainant is entitled for the following reliefs.

The complainant is entitled to get the possession of composing flat number 10-A + 10 B , Block C, Tower Aditya on having tentative super built up area 2309 square ft after removing connecting wall with two parking sets with transformer 1+1 = 2KVA power backup, club and piped gas connectivity and get the sale deed executed after receipt of balance payment within 60 days from the date of judgement of this complaint case otherwise the opposite party shall pay damages at a rate of Rs.50,000.00 per month from 01.01.2015 with interest at a rate of 12% per annum and if not delivered within 60 days from the date of judgement of this complaint case, the rate of interest shall be 15% per annum from 01.01.2015 till the date of actual delivery of the flats will completion certificate/occupancy certificate and all the NOCs of various departments.

The complainant is entitled to get the attested true copies of completion certificate, occupancy certificate, NOCs from various departments.

The complainant is entitled to get Rs.1,636,650/- as compensation for delay in delivery of flat with interest from 01.01.2015 at a rate of 12% per annum if paid within 60 days from the date of judgement of this complaint case otherwise the rate of interest shall be 15% per annum from 01.01.2015 till the actual date of delivery of possession of the flats.

The complainant is entitled Rs.5 Lacs towards damages/ losses suffered by the complainant on her and necessary trips from UK to India with interest from 01.01.2015 at a rate of 12% per annum if paid within 60 days from the date of judgement of this complaint case otherwise the rate of interest shall be 15% per annum from 01.01.2015 till the actual date of delivery of possession of the flats.

The complainant is entitled Rs.2 lakhs towards damages/compensation for mental and physical torture with interest from 01.01.2015 at a rate of 12% per annum if paid

within 60 days from the date of judgement of this complaint case otherwise the rate of interest shall be 15% per annum from 01.01.2015 till the actual date of delivery of possession of the flats.

The complainant is entitled to get interest on the deposited amount from the respective date of deposit with interest at a rate of 12% per annum from 01.01.2015 is paid within 60 days from the date of judgment of this complaint case otherwise the rate of interest shall be 15% per annum from 01.01.2015 till the date of actual delivery of possession of the flat with completion certificate/occupancy certificate and all the NOCs of various departments.

The complaint case is decided accordingly.

ORDER 1- The opposite party is directed to deliver the possession of composite flat number 10-A + 10 B, Block C, Tower Aditya on having tentative super built up area 2309 square ft after removing connecting wall with two parking sets with transformer 1+1 = 2KVA power backup, club and piped gas connectivity and get the sale deed executed after receipt of balance payment within 60 days from the date of judgment of this complaint case otherwise the opposite party shall pay damages at a rate of Rs.50,000.00 per month from 01.01.2015 with interest at a rate of 12% per annum and if not delivered within 60 days from the date of judgment of this complaint case, the rate of interest shall be 15% per annum from 01.01.2015 till the date of actual delivery of the flats will completion certificate/occupancy certificate and all the NOCs of various departments.

2- The opposite party is directed to hand over to the complainant, the attested true copies of completion certificate, occupancy certificate, and NOCs from various departments.

3- The opposite party is directed to pay Rs.1,636,650/- as compensation for delay in delivery of flat with interest from 01.01.2015 at a rate of 12% per annum 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 01.01.2015 till the actual date of delivery of possession of the flats.

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.

(SushilKumar)

(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 26.4.2013

JafRi, PA I

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