

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,  
PUNJAB, CHANDIGARH.**

**Misc. Application No.1030 of 2019  
In/and  
Consumer Complaint No.113 of 2019**

**Date of Institution : 05.02.2019**

**Date of Reserve : 30.09.2019**

**Date of Decision : 21.10.2019**

1. Nikita Verma, wife of Sh.Nitin Verma, resident of House No.5486, Sector 38-West, Chandigarh, aged 34 years, PIN 160014.
2. Nitin Verma, son of Sh.Ashwani Verma, resident of House No.5486, Sector -38-West, Chandigarh, aged 37 years, PIN 160014.

....Complainants

**Versus**

1. M/s ATS Estates Private Limited, Regd. Office: 711/92, Deepali, Nehru Place, New Delhi – 110019, through its Managing Director. email@atsgreen.com
2. M/s ATS Estates Private Limited, Office : ATS Golf Meadows, Chandigarh-Ambala Highway, Opposite Sadashiv Complex, Near Derabassi-Barwala Chowk, Dera Bassi, District SAS Nagar (Mohali) Punjab-140507, through its Authorised Signatory. email@atsgreens.com

....Opposite parties

**Consumer Complaint under Section 17 of  
the Consumer Protection Act, 1986.**

**Quorum:-**

**Hon'ble Mr. Justice Paramjeet Singh Dhaliwal, President  
Mr.Rajinder Kumar Goyal, Member,**

- 1) Whether Reporters of the Newspapers may be allowed to see the Judgment? Yes/No
- 2) To be referred to the Reporters or not? Yes/No
- 3) Whether judgment should be reported in the Digest? Yes/No

**Present:-**

**For the Complainants : Sh.H.S.Ghuman, Advocate**

**For the opposite party : Sh.Harsh Bangar, Advocate**

**RAJINDER KUMAR GOYAL, MEMBER :**

The complainants have filed this complaint, under Section 17(1)(a)(i) of the Consumer Protection Act 1986, (in short, "the Act"), for issuance of the following directions to the opposite parties:

- i) To refund a sum of Rs.53,70,175/- paid by the complainants along with interest at the rate of 12% per annum
- ii) To pay Rs.1,00,000/- as punitive costs on account of deficiency in service and unfair trade practice;
- iii) To pay Rs.25,000/- toward litigation expenses; and
- iv) any other order which this Commission may deem fit.

**M.A. No.1030 of 2019 (For Dismissal of Complaint)**

2. This application has been filed by the opposite parties with the request to dismiss the complaint filed by the complainants under Section 17 of the Act being not maintainable as the complaint filed by the complainants especially in view of the fact that the legislature has enacted an act namely Real Estate Regulation Act, 2016 (RERA). The complaint has been filed in March, 2019 and hence as per Section 79, it ought to have been filed before the authority under

RERA. Further it has been stated that a similar dispute is pending adjudication before the Hon'ble Delhi High Court in the case titled ***"Today Homes and Infrastructure Private Limited versus Ajay Nagpal"*** wherein the Hon'ble Delhi High Court has passed order dated 01.05.2019, whereby it has been directed that the proceedings in the complaint filed before the National Consumer Disputes Redressal Commission be kept in abeyance till the next date of hearing. It was prayed that the proceedings in the present complaint may kindly be kept in abeyance in view of the order passed by the Hon'ble Delhi High Court in the case titled as ***Today Homes and Infrastructure Private Ltd. (Supra)***.

3. Reply to the application has been filed by the complainants stating therein that some provisions of RERA have come into operation w.e.f. 01.05.2016 and the remaining provisions have come into effect from May, 2017. Further, Section 88 of RERA makes it clear the the same are in addition to and not in derogation of the provisions of any other law for the time being in force.

It needs to be mentioned that provisions of Sections 2, 20 to 39, 41 to 58, 71 to 78 came into force with effect from 01.05.2016 and the provisions of Sections 3 to 19, 40, 59 to 70 and Section 79 to 80 came into force with effect from 01.05.2017. It is also an admitted fact that the complainants had entered into an agreement prior to the coming into force of the RERA and they had also booked the flat/apartment much earlier to the date of enforcement of RERA in the State of Punjab and even in the country, in the year 2014. Having failed to comply with the terms of the said Arrangement the

complainants have approached this Commission for the illegal acts, omissions and commissions and adoption of unfair trade practice and various types of deficiencies in service and as such, they being 'consumers' and the opposite parties being 'service providers' have approached this Commission under the C.P. Act. It would be appropriate to reproduce the relevant provisions of Sections 71, 79, 88, 89 of RERA as under:-

***“71. Power to adjudicate.-****(1) For this purpose of adjudicating compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more judicial officer(s) deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard.*

*Provided that any person, whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.*

*(2).....*

*(3).....”*

***79. Bar of jurisdiction.-****No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in*

*respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.*

**88. Application of other laws not barred.**—*The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.*

**89. Act to have overriding effect.**—*The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”*

Some questions were raised by the ‘consumers’ with the Ministry of Housing and Urban Property Alleviation, Government of India. Under Frequently Asked Questions (FAQ) at Sr. Nos. 85 and 86 it has been observed as under:-

**“85. Are the civil courts and consumer forums barred from entertaining disputes under the Act?**

*As per Section 79 of the Act civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to determine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act. Section 71 proviso permits the complainant to withdraw his complaint as regards matters under Section 12, 14, 18 and section 19 from the consumer forum and file it with the adjudicating officer appointed under the Act.*

**86. Can a complainant approach both the Regulatory Authority/adjudicating officer and the consumer forums for the same disputes?**

*The laws of the country do not permit forum shopping, thus, an aggrieved can only approach one of the two for disputes over the same matter.”*

In answer to question No.85 it has been stated that the jurisdiction of the Consumer Fora at District, State or National level has not been

barred from the ambit of C.P. Act. Rather Section 71 of RERA provides the 'consumer', whose complaint in respect of matters covered under Sections 12, 14, 18 and Section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under Section 9 of the C.P. Act, an option to seek permission from the Fora, as the case may be, to withdraw the complaint pending before it and file an application before the adjudicating officer under the RERA.

4. A perusal of Section 79 of RERA reveals that the provisions of said Act bar the jurisdiction of Civil Court. The Consumer Fora under the C.P. Act are not Civil Courts; rather, are performing the judicial functions, which are summary in nature. As such, bare reading of Section 79 of RERA makes it clear that the same is not applicable.

5. In answer to question No.86 it has been stated that the consumer/complainant can approach either of the two authorities i.e. the Consumer Fora under the C.P. Act or the authorities established under the RERA.

6. It is also relevant to mention that as per Section 3, the provisions of the C.P. Act are in addition to and not in derogation of the provisions of any other law for the time being in force. Similarly Section 71 of the RERA has specifically mentioned about the applicability of the provisions, which falls under Section 12, 14, 18 and Section 19 of the C.P. Act and the first proviso to Section 3 of the RERA provides that the projects, which are ongoing on the date of commencement of the RERA and for which the completion certificate

has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of RERA. Section 88 of RERA says that application of other laws is not barred. The provisions of RERA shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The provisions of Section 88 of the RERA and the provisions of Section 3 of the C.P. Act are almost identical, which means both the Fora have jurisdiction to entertain and decide the matter, whichever come in their respective jurisdiction. Section 89 of the RERA provides that the provisions of RERA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. However, there is no inconsistency between the provisions of the two Central Acts. The C.P. Act is applicable where there is deficiency in service and adoption of unfair trade practice, whereas the provisions of RERA have own field i.e. Section 12, 14, 18 and 19 of RERA. This makes it very much clear that there is no inconsistency in the provisions of both the Acts. Section 88 of RERA has clarified that application of other laws is not barred. The remedies are additional remedies under the RERA as well.

7. Moreover, by introduction of RERA, the jurisdiction of the C.P. Act is not specifically ousted. The scope and reach of the C.P. Act of 1986 has been considered by the Hon'ble Supreme Court in catena of judgments, some of the important ones are: ***Lucknow Development Authority v. M.K. Gupta*** (1994) 1 SCC 243, ***Fair Air Engineers (P) Ltd. vs. N. K. Modi*** (1996) 6 SCC 385, ***Skypay***

***Couriers Limited v. Tata Chemicals Limited*** (2000) 5 SCC 294, ***State of Karnataka vs. Vishwabharathi House Building Cooperative Society*** (2003) 2 SCC 412, ***CCI Chambers Cooperative Housing Society Limited Vs. Development Credit Bank Limited*** (2003) 7 SCC 233, ***Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha*** (2004) 1 SCC 305, ***H.N. Shankara Shastry Vs. Assistant Director of Agriculture, Karnataka*** (2004) 6 SCC 230.

8. In ***M.Lalitha's case (supra)***, Hon'ble Supreme Court noticed the background, the object and reasons and the purpose for which the Act of 1986 was enacted. After referring to its earlier judgments in ***M.K. Gupta's case (supra)*** and ***N.K. Modi's case (supra)***, the Hon'ble Supreme Court observed as under:-

*“11. The preamble of the Act declares that it is an Act to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and matters connected therewith. In Section 3 of the Act in clear and unambiguous terms it is stated that the provisions of the 1986 Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.*

*12. From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasi-judicial forums are set up at the*

*district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders.”*

9. In ***Kishori Lal Vs. Chairman, Employees’ State Insurance Corporation*** 2007(5) Recent Apex Judgments (R.A.J.) 68, the Hon'ble Supreme Court held as under:-

*“17..... The trend of the decisions of this Court is that the jurisdiction of the Consumer Forum should not and would not be curtailed unless there is an express provision prohibiting the Consumer Forum to take up the matter which falls within the jurisdiction of civil court or any other forum as established under some enactment. The Court had gone to the extent of saying that if two different fora have jurisdiction to entertain the dispute in regard to the same subject, the jurisdiction of the Consumer Forum would not be barred and the power of the Consumer Forum to adjudicate upon the dispute could not be negated.”*

10. Further in ***National Seeds Corporation Limited Vs. M. Madhusudhan Reddy & Anr.*** (2012) 2 SCC 506, it has been authoritatively held by the Hon'ble Supreme Court that the protection provided to the consumers under the Act is in addition to the remedies available under any other Statute.

11. Similarly, State Consumer Disputes Redressal Commission Chandigarh, U.T. Chandigarh in Consumer Case No.659 of 2017 (***Veena Ghai & Anr. v. Manohar Infrastructure & Constructions Pvt. Ltd.***), which was decided along with bunch of

*similar other cases, vide order dated 28.06.2018, observed that RERA and PAPRA will not debar the jurisdiction of the Consumer Fora in entertaining the complaints filed by a consumer alleging deficiency in providing service, negligence and adoption of unfair trade practice, on the part of the opposite parties. It has been held as follows:-*

*“Further contention was raised by Counsel for the opposite parties that in the face of provisions of the RERA, under which the opposite parties have registered the project, in question, on 15.09.2017, it was not open to this Commission, to entertain and decide the present complaint. He further asserted that sufficient safeguard is provided under the provisions of RERA and if the complainants are feeling aggrieved of any action, on the part of the opposite parties, they may approach under the said Act (RERA) and not under the Act, 1986.*

*We are not inclined to accept this argument. At the time of arguments, it is very fairly admitted by Counsel for the contesting parties, that the provisions of RERA are prospective in nature. It was also so said by the High Court of Bombay in the case of NeelKamal Realtors Suburban Pvt. Ltd. and anr. Vs. Union of India and ors. 2018 (1) R.C.R. (Civil) 298. It is on record that under the RERA, the opposite parties got themselves registered their project, only on 15.09.2017. It is also on record that some of the provisions of RERA came into operation on 01.05.2016 and even the remaining of it, in May 2017. In all, the grievance has been raised by the complainants qua wrongful act/mistake done leading to deficiency in providing service and adoption of unfair trade practice, in selling the project by the opposite parties without sanctions/approvals, before coming into existence of RERA. Reading of the provisions of Section 88 of RERA makes it very*

*clear that the same are in addition and not in derogation of the provisions of any other law for the time being in force. Section 79 of the RERA further makes it very clear that jurisdiction of only the Civil Court to entertain a suit or proceedings qua action taken as per the provisions of the said Act, is barred.*

*It may be stated here that the Consumer Foras under the Act, 1986 despite having some trappings of a Civil Court are not the Civil Courts. As such, the jurisdiction of the Consumer Foras is not debarred, to entertain the complaints filed by consumers, alleging deficiency in providing service, negligence and adoption of unfair trade practice against the opposite parties. Intention of the framers of law has been made clear by the concerned Department i.e. Ministry of Housing and Urban Property Alleviation, Government of India in its website [www.mygov.in/group/ministry-housing-and-urban-poverty-alleviation](http://www.mygov.in/group/ministry-housing-and-urban-poverty-alleviation). Under Frequently Asked Questions (FAQ), at Sr.nos. 85 and 86, it was observed as under:-*

*“85. Are the civil courts and consumer forums barred from entertaining disputes under the Act?*

*As per section 79 of the Act civil courts are barred from entertaining disputes (suits or proceedings) in respect of matters which the Authority or the adjudicating officer or the Appellate Tribunal is empowered under the Act to determine. However, the consumer forums (National, State or District) have not been barred from the ambit of the Act. Section 71 proviso permits the complainant to withdraw his complaint as regards matters under section 12, 14, 18 and section 19, from the consumer forum and file it with the adjudicating officer appointed under the Act.*

*86. Can a complainant approach both the Regulatory Authority / adjudicating officer and the consumer forums for the same disputes?*

*The laws of the country do not permit forum shopping, thus, an aggrieved can only approach one of the two for disputes over the same matter.”*

*It was also so said by the State of Punjab in its Official Website Portal [rera.punjab.gov.in](http://rera.punjab.gov.in). The above fact clearly indicates that in the face of provisions of the RERA, any action taken under the provisions of Act 1986 is not debarred.*

*In view of above findings, we can safely say that RERA and PAPRA will not debar the jurisdiction of this Commission in entertaining the complaints filed by a consumer alleging deficiency in providing service, negligence and adoption of unfair trade practice, on the part of the opposite parties.*

Further, in another judgment passed by the Hon'ble National Commission passed in **Consumer Case No.1764 of 2017** titled as **“Ajay Nagpal Vs. Today Homes & Infrastructure Pvt. Ltd.”** decided on 15.04.2019, wherein it has been held as under:-

*“40. From the various decisions of the Hon'ble Supreme Court referred to above, the following principles emerge:-*

- (i) The Consumer Protection Act, 1986 is a supplement Act and not in derogation of any other Act.*
- (ii) Any Consumer who is aggrieved by any defect in goods purchased or deficiency in service as also regarding unfair trade practice, can approach the Consumer For a by filing the complaint under the Act. Even a Class Action Complaint is permissible under the Act.*
- (iii) The Consumer Fora constituted under the Consumer Protection Act, 1986 are not Civil Courts.*

- (iv) *The Consumer Fora can provide for the reliefs as contemplated under Section 14 of the Act.*
- (v) *A Consumer cannot pursue two remedies for the same cause of action. However, if a Consumer has not approached for redressal of its grievance under the particular Statute, the Consumer can approach the Consumer Fora under the Consumer Protection Act. But, if the Consumer had already approached the Authority under the relevant Statute, he cannot simultaneously file any complaint under the Consumer Protection Act.*
- (vi) *Mere availability of a right to redress the grievance in a particular Statute will not debar the complainant/ Consumer from approaching the Consumer Fora under the Act.*
- (vii) *Even though under Sections 14, 15, 18 and 19 of RERA, various provisions have been made which are to be followed by the Developer/Promoters and the rights and duties and the return of amount as compensation as also rights and duties of Allottees, yet same cannot mean to limit the right of the Allottee only to approach the Authorities constituted under the RERA, he can still approach the Consumer Fora under the Consumer Protection Act.*
- (viii) *Section 71 of RERA which gives the power to adjudicate, does not expressly or impliedly bar any person from invoking the provisions of the Consumer Protection Act. It has also given a liberty to the person whose complaint is pending before the Consumer Fora to withdraw it and file before the RERA authorities.*
- (ix) *Section 79 of RERA only prohibits the jurisdiction of Civil Court from entertaining any suit or proceeding in respect of any matter which can be decided by*

*the Authorities constituted under the RERA. As the Consumer Fora are not Civil Courts, the provisions of Section 79 which bar the jurisdiction of Civil Courts, will not be attracted. So far as to grant injunction is concerned, only that power has been taken away Section 79. But, it does not, in any manner, effect the jurisdiction of the Consumer Fora in deciding the complaints. Both, the Consumer Protection Act, 1986 and the Real Estate (Regulation and Development) Act, 2016 are supplemental to each other and there is no provision in the Consumer Protection Act, which is inconsistent with the provisions of RERA.”*

12. In view of law laid down in the above noted authorities, it is held that this Commission is competent to entertain and decide the present complaint and the provisions of RERA do not bar the jurisdiction of the Consumer Fora. Accordingly, the application filed by the opposite parties is hereby dismissed.

### **Facts of the Complaint**

13. Brief facts, as stated in the complaint, are that opposite parties advertised their upcoming project by the name of 'ATS Meadows Lifestyle' at Derabassi having office complexes with international business standards, recreation and sports arcades including swimming pool, gymnasium and many more. The opposite parties advertised in the newspaper about the features of the project. Being allured by the promises made in the brochure and advertisements and promise of delivery of possession of apartment within 36 months from the date of application, the complainants booked an apartment

in the said project by paying booking amount of Rs.2,00,000/- on 06.09.2014. It was further agreed that all the taxes, duties, additional charges, levy i.e. VAT surcharge and service tax shall be payable in addition to the total price. Thereafter, both the parties entered into an agreement dated 28.10.2014 for the purchase of an apartment in the said project named as 'ATS Golf Meadows Lifestyle'. The complainants availed a housing loan of Rs.25,00,000/- from ICICI Bank for part payment of sale consideration and the remaining amount of sale consideration was paid by the complainants to the opposite parties, well in time as per payment schedule. As per Clause 14 of the Buyer Agreement, the opposite parties were to hand over possession of the apartment complete in all respects within a period of 36 months with a grace period of 6 months from the date of start of the construction of the particular tower. However, the opposite parties failed to deliver the possession within the stipulated period. It has been further averred that the opposite parties offered to pay compensation @ Rs.5 per sq. feet per month but the complainants have declined the offer as the rate of interest to the Bank is higher than the amount which the opposite parties offered for delayed possession. The opposite parties have extended the possession date time and again. The complainants repeatedly requested the opposite parties for possession of the apartment. The opposite parties have clearly violated the conditions of Buyer Agreement by not handing over the possession of Unit in time. Therefore, the complainants are no longer under obligation to accept the delivery of the Unit. The cause of action first accrued to the complainants on

06.03.2018 on which date the possession was to be delivered as per the agreement. However, the construction of Tower No.6, provisionally allotted to the complainants vide Buyer Agreement had already commenced when the complainants booked their apartment vide application dated 06.09.2014. This act and conduct of the opposite parties amounts to deficiency in service and unfair trade practice. Hence, the complainants have filed the complaint seeking all the above mentioned reliefs.

14. Upon notice, the opposite parties appeared and filed their written statement taking preliminary submissions that the complainants do not fall under Section 2(i)(d) of the Act as the complainants made an investment to earn the profits. The complainants have also not obtained the leave of the Commission to file the joint complaint. In the absence of any cogent evidence stating therein the complainants purchased the said unit, in question, for their self use cannot be considered as a consumer. The complainants themselves have violated the contractual obligation and as such the disputes relating to contractual obligation can only be dealt by the Civil Court. The agreement specifically provides for cancellation thereof on the part of the allottee as well as the company under specific circumstances/ situations. Any direction for making the payment to the complainants can be given only by way of compensation under Section 14(1)(d). The complaint filed by the complainants is absolutely misconceived, without any basis and an abuse of process of law, therefore, liable to be dismissed. The complainants have not approached this Commission with clean hands

and suppressed the material fact. On merits, it is submitted that the opposite parties did not make any flashy promises. It is denied that the complainants availed a housing loan of Rs.25,00,000/- from ICICI Bank for making the part payment. It is relevant to mention here that the terms and conditions as contemplated in Agreement are to read in conjunction and in totality and as per Clause 15 of the agreement if the opposite parties fails to give the possession within the stipulated date then in such case, the Company shall be liable to pay compensation @Rs.5/- per sq. ft. super area per month which shall be payable/adjusted from the due amount at the time of offer of possession. It is further contended that the allottees can exit the allotment by giving 90 days' notice and in that event the Company shall refund their entire amount within 90 days from the date of resale of the Apartment to the third party. The complainants have never approached to the opposite parties and have opted straight away to approach this Fora. Rest all the averments as averred by the complainants in their complaint were denied and prayed to dismiss the complaint with costs.

15. Rejoinder to the written statement was filed by the complainants, wherein the complainants denied all the contentions as taken by the opposite parties in their written statement and reiterated the averments made in the complaint and prayed to allow the complaint.

**Evidence of the Parties**

16. To prove that case, the complainants have filed their affidavits along with documents as Ex.C-1, Brochure, Ex.C-2, receipt dated

18.09.2014, Ex.C-3, Application Form, dated 06.09.2014, Ex.C-4, Buyer Agreement dated 28.10.2014, Ex.C-5, payment of EMI of Bank Loan dated 29.06.2018, Ex.C-6 Ledger, Ex.C-7, Photographs, Ex.C-8, Order dated 21.01.2019 and Ex.C-9 Calculation Sheet.

17. On the other hand, opposite parties to support the contentions as detailed in the written statement filed a short affidavit of Sh.Shubhum Gaur, Authorized representative.

### **Contentions of the Parties**

18. We have heard the learned counsel for the parties and have carefully gone through the record carefully.

19. Learned counsel for the complainants vehemently contended that by allured from the advertisement and publicity the complainants booked an apartment in the project of the opposite parties named 'ATS Golf Meadows Lifestyle' Derabassi, by paying booking amount of Rs.2,00,000/-. The total sale consideration of the apartment was fixed as Rs.61,00,000/-. Thereafter, a Buyer's agreement was executed between the parties, wherein they were allotted Apartment bearing No.06053, 5<sup>th</sup> Floor, Tower No.6 having Super Area of approx 2300 sq.ft. along with one car parking earmarked in the basement area. The complainants also availed a housing loan of Rs.25,00,000/- from the ICICI Bank to make the timely payment to the opposite parties. As per clause 14 of the Buyer Agreement, the physical possession of the apartment was to be delivered in 36 months with a grace period of 6 months, complete in all respects which the opposite parties failed to do so. The complainants repeatedly requested the opposite parties to handover the possession. However, the opposite

parties offered to pay compensation @Rs.5/- per sq.ft. per month, which the complainants denied and asked the opposite parties to handover the possession. Also, the complainants have violated the provisions of PAPRA,1995. The opposite parties have committed unfair trade practice. As such, the complainants are entitled to all the reliefs, as claimed in the complaint.

20. Per contra, learned counsel for the opposite parties argued that the complainants have purchased the unit for commercial purposes. No application has been filed by the complainants seeking permission to file the joint complaint. The complainants themselves have violated the contractual obligation and as such the disputes relating to contractual obligation can only be dealt by the Civil Court. It is relevant to mention here that the terms and conditions as contemplated in Agreement are to read in conjunction and in totality and as per Clause 15 of the agreement if the opposite parties fail to give the possession within the stipulated date then in such case, the Company shall be liable to pay compensation @Rs.5/- per sq. ft. super area per month which shall be payable/adjusted from the due amount at the time of offer of possession. However, the opposite parties were ready to compensate as per the agreement by paying Rs.5/- per sq. ft. per month, which the complainants themselves declined to accept. The complainants have never approached to the opposite parties and have opted to straightway approach this Commission. Rest all the averments as averred by the complainants in their complaint were denied and prayed to dismiss the complaint with costs.

### **Consideration of the Contentions**

21. We have given our thoughtful consideration to the respective contentions raised by learned counsel for the parties.

22. First of all the opposite parties raised an objection that the complainants do not fall within the definition of consumer as the apartment purchased by the complainants for investment purposes.

In this regard, it is relevant to mention that there is no evidence from the side of the opposite parties to prove that the complainants are indulging in sale/purchase of property for commercial purpose and simple assertion in this regard in the reply of the opposite parties is not sufficient to prove this fact. Hon'ble National Commission in ***M/s IREO FIVERIVER PVT. LTD. v. SURINDER KUMAR SINGLA & OTHERS*** First Appeal No.1358 of 2016, decided on 29.11.2016, while relying upon its earlier decision in ***KAVITA AHUJA & OTHERS v. SHIPRA ESTATE LTD. & JAI KRISHNA STATE DEVELOPERS PVT. LTD. & OTHERS*** Consumer Case No.137 of 2010, decided on 12.02.2015, held the complainants as consumers, observing that the appellant failed to show any cogent evidence, which may indicate that the respondents/complainants or any of them has been indulging in sale purchase of the properties or that the complainants or any one of them had booked the subject plots in the development project undertaken by the appellant with the intention to sell the plot on subsequent date for earning profit. In the instant case also, as already discussed above, there is no evidence led by the opposite parties to prove that the complainants indulged in sale/purchase of properties or that they purchased the unit, in

question, for further sale or for earning profits or for investment purposes. Accordingly, the above said objection/contention of the opposite parties is rejected and the complainants are held to be 'consumers', under the Act.

23. Another objection raised by the opposite parties is that the complainants themselves have violated the contractual obligation and as such the disputes relating to contractual obligation can only be dealt by the Civil Court. In case we go through the pleadings as well evidence produced by the parties, the complainants had booked one apartment with opposite parties and had paid the substantial amount as demanded by opposite parties and all the terms and conditions were incorporated in the agreement issued by the opposite parties. As per the agreement the possession was to be delivered to the allottee within a period of 36 months with a grace period of 6 months from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made. It is only the interpretation of the terms and conditions and then to see whether there is any deficiency in service on the part of the opposite parties? We do not see that any complicated questions of law and facts are involved, which cannot be adjudicated by this Commission. In this regard, we are fortified by the judgment of '**Dr.J.J.Merchant and Ors. V. Shrinath Chaturvedi**' 2002(6) SCC 635, wherein it was held that the State Commission and District Forum are headed by retired High Court Judges and Officers of District Judge level and in our view, this is not such a case which cannot be decided by the 'Consumer Fora'

after obtaining evidence and if need be after getting an expert opinion.

24. Now coming to merits, admittedly, vide Ex.C-2, the complainants paid a sum of Rs.2,00,000/- towards the Booking Confirmation in ATS Golf Meadows Lifestyle, for Flat No.6053 along with an application form (Ex.C-3) duly filled by the complainants. Thereafter, on 28.10.2014, an agreement was executed between the complainants and opposite parties, wherein the complainants were allotted an Apartment bearing No.0653, 5<sup>th</sup> Floor, Tower No.6, measuring 2300 sq.ft. in 'ATS Golf Meadows Lifestyle' along with a car parking space in the basement area. As per the agreement the total sale consideration was fixed as Rs.61,00,000/-. As per Clause 14, the complainants were to handover the possession of the apartment to the complainants within a period of 36 months with a grace period of six months from the date of actual start of the construction of a particular Tower / Building in which the registration for allotment is made. However, as per Clause 15, if the Company is unable to deliver possession of the said Apartment to the Allottee within th said case, the Company shall be liable to pay compensation @ Rs.5/- per sq. ft. Super Area (1 sq.mt.=10.764 sq.ft.) per month to the original Allottee. Vide Ex.C-5, it is proved that the complainants availed a housing loan of Rs.25,11,000/- vide Loan Account No.LBCHD00002272119 from ICICI Bank. As per Subsidiary Ledger (Ex. C-6) issued by the opposite parties, the complainants have paid a sum of Rs.53,70,175.00 against the total sale consideration. To prove the status of the project, the complainants have also placed the

photographs of the project site as Ex.C-7 (colly) to show that the project is not near completion and lot of work is still pending. On the other hand, no document has been placed on record by the opposite parties in rebuttal to the evidence of the complainants. However, the opposite parties in their written statement taken the objection that the complainants did not take permission from this Commission to file the joint complaint. The complainants being husband and wife have filed the complaint by mentioning specifically that the apartment was booked for their personal use only. Another point raised by the opposite parties in their written statement is that the complainants did not approach the opposite parties and straightway filed the complaint before this Commission which is premature. The complainants and opposite parties were entered into an agreement dated 28.10.2014, wherein the complainants were provisionally allotment an apartment bearing No.06053, 5<sup>th</sup> Floor, Tower No.6 in the said project by specifically mentioning the Application No.410 dated 16.09.2014 and as per page 2 of agreement *it has been mentioned that limitation in the said land/project of the Company has applied to the company vide application No.410 dated 16.09.2014.* Meaning thereby, the limitation to handover the possessions starts from 16.09.2014. The relevant portion of the agreement is reproduced hereunder:-

*“AND WHEREAS the Allottee after satisfying himself about the right, title, location and limitation in the said land/project of the Company has applied to the company vide Application No.410 dated 16/09/2014 agreeing to the terms and conditions set out therein for provisional allotment of an apartment No.06053 on*

*5<sup>th</sup> Floor in Tower No.6 and for provisional allotment of One Basement car parking spaces Nos.1.”*

Moreover, the opposite parties have failed to produce any evidence that on what date the construction was started and as per the agreement the possession of the apartment was to be handed over to the complainants on 15.03.2018. The complaint has been filed by the complainants on 05.02.2019, which is within limitation and not premature and as per the settled law the complainants can directly approach the appropriate Fora if the possession is not delivered within the stipulated period.

25. As per Clause 14 of the agreement, the possession was to be delivered to the complainants within 36 months with a grace period of 6 months. The relevant Clause 14 is reproduced hereunder:-

***“Time or Handing Over Possession;***

*Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be, delivered by the Company to the Allottee within a period of 36 months (three years) with a grace period of six months (hereinafter referred to as ‘the Stipulated : Date’) from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made, subject always to timely payment of all charges including the Basic Sale Price\* Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in which the said Apartment is allotted shall be laid as per certification by the Company’s Architect/ Engineer-in-charge of the Complex and the said certification shall be final and binding on the Allottee.”*

26. From the perusal of the above clause, the complainants were to be handed over the possession of the apartment on or before 05.03.2018, which the opposite parties have failed to do so. The opposite parties have also failed to produce on record any document with regard to the compliance of the PAPRA, 1995.

27. Further, as it has been held above that the opposite parties failed to deliver possession of the unit, in question, by the stipulated date despite receiving the substantial amount. The complainants cannot be made to wait for an indefinite period, for delivery of possession of the apartment purchased by them. Furthermore, non-delivery of possession of the apartment/unit, in question, by the stipulated date, is a material violation on the part of the opposite parties and amounts to deficiency in providing service and adoption of unfair trade practice. It is settled law that when there is a material violation on the part of the builder, in not handing over possession of unit/plot by the stipulated date, the purchaser is not bound to accept the offer, even if the same is made at a belated stage and on the other hand, can seek refund of amount paid. It was so held by the Hon'ble National Commission, in case titled as **Aashish Oberai Vs. Emaar MGF Land Limited, Consumer Case No. 70 of 2015, decided on 14.09.2016**, wherein, under similar circumstances, while negating the plea taken by the builder, it was held as under:-

*"I am in agreement with the learned senior counsel for the complainants that considering the default on the part of opposite parties no.1 and 2 in performing its contractual obligation, the complainants cannot be compelled to accept the*

*offer of possession at this belated stage and therefore, is entitled to refund the entire amount paid by him along with reasonable compensation, in the form of interest."*

28. Not only as above, in a case titled as **Brig Ajay Raina (Retd.) and another Vs. M/s Unitech Limited, Consumer Complaint No. 59 of 2016, decided on 24.05.2016**, wherein possession was offered after a long delay, this Commission, while relying upon the judgments rendered by the Hon`ble National Commission, ordered refund to the complainants, while holding as under:-

*"Further, even if, it is assumed for the sake of arguments, that offer of possession, was made to the complainants, in July 2015 i.e. after a delay of about three years, from the stipulated date, even then, it is not obligatory upon the complainants to accept the same."*

29. Further, in another case titled as **M/s. Emaar MGF Land Ltd. & Anr. Vs. Dr.Manuj Chhabra, First Appeal No.1028 of 2015, decided on 19.04.2016**, the Hon`ble National Commission, under similar circumstances, held as under:-

*"I am of the prima facie view that even if the said offer was genuine, yet, the complainants was not obliged to accept such an offer, made after a lapse of more than two years of committed date of delivery".*

30. As per Section 9 of PAPRA, every builder is required to maintain a separate account in a scheduled Bank, for depositing the amount deposited by the buyers, who intend to purchase the plots/flats, but no evidence has been led on the record by the opposite parties to prove that any account has been maintained by

them in this respect. As such, the opposite parties also violated Section 9 of the PAPRA.

31. Further, as per Section 12 of the PAPRA, if the builder fails to deliver possession of the plot/apartment/space/unit by the specified date, then the builder is liable to refund the amount deposited by the buyer with interest.

32. As per Rule 17 of the "Punjab Apartment and Property Regulation Rules, 1995, framed under Section 45 of the PAPRA, it has been provided as under:-

***"Rate of interest on refund of advance money upon cancellation of agreement.- The promoter shall refund full amount collected from the prospective buyers under sub-section (1) of section 6 together with interest thereon at the rate of twelve per cent per annum payable from the date of receipt of amount so collected till the date of re-payment."***

33. The Consumer Protection Act came into being in the year 1986. It is the benevolent piece of legislation to protect the consumers from exploitation. The spirit of the benevolent legislation cannot be overlooked and its object is not to be frustrated. The complainants have made payment of substantial amount to the opposite parties with the hope to get the possession of the flat in a reasonable period. The circumstances clearly show that the opposite parties made false statement of facts about the goods and services i.e. allotment of flat and delivery of possession in a stipulated period. The act and conduct of the opposite parties is a clear case of misrepresentation and deception, which resulted in the injury and loss of opportunity to the complainants. There is escalation in the price of construction also. The builder is under obligation to deliver the

possession of the plot/unit/flat within a reasonable period. The complainants cannot be made to wait indefinitely to get possession of the flat booked. From the facts and evidence brought on the record of the complaint, it is clearly made out that the opposite parties i.e. builder knew from the very beginning that they had not complied with the provisions of the PAPRA and Rules and would not be able to deliver the possession within the stipulated period, thus by misrepresentation induced the complainants to book the unit, due to which the complainants have suffered mental agony and harassment. It is the settled principle of law that compensation should be commensurate with the loss suffered and it should be just, fair and reasonable and not arbitrary. The amount paid by the complainants is a deposit held by the opposite parties in trust of complainants and it should be used for the purpose of building the plots, as mentioned in Section 9 of PAPRA. The builder is bound to compensate for the loss and injury suffered by the complainants for failure to deliver the possession, so has been held in catena of judgments by the Hon'ble Supreme Court and the Hon'ble National Commission. To get the relief, the complainants have to wage a long drawn and tedious legal battle. As such, the complainants were at loss of opportunities. In these circumstances, the complainants are entitled to the refund of the amount deposited by them, along with interest and compensation.

34. In view of our above discussion, the complaint is allowed against the opposite parties. The following directions are issued to opposite parties:

- i) to refund a sum of Rs.53,70,175/-, as prayed, along with interest at the rate of 12% per annum from respective dates of deposit till realization; as per Rule 17 of PAPRA;
- ii) to pay Rs.65,000/- as compensation on account of mental agony and harassment as well as litigation expenses;

35. The opposite parties shall comply with the above said directions within a period of 30 days from the receipt of the certified copy of the order.

**(JUSTICE PARAMJEET SINGH DHALIWAL)  
PRESIDENT**

**(RAJINDER KUMAR GOYAL)  
MEMBER**

**October 21<sup>st</sup>, 2019**

*parmod*