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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.V. NAGARATHNA; J., R. MAHADEVAN; J.
FEBRUARY 20, 2026.

CIVIL APPEAL NO. 5289 OF 2022
PARSVNATH DEVELOPERS LTD. *versus* **MOHIT KHIRBAT**

CIVIL APPEAL NO. 5290 OF 2022
PARSVNATH DEVELOPERS LTD. *versus* **GP. CAPT. SUMAN CHOPRA (DEAD) THROUGH LRS.**

CIVIL APPEAL NO. 11047 OF 2025
PARSVNATH HESSA DEVELOPERS PVT. LTD. *versus* **AMAN CHAWLA AND ANOTHER**

Consumer Protection Act, 1986 – Sections 2(1)(g), 2(1)(o), 2(1)(r), and 14 – Housing Construction and Delay in Possession – Held that housing construction falls within the ambit of "service" under Section 2(1)(o), and failure to deliver possession within the stipulated period constitutes "deficiency" under Section 2(1)(g) - held that the jurisdiction of consumer fora is statutory and not merely contractual; therefore, one-sided or oppressive contractual terms cannot curtail the power of the NCDRC to award just and reasonable compensation. *[Paras 10 - 18]*

Consumer Protection Act, 1986 – Section 14 – Award of Interest beyond Contractual Terms – Supreme Court rejected the appellant's contention that compensation should be restricted to the nominal rate (Rs. 10/- per sq. ft.) specified in Clause 10(c) of the Flat Buyer Agreement - It held that where a clause is found to be unfair, one-sided, or oppressive especially when compared to the high interest (24% p.a.) charged to consumers for defaults—consumer fora are not bound to mechanically enforce it and may award higher interest to prevent manifest injustice. *[Paras 15 - 18]*

Real Estate and Statutory Compliances – Occupancy Certificate (OC) – A developer cannot compel a purchaser to accept possession without a valid Occupancy Certificate - Obtaining an OC is a statutory pre-condition integral to the lawful delivery of possession - Failure to obtain the same constitutes a deficiency in service. *[Paras 25 - 29]*

Subsequent Purchasers – Right to Compensation – A subsequent purchaser is entitled to seek the same relief as the original allottee - The right to claim compensation for deficiency in service travels with the allotment and cannot be denied merely because the party stepped into the shoes of the original allottee at a later stage – Appeals dismissed. *[Relied on Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan (2019) 5 SCC 725; IREO Grace Realtech Private Limited v. Abhishek Khanna (2021) 3 SCC 241; Bangalore Development Authority v. Syndicate Bank (2007) 6 SCC 71; Samruddhi Cooperative Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd. (2022) 4 SCC 103; Dharmendra Sharma v. Agra Development Authority 2024 INSC 667; Para 18-22]*

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J U D G M E N T

R. MAHADEVAN, J.

1. These three appeals arise out of separate orders dated 30.07.2018, 30.07.2018, and 21.11.2019 respectively passed by the National Consumer Disputes Redressal Commission, New Delhi[1] in Consumer Complaint Nos. 827 of 2017, 828 of 2017 and 2355 of 2017.

2. By the impugned orders, the NCDRC directed the appellant to complete construction of the flats and hand over possession to the respondents in these appeals on or before 31.03.2019, 31.03.2019 and 31.03.2020 respectively, after obtaining the requisite Occupancy Certificate from the competent authorities. The appellant was further directed to pay compensation by way of simple interest at the rate of 8% per annum with effect from 13.11.2014, 14.12.2013 and 20.08.2015 respectively till the actual delivery of possession.

2.1. The NCDRC also directed the appellant to pay/credit rebate for the period from 01.09.2013 to 12.11.2014 at the same rate at which such rebate had earlier been credited to the account of the respondent Dr. Mohit Khirbat, and to pay litigation costs of Rs.25,000/- to the respondents in each case. Insofar as the respondents in C.A. No. 11047/2025 are concerned, the NCDRC restrained the appellant from withdrawing any rebate already credited to the account of the respondents. It was further directed that any increase in stamp duty occurring after 12.11.2014, 13.12.2013 and 20.08.2015 respectively shall be borne by the appellant.

2.2. Additionally, the NCDRC permitted inspection of the flats by the appellant prior to offering possession, with liberty to take measurements along with its architect. In the event of any excess area being found, the respondents were held liable to pay for such excess area at the original allotment price, with the value thereof to be adjusted against the compensation payable. The appellant was, however, held entitled to demand payment of any balance amount remaining after such adjustment.

3. At the outset, a brief narration of the facts giving rise to the present appeals is necessary. The consumer complaints state that the respondents had booked residential apartments with the appellant in a project developed by it at Sector53, Gurgaon known as *Parsvnath Exotica*. The transaction was subsequently endorsed by the appellant by transferring the allotments in favour of the respondents. The material particulars of the respective cases are as follows:

Case No.	**Owner(s) of the Flat**	**Flat No. & Area**	**Agreement date and Basic sale price**
C.A. No. 5289 of 2022 (Consumer Complaint No. 827 of 2017)	Original owners: Meera Mehra & Raj Kumar Mehra; Subsequent owner: the present respondent	B-5-501 3390 sq. ft.	23.02.2007 and Rs. 2,03,40,000/- Endorsed by the appellant on 20.05.2011
C.A. No. 5290 of 2022 (Consumer Complaint No. 828 of 2017)	Respondent: Gp. Capt. Suman Chopra	B-6-903 3390 sq. ft.	12.03.2007 and Rs. 1,82,72,100/-

[1] For short, "NCDRC"

C.A. No. 11047 of 2025 (Consumer Case No. 2355 of 2017)	Original owner: Gunja Infrastructure Private Limited; Subsequent owners: Noor Bhatia and Rakesh Bhatia; and thereafter, GPA Holder: Arjun Chawla	B-6-202 3390 sq. ft.	14.02.2011; after 4% rebate of Rs. 2,54,25,000/-, basic price Rs.2,44,08,000/- Transfers dated 07.03.2011 and 02.02.2012

3.1. Under the terms of the Flat Buyer Agreements, possession of the flats was required to be delivered within 36 months from the commencement of construction of the respective blocks, with a grace period of six months. Despite payment of almost the entire sale consideration by the respondents, possession was not delivered within the stipulated or even the extended contractual period. The respondents were therefore constrained to file consumer complaints before the NCDRC seeking *inter alia* delivery of possession, compensation, damages and costs.

3.2. Before the NCDRC, the appellant contended that the delay was attributable to factors such as lack of adequate financial resources, shortage of labour, escalation in manpower and material costs, and statutory approvals and procedural compliances. However, the NCDRC, by the impugned orders, disposed of the consumer complaints in favour of the respondents holding that the appellant could not be permitted an indefinite period to obtain the Occupancy Certificate, and was required to do so in a time-bound manner at its own cost and responsibility. Aggrieved thereby, the appellant has preferred the present appeals.

4. The learned senior counsel appearing for the appellant contended that the NCDRC exceeded its jurisdiction by travelling beyond the scope of Section 14 of the Consumer Protection Act, 1986[2] while granting the reliefs under the impugned orders, and failed to give due effect to the contractual terms governing the relationship between the parties.

4.1. It was submitted that Clause 10(a) of the Flat Buyer Agreement specifically provides that no claim for damages or compensation shall lie against the developer for any delay in handing over possession caused due to the reasons enumerated therein. In view of such stipulation, the respondents were not entitled to claim compensation by way of interest over and above what is exactly provided under Clause 10(c) of the Agreement, which, according to the appellant, has already been paid.

4.2. The learned senior counsel further submitted that Clause 11 (a) of the Flat Buyer Agreement squarely casts the liability to bear stamp duty, registration charges and other incidental expenses upon the buyer. The direction issued by the NCDRC requiring the appellant to bear the increased stamp duty was, therefore, contended to be contrary to the express contractual terms.

4.3. It was also urged that the NCDRC awarded interest and litigation costs without examining the contractual entitlements or the factual matrix, and in disregard of the law settled by this Court. According to the learned counsel, once the Agreement contains a specific stipulation governing compensation for delay, grant of interest beyond such stipulation was impermissible.

4.4. The learned senior counsel contended that the respondents sought reliefs far in excess of their legitimate entitlement, and that the amounts claimed were inflated and unsupported by material on record, yet were allowed without proper scrutiny.

[2] For short, "the Act"

4.5. It was further submitted that the complaints were motivated by unjust enrichment, while genuine industry-wide difficulties faced by the real estate sector such as shortage of finance and labour, escalation in material costs, and delays in approvals, were completely overlooked by the NCDRC, despite such factors being beyond the appellant's control.

4.6. The learned senior counsel emphasised that the impugned orders do not disclose any discernible methodology or rationale for determination of compensation by way of interest or costs. It was contended that compensation must have a rational nexus with actual loss or damage suffered, which is entirely absent in the present cases.

4.7. With specific reference to C.A. No. 5289 of 2022, it was submitted that the original allottee was a chronic defaulter in payment of instalments, necessitating repeated reminders. The appellant offered possession for fit-out purposes after reconciliation of accounts, granted a special rebate of Rs. 17,00,000/- towards unfinished items, and credited Rs. 17,62,800/- towards compensation for delay from September 2013 to December 2017. Pursuant to the interim order of this Court dated 12.02.2021, further compensation was paid, aggregating to Rs. 43,73,100/- upto October 2024.

4.8. In C.A. No. 5290 of 2022, it was submitted that upon completion of works, a letter offering possession for fit-out was issued on 13.01.2022, but the respondent was not willing to take possession. As directed by this Court, compensation amounting to Rs.43,05,300/- was paid upto October 2024.

4.9. Insofar as C.A. No. 11047 of 2025 is concerned, it was submitted that possession was taken by the respondents on an "as is where is" basis on 14.08.2022, and a sum of Rs. 33,22,200/- was credited or adjusted towards special rebate for the period from April 2013 to May 2021. Despite the same, the respondents continue to raise claims for further delay compensation.

4.10. The learned senior counsel submitted that after completion of Towers B5 and B6, applications for grant of Occupancy Certificate were duly made before the Directorate of Town and Country Planning, but the same were delayed due to changes in government policy. It was contended that the delay in issuance of the Occupancy Certificate is not attributable to the appellant, which has also complied with this Court's directions, including handing over three flats to the State of Haryana as solvent security pending completion of EWS flats.

4.11. Ultimately, the learned senior counsel submitted that the appellant has acted bona fide, settled several similarly situated disputes, and sought liberty to effect settlement either by refund or by directing acceptance of possession on an "as is where is" basis along with contractual compensation.

5. *Per contra*, the learned senior counsel for the respondents supported the impugned orders and contended that the appellant failed to complete the project or obtain the requisite approvals, including the Occupancy Certificate within the contractual period, thereby compelling the respondents to approach the NCDRC. It was submitted that instead of complying with the NCDRC orders, the appellant prolonged the matter by filing the present appeals.

5.1. It was submitted that in C.A. No. 5289 of 2022, the respondent paid the entire sale consideration by October 2013, despite which the appellant failed to complete the project and hand over possession. In C.A. No. 5290 of 2022, the respondent had paid almost the

entire sale consideration of Rs.1,82,72,100/- prior to the committed possession date of 14.12.2013, yet possession was not delivered within time.

5.2. With respect to C.A. No. 11047 of 2025, it was submitted that despite payment of about 95% of the sale consideration by 2013, possession was not delivered even after expiry of the extended contractual period. Execution proceedings were initiated due to non-compliance of the NCDRC order, resulting in issuance of non-bailable warrants against the directors of the appellant. In the execution proceedings, the appellant admitted its liability to the extent of Rs. 1.20 crores as against the claimed Rs. 1.33 crores. Possession was ultimately offered on 14.08.2022 without obtaining the Occupancy Certificate, which was accepted by the respondents due to urgent need, without prejudice to their rights.

5.3. The learned senior counsel fairly submitted that the respondents in CA. No.11047 of 2025 preferred C.A. No. 951 of 2020 seeking enhancement of interest, which was dismissed by this Court on 11.03.2024, thereby rendering the NCDRC order final and binding.

5.4. It was further submitted that the appellant intentionally delayed compliance by relying on the pendency of C.A. No. 473 of 2024 (Parsvnath Developers Ltd v. Mallika Raghavan) which was ultimately dismissed on 22.04.2024 in view of an out-of-court settlement.

5.5. On the aforesaid grounds, the learned senior counsel submitted that the respondents have suffered for more than a decade despite having paid nearly the entire sale consideration and, accordingly, prayed for dismissal of the appeals.

6. We have carefully considered the rival submissions and perused the materials placed on record.

7. It is not in dispute that the respondents had booked residential apartments in the project developed by the appellant and had paid nearly the entire sale consideration. It is equally undisputed that the appellant failed to complete the project within the stipulated period and was unable to hand over possession of the flats to the respondents within the contractual time frame. Consequently, the respondents were constrained to approach the NCDRC by filing consumer complaints. Upon consideration of the pleadings and submissions advanced by both sides, the NCDRC disposed of the complaints in favour of the respondents.

8. As indicated above, by the impugned orders, the NCDRC directed the appellant to complete construction of the flats and to hand over possession to the respondents within the time specified therein, after obtaining the requisite Occupancy Certificate from the competent authority. The appellant was further directed to pay compensation by way of interest at the rate of 8% per annum from the respective cut off dates till actual delivery of possession, to extend rebate for the specified period at the contractual rate, to pay litigation costs of Rs. 25,000/- and to bear any increase in stamp duty occurring after the stipulated dates. Aggrieved by the said directions, the appellant has approached this Court with the present appeals.

9. The principal submission urged on behalf of the appellant is that the NCDRC exceeded its jurisdiction by travelling beyond the scope of Section 14 of the Act and the contractual terms governing the parties, particularly Clause 10 of the Flat Buyer Agreement. It is contended that in view of Clause 10(c), which prescribes a fixed rate of compensation for delay, the respondents were not entitled to any further amount by way

of interest or compensation, and that the grant of a higher rate by the NCDRC amounts to unjust enrichment.

10. The submissions so made cannot be accepted. The jurisdiction of the consumer fora is traceable not merely to the contractual terms agreed between the parties but to the statute itself. Sections 12 and 22 of the Act empower the consumer fora, including the NCDRC to adjudicate complaints relating to deficiency in service and to grant appropriate reliefs. Section 22 expressly incorporates the powers under Sections 12, 13 and 14, thereby enabling the NCDRC to issue directions and award compensation for loss or injury caused to a consumer. The source of power, therefore, is statutory, and not contractual. For better appreciation, the relevant provisions of the Act are extracted below:

*"**12. Manner in which complaint shall be made —** (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by– (a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;*

(b) any recognized consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected;

Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant.

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act;

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation — For the purposes of this section, "recognized consumer association" means any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force."

*"**22. Power and procedure applicable to the National Commission.—** (1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.*

(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record."

11. It is well settled that housing construction falls within the ambit of "service" under Section 2(1)(o) of the Act, and failure to deliver possession within the stipulated period

constitutes "deficiency" under Section 2(1)(g). In ***Lucknow Development Authority v. M.K. Gupta***[3], this Court held that the provisions of the Act must receive a liberal construction in favour of the consumer, the legislation being beneficial in character. The expression "compensation" was held to be of wide amplitude, extending not only to pecuniary loss but also to mental agony and harassment occasioned by deficiency in service. The following passage is pertinent:

"The word 'compensation' is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him Any other construction would defeat the very purpose of the Act. The Commission or the forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him."

12. In ***M/s. Imperia Structures Ltd. v. Anil Patni and another***[4]***,*** and ***IREO Grace Realtech Private Limited v. Abhishek Khanna and others***[5], this Court reiterated that flat purchasers are "consumers" under the Act, and delay in handing over possession amounts to deficiency in service. The consumer fora, in exercise of powers under Section 14, are competent to redress such deficiency and award just and reasonable compensation commensurate with the injury suffered. The following paragraphs from *IREO* are apposite:

*"**29.** Section 2(1)(c) of the Consumer Protection Act, 1986 defines a "complaint" as:*

"2. (1)(c) "complaint" means any allegation in writing made by a complainant that –

(i) any unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects.

(emphasis supplied)

Section 2(1)(g) of the Act defines the expression "deficiency" to include any fault, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained under law, or in pursuance of a contract, or in relation to a "service". The term "service" has been defined by Section 2(1)(o) to include a service of any description which is made available to potential users. Section 2(1)(o) was amended by Act 50 of 1993 w.e.f. from 18.06.1993 to include "housing construction" within the purview of "service". The amended Section 2(1)(o) reads as follows:

"2(1)(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"

(emphasis supplied)

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[3] (1994) 1 SCC 243

[4] Civil Appeal No. 3581-3590 of 2020 dated 02.11.2020

[5] (2021) 3 SCC 241

30. *In LDA v. M.K. Gupta, this Court discussed the legislative intent of including "housing construction" within the ambit of "service' as: (SCC pp. 252 & 256-57, paras 2 & 6)*

"2. …. A scrutiny of various definitions such as 'consumer', 'service', 'trader', 'unfair trade practice' indicates that legislature has attempted to widen the reach of the Act. Each of these definitions are in two parts, one, explanatory and the other explanatory. The explanatory or the main part itself uses expressions of wide amplitude indicating clearly its wide sweep, then its ambit is widened to such things which otherwise would have been beyond its natural import. Manner of construing an inclusive clause and its widening effect has been explained in Dilworth v. Commissioner of Stamps as under: "…'include' is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural, import, but also those things which the definition clause declares that they shall include."

It has been approved by this Court in ESI Corpn. v. High Land Coffee Works[6], CIT v. Taj Mahal Hotel[7] and State of Bombay v. Hospital Mazdoor Sabha[8]. The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a 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 is not contrary to the attempted objective of the enactment.

….

6. ….. As pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immoveable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-clause (ii) of clause (r) of Section 2 as unfair trade practice.… A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993."

31. *Section 2(1)(r) of the Consumer Protection Act, 1986 defines "unfair trade practice" as follows:*

"2. (1)(r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely…"

(emphasis supplied)

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[6] (1991) 3 SCC 617

[7] (1971) 3 SCC 550

[8] AIR 1960 SC 610 : (1960) 2 SCR 866

The said definition is an inclusive one, as held by this Court in Pioneer Urban Land & Infrastructure Ltd v. Govindan Raghavan[9], wherein this Court speaking through one of us (Indu Malhotra, J.) held: (SCC pp. 732-33 & 734, paras 6.1 – 6.3 & 6.8)

"6.1 …. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. In Fortune Infrastructure v. Trevor D'Lima, this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

6.2. The respondent flat purchaser has made out a clear case of deficiency of service on the part of the appellant builder. The respondent flat purchaser was justified in terminating the apartment buyer's agreement by filing the consumer complaint, and cannot be compelled to accept the possession whenever it is offered by the builder. The respondent purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation.

6.3 The National Commission in the impugned order dated 23-10-2018 [Geetu Gidwani Verma v. Pioneer Urban land and Infrastructure Ltd., 2018 SCC OnLine NCDRC 1164] held that the clauses relied upon by the builder were wholly one-sided, unfair and unreasonable, and could not be relied upon. The Law Commission of India in its 199th Report, addressed the issue of "Unfair (Procedural & Substantive) Terms in Contract". The Law Commission inter alia recommended that a legislation be enacted to counter such unfair terms in contracts. In the draft legislation provided in the Report, it was stated that:

"… a contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties."

…

6.8. A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5-2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(1)(r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder."

32. *In a similar case, this Court in Arifur Rahman Khan v. DLF Southern Homes (P) Ltd.[10] affirmed the view taken in Pioneer, and held that the terms of the agreement authored by the developer does not maintain a level platform between the developer and the flat purchaser. The stringent terms imposed on the flat purchaser are not in consonance with the obligation of the developer to meet the timelines for construction and handling over possession, and do not reflect an even bargain. The failure of the developer to comply with the contractual obligation to provide the flat within the contractually stipulated period, would amount to a deficiency of service. Given the one-sided nature of the apartment buyer's Agreement, the consumer fora had the jurisdiction to award just and reasonable compensation as an incident of the power to direct removal of deficiency in service.*

33. *Section 14 of the 1986 Act empowers the Consumer Fora to redress the deficiency of service by issuing directions to the Builder, and compensate the consumer for the loss or injury caused by the opposite party, or discontinue the unfair or restrictive trade practices.*

34. *We are of the view that the incorporation of such one-sided and unreasonable clauses in the apartment buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the*

[9] (2019) 5 SCC 725 : (2019) 3 SCC (Civ) 37
[10] (2020) 16 SCC 512

National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.

35. In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the apartment buyer's Agreement."

13. It is equally well settled that contractual stipulations cannot curtail the statutory jurisdiction of the consumer fora. In ***Pioneer Urban Land & Infrastructure Ltd v. Govindan Raghavan***[11], this Court held that one-sided and unreasonable clauses in builder-buyer agreements constitute an unfair trade practice under Section 2(1)(r) of the Act. It was further observed that the incorporation of such oppressive terms in a standard form contract, where purchasers have little or no bargaining power, cannot bind the consumer so as to defeat statutory remedies under the Act.

14. In the present case, Clause 10 of the Flat buyer agreement stipulates the period for completion of construction and provides for payment of delay compensation, and reads thus:

"10. (a) Construction of the Flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular Block in which the Flat is located, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the Fire Service Dept., Civil Aviation Dept., Traffic Dept., Pollution Control Dept., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the Developers and subject to timely payments by the Flat Buyers in the Scheme. No claim by way of damages/compensation shall lie against the Developers in case of delay in handing over possession on account of the said reasons. The date of submitting application to the concerned authorities for issue of completion/ part completion/occupancy/part occupancy certificate of the Complex shall be treated as the date of completion of the Flat for the purpose of this clause/agreement.

(b) The Developers on completion of construction shall issue a final call notice to the Buyer, who shall remit all dues within 30 days thereof and take possession of the Flat. The Buyer shall be liable for payment of all taxes, levies, outflows, maintenance charges from the dates these are levied/made applicable irrespective of the fact that the Buyer has not taken possession of the Flat or has not been enjoying benefit of the same.

(c) In case of delay in construction of the Flat beyond the period as stipulated subject to force majeure and other circumstances as aforesaid under sub-clause (a) above with a grace period of 6 months, the Developers shall pay to the Buyer compensation @ Rs. 107.60 (Rupees One hundred seven and paise sixty only) per sq. meter or @ Rs. 10/- per sq. ft. of the super area of the Flat per month for the period of delay. Likewise, if the Buyer fails to settle the final account and to take possession of the Flat within 30 days from the date of issue of the final call notice/offer to hand over possession by the Developers, the Buyer shall be liable to pay to the Developers holding charges@ Rs. 107 .60 per sq, meter or @ Rs.10/- per sq. ft. of the super area of the Flat per month on expiry of 30 days' notice.

(d) Upon taking possession of the Flat the Buyer shall not be entitled to put forward any claim against the Developers in respect of any item of work in the Flat which may be alleged not to have been carried out or completed or for any other reason whatsoever."

15. A reading of Clause 10(c) reveals that compensation for delay is stipulated at the rate of Rs. 10 per sq. ft. per month. Whereas, Clause 5(b) of the Agreement empowers the developer to charge interest at 24% per annum for delayed payments by the allottee

[11] (2019) 5 SCC 725 : (2019) 3 SCC (Civ) 37

and to forfeit a substantial portion of the earnest money. Thus, the terms are evidently one-sided and have been drafted unilaterally by the developer. The stipulated compensation is nominal and disproportionate, particularly in cases of prolonged delay causing financial strain and mental hardship to homebuyers.

16. The statute does not impose any embargo on the grant of higher or reasonable compensation merely because the parties have agreed to a particular clause, especially where such clause is found to be unfair or oppressive. While consumer fora must act judicially and not arbitrarily enhance compensation, they are not bound to mechanically enforce a contractual term that results in manifest injustice. Departure from such a clause, where justified by the nature and duration of the delay and the hardship caused, lies within the statutory competence of the forum.

17. In the instant case, the delay in completion and handing over of possession is not disputed. Such failure constitutes deficiency in service. The NCDRC has examined the facts, assessed the extent of delay and its impact on the complainants, and determined compensation in the exercise of its powers conferred under the Act.

18. Accordingly, it must be held that the NCDRC acted well within the ambit of its statutory authority in awarding compensation, notwithstanding the restrictive stipulation contained in Clause 10(c) of the Agreement. The power of the consumer fora to grant just and reasonable compensation for deficiency in service is traceable to the statute and cannot be curtailed by contractual terms which operate to the detriment of the consumer. The award therefore represents a legitimate and permissible exercise of statutory jurisdiction.

18.1. Further, as held in ***Laureate Buildwell Private Limited v. Charanjeet Singh***[12], a subsequent purchaser is entitled to seek the same relief as the original allottee and cannot be denied compensation merely on the ground that he or she stepped into the shoes of the original allottee at a later stage. The right to claim compensation for deficiency in service travels with the allotment, unless expressly barred.

19. As regards the determination of compensation in cases of delayed or failed delivery of possession, reference may be made to the decision in ***Bangalore Development Authority v. Syndicate Bank***[13], wherein, this Court after surveying a catena of decisions, crystallised the governing principles relating to grant or refusal of relief to an allottee aggrieved by delayed or non-delivery of possession. It was held that where possession is not delivered within the stipulated or reasonable time without justifiable cause, the allottee is entitled to refund with reasonable interest and in appropriate cases, additional compensation depending upon the facts. Compensation is not uniform and must be moulded in light of the nature of delay, conduct of the authority, and extent of harassment suffered. The governing principles laid down in the said judgment are as follows:

"(a) Where the development authority having received the full price, does not deliver possession of the allotted plot/flat/house within the time stipulated or within a reasonable time, or where the allotment is cancelled or possession is refused without any justifiable cause, the allottee is entitled for refund of the amount paid, with reasonable interest thereon from the date of payment to date of refund. In addition, the allottee may also be entitled to compensation, as may be decided with reference to the facts of each case.

(b) Where no time is stipulated for performance of the contract (that is for delivery), or where time is not the essence of the contract and the buyer does not issue a notice making time the

[12] (2021) 20 SCC 401

[13] (2007) 6 SCC 711

essence by fixing a reasonable time for performance, if the buyer, instead of rescinding the contract on the ground of nonperformance, accepts the belated performance in terms of the contract, there is no question of any breach or payment of damages under the general law governing contracts. However, if some statute steps in and creates any statutory obligations on the part of the development authority in the contractual field, the matter will be governed by the provisions of that statute.

(c) Where an alternative site is offered or delivered (at the agreed price) in view of its inability to deliver the earlier allotted plot/flat/house, or where the delay in delivering possession of the allotted plot/flat/house is for justifiable reasons, ordinarily the allottee will not be entitled to any interest or compensation. This is because the buyer has the benefit of appreciation in value.

(d) Though the relationship between Development Authority and an applicant for allotment is that of a seller and buyer, and therefore governed by law of contracts, (which does not recognise mental agony and suffering as a head of damages for breach), compensation can be awarded to the consumer under the head of mental agony and suffering, by applying the principle of Administrative Law, where the seller being a statutory authority acts negligently, arbitrarily or capriciously.

(e) Where an alternative plot/flat/house is allotted and delivered, not at the original agreed price, but by charging current market rate which is much higher, the allottee will be entitled to interest at a reasonable rate on the amount paid towards the earlier allotment, from the date of deposit to date of delivery of the alternative plot/flat/house. In addition, he may be entitled to compensation also, determined with reference to the facts of the case, if there are no justifiable reasons for non-delivery of the first allotted plot/flat/house.

(f) Where the plot/flat/house has been allotted at a tentative or provisional price, subject to final determination of price on completion of the project (that is acquisition proceedings and development activities), the Development Authority will be entitled to revise or increase the price. But where the allotment is at a fixed price, and a higher price or extra payments are illegally or unjustifiably demanded and collected, the allottee will be entitled to refund of such excess with such interest, as may be determined with reference to the facts of the case.

(g) Where full payment is made and possession is delivered, but title deed is not executed without any justifiable cause, the allottee may be awarded compensation, for harassment and mental agony, in addition to appropriate direction for execution and delivery of title deed.

(h) Where the allotment relates to a flat/house and construction is incomplete or not in accordance with the agreed specifications, when it is delivered, the allottee will be entitled to compensation equivalent to the cost of completing the building or rectifying the defects.

(i) The quantum of compensation to be awarded, if it is to be awarded, will depend on the facts of each case, nature of harassment, the period of harassment and the nature of arbitrary or capricious or negligent action of the authority which led to such harassment.

(j) While deciding whether the allottee is entitled to any relief and in moulding the relief, the following among other relevant factors should be considered : (i) whether the layout is developed on 'no profit no loss' basis, or with commercial or profit motive; (ii) whether there is any assurance or commitment in regard to date of delivery of possession; (iii) whether there were any justifiable reasons for the delay or failure to deliver possession; (iv) whether the complainant has alleged and proved that there has been any negligence, shortcoming or inadequacy on the part of the developing authority or its officials in the performance of the functions or obligations in regard to delivery; and (v) whether the allottee has been subjected to avoidable harassment and mental agony.

19.1. In ***Ghaziabad Development Authority v. Balbir Singh***[14] this Court clarified that compensation cannot follow a rigid or formulaic pattern. The quantum must depend upon

[14] (2004) 5 SCC 65

the nature and extent of the loss suffered. Where possession is eventually delivered, compensation may ordinarily be lower since the allottee receives the benefit of appreciation; however, where refund alone is directed, compensation may be higher as the allottee is deprived of both possession and escalation in value. Compensation may include pecuniary loss as well as mental agony resulting from deficiency in service. The relevant paragraphs are extracted as under:

"8…Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard and fast rule can be laid down, however a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause.

9. That compensation cannot be uniform and can best of illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in such cases would necessarily have to be higher. Further if the construction is not of good quality or not complete, the compensation would be the cost of putting it in good shape or completing it along with some compensation for harassment. Similarly, if at the time of giving possession a higher price or other amounts is collected unjustifiably and without there being any provision for the same the direction would be to refund it with a reasonable rate of interest. If possession is refused or not given because the consumer has refused to pay the amount, then on the finding that the demand was unjustified the consumer can be compensated for harassment and a direction to deliver possession can be given. If a party who has paid the amount is told by the authority that they are not in a position to ascertain whether he has paid the amount and that party is made to run from pillar to post in order to show that he has paid the amount, there would be deficiency of service for which compensation for harassment must be awarded depending on the extent of harassment. Similarly, if after delivery of possession, the sale deeds or title deeds are not executed without any justifiable reasons, the compensation would depend on the amount of harassment suffered. We clarify that the above are mere examples. They are not exhaustive. The above shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer."

20. The expansive understanding of "compensation" under the Act was authoritatively explained in ***Lucknow Development Authority*** (supra). Subsequent decisions, including ***Chief Administrator, H.U.D.A. and another v. Shakuntla Devi***[15] and ***DLF Homes Panchkula Pvt. Ltd. v. D.S. Dhanda Etc. Etc.***[16] reiterate that compensation must be fair, reasonable, and commensurate with the loss or injury suffered. The consumer fora must analyse the factual matrix and cannot mechanically restrict compensation to strict financial calculations alone.

[15] (2017) 2 SCC 301

[16] AIR 2019 SUPREME COUR 3218

21. The jurisprudence that emerges is clear: compensation under the Act is remedial and protective in character. Detailed mathematical ascertainment of market decline is not a *sine qua non*; what is required is that the award be just, reasonable and proportionate to the delay, deprivation and hardship established on record.

22. When the aforesaid principles are applied to the present case, the conduct of the appellant assumes significance. Over a prolonged period, this Court passed a series of orders to safeguard the interests of the homebuyers and ensure completion of the project. By order dated 12.02.2021, the appellant was directed to complete construction and hand over possession and as an interim measure, to pay contractual delayed compensation. The appellant was made aware that even if the appeals were to succeed, it could not evade its contractual obligation to compensate the homebuyers.

23. Subsequent orders dated 08.07.2021, 28.02.2022, and 08.04.2022 record repeated assurances by the appellant, directions for completion of EWS units, inspection by the Director of Town and Country Planning, and furnishing of security for unfinished works. Despite such indulgences and extensions of time, the appellant failed to secure the requisite Occupancy Certificate.

24. The proceedings dated 13.11.2024 further reveal that the appellant continued to propose handing over possession on an "as is where is" basis without obtaining statutory approvals. Thus, the record unequivocally demonstrates persistent non-compliance despite repeated undertakings before this Court.

25. The issue of offering possession without an Occupancy Certificate is no longer *res integra*. In ***Samruddhi Cooperative Housing Society Ltd v. Mumbai Mahalaxmi Construction (P) Ltd***[17], this Court held that failure to obtain the requisite Occupancy Certificate constitutes deficiency in service, entitling consumers to seek compensation. The relevant paragraphs read thus:

"24. 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 its decisions in Arifur Rahman Khan v. DLF Southern Homes (P) Ltd. [(2020) SCC 512] and Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan [(2019) 5 SCC 725 : (2019) 3 SCC (Civ) 37], this Court has held that the failure to obtain an occupancy certificate or abide by contractual obligations amounts to a deficiency in service. In Treaty Construction v. Ruby Tower Coop. Housing Society Ltd. [(2019) 8 SCC 157 : (2019) 4 SCC (Civ) 141], the Court also considered the question of awarding compensation for not obtaining the certificate. In that case, the Court declined to award damages as there was no cogent basis for holding the appellant liable for compensation, and assessing the quantum of compensation or assessing the loss to the members of the respondent society.

25. In the present case, 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 occupancy 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."

25.1. Similarly, in ***Dharmendra Sharma v. Agra Development Authority***[18], it was categorically held that a purchaser cannot be compelled to accept possession without

[17] (2022) 4 SCC 103
[18] 2024 INSC 667

completion and statutory certificates, and such an offer is legally untenable. The following paragraphs are apposite:

"29. The appellant's key contention regarding the absence of the completion certificate and firefighting clearance certificate merits serious consideration. The appellant consistently raised this issue, asserting that a valid offer of possession cannot be made without these documents. Section 4(5) of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 and Section 19(10) of the RERA Act, 2016 mandate that a developer must obtain these certificates before offering possession. Despite the appellant's repeated requests, ADA failed to produce these certificates, rendering its offer of possession incomplete and legally invalid.

30. The appellant has rightly cited relevant precedents to bolster this argument. In Debashis Sinha v. R.N.R. Enterprise [(2023) 3 SCC 195 : (2023) 1 SCC (Civ) 356], this Court held that possession offered without the requisite completion certificate is illegal, and a purchaser cannot be compelled to take possession in such circumstances…"

26. In view of these authoritative pronouncements, possession without an Occupancy Certificate cannot be forced upon the respondents. Obtaining such certificate is a statutory pre-condition integral to lawful delivery of possession.

27. It is also relevant to note that the respondents in C.A. No. 11047 of 2025 had sought enhancement of interest, but the award of interest at 8% per annum has attained finality upon dismissal of their appeal (C.A. No. 951 of 2020) on 11.03.2024. Further, the order dated 21.11.2019 passed by the NCDRC in Consumer Complaint No. 2355 of 2017, impugned in C.A. No. 11047 of 2025, was subject to the outcome of Civil Appeal No. 473 of 2020 (Parsvnath Developers Ltd v. Mallika Raghavan) which was disposed of on 22.04.2024, in terms of an out-of-court settlement, directing refund with interest at 8% per annum.

28. Having regard to the totality of circumstances, namely the prolonged delay, failure to obtain mandatory statutory approvals, repeated non-compliance with the directions of this Court and the long deprivation suffered by the respondents despite payment of substantial consideration, we are of the considered view that award of interest at the rate of 8% per annum represents fair and reasonable compensation consistent with the principles laid down by this Court.

28.1. It is further evident from the record that the NCDRC has awarded rebate, litigation expenses and additional stamp duty charges to be borne by the appellant on account of the delay in handing over the possession. These directions have been issued upon consideration of the factual matrix and material available on record. Such directions are incidental and ancillary to the main relief of compensation and fall squarely within the ambit of Section 14 of the Act. Hence, the same do not suffer from any perversity or jurisdictional error so as to warrant interference by this Court.

29. Accordingly, we find no merit in these appeals. The orders of the NCDRC are hereby affirmed. The appellant is directed to obtain the requisite Occupancy Certificate and hand over possession to the respondents in C.A. Nos. 5289 of 2022 and 5290 of 2022 within a period of six months from the date of this judgment. Till such time, the appellant shall continue to pay compensation as determined by the NCDRC without any default. In the event the appellant is unable to obtain the Occupancy Certificate within the said period on account of bona fide causes not attributable to it, liberty is granted to approach the NCDRC for appropriate consideration, limited to the issue of interest for the period subsequent to the time stipulated in this judgment.

29.1. Insofar as the respondents in C.A. No. 11047 of 2025 are concerned, they shall be entitled to compensation by way of interest at 8% per annum from the agreed date of possession till 14.08.2022, after adjusting the amount already paid. The appellant shall obtain the Occupancy Certificate, if not already obtained, and furnish the same to the respondents forthwith.

30. With the aforesaid observations and directions, all the appeals stand dismissed. There shall be no order as to costs.

31. Pending application(s), if any, shall stand disposed of.