

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI**

**FIRST APPEAL NO. 542 OF 2017**

(Against the Order dated 02/02/2017 in Complaint No. 164/2016 of the State Commission Punjab)

1. M/S. COUNTRY COLONISERS PVT. LTD.  
THROUGH HARMANDEEP SINGH KANDHARI,  
AUTHORISED REPRESENTATIVE, REGD. OFFICE  
AT: PO PAYON AND SILK MILLS, ADJOINING COCA  
COLA DEPOT, G.T. ROAD, CHHEHARTA,  
AMRITSAR,  
PUNAJB-143105

.....Appellant(s)

Versus

1. HARMIT SINGH ARORA & 2 ORS.  
S/O. S. PURAN SINGH, R/O. HOUSE , PHASE-IX,NO.  
MOHALI,  
PUNJAB

2. HARMANDEEP SINGH KANDHARI  
AUTHORISED SIGNATORY, M/S. COUNTRY  
COLONISERS PVT LTD., A-, MOHAN  
COOPERATIVE INDUSTRIAL ESTATE, MAIN  
MATHURA ROAD,  
NEW DELHI-110044

3. WAVE ESTATE  
THROUGH ITS MANAGER, SECTOR-85,  
SAHIBZADA AJIT SINGH NAGAR,  
PUNJAB-140308

.....Respondent(s)

**FIRST APPEAL NO. 1138 OF 2018**

(Against the Order dated 08/03/2018 in Complaint No. 185/2017 of the State Commission Punjab)

1. COUNTRY COLONIZERS PVT. LTD.  
THROUGH HARMANDEEP SINGH KANDHARI,  
AUTHORIZED REP. SECTOR 85, SAHIBAZADA  
AJIT SINGH NAGAR,  
MOHALI 140308  
PUNJAB

.....Appellant(s)

Versus

1. KARNAIL SINGH MUDAHAR  
S/O. S. KARTAR SINGH MUDAHAR, R/O. 1571,  
FIRETHORN STREET, BOLINGBROOK, ILLINOIS,  
USA 60490

.....Respondent(s)

**FIRST APPEAL NO. 1142 OF 2018**

(Against the Order dated 08/03/2018 in Complaint No. 184/2017 of the State Commission Punjab)

1. COUNTRY COLONIZERS PVT. LTD.

THROUGH HARMANDEEP SINGH, AUTHORIZED  
REP. SECTOR 85, SAHIBZADA AJIT SINGH NAGAR  
MOHALI 140308  
PUNJAB

.....Appellant(s)

Versus

1. MOHINDER SINGH MUDAHAR

S/O. S. KARTAR SINGH, R/O. 11123, POTOMAC  
OAKS DRIVE ROCKVILLE,  
MD 20850  
USA

.....Respondent(s)

**FIRST APPEAL NO. 119 OF 2019**

(Against the Order dated 27/08/2018 in Complaint No. 409/2018 of the State Commission Punjab)

1. M/S. COUNTRY COLONIZERS PVT. LTD.

THROUGH AUTHORIZED SIGNATORY, C-1,  
SECTOR 3  
NOIDA  
UTTAR PRADES 201301

.....Appellant(s)

Versus

1. PAWAN KUMAR & 2 ORS.

S/O. SH. JAGDISH CHANDER, R/O. WARD NO 3,  
VILLAGE SUREWALA . 13 CDR, TEHSIL TIBBI,  
HANUMANGARH  
RAJASTHAN 335526

2. TEEJAN DEVI

W/O. SH. JAGDISH CHANDER, R/O. WARD NO 3,  
VILLAGE SUREWALA . 13 CDR, TEHSIL TIBBI,  
HANUMANGARH  
RAJASTHAN 335526

3. HOUSING DEVELOPMENT FINANCE  
CORPORATION LTD

THROUGH AUTHORIZED SIGNATORY, SCO NO  
153-155, SECTOR 8C  
CHANDIGARH

.....Respondent(s)

**FIRST APPEAL NO. 1198 OF 2017**

(Against the Order dated 18/04/2017 in Complaint No. 144/2016 of the State Commission Punjab)

**WITH**

IA/6164/2018(Directions),IA/8939/2019(Placing addl. documents)

1. COUNTRY COLONISERS PVT. LTD.  
THROUGH HARMANDEEP SINGH KANDHARI  
AUTHORIZED REP. REGD. OFFICE AT: PO RAYON  
CHHEHARTA, AMRITSAR,  
PUNJAB-143105

.....Appellant(s)

Versus

1. S. JAYSHREE & ANR.  
R/O. HOUSE NO. 2117, TOP FLOOR, SECTOR-21-C,  
CHANDIGARH  
2. AMRITALAL SINGH  
C/O. SCO NO. 365 (TOP FLOOR), SECTOR-32-D,  
CHANDIGARH

.....Respondent(s)

**FIRST APPEAL NO. 1292 OF 2017**

(Against the Order dated 18/04/2017 in Complaint No. 137/2016 of the State Commission Punjab)

1. COUNTRY COLONISERS PVT. LTD.  
THROUGH HARMANDEEP SINGH KANDHARI  
AUTHORIZED, PO RAYON AND SILK  
MILLS,ADJOINING COCA COLA DEPOT,  
G.T.ROAD,CHHAHARTA,  
AMRITSAR-143105  
PUNJAB

.....Appellant(s)

Versus

1. YADVINDER SINGH BHATIA & ANR.  
S/O SHRI.SHASHWAT SINGH BHATIA, R/O HOUSE  
NO.486, SECTOR-63  
MOHALI  
PUNJAB  
2. CHITVEEN KAUR BHATIA  
W/O YADVINDER SINGH BHATIA,R/O HOUSE  
NO.-A302,PALM VILLAGE,SECTOR-126,  
MOHALI  
PUNJAB

.....Respondent(s)

**FIRST APPEAL NO. 1376 OF 2018**

(Against the Order dated 24/04/2018 in Complaint No. 906/2017 of the State Commission Punjab)

1. M/S COUNTRY COLONIZERS PVT. LTD.  
THROUGH AUTHORIZED SIGNATORY, C-1,  
SECTOR 3,  
NOIDA 201301  
UTTAR PRADESH

.....Appellant(s)

Versus

1. GURSHARN SINGH ATWAL  
S/O. SH. SANTOKH SINGH ATWAL, R/O. H NO 2078,  
PASES-X,  
MOHALI  
PUNJAB

.....Respondent(s)

**FIRST APPEAL NO. 1387 OF 2017**

(Against the Order dated 26/04/2017 in Complaint No. 272/2016 of the State Commission Punjab)

**WITH**

**IA/8010/2019(Placing addl. documents),IA/9620/2017(Condonation of  
delay),IA/9982/2017(Placing addl. documents)**

1. COUNTRY COLONISERS PVT. LTD.  
THROUGH HARMANDEEP SINGH KANDHARI  
AUTHORIZED REPRESENTATIVE, PO RAYON AND  
SILK MILS ADJOINING COCA COLA DEPOT, G.T.  
ROAD CHHEHARTA  
AMRITSAR  
PUNJAB 143105

.....Appellant(s)

Versus

1. PAVITAR PAL SINGH  
S/O. SH HARJIT SINGH, R/O. HOUSE NO 1108,  
SECTOR 59 PHASE-V, S.AS. NAGAR  
MOHALI  
PUNJAB

.....Respondent(s)

**FIRST APPEAL NO. 1402 OF 2017**

(Against the Order dated 19/04/2017 in Complaint No. 84/2016 of the State Commission Punjab)

**WITH**

**IA/8011/2019(Placing addl. documents),IA/9744/2017(Condonation of  
delay),IA/9983/2017(Placing addl. documents),IA/16406/2018(Directions)**

1. COUNTRY COLONISERS PVT. LTD.  
THROUGH HARMANDEEP SINGH KANDHARI,  
AUTHORISED REPRESENTATIVE, REGD. OFFICE AT:  
PO RAYON AND SILK MILLS, ADJOINING COCA  
COLA DEPOT, G.T. ROAD, CHHEHARTA,  
AMRITSAR,  
PUNJAB-143105

.....Appellant(s)

Versus

1. SWARANJEET KAUR  
W/O. SH. SURJIT SINGH, R/O. HOUSE NO. 2345,  
URBAN ESTATE, PHASE-II,  
PATIALA

PUNJAB

.....Respondent(s)

**FIRST APPEAL NO. 1510 OF 2018**

(Against the Order dated 22/11/2017 in Complaint No. 494/2017 of the State Commission Punjab)

1. M/S COUNTRY COLONISERS PVT. LTD.  
THROUGH AUTHORIZED SIGNATORY, C-1,  
SECTOR 3,  
NOIDA  
UTTAR PRADESH 201301

.....Appellant(s)

Versus

1. ASHU ARORA & 2 ORS.  
W/O. SH. PARMINDER SINGH, R/O. S-326,  
GREATER KAILASH  
NEW DELHI 11  
2. PARMINDER SINGH  
S/O. SH. HARBANS SINGH, R/O. S-326, GREATER  
KAILASH  
NEW DELHI 11  
3. INDABULLS HOUSING FINANCE LTD  
F-60, SECOND FLOOR, MALHOTRA, CONNAUGHT  
PLACE  
NEW DELHI 110001

.....Respondent(s)

**FIRST APPEAL NO. 1615 OF 2018**

(Against the Order dated 06/02/2018 in Complaint No. 837/2017 of the State Commission Punjab)

1. M/S COUNTRY COLONISERS PVT. LTD.  
THROUGH AUTHORIZED SIGNATORY, C-1,  
SECTOR 3,  
NOIDA  
UTTAR PRADESH

.....Appellant(s)

Versus

1. ABHISHEK DIWAN & ANR.  
S/O. DURGA PRASAD DIWAN, R/O. FLAT NO 231  
PLOT NO 68, PRAGATI APARTMNET, SECTOR 55  
GURGAON  
HARYANA  
2. HOUSING DEVELOPMENT FINANCE  
CORPORATION LTD  
(HDFC) THROUGH ITS MANAGING DIRECTOR,  
RAMAN HOUSE 169 BACKBAY, RECLAMATION  
MUMABI 400 200

.....Respondent(s)

**FIRST APPEAL NO. 1620 OF 2018**

(Against the Order dated 06/02/2018 in Complaint No. 837/2017 of the State Commission Punjab)

1. M/S COUNTRY COLONISERS PVT. LTD.  
THROUGH AUTHORIZED SIGNATORY, C-1,  
SECTOR 3  
NOIDA  
UTTAR PRADESH 201301

.....Appellant(s)

Versus

1. KULTEJ VERMA & 2 ORS.  
(A) PERMANENT RESIDENTS S/O. SH. RAJ KUMAR  
VERMA, H NO 19, RANJIT ENCLAVE, ASHOKA  
NURSERY, KUNJPURA ROAD  
KARNAL

2. KULTEJ VERMA  
(B) CURRENTLY RESIDENT, S/O. SH. RAJ KUMAR  
VERMA, H NO 05, HEAVENS GARDEN, NAGURU  
DRIVE , NAGURU, PO BOX NO 9451, KAMPALA  
UGANDA

3. PRABHJOT KAUR  
W/O. SH. KULTEJ VERMA, (A) PERMANENT  
RESIDENTS, S/O. SH. RAJ KUMAR VERMA, H NO  
19, RANJIT ENCLAVE, ASHOKA NURSERY,  
KUNJPURA ROAD  
KARNAL

4. PRABHJOT KAUR  
W/O. SH. KULTEJ VERMA, (B) CURRENTLY  
RESIDENT, H NO 05, HEAVENS GARDEN, NAGURU  
DRIVE , NAGURU, PO BOX NO 9451, KAMPALA  
UGANDA

5. HOUSING DEVELOPMENT FINANCE  
CORPORATION LTD  
THROUGH MANAGING DIRECTOR, SCO 142, 1  
FLOOR, ABOVE NATION SKIN HOSPITAL, SECTOR  
5, MDC  
PANCHKULA

.....Respondent(s)

**FIRST APPEAL NO. 1679 OF 2017**

(Against the Order dated 20/04/2017 in Complaint No. 218/2016 of the State Commission Punjab)

1. COUNTRY COLONIZERS PVT. LTD.  
C-1, SECTOR-3.  
NOIDA-201301  
UTTAR PRADESH

.....Appellant(s)

Versus

1. YOGESH MONGA & ANR.  
S/O. TILAK RAJ MONGA. H.NO. 2893, SECTOR-8-C.  
CHANDIGARH.

2. MANISHA MONGA  
W/O.YOGESH MONGA. H.NO. 2893, SECTOR-8-C.  
CHANDIGARH.

.....Respondent(s)

**FIRST APPEAL NO. 1862 OF 2018**

(Against the Order dated 19/07/2018 in Complaint No. 1017/2017 of the State Commission  
Punjab)

1. M/S COUNTRY COLONISERS PVT. LTD.  
THROUGH AUTHORISED SIGNATORY, C-1,  
SECTOR 3  
NOIDA  
UTTAR PRADESH 201301

.....Appellant(s)

Versus

1. RAMANDEEP KAUR & ANR.  
W/O. SH. S. AMARINDER SINGH, R/O. B-11/1409,  
STREET NO 4, WARD NO 19. GOBIND COLONY ,  
BARNALA  
PUNJAB

2. HOUSING AND DEVELOPMENT CORPORTION  
BANK (HDFC BANK)  
THROUGH ITS BRANCH MANAGER SCO NO  
1653-155, SECTOR 8C  
CHANDIGARH

.....Respondent(s)

**FIRST APPEAL NO. 1948 OF 2017**

(Against the Order dated 19/04/2017 in Complaint No. 82/2016 of the State Commission Punjab)

**WITH**

**IA/14364/2017(Stay),IA/14366/2017(Condonation of delay)**

1. COUNTRY COLONIZERS PVT. LTD.  
C-1, SECTOR-3.  
NOIDA-201301  
UTTAR PRADESH.

.....Appellant(s)

Versus

1. JASWINDER PAL SINGH CHAWLA  
S/O. SH. MALIK SINGH CHAWLA. R/O.139,  
SECTOR-38 A.  
CHANDIGARH.

.....Respondent(s)

**FIRST APPEAL NO. 1953 OF 2018**

(Against the Order dated 30/01/2018 in Complaint No. 63/2017 of the State Commission Punjab)

1. COUNTRY COLONIZERS PVT. LTD.  
THROUGH AUTHORIZED SIGNATORY, C-1,  
SECTOR 3,  
NOIDA  
UTTAR PRADESH 201301

.....Appellant(s)

Versus

1. RACHNA SINGLA  
W/O. SH. SUMIT SINGLA, R/O. H NO 253/8, RAM  
BASTI , C/O. M/S. JANKI DASS FOOD TEHSIL  
SAMANA  
PATIALA  
PUNJAB

.....Respondent(s)

**FIRST APPEAL NO. 1954 OF 2017**

(Against the Order dated 18/05/2017 in Complaint No. 81/2016 of the State Commission Punjab)

**WITH**

**IA/8013/2019(Placing addl. documents),IA/14392/2017(Stay),IA/14394/2017(Condonation of delay)**

1. COUNTRY COLONIZERS PVT. LTD.  
C-1, SECTOR-3.  
NOIDA-201301  
UTTAR PRADESH.

.....Appellant(s)

Versus

1. SIMMI BATRA & ANR.  
W/O. SH. JATINDER BATRA. R/O. 3054, BLOOD  
DONOR SOCIETY, SECTOR-50 D.  
CHANDIGARH.  
2. SH. JATINDRA BATRA.  
S/O. SH. GOBIND BATRA. R/O. 3054, BLOOD  
DONOR SOCIETY, SECTOR-50 D.  
CHANDIGARH.

.....Respondent(s)

**FIRST APPEAL NO. 2319 OF 2017**

(Against the Order dated 21/04/2017 in Complaint No. 10/2016 of the State Commission Punjab)

1. COUNTRY COLONISERS PVT. LTD.  
THROUGH HARMANDEEP SINGH KANDHARI,  
AUTHORIZED REPRESENTATIVE, PO RAYON AND  
SILK MILLS ADJOINING COCA COLA DEPT, G.T  
ROAD CHHEHARTA  
AMRITSAR  
PUNJAB 143105

.....Appellant(s)



Versus

1. BIMPLEJEET KAUR BHATIA & ORS.  
SH. PARMINDER PAL SINGH BHATIA S/O. SH  
STAWANT SINGH BHATIA R/O. HOUSE NO 486  
SECTOR 63  
MOHALI  
PUNJAB

2. RABINDER PAL SINGH BHATIA  
SH. PARMINDER PAL SINGH BHATIA S/O. SH  
STAWANT SINGH BHATIA R/O. HOUSE NO 486  
SECTOR 63  
MOHALI  
PUNJAB

3. INDIA BULLS HOUSING FINANCE LTD  
THROUGH ITS DIRECTOR, 1:60, II FLOOR,  
MALHOTRA BUILDING  
NEW DELHI 110 001

.....Respondent(s)

**FIRST APPEAL NO. 26 OF 2018**

(Against the Order dated 06/06/2017 in Complaint No. 205/2016 of the State Commission Punjab)

1. COUNTRY COLONIZERS PVT. LTD.  
THROUGH AUTHORIZED SIGNATORY. R/O. C-1,  
SECTOR-3.  
NOIDA-201301  
UTTAR PRADESH.

.....Appellant(s)

Versus

1. RAMESH GUPTA & ANR.  
S/O. RAM BAGAT. R/O. 475, PRITI NAGAR.  
HISSAR.  
HARYANA  
2. PUNJAB NATIONAL BANK.  
THROUGH ITS BRANCH MANAGER. RAB-LOAN  
BRANCH, SIRSA ROAD.  
HISSAR  
HARYANA.

.....Respondent(s)

**FIRST APPEAL NO. 27 OF 2018**

(Against the Order dated 26/04/2017 in Complaint No. 245/2016 of the State Commission Punjab)

1. COUNTRY COLONIZERS PVT. LTD.  
THROUGH AUTHORIZED SIGNATORY. R/O. C-1,  
SECTOR-3.  
NOIDA-201301.

UTTAR PRADESH.

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.....Appellant(s)

Versus

1. NEHA SODHI GAUR & 2 ORS.

W/O. AKSHAT GAUR. R/O. 4593, SECTOR-18 D.

CHANDIGARH.

2. AKSHAT GAUR.

S/O. ATUL SHARMA. R/O. 4593, SECTOR-18 D.

CHANDIGARH.

3. HOUSING AND DEVELOPMENT CORPORATION  
BANK(HDFC).

THROUGH ITS BRANCH MANAGER. SCO

NO.153-155, SECTOR-8 C.

CHANDIGARH.

.....Respondent(s)

**BEFORE:**

**HON'BLE MR. DR. S.M. KANTIKAR,PRESIDING MEMBER**

**HON'BLE MR. DINESH SINGH,MEMBER**

**For the Appellant :**

**For the Respondent :**

**Dated : 01 Jul 2019**

**ORDER**

**Appearance:**

**FA/542/2017**

Mr. Sumeer Sodhi, Advocate

Mr. Arjun Nanda, Advocate

For the Appellant

:

Ms. Ridhima Juneja, Advocate

For Respondents : Mr. Sumeet Anand,, Advocate with  
Mr. Pratyush Parmial, Advocate  
Mr. Ankur Gogia, Advocate  
Mr. Shivam Sharma, Advocate  
Respondent No. 1 in person

For Respondents No. 2 & 3 : deleted

**FA/1198/2017**

For Respondents : Mr. Sanjeev Sharma, Advocate

**FA/1292/2017**

For Respondents : Mr. Yadvinder Singh Bhatia,  
(Respondent no. 1 in person)

**FA/1387/2017**

For Respondent : Mr. Manav Bajaj, Advocate with  
Respondent in person

**FA/1402/2017;**

For Respondents : Mr. Sanjeev Sharma, Advocate

**FA/1679/2017**

For Respondent : Mr. Munish Goel, Advocate

**FA/1948/2017**

For Respondent : Mr. Sanjeev Sharma, Advocate

**FA/1954/2017**

For Respondents : NEMO

**FA/2319/2018**

Mr. Parminder Pal Singh Bhatia

For Respondent : (Respondent in person)

For Respondent No. 3 : Mr. Krishan Kumar, Advocate with

Mr. Rahul Raj Mishra, Advocate

**FA/26/2018**

For Respondents : Mr. Sanjeev Sharma, Advocate

**FA/27/2018**

For Respondent : Mr. Sanjeev Sharma, Advocate

For Respondent No. 3 : Mr. Avnish Tyagi, Advocate

**FA/1138/2018**

For Respondents : Mr. Pushpinder Singh, Advocate with  
Mr. Sandeep Jain, Advocate  
Mr. Prabjit Singh, Advocate

**FA/1142/2018**

For Respondents : Mr. Pushpinder Singh, Advocate with  
Mr. Sandeep Jain, Advocate  
Mr. Prabjit Singh, Advocate

**FA/1376/2018**

For Respondents : Mr. Arvind Rathaur, Advocate with  
Mr. Shashi Ranjan, Advocate

**FA/1510/2018**

For Respondents : Mr. Nikhil Jain, Advocate

**FA/1615/2018**

For Respondent No. 1 : Mr. Rajnish Ranjan, Advocate for  
Mr. Shashwat V. Dubey, Advocate

For Respondent No. 2 : Mr. Pradeep Kumar Jha, Advocate

**FA/1620/2018**

For Respondents : Mr. Savinder Singh Gill, Advocate with  
Mr. Anant Agarwal, Advocate

**FA/1862/2018**

For Respondent No. 1 : Mr. Karan Dewan, Advocate

For Respondent No. 2 : Mr. Pradeep Kumar Jha, Advocate

**FA/1953/2018**

For Respondents : Mr. Savinder Singh Gill, Advocate with  
Mr. Anant Agarwal, Advocate

**FA/119/2019**

For Respondents No. 1 & 2 : Mr. Anuj Aggarwal, Advocate with  
Mr. Chitvan Singhal, Advocate

For Respondent No. 3 : Mr. Pradeep Kumar Jha, Advocate

**HON'BLE MR. DINESH SINGH, MEMBER**

1. This relates to a home buyer - builder co. dispute .
2. On 03.06.2019, after hearing the learned counsel present and the complainants present in person, and after perusing the material on record, and after the due consideration, we recorded the sum and substance of our considered view in the daily Order:

**Dated: 03-06-2019**

**ORDER**

Heard the learned counsel for the appellant – builder co. and the learned counsel for the respondents – complainants and the respondents - complainants in - person.

Perused the material on record.

Deficiency in service and unfair trade practice are determined against the appellant – builder co.

The respective principal amount / s deposited by the respondent / s – complainant / s with the appellant – builder co. shall be refunded with interest by the appellant – builder co. to the respondent / s – complainant / s in each case.

The interest shall be payable from the respective date / s of deposit to the actual date / s of realisation.

The rate of interest shall be the rate for house building loan in the corresponding period in a scheduled nationalized bank (take, State Bank of India). If 'floating' / varying / different rates of interest were / are prescribed, the higher rate shall be taken for this instant computation.

Lumpsum compensation of Rs. 1 lakh shall be paid by the appellant – builder co. to the respondent /s – complainant / s in each case.

Cost of litigation of Rs. 1 lakh shall be paid by the appellant – builder co. to the respondent / s – complainant / s in each case.

Respective amounts, if any, deposited by the appellant – builder co. with the State Commission shall be adjusted in the above payments with interest, if any, accrued thereon, in each case.

First charge on the awarded amount shall be of the respective bank or financial institution, if any, that has provided loan to the respondent / s – complainant / s towards payment of the respective principal amount / s in each case.

It shall be the responsibility of the appellant – builder co. to correctly ascertain the correct rate of interest as directed and to make the respective payments accompanied with clear and cogent respective calculation sheet / s in each case.

In addition, specifically for indulging in unfair trade practice, the appellant – builder co. is put to stern advice of caution with cost of Rs.25,000/- in each case (i.e. in total 25000 x 20 = Rs.5,00,000/-) to be deposited in the Consumer Legal Aid Account of the State Commission.

All payments shall be made within four weeks of the pronouncement of the reasoned judgment.

It shall be the responsibility of the appellant – builder co. and the respondent / s – complainant / s (both, individually) to inform the respective bank or financial institution, if any, of the reasoned judgment, in each case, within two weeks of the pronouncement of the reasoned judgment.

If the payments to be made by the appellant – builder co. to the respondent / s – complainant / s are delayed beyond the stipulated period of four weeks from the date of the pronouncement of the reasoned judgment, it shall attract higher / penal interest and other compensation / cost (which will be determined by this Commission in the facts and specificities of that contingency if it so arises, in each concerned case).

A copy of the reasoned judgment be sent by the Registry to the State Commission, the appellant – builder co. and the respondent / s – complainant / s in each case within one week of the pronouncement of the reasoned judgment.

The appellant – builder co. shall file a report – in – compliance with the Registry of this Commission within six weeks of the pronouncement of the reasoned judgment with copies thereof to the respective respondent /s – complainant / s in each case.

Reasoned judgment to follow.

Execution in each case shall remain stayed till the pronouncement of the reasoned judgment.

3. We are giving our reasons hereinafter, and firming-up our findings and award.

4. Of these 20 first appeals / cross - first appeals, 5 have been filed within limitation. The remaining 15 have been filed with delay.

In the interest of justice, and to decide the first appeals on merit, on facts and law, the delay in filing 15 of these 20 first appeals / cross - first appeals is condoned.

5. The salient material dates and the specific awards made in the 20 f.a.s are given in the table below:

	Date of Agreement	Award		



C.C. Nos.  F.A. Nos.	Assured dated of handing over physical possession  Date of institution of compliant  Date of impugned Order of State Commission	Amount deposited	Refund of amount deposited and interest thereon etc.	Lumpsum compensation	Cost of litigation
C.C. 144 of 2016  F.A. 1198 of 2017  [lead- case]	19.12.2012  18.12.2015  (inclusive of the extended period of 6 months)  13.05.2016  18.04.2017	Rs. 69,62,824/-	To refund the amount of Rs.69,62,824/- deposited by the complainants with OP alongwith interest @ 12% minus pre-EMI interest already paid by OP to financial institution.  The amount paid by the financial institution will be paid first and then the remaining amount will be paid to the complainants.	Rs. 2 lakh	Rs. 21,000/-
			OPs to complete the project within a period of four months from the date of order as per the specifications given in the apartment allottees agreement		

			including occupation certificate from the competent authority and hand over the possession of the apartment, complete in all respects to the complainant;		
	26.12.2012		Pay interest on the deposited amount @ 12% p.a. from 1.4.2016 till the date of delivery of the possession of the apartment		
C.C. 164 of 2016	25.12.2015 (inclusive of the extended period of 6 months)		apartment		
F.A. 542 of 2017	26.05.2016	Rs. 55,35,497/-	Or	Rs. 2 lakh	Rs. 21,000/-
	02.02.2017		In case the possession of the apartment is not delivered to the complainant as specified above, then OPs will refund the amount so deposited by the complainant i.e. Rs. 55,35,497/- alongwith interest @ 12% p.a. from the date of deposit till the date of payment.		
			[Note: The time-frame for complying with the first remedy has since expired. Therefore, on date,		

			only the alternative second remedy obtains.]		
C.C. 137 of 2016 F.A. 1292 of 2017	13.10.2012 12.10.2015 (inclusive of the extended period of 6 months) 05.05.2016 18.04.2017	Rs. 51,33,808/-	To refund the amount of Rs. 51,33,808/- deposited by the complainants with OP No.1 alongwith interest @ 12% minus pre-EMI interest already paid by OPs to HDFC Ltd.	Rs. 2 lakh	Rs. 21,000/-
C.C. 272 of 2016 F.A. 1387 of 2017	07.03.2013 06.03.2016 (inclusive of the extended period of 6 months) 31.08.2016 26.04.2017	Rs. 59,99,029.63p	To refund the amount of Rs. 59,99,029.63p deposited by the complainant with OPs alongwith interest @ 12% minus pre-EMI interest already paid by OPs to financial institution.	Rs. 2 lakh	Rs. 21,000/-
C.C. 84 of 2016	17.10.2012 16.10.2015		To refund the amount of Rs. 40,14,764/-		

F.A. 1402 of 2017	(inclusive of the extended period of 6 months)  16.03.2016  19.04.2017	Rs. 40,14,764/-	deposited by the complainant with OPs alongwith interest @ 12% from the date of deposit till the actual realization.	Rs. 2 lakh	Rs. 21,000/-
C.C. 218 of 2016  F.A. 1679 of 2017	30.04.2013  29.04.2016  (inclusive of the extended period of 6 months)  22.07.2016  20.04.2017	Rs. 79,35,462/76p	To refund the amount of Rs. 79,35,462/76p deposited by the complainants with OPs alongwith interest @ 12% minus pre-EMI interest already paid by OPs to financial institution.  Out of which amount paid by the financial institution India Bulls Housing Finance Ltd. will be paid first and then the remaining amount will be paid to the complainants.	Rs. 2 lakh	Rs. 21,000/-
C.C. 82 of 2016  F.A.	24.11.2012  23.11.2015  (inclusive of the extended period of 6 months)	Rs. 54,19,752/-	To refund the amount of Rs. 54,19,752/- deposited by the complainant with OPs alongwith interest @ 12% minus pre-EMI interest already paid by OPs to financial institution.	Rs. 2 lakh	Rs. 21,000/-

1948 of 2017	16.03.2016 19.04.2017		The amount paid by the financial institution i.e. India Bulls Housing Finance Ltd. will be paid first and then the remaining amount will be paid to the complainant.		
C.C. 81 of 2016 F.A. 1954 of 2017	24.08.2012 23.08.2015 (inclusive of the extended period of 6 months)	Rs. 52,52,890/-	To refund the amount of Rs. 52,52,890/- deposited by the complainants with OPs alongwith interest @ 12% minus pre-EMI interest already paid by OPs to financial institution.  The amount paid by the financial institution i.e. HDFC Bank will be paid first and then the remaining amount will be paid to the complainants.	Rs. 2 lakh	Rs. 21,000/-
C.C. 10 of 2016 F.A. 2319 of 2017	17.10.2012 16.10.2015 (inclusive of the extended period of 6 months) 07.01.2016	Rs. 54,19,459/-	To refund a sum of Rs. 54,19,459/- alongwith interest @ 12% minus pre-EMI interest already paid by OP No. 1 to OP No. 2.  Out of the amount to be recovered, a sum of Rs.	Rs. 2 lakh	Rs. 21,000/-

	21.04.2017		37,31,250/- alongwith interest upto date will be paid to OP No. 2 and balance will be paid to the complainants.		
C.C. 205 of 2016 F.A. 26 of 2018	19.12.2012 18.12.2015 (inclusive of the extended period of 6 months) 05.07.2016 06.06.2017	Rs. 41,58,539/-	To refund the amount of Rs. 41,58,539/- deposited by the complainant with OPs alongwith interest @ 12% from the date of deposit till payment;  Out of which amount paid by the financial institution Punjab National Bank will be paid first and then the remaining amount will be paid to the complainant.	Rs. 2 lakh	Rs. 21,000/-
C.C. 245 of 2016 F.A. 27 of 2018	19.09.2012 18.09.2015 (inclusive of the extended period of 6 months) 04.08.2016	Rs. 78,68,206/-	To refund the amount of Rs. 78,68,206/- deposited by the complainants and financial institution with the OPs alongwith interest @ 12% minus pre-EMI interest already  paid by OP to financial institution i.e. HDFC Ltd.  Out of the amount to be recovered from OP Nos. 1 & 2, the amount due to OP	Rs. 2 lakh	Rs. 21,000/-

	26.04.2017		No. 3 will be paid first and remaining amount will be paid to the complainant.		
C.C. 185 of 2017 F.A. 1138 of 2018	23.08.2013 22.08.2016 (inclusive of the extended period of 6 months) 29.03.2017 08.03.2018	Rs. 35,41,090/-	To refund the entire deposited amounts of the complainant with interest @ 12% per annum from the date of their deposits till actual payment.	Rs. 75,000/-	Rs. 25,000/-
C.C. 184 of 2017 F.A. 1142 of 2018	11.10.2013 10.10.2016 (inclusive of the extended period of 6 months) 29.03.2017 08.03.2018	Rs. 43,52,599/-	To refund the entire deposited amounts of the complainant with interest @ 12% per annum from the date of their deposits till actual payment.	Rs. 75,000/-.	Rs. 25,000/-
	20.10.2012 19.10.2015				

C.C. 906 of 2017	(inclusive of the extended period of 6 months)	Rs. 24,71,795/-	To refund the amount of Rs. 24,71,795/- to the complainant along with interest at the rate of 12% per annum from the respective dates of deposits till realization.	Rs. 50,000/- as compensation and litigation expenses.
F.A. 1376 of 2018	23.10.2017  24.04.2018			
C.C. 494 of 2017	23.10.2012  22.10.2015  (inclusive of the extended period of 6 months)	Rs. 52,62,587/-	To refund the amount of Rs. 52,62,587.25P, along with interest at the rate of 12% per annum from the respective various dates of payment till realization, as per Rule 17 of PAPRA;	Rs. 60,000/- as compensation and litigation expenses.
F.A. 1510 of 2018	15.06.2017  22.11.2017		First of all, opposite parties No. 1 to 4 shall pay the outstanding amount to opposite party No. 5 towards the loan advanced by it to the complainants and, thereafter, the remaining amount, if any, shall be paid to the complainants	
			To refund the amount of Rs. 49,52,088/- along with interest at the rate of 12% per annum from the respective various dates of payment till realization, as per Rule 17 of PAPRA;	



<p>C.C. 837 of 2017</p> <p>F.A.</p> <p>1615 of 2018</p>	<p>06.10.2012</p> <p>05.10.2015 (inclusive of the extended period of 6 months)</p> <p>22.09.2017</p> <p>06.02.2018</p>	<p>Rs. 49,52,088/-</p>	<p>Opposite parties No. 1 to 3 shall also bear the Pre-EMI interest accrued on the loan amount obtained by the complainant from the Bank, from 26.12.2012 (date of execution of Tripartite Agreement) till the refund of the entire amount to the Bank / complainant. If any amount has been paid by opposite parties No. 1 to 3 as Pre-EMI interest, the same would be adjusted accordingly.</p> <p>It is also made clear that, first of all, opposite parties No. 1 to 3 shall pay the outstanding amount to opposite party No. 4 – Bank towards the loan advanced by it to the complainant and, thereafter, the remaining amount, if any, shall be paid to the complainant.</p>	<p>Rs. 50,000/- as compensation and litigation expenses.</p>
<p>C.C. 422 of 2017</p>	<p>28.12.2012</p> <p>27.12.2015 (inclusive of the extended period of 6 months)</p>	<p>Rs. 21,32,848/-</p>	<p>To refund the amount of Rs. 21,32,848/- along with interest at the rate of 12% per annum from the</p>	<p>Rs. 60,000/- as compensation and litigation expenses.</p>

F.A. 1620 of 2018	25.05.2017  06.12.2017		respective various dates of payment till realization, as per Rule 17 of PAPRA.		
C.C. 1017 of 2017  F.A. 1862 of 2018	23.11.2013  22.11.2016  (inclusive of the extended period of 6 months)  27.11.2017  19.07.2018	Rs. 21,76,398/-	To refund a sum of Rs. 21,76,398/- alongwith  interest @ 12% from the various dates of deposit till actual payment;  HDFC will have the first charge whatever amount has been received by OP Nos. 1 to 3 from HDFC. Firstly the account of HDFC will be cleared and the  remaining amount will be paid to the complainant.	Rs. 1 lakh	Rs. 21,000/-
C.C. 63 of 2017	20.10.2012  19.10.2015  (inclusive of the extended period of 6 months)	Rs. 41,58,539/-	To refund a sum of Rs. 41,58,539/- alongwith interest @ 12% p.a. from the various dates of deposit till actual payment;  HDFC Bank will have the first charge on whatever amount has been paid to OP from HDFC Bank	Rs. 1 lakh	Rs. 21,000/-

<p>F.A. 1953 of 2018</p>	<p>03.02.2017  30.01.2018</p>		<p>alongwith the upto date interest. Firstly the payment will  be made to HDFC Bank of the amount due in its  accounts against the complainant and the balance payment will be made to the complainant.</p>		
<p>C.C. 409 of 2018  F.A. 119 of 2019</p>	<p>09.03.2013  08.03.2016 (inclusive of the extended period of 6 months)  18.05.2018  27.08.2018</p>	<p>Rs. 69,62,825/-</p>	<p>To refund the amount of Rs. 69,62,825/-, along with interest at the rate of 12% per annum from the respective dates of deposit till realization, as per Rule 17 of PAPRA;  First of all, opposite party No.3 shall issue a certificate qua balance repayable loan amount as on the date of order and opposite parties No.1 &amp; 2 shall pay the outstanding amount to  opposite party No.3-HDFC Ltd. towards the loan advanced by it to the complainants and, thereafter, the remaining amount, if any, shall be paid to the  complainants.</p>	<p>Rs. 1 lakh as compensation and litigation expenses.</p>	

6. We note that these 20 f.a.s have similar facts and same questions of law involved.

7. We are taking f.a. no. 1198 of 2017, arising from the Order dated 18.04.2017 of the State Commission in c.c. no. 144 of 2016, M/s Country Colonisers Pvt. Ltd. vs. S. Jayashree & Anr., as the lead-case.

8. The facts, as taken from the lead-case, f.a. no. 1198 of 2017, and as recorded in paras 1 and 2 of the said Order dated 18.04.2017 of the State Commission, are as below:

Complainants have filed this complaint against the opposite party (hereinafter referred as Op) under Section 17 of the Consumer Protection Act, 1986 (for short the Act). Op had invited applications for their integrated residential project under the name and style of Wave Garden, Sector 85, SAS Nagar (Mohali) and the complainants applied for the same. When he approached, Ops assured quality construction and handing over the possession of the unit in time and allured by the offer of the Op, complainants booked one flat No. 1101 (Bougainvillea) by paying an amount of Rs. 5,00,000/- on 4.6.2012. The Apartment Allottees Agreement was executed between complainant Mrs. S. Jai Shree and Op on 19.12.2012 and total consideration of the flat is Rs. 76,34,250/-. The documents asked for by the Ops were supplied to them as demanded. According to Clause 5.1, the possession was to be delivered within a period of 30 months alongwith an extended period of six months from the date of execution of the agreement, which expired on 4.6.2015 but till date possession of the flat was not delivered. It was further alleged that Ops did not adhere to the terms of the agreement. Ops informed that development activity of the site given to Shapporji Pallonji & Co. Ltd. will be completed by October, 2014. The complainants visited the site and were shocked to see that there was only structure and no construction was going on. When approached the Ops, no satisfactory response was given to them. Vide letters dated 6.4.2015 and 17.9.2015, Ops informed that complainants are not liable to pay the EMI till 31.12.2015. Further complainant received one SMS dated 8.2.2016 wherein Ops gave advertisement for booking of 2/3 BHK Flats in Wave Estate by paying 15% and no interest on EMI till possession. Otherwise also as per subvention scheme, no EMI till possession but Op vide letter dated 20.12.2015 denied to pay pre-EMI interest. The total value of the flat is Rs. 76,34,250/- and 65% of the same comes to Rs. 49,62,265/- whereas Ops received Rs. 69,62,824/- i.e. 92% of the cost of the flat. Ops had withdrawn the amount more than the limit by mis-representation from the Bank Official and the complainant is burdened with interest on both ends. Legal notice was issued to the Ops. Complainants are residing in a rented accommodation by paying a rent of Rs. 18,150/- per month. The complainant had availed a home loan for purchasing the flat. The complainant was never a defaulter of Ops. Alleging deficiency in service on the part of Op, this complaint has been filed by the complainants with this Commission seeking directions against Ops as under:-

“(i) to pay EMI or pre-EMI to the bank till the possession is given;

(ii) to pay Rs. 18,150/- per month from 4.11.2014 till the possession of the flat is given and to refund the excess amount to the Bank which had been got released fraudulently from the Bank;

(iii) to pay interest @ 24% p.a. on the amount of Rs. 69,62,824/- from 4.11.2014 till date;

(iv) to pay compensation in the sum of Rs. 5 lacs on account of mental harassment;

(v) to pay cost of litigation to the tune of Rs. 33,000/- to the complainants.

(v) or any other directions which this Hon'ble Commission may deem fit in the facts and circumstances of the case.

2. Ops in their written reply took the preliminary submissions that this complaint is not maintainable as the complainants do not fall within the definition of consumer as defined under Section 2(1)(d) of the Act as the complainant had purchased the housing unit for commercial purposes and had their own residential house No. 2117, Sector 21-C, Chandigarh and being Investor has got booked the apartment No. 1101, Tower B (Bougainvillea), 11<sup>th</sup> Floor in Wave Garden, Sector 85, Mohali; the Commission has no territorial jurisdiction to entertain and decide the complaint as the intricate questions of law and facts are involved, which cannot be adjudicated in summary procedure under the Act, therefore, the matter be relegated to the Civil Court; complainants have not approached the Commission with clean hands and suppressed the material facts as firstly they had opted for construction linked plan but later on shifted to Subvention Linked Plan; this complaint deserves to be dismissed as the complainants have not impleaded the financial institution i.e. HDFC Ltd., which is a necessary party to the complaint; there is arbitration clause in the allottees agreement, therefore, the matter is required to be referred to the Arbitrator; under subvention linked plan, the complainant paid 15% of the basic sale price and then tripartite agreement was executed between the bank, complainants and the builder and amount under that plan becomes due in accordance with the stage of the construction and the bank pays the amounts according to stage of the construction. EMI commences from the month following the month in which loan is disbursed. Till such commencement, the complainants are liable to pay the Pre-EMI interest as agreed between the parties. Under Clause 4 of the tripartite agreement, the builder had agreed to pay pre-EMI amount for 24 months from the date of disbursement of first loan installment by the Bank, however, as a goodwill gesture, Op extended the period upto December, 2015. Till December, 2015, the complainants did not pay any amount. Complainants failed to pay the due amount in time. With regard to non-completion of the project, there was no agreed time for mandatory completion of the project. In Clause No. 5.1, it has been referred that the developer shall endeavour to complete the project as far as possible within 36 months. It was denied that the construction is not raised at the site. On merits, it was again reiterated that the unit was purchased for commercial purposes. It was again stated that in the agreement, the time agreed was not mandatory. It was only an endeavor on the part of the Ops to complete the project within the period as referred in Clause 5.1 of the agreement. It has been denied that the agreement is loaded in favour of Ops. Out of the amount paid by the bank, pre-EMI interest to the bank has been paid by the Op. Complaint is without merit. It be dismissed.

(paras 1 and 2 of the State Commission's Order dated 18.04.2017)

**9.** The State Commission in its Order dated 18.04.2017 has given reasoned findings to the effect that (lead-case):

(a) the complainant is a consumer within the definition of 'consumer' under section 2(1)(d) of the Act 1986 (para 5 of the State Commission's Order);

(b) existence of an arbitration clause in the agreement does not bar the jurisdiction of the State Commission (para 6);

(c) the complaint is maintainable in consumer protection fora (para 7);

(d) the builder co. is deficient in service.

**10.** The State Commission has allowed the complaint with directions as recorded in para 12 of its Order dated 18.04.2017 (lead-case):

12. In view of the above, we accept the complaint and direct Op as under:-

(i) to refund the amount of Rs. 69,62,824/- deposited by the complainants with Op alongwith interest @ 12% minus pre-EMI interest already paid by Op to financial institution.

(ii) the amount paid by the financial institution will be paid first and then the remaining amount will be paid to the complainant.

(iii) pay Rs. 2,00,000/- on account of compensation for mental tension and harassment; and

(iv) Rs. 21,000/- as litigation expenses.

The above directions be complied within 45 days from the receipt of certified copy of the order.

(para 12 of the State Commission's Order dated 18.04.2017)

**11 .** The State Commission had heard both sides, appraised the evidence, and passed a reasoned Order.

We are broadly in agreement with the findings of the State Commission.

We are, but, making our reasoned examination of the matter, as well as stating the reasons for determining deficiency in service as well as unfair trade practice on the part of the builder co. and for finding it appropriate to modify the award of the State Commission.

**12.** The contention of the complainant (lead-case) was to the effect that as per the terms and conditions of the agreement dated 19.12.2012, the possession of the subject unit was to be delivered within a period of 30 months from the date of execution of the agreement and in all contingencies within an extended period of 6 months thence i.e. upto 18.12.2015 (inclusive of the extended period of 6 months beyond 30 months). Only structural work was going on at the site. Construction was not complete. Despite depositing about 92% of the total cost of the subject unit (deposited: Rs. 69,62,824/-; total cost: Rs. 76,34,250/-), the builder co. failed to deliver physical possession of the subject unit till the assured date (18.12.2015) or till the date of filing of the complaint in the State Commission (13.05.2016) [as well as till the date of decision of the State Commission (18.04.2017), as also till the date of arguments (03.06.2019) in the first appeal before this Commission].

**13.** During arguments before this Commission on 03.06.2019, the builder co. admitted that completion / occupancy certificate of the subject units (in the lead-case, as well as in all the other 19 similar cases) had not been obtained till date (i.e. not been obtained till 03.06.2019).

14. The builder co.'s principal contentions, as contained in the grounds in its memo of appeal, are reproduced below:

4. The Appellant herein is assailing the impugned order dated 18.04.2017 warranting interference by this Hon'ble Commission by this Hon'ble Commission on the following, inter-alia, grounds:

A. BECAUSE state commission has committed an error by directing the opposite party to refund the amount to the complainant as the complainant has deliberately not impleaded the bank as a necessary party in the case with mala fide intentions so as to usurp the public money paid by the bank.

B. BECAUSE material irregularity has been committed by the Ld. State Commission while passing the Impugned Order dated 08.04.2017 in Consumer Complaint No. 144 of 2016.

C. BECAUSE the Ld. State Commission did not consider that the Respondent No. 2 herein has purchased the said apartment in January-February 2015 and has stepped into the shoes of the Respondent No. 1 from that day onwards.

D. BECAUSE the State Commission has committed a gross irregularity in not relegating to the procedure as mentioned in the contract between the parties in case of delayed possession. A contract between the parties cannot be superseded or amended by a court of law.

E. BECAUSE the Ld. State Commission does not have jurisdiction to entertain and adjudicate upon the dispute involved in the Complaint in as much it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act, 1986 and the dispute between the parties herein is exclusively triable by a Civil Court and therefore, a Complaint before the Consumer Fora is not maintainable and was liable to be dismissed summarily on this ground alone.

F. BECAUSE the Ld. State Commission failed to take notice of Clause 5.1 of the Apartment Allottee(s) Arrangement dated 26.12.2012 due to which the Appellant delayed in handing over the possession of the said apartment. The abovesaid Clause of the Arrangement clearly states that it shall be the endeavor of the Appellant herein to successfully complete the construction of the said Apartment within a period of 30 months along with an extended period 6 months from the date of the Arrangement. It is also submitted that the handing over of possession of the said Apartment was also contingent upon the Respondent No. 1 / Complainant making timely payments to the Appellant herein and also subject to Force Majeure reasons. The correct interpretation of the abovementioned clause would reflect that time is not of the essence of the contract between the parties in so far as the possession of the flat is concerned.

G. BECAUSE the Ld. State Commission failed to consider that the Respondent No. 1 / Complainant was required to make timely payments in order to enable the Appellant herein to complete the construction of the said Apartment on time.



H. BECAUSE the Ld. State Commission failed to consider that Respondent No.1 /Complainant failed to carry out his obligations under the said Arrangement which made the Respondents / Complainants liable to make timely payments, and the Respondent No. 1 / Complainant has failed to do so.

I. BECAUSE THE Ld. State Commission failed to consider that time was not the essence of the Contract. The commitment of the Appellant under the Arrangement was to try and complete the construction within 36 months from the date of the Arrangement. The Appellant indefatigably strived and made best efforts possible to ensure that its endeavor to complete the construction within the stipulated period in terms of Clause 5.1 of the agreement is reproduced herein below for ready reference:

*“5 .1. Subject to Clause 5.2 and further subject to all the Allottee(s) of the said “Apartment” in the “Said Project” making timely payments, the Developer shall endeavor to complete the development of “Said Project” in general and the said “Apartment” in particular as far as possible within 30 (thirty) months along with an extended period of (6) months from the date of execution of this Apartment Allottee(s) Arrangement and / or from the date of start of construction of Group Housing named as “Wave Gardens” whichever is later.”*

J. BECAUSE the definitions of ‘Complainant’, ‘Complaint’, Consumer Dispute’ and ‘Service’, as defined in Section 2 (1) of the Consumer Protection Act, do not cover the claims arising under the present dispute and that from the aforesaid definitions, the Complainant / Respondent is not a ‘consumer’ and the controversy involved in the Complaint is not a ‘Consumer Dispute’.

K. BECAUSE the transaction entered between the parties to the present dispute is a commercial transaction and the Respondents / Complainants cannot claim relief from the Hon’ble Consumer Commission as he is an investor in the current transaction.

L. BECAUSE grave injustice would be caused to the Appellant if no opportunity is afforded to the Appellant to show as to how the Complainant does not fall under the definition of “Consumer” under the Consumer Protection Act.

M. BECAUSE the Ld. State Commission erred in law in not asking the Respondent No. 1 / Complainant to submit an affidavit in respect of the residential properties owned by the Respondent No. 1 / Complainant and its position as an Investor.

N. BECAUSE the Ld. State Commission has made an erroneous order without considering the fact that the parties to the dispute are bound by the Apartment Allottee Arrangement which is to be read harmoniously and no clause should be read on its own which benefit the Respondent No. 1 / Complainant.

O. BECAUSE the Ld. State Commission has failed to appreciate that a substantial period of delay in completion of the project was caused due the FORCE MAJEURE instances given under Clause 5.2 of the Apartment Allottee Arrangement which are beyond the control of the Appellant. The relevant clause 5.2 of the agreement is reproduced herein below for ready reference:



*“For the purposes of this Apartment Allottee(s) Arrangement “Force Majeure” shall mean any event or circumstance or a combination of events and circumstances, whether occurred or likely to occur, which satisfies all or any of the following Conditions:*

*d) Nonpayment of sums due from the Allottee(s) including payment of installment / applicable interest and levies as mentioned herein above on time by nay of the Allottee(s) of the said Apartment.*

*e) change in governmental policy, laws (including any statute, ordinance, rule, regulation, judgement, notification, order, decree, permission, license or approval), including but not limited to, expropriation or compulsory acquisition by any government of any part of the Housing Project or rights therein.*

*g) any dispute between the Developer and Allottee(s) and / or between the Developer and the person, persons, association of persons obstructing and creating hurdle in the progress of the development work of the “Said Project” and / or Group Housing development named as “Wave Gardens” and / or any proceeding initiated in this regard;*

*i) any other reasons which can be construed to be beyond the control of the normal human being.”*

P. BECAUSE the Ld. State Commission has failed to take notice of the numerous reminders and Payment Demand Notices that were sent to the Respondent No. 1 / Complainant for defaults in making payments as per the payment schedule.

Q. BECAUSE the Ld. State Commission erred in law in holding that there is deficiency in service on the part of the Appellants. The Respondent No. 1 / Complainant was well aware that timely payment is the essence of the Agreement and is also essential for the progress of the project and still the Respondent No. 1 / Complainant defaulted in making timely payments, which shows the lack of interest and non-fulfilment of the terms of the agreement and hence, clearly does not make the Appellant liable of “Deficiency of Services”.

R. BECAUSE the Ld. State Commission failed to notice that the Complaint filed by the Complainant is false and frivolous and is filed so with the intention to escape the liability to pay the outstanding dues to the Appellants and to wriggle out of the Agreement.

S. BECAUSE the grant of 12% interest is not only unreasonable as it is not supported by any reason by the Ld. State Commission, but it is also excessive and will be very onerous and burdensome. More so the grant of Rs. 2 Lacs for mental tension, agony and harassment is too harsh and uncalled for in the facts and circumstances of the case.

(para 4., 4.A. to 4.S., of the builder co.’s memo of appeal)

15. The material fundamental details are given in the table below (lead-case):

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Date of agreement:	19.12.2012	
Total cost of the subject unit:	earnest money and subsequent installments	Rs. 76,34,250
Dates of making deposits with the builder co. and amounts of the deposits:	04.06.2012	Rs. 5,00,000 (earnest money)
		Rs. 5,93,077
	09.07.2012	Rs. 1,08,611
	22.01.2013	Rs. 3,11,652
	28.01.2013	Rs. 13,01,348
	28.01.2013	Rs. 97,181
	30.01.2013	Rs. 57,797
	10.03.2014	Rs. 15,98,447
	10.03.2014	Rs. 1,68,553
	10.03.2014	Rs. 3,97,122
	04.04.2014	Rs. 17,66,562
	15.06.2015	Rs. 62,475
	15.06.2015	(subsequent installments)
	Total deposited: Rs. 69,62,824	
	2012 to 2015	(about 92% of the total cost)
Assured date of completion and handing over possession (inclusive of the extended period of 6 months beyond 30 months of the date of execution of the agreement):	18.12.2015	

Date of filing of complaint in the State Commission:	13.05.2016
Date of the State Commission's impugned Order:	18.04.2017
Date of arguments in first appeal before this Commission:	03.06.2019
Completion / Occupancy Certificate of the subject unit:	Not obtained.

**16.** We may first note, here, that the Act 1986 is for better protection of the interests of consumers, to provide speedy and simple redressal to consumer disputes, in recognizedly a fight amongst unequals.

**17.** We may also note that the consumer-complainant is not seeking specific performance of a contract in a civil court; he is seeking consumer justice from a quasi-judicial machinery for redressal of consumer disputes under the provisions of The Consumer Protection Act, 1986.

**18.** Section 3 of the Act 1986 specifically provides that 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. That is, the remedy provided under the Act is in addition to the provisions of any other law for the time being in force; the provisions of this Act give the consumers an additional remedy besides those that may be available under other existing laws.

**19.** It flows straightaway from section 3 of the Act that existence of an arbitration clause in the agreement does not bar the jurisdiction of the State Commission.

An agreement (self-determined and self-articulated by a builder co. itself) does not supersede the statute.

We find no merit in the builder co.'s contention that the existence of an arbitration clause in its agreement bars the jurisdiction of the State Commission.

And we agree with the State Commission's observation in this regard as contained in para 6 of its Order dated 18.04.2017.

**20.** The subject project is a residential housing project, and the subject unit is a residential dwelling unit.

The agreement dated 19.12.2012 is admitted to by both sides.

The amount deposited by the complainant with the builder co. is admitted to by both sides.

The complainant had deposited Rs. 69,62,824/-, which was about 92% of the total cost (Rs. 76,34,250/-) of the subject unit, and there is nothing on record to show that he was not ready and willing to deposit the balance cost with interest, in accordance with any clause of the agreement, or, for that matter, for the sake of discussion, by any computation of the builder co., provided that the subject unit was duly and fully developed within the assured period and was not unreasonably delayed (reasonable delay here would connote such delay as a reasonable man of normal intelligence would not normally agitate).

On the face of it, the complainant was not barred on count of “commercial purpose” (the exception in the ‘explanation’ to section 2(1)(d) refers).

The complainant who entered into the agreement with the builder co. was ‘consumer’ within the meaning of section 2(1)(d) of the Act 1986.

We find no merit in the builder co.’s contention that the complainant was not a ‘consumer’.

And we agree with the State Commission’s observation in this regard as contained in para 5 of its Order dated 18.04.2017.

Further, it may be specifically seen that a provision for interest (@ 18% p.a.) in case of delay in making any instalment/s is contained in the agreement (clause 4.2), as also that a provision for the builder co. having a lien on the subject unit towards all outstanding dues is contained in the agreement (clause 5.8).

As such the builder co.’s ground of delay in payment of any instalment/s on the part of the complainant fails, and we find no merit in the builder co.’s contention, as raised in its memo of appeal, that the complainant was not forthcoming in making payments towards the subject unit.

**21.** Perusing the entire material on record, in our considered view, this case, for apt adjudication on merit, does not require recording of extensive oral evidence and proving extensive documentary evidence as per the provisions of the Indian Evidence Act, 1872 and adherence to the substantive and procedural provisions of the Code of Civil Procedure, 1908, that is best undertaken in a civil court.

We find no issue involved, as may require such (extensive) oral and documentary evidence and such (complex) examination as to make it apt or necessary for the case to be adjudicated only and only in a civil court.

We find the case to be within the professional competence and lawful jurisdiction of the State Commission.

The State Commission had the jurisdiction to entertain these complaints, and to adjudicate apropos deficiency in service [section 2(1)(g) & (o)] and unfair trade practice [section 2(1)(r)] under the additional (alternative) remedy provided for consumers (section 3).

We find no merit in the builder co.’s contention that this case can be adjudicated only and only in a civil court.

And we agree with the State Commission's observation in this regard as contained in para 7 of its Order dated 18.04.2017.

22 . Notwithstanding the fact that the consumer-complainant entered into the agreement voluntarily, with eyes open, we may, but, also place in perspective that the opposite party is a builder co., its activities spread across different districts and states of the country. It has its own pre-determined and pre-set articulation of (its) agreement. The buyer-consumer has to necessarily agree to the letter of the agreement, inclusive of all its terms and conditions, as determined and set by the builder co., else, he cannot enter into the agreement at all. The language of the agreement is vetted, administratively, financially, technically and legally, by functionaries (/ experts) of the builder co., and the buyer-consumer has to but agree to it *in toto* (there is an element of 'take it, or leave it', notwithstanding that the buyer-consumer enters into the agreement voluntarily and with eyes open and is aware of its articulation and language).

23. We also want to place in perspective that the nature of the agreement between the builder co. and the consumer-complainant was in essence of a self-financing scheme, in which the consumer-complainant was paying the builder co. the agreed total cost, together with the agreed interest for delay in making any instalment/s, prior to / simultaneous to the construction, and it went without saying that the total cost included the builder co.'s effort and profit.

24. We have perused the agreement, holistically, in its entirety, and have noted the nature and manner of the terms and conditions articulated therein.

Here we may quote the following sub-clauses of clause 5 and clause 12 of the agreement:

**Clause 5: Possession of Apartment**

5.1. Subject to Clause 5.2 and further subject to all the Allottee(s) of the said "Apartment" in the "Said Project" making timely payment, the Developer shall endeavor to complete the development of "Said Project" in general and the said "Apartment" in particular as far as possible within 30 (thirty) months along with an extended period of (6) months from the date of execution of this Apartment Allottee(s) Arrangement and / or from the date of start of construction of Group Housing named as "Wave Gardens" whichever is later.

5.2. For the purposes of this Apartment Allottee(s) Arrangement "Force Majeure" shall mean any event or circumstance or a combination of events and circumstances, whether occurred or likely to occur, which satisfies all or any of the following conditions:

Materially and adversely affecting the "Said Project" / Group Housing development named as "Wave Garden" and / or the performance of an obligation of the Developer;

And are beyond the control of the Developer;

And includes (without limitation), subject to satisfaction of the above conditions, the following events and / or circumstances:

- a) war (whether declared or undeclared), invasion, armed conflict or act of the foreign enemy;
- b) revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage;
- c) strikes, industrial disputes and / or lockouts and / or interrupting supplies and services to the "Said Project";
- d) Non-payment of sums due from the Allottee(s) including payment of installment / applicable interest and levies as mentioned herein above on time by any of the Allottee(s) of the said "Apartment".
- e) change in governmental policy, laws (including, any statute, ordinance, rule, regulation, judgement, notification, order, decree, permission, license or approval), including but not limited to, expropriation or compulsory acquisition by any Government of any part of the Housing Project or rights therein;
- f) acts of God or events beyond the reasonable control of the affected party which could not reasonably have been expected, including any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, landslide, subsidence, flood, storm, cyclone, epidemics or plagues or any other similar effect;
- g) any dispute between the Developer and Allottee(s) and / or between the Developer and the person, persons, association of persons obstructing and creating hurdle in the progress of the development work of the "Said Project" and / or Group Housing development named as "Wave Gardens" and / or any proceeding initiated in this regard;
- h) any judgment or order of any court of competent jurisdiction or Government in India or the State Government or any Local Body or Statutory Authority, made against the Developer in any proceedings;
- i) any other reasons which can be construed to be beyond the control of the normal human being;

5.4. The Allottee(s) shall take possession of the "Apartment" within 30 (thirty) days from the date of issue of offer to take possession, failing which the Allottee(s) undertakes and agrees to pay the Holding Charges as may be decided by the Developer from time to time besides the applicable Maintenance Charges, for the entire period after expiry of 30 (thirty) days during which the Allottee(s) does not take delivery or physical possession of the "Apartment". The Holding Charges shall be decided by the Developer and the same may be revised or modified from time to time, by the Developer in view of the prevailing circumstances. The purpose for imposition of this charge is to ensure and secure the habitation in "Wave Gardens" at the earliest which otherwise is the object of the Government for granting development of the "Said Project" / "Wave Gardens". It is hereby clarified that these Holding Charges shall be independent of all dues and charges specified hereunder. Where the Allottee(s) omits, fails, refuses and / or neglects to take

possession of the “Apartment” from the Developer for any reason whatsoever, the “Apartment” shall be held by the Developer at the risk and cost of the Allottee(s) and the Developer shall in its sole discretion, reserve the right to cancel the allotment in such circumstances and forfeit the Earnest Money, recover delayed payment interest and other outstanding dues accrued as per this Apartment Allottee(s) Arrangement and refund the balance price paid by the Allottee(s) without any interest / compensation upon realization of money from resale / re-allotment to any other intending Allottee(s).

5.5. Subject to clause 5.1 and 5.2 above and further the Allottee(s) having complied with its obligations under the Application Form as well as this Apartment Allottee(s) Arrangement including but not limited to timely payment of the entire Consideration and other charges as per the payment plan opted by the Allottee(s), in the event of willful delay in construction of the “Apartment” for reason attributable solely to the Developer, delay charges would be payable to the Allottee(s) at the rate of Rs. 5/- per square feet per month on Super Area. It is hereby clarified that the aforesaid delay charges shall be payable, subject to demand being raised by the Allottee(s) for the same (and will be calculated from the date of the said demand), till the date when possession of the “Apartment” is offered to the Allottee(s). Further, all payments towards the delay charges, as due from the Developer, would be adjusted from the payment due to the Developer from the Allottee(s) at the time of the final settlement of Sale Consideration of the “Apartment”. Provided specifically that, the Developer shall be entitled, without the payment of any delay charges, not to offer the possession of the Said “Apartment”, to the Allottee(s), till all amount due and payable by the Allottee(s), as of such date, including all default, payment of interest etc., have been paid by the Allottee(s).

## **Clause 12: Events of Defaults and Consequences**

It is specifically made clear to the Allottee(s) that the Allottee(s) shall perform and comply with all covenants and obligations required to be performed or complied with the terms and conditions mentioned herein. Any default, breach of covenants or non-compliance of any of the terms and conditions of this Apartment Allottee(s) Arrangement shall be deemed to be events of default liable for consequences stipulated herein.

With a view to acquaint the Allottee(s), some of indicative events of defaults are mentioned below which are merely illustrative and are not exhaustive.

- a) Failure to make payments within the time as stipulated in the Schedule of Payments by the Allottee (s), requisite stamp duty, registration, taxes and any incidental charges, any increases in security including but not limited to non-interest bearing maintenance security as demanded by the Developer, any other charges, taxes etc. as may be notified by the Developer to the Allottee(s), default in the payment of installments under the Schedule of Payments, interest on installments by whatever name called and all other default of similar nature.



- b) Failure to perform and observe any or all the Allottee(s) obligations including those as set forth in this Apartment Allottees(s) Arrangement or to perform any other obligation, if any, set forth in any other related Agreement.
- c) Failure to take over the said "Apartment" for occupation and use within the time stipulated by the Developer.
- d) Failure to execute Conveyance / Sale Deed / Maintenance Agreement and / or any other document required to be executed and further fails to pay on or before its due date the registration charges, stamp duty, taxes maintenance charges, maintenance security or any increases in respect thereof, as demanded by the Developer and / or its nominee and / or other local body.
- e) Assignment of any interest of the Allottee(s) in "Apartment" without prior written consent of the Developer or without payment of Administrative / transfer Charges or not executing documents as asked by the Developer for assignment / transfer, as may be fixed by the Developer from time to time.
- f) Dishonor / stoppage of payment of any cheque(s) including post dated cheques given by the Allottee(s) for any reason whatsoever.
- g) Any other acts, deeds or things which the Allottee(s) may commit, omit or fail to perform, terms and conditions of allotment and any other undertaking, deed etc, or as demanded by the Developer which in the opinion of the Developer amounts to an event of default and the Allottee(s) agrees and confirms that the decision of the Developer in this regard shall be final and binding on the Allottee(s).
- h) Any breach of any of the Allottee(s) obligations and duties under this Apartment Allottee(s) Arrangement / Maintenance Agreement and any Rules as may be prescribed by the Developer / Maintenance Agency in respect of the use and occupation of the said "Apartment".

Upon the occurrence of any of event(s) of default in respect of covenants and obligations under this Apartment Allottee(s) Arrangement, or any violation of any rules as may be prescribed by the Developer may:

- i) IN CASE THE POSSESSION HAS NOT BEEN HANDED OVER TO THE ALLOTTEE(S), the Developer may at its sole discretion cancel registration / allotment. If the Developer opts to cancel the allotment, the Allottee(s) however, shall be given (30) days notice to cure / rectify the breach. The Allottee(s) agrees that if the default is not cured / rectified within such thirty (30) days, this Apartment Allottee(s) Arrangement shall automatically stand cancelled without any further notice and the Developer shall have the right to forfeit the earnest money including any other amount of a non-refundable nature.

The Allottee(s) agrees that upon such cancellation, the Developer will be released and discharged of all liabilities and obligations under this Apartment Allottee(s) Arrangement and the Allottee(s) hereby further authorizes the Developer that the allotted "Apartment" may be sold to any other party by the Developer or dealt with in any manner



as the Developer may in its sole discretion deem fit as if this Apartment Allottee(s) Arrangement had never been executed. In case the said "Apartment" is cancelled by the Developer, the amount equivalent to earnest money and any other amount of non-refundable nature shall be forfeited out of the amount paid by the Allottee(s) in respect of the said "Apartment" and the balance if any shall be refunded without any interest to the Allottee(s). It is clarified here that after refund of the amount as mentioned above, the Allottee(s) shall be left with no right, title, interest or lien over the said "Apartment" in any manner whatsoever.

ii) **IN CASE THE POSSESSION HAS BEEN HANDED OVER TO THE ALLOTTEE(S):** The Developer may send a notice to the Allottee(s) to cure / rectify the default as specified in that notice within a period of seven (7) days. In case the default as stated in the notice is not cured / rectified by the Allottee(s) within seven (7) days, the Allottee(s) shall be required to pay penalty @ Rs. 5/- per square feet per month on Super Area to the Developer till the default is not cured / rectified. The Developer will also be entitled to withdraw all facilities besides disconnect the electricity / water connection of the defaulting Allottee(s), in case the default is not cured by the Allottee(s) within the cured period. The Developer also agrees and understands that the Developer shall have first charge / lien on the said "Apartment" in respect of any such non-payment of penalty / damages as stated above. The exercise of the above remedies is without prejudice to the other rights of the Developer.

**25.** A mere reading of clause 5.2 of its agreement (quoted in para **24**) shows that the builder co. has given its own meaning and scope of '*force majeure*', notwithstanding that '*force majeure*' is a legal phrase, to be interpreted, on the law, and on the obtaining facts.

Further, on the one hand, the clause has been kept nebulous and open-ended, and, on the other hand, principal responsibilities of the builder co. in project planning, execution and completion (without time or cost overruns) have been extensively included therein.

This bespeaks of unfair and deceptive arbitrariness.

**26.** Furthermore, in respect of its one principal ground of '*force majeure*', taken in para 4. O. of its memo of appeal (quoted in para **14**), the builder co. has made a bland, unreasoned and unexplained averment that the "State Commission has failed to appreciate that a substantial period of delay in completion of the project was caused due to FORCE MAJEURE instances given under clause 5.2 of the" agreement "which are beyond the control of" the builder co., without in any manner expounding, with the requisite reasons, on the specific fact/s that constituted its so averred "*force majeure instances*". Instead of specifying any fact/s or reason/s, the builder co. has only gone forth to reproduce part of clause 5.2 of its agreement (wherein "*force majeure*" finds mention).

We, thus, find no merit in the builder co.'s contention of "*force majeure instances*".

**27.** In clause 5.4, the buyer is required to take possession of the subject unit within 30 days of issue of offer to take possession, failing which the buyer has to pay "Holding Charges as may be decided" by the builder co. "from time to time" besides "Maintenance Charges". The said clause

5.4 further stipulates that the “Holding Charges shall be decided by” the builder co. and “the same may be modified and revised from time to time” by the builder co. “in view of the prevailing circumstances”.

We note that, on the one hand, “delay charges” for delay in completion and handing over possession of the subject unit to the buyer have been fixed at a (self-evidently meagre) amount of “Rs.5/- per square feet per month on Super Area” (clause 5.5), and, on the other hand, the “Holding Charges” for failure of the buyer to take possession within 30 days of it being offered have not been specified at all and the right to modify and revise them has also been retained by the builder co. with itself (clause 5.4).

This bespeaks of unfair and deceptive arbitrariness.

**28 .** For an ordinary common buyer–consumer, the two fundamentals, which are significant and material, are, *one* , ‘Cost’ and, *two* , ‘Time’, that is, the total cost, read with the schedule of making payment and interest for delay in making any installment/s, and the total time period in which possession would be delivered.

**29.** Clause 5.1 stipulates that the builder co. “shall endeavour to complete the development” of the project and the subject unit “as far as possible” within 30 months with an extended period of 6 months “from the date of execution” of the agreement “and / or” “from the date of start of construction” “whichever is later”.

That is to say that, if the start of construction is indefinitely delayed, or, for the matter, delayed *ad infinitum* , the 30 month period itself would never initiate at all, and the builder co. can obtain and retain, indefinitely, *ad infinitum* , the earnest money and the subsequent installment/s together with interest for any delayed instalment/s.

Such proposition, on the face of it, is absurd.

And it bespeaks of unfair and deceptive arbitrariness.

**30.** Unless the date of start of construction is earlier to the date of execution of the agreement, the clear sum and substance and import of “- - - the Developer shall endeavour to complete the development of “Said Project” in general and the said “Apartment” in particular as far as possible within 30 (thirty) months along with an extended period of (6) months from the date of execution of this Apartment Allottee(s) Arrangement and / or from the date of start of construction of Group Housing named as “Wave Gardens” whichever is later. - - -” in clause 5.1 read in conjunction with “- - - in the event of willful delay in construction of the “Apartment” for reason attributable solely to the Developer, delay charges would be payable to the Allottee(s) at the rate of Rs.5/- per square feet per month on Super Area - - -” in clause 5.5, as evident to a reasonable man of normal intelligence, is that the builder co. would complete construction and hand over possession of the subject unit within a period of 30 months from the date of execution of the agreement and in all contingencies within an extended period of 6 months thence, and, in case there is some short reasonable delay in offering possession, the builder co. would pay compensation for such short reasonable delay @ Rs.5/- per square feet per month on the super area.

That “subject to” or “endeavour to” etc. have been incorporated in clauses 5.1 and 5.5 and in other clauses, or that other such terms and conditions (albeit ‘ifs and buts’) have been built into the

various clauses of the agreement, do not in any manner take away the import of the proposition intended to be conveyed and understood.

And the compensation for delay provided for in clause 5.5 (rs. 5 per sq. ft. p.m.) cannot be for an unreasonably protracted period or indefinite; at best it can be for a short period that would appear to be reasonable *per se* and would be acceptable *as such* to a reasonable man.

**31.** The contention of the builder co., that the terms and conditions of clause 5.1 and clause 5.5, and of the various other clauses of the agreement, read together, imply that delay could for any period beyond 30 months and also beyond the extended period of 6 months thence, that it can be short or protracted, reasonable or otherwise, and that the (self-evidently meagre) compensation for delay provided for in clause 5.5 could be paid indefinitely for any period above 30 months and also beyond the extended period of 6 months thence, is misconceived and erroneous.

As already stated, unless the date of start of construction is earlier to the date of execution of agreement, the clear import and intent of the assured period of handing over possession “- - - the Developer shall endeavour to complete the development of “Said Project” in general and the said “Apartment” in particular as far as possible within 30 (thirty) months along with an extended period of (6) months from the date of execution of this Apartment Allottee(s) Arrangement and / or from the date of start of construction of Group Housing named as “Wave Gardens” whichever is later. - - -” in clause 5.1 read with the compensation for delay in handing over possession of “- - - in the event of willful delay in construction of the “Apartment” for reason attributable solely to the Developer, delay charges would be payable to the Allottee(s) at the rate of Rs.5/- per square feet per month on Super Area - - -” in clause 5.5 is that the construction would be completed and the possession handed over not later than 30 months of the execution of the agreement and within all contingencies within the extended period of 6 months thence, and that for a short reasonable delay beyond 30 months or at the outside beyond the extended period of 6 months thence, a (somewhat token) compensation would be paid.

To say that the possession can be delayed indefinitely or unreasonably and a token compensation for delay can be paid indefinitely or for an unreasonably protracted period is misconceived and erroneous. Indefinite or unreasonable delay with token compensation for delay cannot continue *ad nauseam*, *ad infinitum* (such situation would be absurd).

The builder co.’s contention, taken in para 4. F. of its memo of appeal (quoted in para **14**) that “time is not the essence of the contract”, is misconceived and erroneous.

**32.** For the buyer-consumer, when he entered into the agreement and / or made his first deposit towards the total cost, and subsequently continued to ( / will continue to) make his deposits as per the stipulated schedule of deposit, together with the stipulated interest if there was / is any delay in depositing any instalment/s, the proposition conveyed and understood was that the construction would be completed, possession would be delivered, registration would be executed, completion / occupancy certificate and other documentary requisites including safety certifications from concerned government and municipal authorities would be provided, requisite structural drawings & plans would be provided, by the builder co., i.e. all requisite documents and certifications as are necessary for peaceful enjoyment and future maintenance and upkeep of the subject unit would be provided by the builder co., within the conveyed and understood time period of 30 months from the date of execution of the agreement and in all contingencies within the extended period of 6 months thence.

**33.** Prior to, or, at the least, simultaneous to, getting a consumer to enter into its agreement and accepting the first payment towards the total cost of the subject unit, the builder co. was required and expected to have the due pragmatic and realistic assessment and preparation of the project planning, execution and completion.

It was the prime responsibility of the builder co. to ensure that it was in a position to deliver the possession of the subject unit/s to the buyer/s-consumer/s within the assured period of 30 months and in all contingencies within the extended period 6 months thence.

Planning, execution and completion were its responsibility, and not of the consumer.

(Normal) impediments or problems that arise in planning, execution and completion were its responsibility, and not of the consumer.

Specifically, availability of land (/ acquisition of land), as well as all approvals from the concerned government and municipal authorities, as and when due, being fundamental basic requirements of a residential housing project, were decidedly the builder co.'s primary responsibilities, and not of the consumer.

Cost and Time overruns were its responsibility, not of the consumer.

**34 .** Non-fulfilment of its overall responsibilities of project planning, execution and completion can not be and are not grounds for condoning or overlooking delay in completion and failure to hand over possession within the assured period.

**35.** *Force majeure* , unforeseeable circumstances, irrespective of its various 'liberal' or 'strict' interpretations, and irrespective of its various interpretations in different sets of facts, can, but, not be nebulously and irrationally articulated in the agreement, or contended and argued for anything and everything related to the builder co.'s responsibilities for completion of the project without cost or time overruns.

**36.** It is significant that the material facts and consequences relating to availability of land (/ acquisition of land) and approvals from concerned government and municipal authorities at the due time were not brought to the notice of the buyer-consumer at the time of entering into the agreement and / or accepting the first deposit towards the total cost of the subject unit from the buyer-consumer.

In the absence of the facts and the consequences thereof being specifically and explicitly brought to his notice, the buyer-consumer would reasonably (and correctly) understand that all aspects of project planning, execution and completion, inclusive of availability of land (/ acquisition of land) and all approvals from concerned government and municipal authorities at the due time, were the responsibility of the builder co. and have been / are being / would be duly taken care of by the builder co., without cost or time overruns.

Not bringing the material facts and consequences relating to availability of land (/ acquisition of land) and approvals from the concerned government and municipal authorities at the due time to the notice of the buyer-consumer while entering into its agreement and / or accepting the first deposit towards the total cost of the subject unit from the buyer-consumer bespeaks of unfair and deceptive arbitrariness.

**37.** Here, in the lead-case, c.c. no. 144 of 2016, f.a. no. 1198 of 2017, the agreement was executed on 19.12.2012, the conveyed and understood period of 30 months plus the extended period of 6 months thence (36 months) expired on 18.12.2015, the consumer-complainant went to the State Commission on 13.05.2016 i.e. almost 5 months after expiry of the said 36 months (inclusive of the extended period of 6 months) from the date of execution of the agreement. Significantly, the possession of the unit in question was not offered even in the subsequent period of litigation in the State Commission (upto 18.04.2017; about 11 more months) and also in the still subsequent period of litigation in the National Commission (upto 03.06.2019, the date of arguments; yet about 26 more months). Admittedly, completion / occupancy certificate has still not been obtained by the builder co. Such delay in offering possession cannot be said to be reasonable or normal.

The position in respect of the other 19 c.c.s / f.a.s is similar (the table in para 5 refers).

**38.** Here we may note that, plainly put, in simple language, the sum and substance of the builder co.'s contentions, *inter alia* placing its reliance on its own self-determined and self-articulated agreement and on its own interpretation thereof, is that it can delay completion and handing over possession of the subject unit, indefinitely, *ad infinitum*, while continuing to obtain and retain the amount deposited by the buyer-consumer, together with interest for any delayed instalment/s, and will only be liable to pay the self-evidently meagre compensation for delay, without the buyer-consumer having any option or remedy to seek refund, with just and equitable interest, lumpsum compensation and cost of litigation.

In the light of the examination made afore, this contention belies any logic or rationale. We fail to discern any logic or reason to appreciate it, and record our considered view as such.

**39.** Not completing the project and not duly offering possession of the subject unit within the assured period of 36 months (inclusive of the extended period of 6 months) of the execution of the agreement, with the complainant making good his part of depositing an amount of Rs. 69,62,824/- comprising about 92% of the total cost (Rs. 76,34,250/-) of the subject unit, and there being nothing on record to show that he was not ready and willing to deposit the balance cost with interest, in accordance with any clause of the agreement, or, for that matter, for the sake of discussion, by any computation of the builder co. (provided that the subject unit was duly and fully developed within the assured period, and was not unreasonably delayed), constitute deficiency in service within the meaning of section 2(1)(g) and (o) of the Act 1986.

**40.** Giving its own meaning and scope to '*force majeure*', keeping the clause related thereto nebulous and open-ended and extensively including therein its principal responsibilities of project planning, execution and completion (refer paras 25, 26); not specifying at all the holding charges for failure of the buyer to take possession within 30 days of it being offered and retaining the right to modify and revise the said holding charges (para 27); stipulating that endeavour to complete the subject unit as far as possible within 30 months and within an extended period of 6 months from the date of execution of the agreement and / or from the date of start of construction whichever is later, and thereby imbibing even such absurd situation that if the start of construction is indefinitely delayed or is delayed *ad infinitum*, the 30 month period itself would never initiate at all and the builder co. can obtain and retain the earnest money and the subsequent installment/s together with interest for any delayed instalment/s, indefinitely, *ad infinitum* (para 29); not bringing the material facts and consequences relating to availability of land (/ acquisition of land) and approvals from concerned government and municipal authorities at the due time to the notice

of the buyer-consumer at the time of entering into the agreement and / or accepting his first deposit towards the total cost of the subject unit, and thereby making the buyer-consumer reasonably (and correctly) understand that all aspects of project planning, execution and completion, inclusive of availability of land (/ acquisition of land) and all approvals from concerned government and municipal authorities at the due time, were the responsibility of the builder co. and have been / are being / would be duly taken care of by the builder co., without cost or time overruns (para 36 ); illogically and irrationally contending, for years together, that it can delay completion and handing over possession of the subject unit, indefinitely, *ad infinitum* , while continuing to obtain and retain the amount deposited by the buyer-consumer, together with interest for any delayed instalment/s, and it will only be liable to pay the self-evidently meagre compensation for delay, without the buyer-consumer having any option or remedy to seek refund, with just and equitable interest, lumpsum compensation and cost of litigation (para 38 ), constitute unfair trade practice within the meaning of section 2(1)(r) of the Act 1986.

**41.** It is well and truly evident that the builder co. had to hand over possession of the subject unit within a period of 30 months from the date of execution of the agreement and in all contingencies within an extended period of 6 months thence, as intended to be conveyed and understood, and a short reasonable delay would have attracted token compensation, which, by its very nature, has to and can be only and only for a short period which a reasonable man would not agitate.

**42.** The consumer-complainant was put to loss and injury, put to a continuous position of mental agony and physical harassment, hardship and difficulty, uncertainty and helplessness, even after making payment of Rs. 69,62,824 against the total cost of Rs. 76,34,250 i.e. about 92% of the total cost, between 04.06.2012 and 15.06.2015, before the assured date (18.12.2015) of handing over possession, and well before approaching the State Commission (on 13.05.2016).

**43.** The above examination makes it explicitly evident that two rights accrued to the consumer-complainant:

*one* : the option to wait for the subject unit to be handed over, if and when the construction was completed and the offer of possession of the subject unit was made by the builder co., at his (the consumer-complainant's) considered wisdom and discretion, and in addition seek just and equitable compensation under the Act 1986 for unreasonable delay and loss and injury.

*two* : to claim refund of the principal amount, with just and equitable interest thereon, lumpsum compensation and cost of litigation.

That is, the consumer-complainant had both options available, *one* , to obtain possession of the subject unit at his considered wisdom and discretion if and when offered by the builder co. and to in addition seek just and equitable compensation under the Act 1986 for unreasonable delay in possession and the loss and injury, and, *two*, to opt for a fair amount from the builder co., comprising of refund of the deposited amount, with just and equitable interest thereon, lumpsum compensation and cost of litigation.

**44.** It is seen that of the two options available to the consumer-complainant (as determined in para 43 ), he opted for obtaining a fair amount, comprising of refund of the principal amount paid to the builder co., with interest thereon, lumpsum compensation and cost of litigation.



45. To sum up, we find, both, deficiency in service within the meaning of section 2(1)(g) & (o), and unfair trade practice within the meaning of section 2(1)(r), to be well and truly evident on the part of the builder co.

46. In remedy, it is appropriate to direct the builder co. to refund the principal amount deposited by the complainant with the builder co., with just and equitable interest, lumpsum compensation and cost of litigation, to the complainant.

47. In so far as refund of the amount deposited by the complainant with the builder co. is concerned, there can be no two opinions. The refund in full has necessarily to be made by the builder co. to the complainant.

48. In respect of the interest on the amount deposited, it is always desirable and preferable, to the extent feasible and appropriate in the facts and specificities of a case, that some objective logical criteria be identified and adopted to determine an apt rate of interest. The rate of interest cannot be arbitrary or whimsical, some reasonable and acceptable rationale has to be evident, subjectivity has to be minimized.

In our considered view, bearing in mind that the subject unit in question is a residential dwelling unit, in a residential housing project, the rate of interest for house building loan for the corresponding period in a scheduled nationalized bank (take, State Bank of India) would be appropriate and logical, and, if 'floating' / varying / different rates of interest were / are prescribed, the higher rate of interest should be taken for this instant computation.

49. The lumpsum compensation for loss and injury, for mental agony and physical harassment, hardship and difficulty, uncertainty and helplessness, can be neither meagre nor exorbitant, it has to be just and equitable, commensurate with the loss and injury.

In our considered view, lumpsum compensation of Rs. 1 lakh would be just and appropriate in the given facts and specificities of the case.

50. In respect of cost of litigation, too, just and equitable cost is necessary.

In our considered view, cost of litigation of Rs. 1 lakh would be just and appropriate.

51. We may specifically note that the substantive dispute was between the complainant and the builder co.

Banks / financial institutions provided loan to facilitate the transaction between the buyer and the builder co. apropos the subject unit, *from* the builder co. *to* the buyer.

We may further note, in general, that banks / financial institutions function ( / are required to function) as per their rules and norms, and as per the law, they provide finance in the normal wont of their functioning, and should not be unnecessarily and unjustifiedly put to trouble or difficulty in a consumer dispute that is substantively between the buyer and the builder / developer / etc.

We therefore deem it appropriate that the first charge on the awarded amount should necessarily be of the bank or financial institution, if any, that has provided loan to the complainant towards making payment for the subject unit to the builder co.

**52.** We may also note that once the amount awarded for deficiency in service and / or unfair trade practice is adjudicated and determined, the onus is on the builder co. to be prompt and dutiful in making the necessary payments within the stipulated time. Creating yet further harassment, difficulty and helplessness for the ordinary simple consumer by delaying payments or making reduced payments etc. (if the adjudication is not stayed or quashed or modified by a higher authority / court) will be an unacceptable situation, to be viewed seriously - the harassment, difficulty and helplessness of the consumer should end promptly and fully, the chapter should close. Therefore, if the builder co. delays the adjudicated payments beyond the time stipulated, it would and should attract higher / penal interest and other compensation / costs, which will be determined by this Commission if the contingency so arises.

**53.** We may add that the duties / responsibilities of Director of a Company are laid-down in The Companies Act, 2013.

And we make it explicit that the builder co. (juristic person) as well as its Directors (persons) as also its concerned functionaries (persons) are liable, individually, jointly, and severally. And the liability qua the consumer-complainant initiated the day the consumer-complainant made his first deposit with the builder co. / its functionaries, and it continues.

We are making this observation *inter alia* in reference to 'enforcement' under section 25(3) and 'penalties' under section 27(1) of the Act 1986.

**54.** We firm-up our findings and award as below:

**a.** Deficiency in service and unfair trade practice are determined against the builder co. and its Directors as well as its concerned functionaries, in each case.

**b.i.** The respective amount/s deposited by the complainant/s with the builder co. shall be refunded with interest by the builder co. and its Directors as well as its concerned functionaries to the complainant/s, in each case.

**b.ii.** The interest shall be payable from the respective date/s of deposit till the actual date/s of realisation.

The rate of interest shall be the rate for house building loan in the corresponding period in a scheduled nationalized bank (take, State Bank of India). If 'floating' / varying / different rates of interest were / are prescribed, the higher rate shall be taken for this instant computation.

**b.iii.** Lumpsum compensation of Rs. 1 lakh shall be paid by the builder co. and its Directors as well as its concerned functionaries to the complainant/s, in each case.

**b.iv.** Cost of litigation of Rs. 1 lakh shall be paid by the builder co. and its Directors as well as its concerned functionaries to the complainant/s, in each case.

**b.v.** Respective amounts, if any, deposited by the builder co. with the State Commission shall be adjusted in the above payments, with interest, if any, accrued thereon, in each case.



**b.vi.** First charge on the awarded amount shall be of the concerned bank or financial institution, if any, that has provided loan to the complainant/s towards making payment for their subject unit/s to the builder co., in each case.

**b.vii.** It shall be the responsibility of the builder co. and its Directors as well as its concerned functionaries to correctly ascertain the exact rate of interest, as directed in sub-para **b.ii.** , and to make the respective payments, accompanied with clear and cogent respective calculation sheet/s, in each case.

**b.viii.** In addition, specifically for indulging in unfair trade practice, the builder co. and its Directors as well as its concerned functionaries are put to stern advice of caution with cost of Rs. 25,000/- in each case (i.e. in total  $25000 \times 20 = \text{Rs. } 5,00,000/-$ ) to be deposited in the Consumer Legal Aid Account of the State Commission.

**b.ix.** The builder co. and its Directors as well as its concerned functionaries shall be liable individually, jointly and severally.

**b.x.** All payments shall be made within four weeks of the pronouncement of this Order.

**b.xi.** It shall be the responsibility of the builder co. and its Directors as well as its concerned functionaries as also of the complainant/s (i.e. of both sides) to inform the concerned bank or financial institution, if any, of this Order, in each case, within two weeks of the pronouncement of this Order.

**b.xii.** If the payments to be made by the builder co. and its Directors as well as its concerned functionaries to the complainant/s are delayed beyond the stipulated period of four weeks from the date of the pronouncement of this Order, it shall attract higher / penal interest and other compensation / cost (which will be determined by this Commission in the facts and specificities of that contingency if it so arises, in each concerned case).

**55.** A copy each of this Order be sent by the Registry to the State Commission, to the builder co. and its chief executive and to the complainant/s in each case within one week of the pronouncement of this Order.

**56.** The builder co. through its chief executive shall file a report-in- compliance with the Registry of this Commission within six weeks of the pronouncement of this Order with copies thereof to the complainant/s in each case.

**57.** Needless to add that the State Commission shall proceed for execution as per the law for failure or omission to comply with this Order

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**DR. S.M. KANTIKAR**  
**PRESIDING MEMBER**

.....  
**DINESH SINGH**

**MEMBER**